THE

CONSTRUCTIONS

OF THE

REGULATIONS AND ACTS,

ISSUED BY THE

Court of Sudder Dewanny Adawlut,

FROM 1798 TO 1847,

WITH AN INDEX.

PUBLISHED WITH THE PERMISSION OF GOVERNMENT.

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PREFACE.

BY the permission of Government, a new edition of the CONSTRUCTIONS has been prepared, in which the Dewanny Constructions are separated from those of the Nizamut.

This volume contains the CONSTRUCTIONS issued by the Sudder Dewanny Adawlut, but among them will be found several published on the Nizamut side of the Court, which apply to Civil as well as to Criminal matters. Notes, indicative of the present state of the law, have also been added.

Those CONSTRUCTIONS which are obsolete, or which have been rescinded, are printed in italics, and no reference is made to them in the Index. It is difficult precisely to define the rule which has been observed in marking those CONSTRUCTIONS which are obsolete. Many have been expressly rescinded by the Court. A few appear rather to have anticipated the state of the law at the time when they were promulgated. Others, which refer to laws subsequently rescinded, are equally applicable to more recent Legislative enactments. It is only to be noted that where any person using this edition has occasion to differ from the Editor, there is nothing to prevent him from following his own better judgment.

With regard to the CONSTRUCTIONS themselves, they must be taken *quantum valeant*. They are useful weapons in argument, and very few suits are decided without the quotation

of a Construction by the Pleaders on either side. They also contain much valuable direction and information on points of practise, which is not to be found elsewhere. Mr. Bowyer, in his Commentaries on the modern Civil Law, observes, that "the authority of the *responsa prudentum* was not positive and invariable, but obtained only when their opinions were confirmed by general reception." It is not therefore surprising, that the Constructions, issued by successive Judges of the Sudder Court, should not be all held in equal estimation.

The original number of each Construction has been adhered to, in the present edition, for convenience of reference.

The Index is an abbreviation of the abstract of the Constructions published by Mr. Reid, late a Judge of the Sudder Court.

C. T. BUCKLAND.

26*th December*, 1854.

CONSTRUCTIONS

OF THE

REGULATIONS OF GOVERNMENT,

BY THE

COURT OF SUDDER DEWANNY ADAWLUT.

No. 1.

1793.
Reg. XVI.
1795.
Reg. XV.
1803.
Reg. XXI.

THE provisions contained in Regulation XVI. 1793, (extended to Benares by Regulation XV. 1795, and re-enacted for the Ceded Provinces by Regulation XXI. 1803,) determined by the Sudder Dewanny Adawlut, on the 3rd of May, 1798, on reference from the Dacca Provincial Court, to refer to suits for money or personal property, and to disputed accounts arising out of suits for real property.

May 3, 1798.

See Regulation VI. of 1813, and No. 243.

No. 2.

1793.
Reg. IV. Sec. 22.

The judge of zillah Shahabad was informed, that the Court do not consider Section 22, Regulation IV. 1793, to authorize or intend a sequestration of lands, till the judgment of forfeiture be confirmed.

May 2, 1799.

No. 3.

1794.
Reg. III. Sec. 14.

The Court of Sudder Dewanny Adawlut, in reply to a reference from the Dacca Provincial Court, determined, on the 8th of April, 1802, that a decree not enforced during a period of 12 years and upwards, might be put in execution, on application for that purpose, without a fresh suit; provided the party holding it explain satisfac-

torily the cause of the delay, and no valid objections are offered by the adverse party.*

April 8, 1802.

No. 4.

1799. Reg. VII.

Under Regulation VII. 1799, land belonging to a defaulter other than that for which the balance is due from him, cannot be sold, but his interest in that for which he owes a balance may be sold, and so may his chattels.

January 11, 1803.

See No. 496.

No. 5.

1793. Reg. XXXVI. Sec. 15.

1803. Reg. XVII. Sec. 15.

On a reference from the judge, zillah Tipperah, the Court determined, that in the absence of a register from the station, the judge cannot officiate for the registry of deeds, without deputation from the register, under Section 15, *Regulation XXXVI.* 1793.

May 10, 1804.

See Regulation IV. 1824, *Sec.* 4.

No. 6.

1800. Reg. VII., Sec. 6.

Extract from a letter from the Judge of zillah Nuddea, dated 28th March, 1805.

"The idea which hitherto prevailed in this district, is that if an obligation required to be written on stamped paper, be written on any other kind of stamped paper than that prescribed for such obligation, the Collector, after receiving the prescribed penalty, is to cause the proper stamp to be affixed to it; but that if the obligation be written on plain paper, the Collector's receipt, stating that the penalty has been paid, is sufficient: whereas it appears to me that whether the obligation be written on plain paper, or on any other kind of stamped paper, than that prescribed for such obligation, the collector, after receiving the prescribed penalty, is bound to transmit it to the superintendent of the stamp office, to have the proper

* The application in the particular case which led to the above reference, was made after a lapse of 16 years. But see the case of Jugernath Pershad Sircar, appellant, *versus* Radhanath Sircar and others, in which the Court determined that a decree for landed property should not be executed after the lapse of 13 years without a new suit. Sudder Dewanny Adawlut Reports, vol. ii., page 280. See the Court's Construction of 28th October, 1813.—See also Summary Reports, 21st Jan. 1852, case of Mr. Sandes, page 244, Carrau's Edition.

stamp affixed thereto; and that unless the proper stamp is affixed to the obligation, it cannot be admitted in evidence in any court of justice, notwithstanding the collector may have certified that the prescribed penalty has been paid."

Extract from a letter of the Register, Sudder Dewanny Adawlut, in reply, dated 3rd April, 1805.

"The Court are of opinion, that under clauses 2 and 3, of Section 6, Regulation VII. 1800, any instruments written on any other paper than the stamped paper prescribed for such instruments, which may be presented to the collector with the amount of the prescribed penalties, in order to render them legal instruments, ought, as directed in the said clauses, to be forwarded to the superintendent of the office, for the purpose of having proper stamps affixed thereto."

See Sec. 14, *Reg. X, of* 1829.

No. 7.
1803.
Reg. XLIX., Secs. 2 and 3.

On a question from the judge of Behar, whether a judge is empowered to recall suits referred by him to an assistant judge, under Sections 2 *and* 3, *Regulation XLIX.* 1803, *the Court resolved, that a judge is not specially invested, by the Regulations, with a discretionary power of recalling suits which have been referred to an assistant judge; the Court declared their opinion, that a judge is not authorized to recall such suits, except in cases of evident necessity, arising from the absence of an assistant judge, or from the vacancy or discontinuance of the office of assistant judge.*

June 5, 1805.

See Sec. 3, *Reg. XXIV.* 1814.

No. 8.
1801.
Reg. VI. Sec. 7, clause 6.

Superintendent of Eastern Salt Chowkees, plaintiff, versus Mirza Hossein Alee, zemindar of Kismut Buldkhal, defendant.

On the 31*st of August*, 1804, *the judge of Tipperah adjudged a fine of* 5,000 *rupees against the defendant, under Section* 7, *Regulation VI.* 1801, *for the illicit manufacture of salt within his zemindaree. The defendant petitioned Government, who called on the judge for a report; and understanding from him, that a doubt was entertained whether an appeal from the decision of the zillah courts, in such cases, was meant to be allowed, by the terms of the sixth clause of the above section, the following*

explanation of that clause was communicated to the Sudder Dewanny Adawlut, in a letter from the Secretary to Government, 7th February, 1805.

"*It appears to the Governor General in Council, that the only object of the rule contained in clause sixth, Section* 7, *Regulation VI.* 1801, *was ultimately to afford to individuals, who might be prosecuted for the illicit manufacture of salt, such relief as the circumstances of the case might appear to render reasonable and proper; and that it was by no means intended to preclude such persons from appealing from the decisions of the zillah judge to the superior court.*"

The Sudder Dewanny Adawlut concurred in the above construction of Section 7, *Regulation VI.* 1801, *and informed the Dacca Provincial Court accordingly.*

July 27, 1805.

See Regulation X. 1819.

No. 9.

1793. Reg. XLVI., Sec. 3. 1802. Reg. III., Sec. 6.

On a reference from the Moorshedabad Court of Appeal, to ascertain by whom the subsistence of pauper plaintiffs or appellants, confined under the Regulations for litigiousness in their plaints or appeals, is payable, the Court of Sudder Dewanny Adawlut determined, that as plaintiffs and appellants, in such cases, are not confined at the instance of the defendant or respondent, any requisite subsistence for them, during their imprisonment, should be paid by Government.

September 13, 1805.

See Regulation XXVIII. 1814, Sec. 11, clause 1.

No. 10.

1799. Reg. VII., Sec. 29, clause 5.

In a case before the Sudder Dewanny Adawlut, between Abdool Ruheem (purchaser of the lands of Tarnee Churn and Doorga Churn, sold in execution of a decree against their father Ramgovind Mitter), and Neelkunt Mitter and Hurgovind Mitter (former sharers with Ramgovind Mitter), who represented that their shares were ordered by the Calcutta Provincial Court to be delivered over to the purchaser, with the share of Ramgovind Mitter, under a construction of the fifth clause of Section 29, Regulation VII. 1799, that whatever be specified in the collector's proclamation as the property of the person whose lands are sold, must be delivered over to the purchaser, the Court adopted an opposite construction, *viz.* that it was not meant by this Regulation, and would be evidently unjust,

to dispossess parties, in actual possession, and claiming right of property, of any part of the lands sold.*

September 18, 1805.

No. 11.

1793.
Reg. IV., Sec. 13,
Reg. XLVI.
Sec. 3.
1802.
Reg. III., Sec. 6.

Women of rank not to be confined for litigious pauper suits and appeals.

On a reference from the judge of zillah Behar, in the case of Gool Bebee, the Sudder Dewanny Adawlut informed him, that they did not consider women of rank, who are exempted by Section 13, Regulation IV. 1793, from personal appearance in a court of justice, to be proper objects of the discretionary rule contained in Section 3, Regulation XLVI. 1793, and Section 6, Regulation III. 1802.

September 26, 1805.

See Sec. 11, Regulation XXVIII. 1814.

No. 12.

Ditto, ditto.

On a further reference on the same case, the judge was informed, "the Court do not consider the terms of Section 6, Regulation III. 1802, to have taken away the discretion given by Section 3, Regulation XLVI. 1793, but to explain and prescribe that the original rule is to be carried into execution, notwithstanding an appeal, providing, at the same time, for further imprisonment, in the event of litigious appeal."

October 18, 1805.

See Sec. 11, Regulation XXVIII. 1814.

No. 13.

1803.
Reg. XLIX., Sec. 2,
clause 7.

The Sudder Dewanny Adawlut, on a reference from the judge and assistant judge of Hooghly, determined that, under the seventh clause of Section 2, *Regulation XLIX.* 1803. *summonses to respondents, in causes decided by an assistant judge, and appealed to a provincial court, are to be forwarded by the zillah judge to the assistant judge, and executed by the latter.*

It was at the, same time determined, that the native officers appointed to attend an assistant judge, might, as far as their current duties admit, be employed to assist the officers of the zillah court, in transcribing the papers of cases appealed to the provincial court; but unless the establishment of the assistant judge be

* Rules for enquiring into disputed claims of this nature have been laid down in Regulation VII., 1825.

framed with a view to include this duty, it should not be imposed beyond what might be compatible with the discharge of their current duties.

November 15, 1805.

See Regulation XXIV. 1814.

No. 14.

1793. Reg. XXXIX. 1795. Reg. XLIX. 1803. Reg. XLVI.

On a question from the judge of zillah Behar, whether a pergunnah cauzy could attest a deed of land situated in a pergunnah of which he was not the appointed cauzy, and executed out of his proper jurisdiction, the Court of Sudder Dewanny Adawlut expressed their opinion, that the attestation of a cauzy to a deed so executed, must be considered entirely unofficial, and of no greater weight than the attestation of other persons not given officially.

November 29, 1805.

No. 15.

1793. Reg. XV., Sec 10.

Beharee Lall, appellant, *versus* Mussummaut Fahmeedah, and Mussummaut Phekoo, respondents.

In the case of mortgage granted by respondents to appellant, antecedently to the 20th March, 1780, on condition, that appellant should retain possession and enjoy the profits of the lands mortgaged, until the principal sum lent should be repaid, (the annual profits of the lands being given in lieu of interest;) the Court dismissed the claim of appellant to recover the principal of his loan, and 12 per cent. interest, under Section 10, Regulation XV. 1793, and decreed that the parties should abide by their engagement, on the ground that the provisions and intention of that section, which were meant for the benefit of the mortgagers, are not applicable to this case, in which it appears that the mortgagee had received less than 12 per cent. profit from the lands.

December 18, 1805.

No. 16.

1793. Reg. XIX. Sec. 4.

Government, appellant; versus Raja Bishoonauth and Sheeonauth, respondents.

Appellant sued respondents in the Dewanny Adawlut, zillah Moorshedabad, for the right of resuming the lakhiraj of about 4,500 *beegahs of land, held exempt from assessment, rated at eight annas per beegah, about* 2,250 *rupees per annum. The zillah court gave judgment in favor of Government for nearly the whole of the claim, but the provincial court amended the*

zillah decree, and adjudged about 4,000 *beegahs of the land to be the valid lakhiraj tenure of respondents. Government appealed from this decision to the Sudder Dewanny Adawlut, who determined the appeal to be admissible, on payment of the institution fee upon* 20,000 *Rs., being ten times the annual amount adjudged against the appellant by the decree of the provincial court.**

January 25, 1806.

No. 17.

1793.
Reg. XLIX.

1798.
Reg. V. Sec. 7.

Kishen Persaud Nundee, appellant, versus Juggurnauth Shah, respondent.

Respondent complained against appellant for forcible dispossession from a talook, and obtained a judgment for possession, under Regulation XLIX. 1793. *The decision of the zillah judge stated it to have been established, that the appellant had dispossessed the respondent vi et armis. Appellant appealed to the provincial court under Section* 7, *Regulation V.* 1798, *denying the forcible possession, and alleging the irrelevancy of Regulation XLIX.* 1793, *to the case. Provincial court rejected the appeal, on an inference drawn from appellant's statement of the case, against the right of appellant to the talook in dispute. The Sudder Dewanny Adawlut considered this an insufficient ground for rejecting an appeal against the relevancy of Regulation XLIX.* 1793, *to judge of which, a perusal of the evidence offered in the zillah court is requisite, and therefore admitted on appeal.*

January 29, 1806.

See Act IV. of 1840.

No. 18.

1793.
Reg. VII. Sec. 32.

The terms of Section 32, *Regulation VII.* 1793, *(relative to fines of pleaders for non-attendance,) were not meant to restrict the civil courts from imposing a less fine than the amount stated, in cases wherein they may consider a less fine adequate. Ruled by Sudder Dewanny Adawlut, on a reference from the Patna Provincial Court.*

February 8, 1806.

See Act XVIII. 1852.

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* Government, in such case, does not sue for the property of the land, but for the public assessment demandable from it.—*Vide* Section 4, Regulation XIX. 1793, &c.

No. 19.

1805.
Reg. II Sec. 14, Clause 3.

On a reference from Mr. Macan, judge of city Dacca (who had been register of that court), to ascertain whether he might try in appeal, as judge, causes formerly tried and decided by him as register, the Court of Sudder Dewanny Adawlut determined that as there is no provision for the case in the Regulations, he should hear the appeal, taking any new evidence which might appear requisite, and leaving the parties, if dissatisfied with his decision, to appeal therefrom to the provincial court.

April 26, 1806.

See No. 305.

No. 21.

1793.
Reg. IV. Sec. 8.
1803.
Reg. III. Sec. 10.
1806.
Reg. II., Sec. 12.

On a reference from the Patna Provincial Court, to ascertain by whom the allowance for subsistence to prisoners is payable, when parties are confined in execution of process for vakeel's fees, or the stamp duty on paper used for decrees, the Court of Sudder Dewanny Adawlut informed them that, in pursuance of the spirit and intention of Section 8, Regulation IV. 1793, the subsistence of prisoners confined under civil process, is payable by the persons at whose instance they are confined. That, therefore, in the cases stated, it is payable by the vakeels, if the party be confined for their fees, and at their instance, or by Government, if the confinement be ordered on account of the stamp duty, or other item payable to Government. That, however, in all cases, an application for the confinement of the party under civil process is requisite, and that in the first instance, after demand of the amount due, such process should be executed upon the property of the party from whom the amount is due, and the property of his securities.

June 25, 1806.

NOTE.—See Regulation VI. of 1830.

No. 22.

1793.
Reg. VIII., Sec. 49, Benares.
1800.
Reg. V., Sec. 26.

On a reference to the Sudder Dewanny Adawlut, the judge of zillah Purnea was informed, on the 6th August, 1806, that the reference in Section 49, Regulation VIII. 1793, to Section 18, instead of Section 19, of that Regulation, is a mistake, as constructively corrected by clause fifth, Section 29, Regulation VII. 1799.

August 6, 1806.

No. 23.

1793.
Reg. XVII., Secs. 19, 20. 1799. Reg. VII., Sec. 9. Benares, 1795. Reg. XLV. Secs. 17, 18. 1800. Reg. V. Sec. 9. C. C. P. 1803. Reg. XXVIII. Secs. 17, 18.

On a reference to the Sudder Dewanny Adawlut, the judge of zillah Nuddea was informed on the 9th August, 1806, that the Court were of opinion, that the suits directed to be brought under Sections 19 and 20, Regulation XVII. 1793, and Section 9, Regulation VII. 1799, should be considered as summary; but that the defendant should be heard in his defence, and any evidence offered by him to refute the charge of resistance to attachment should be taken.

August 9, 1806.

See Nos. 503, and 615.

No. 24.

1806.
Reg. II. Sec. 11.

On a reference to the Court of Sudder Dewanny Adawlut, the Provincial Court of Calcutta were informed, on the 20th September, 1806, that the Court were of opinion, that Section 11, Regulation II. 1806, does not apply, except to persons confined under decrees of court, and of course is not applicable to persons in confinement at the instance of the collectors for arrears of revenue.

September 20, 1806.

See Nos. 60, 86, 95, 319, 328 and 372.

No. 25.

1805.
Reg. XII. Sec. 12.

On a reference to the Sudder Dewanny Adawlut, the judge of zillah Cuttack was informed, on the 27th September, 1806, *that under Section* 12, *Regulation XII.* 1805, *clauses first and second of Section* 18, *Regulation VI.* 1797, *are extended to the province of Cuttack; and that by the words "pleadings and other papers which are considered to be of the nature of pleadings" in Section* 12, *Regulation XII.* 1805, *are meant to be included all miscellaneous petitions and answers, and other applications made under clause ninth, Section* 17, *Regulation VI.* 1797.

September 27, 1806.

See Reg. X. of 1829.

No. 26.

1793.
Reg. XLIX. Sec. 3.
1795.
Reg. XIV.
1803.
Reg. XXXII.

On a reference to the Sudder Dewanny Adawlut from the judge of zillah Mymensing, the courts of circuit were informed by a circular letter, under date the 27th September, 1806, *that under Section* 3, *Regulation XLIX.* 1793, *(B. R. XIV.* 1795, *C. P. Regulation XXXII.* 1803,*) it was not meant that the inquiry into the fact of forcible dispossession should be ex parte,*

but only to restrict the inquiry to that fact alone, without any investigation as to the right of possession or property.

September 27, 1806.

See Act IV. of 1840.

Extract from a Letter to the Acting Judge of Zillah Bhaugulpore, under date the 21*st February*, 1807.

No. 27.

1805.
Reg. II. Sec. 4, Clause 1.

The Court are of opinion, that the process of distraint was primarily intended to enable landholders and farmers of land to realize their rents for the current year with punctuality; but the Regulation does not restrict the process of distraint from being employed for arrears of a former year, provided the person upon whom the distress is levied continue to be an under-tenant of the distrainer.

February 1, 1807.

No. 28.

1793.
Reg. XLIX.
Benares, 1795.
Reg. XIV.
C. C. P. 1803.
Reg. XXXII.

On a reference from the acting judge, zillah Nuddea, he was informed, on the 28*th February*, 1807, *that under the spirit of Regulation XLIX.* 1793, *the Court were of opinion, that complaints of violent dispossession from fisheries, tanks, &c. should be taken up under that Regulation.*

February 28, 1807.

See Act IV. of 1840.

No. 29.

1795.
Reg. XXVII.
Sec. 2, and 1795, Reg. I. Sec. 3, Clause 6. Ben.
1793.
Reg. I. Sec. 5, C. C. P. 1803, Reg. XXV. Sec. 33. C. C. P. 1805, Reg. IX. Sec. 23.

On a reference to the Suddier Dewanny Adawlut, the judge of zillah Mirzapore was informed, on the 30th May, 1807, that the Court were of opinion, that Section 2, Regulation XXVII. 1795, is applicable in bar of claims preferred by zemindars, under clause sixth, Section 3, Regulation I. 1795, for the recovery of their estates from farmers, if the refusal of the zemindars to pay the assessment required of them be established; but that the case of actual refusal only, being provided for by Section 2, Regulation XXVII. 1795, it cannot be pleaded in any other case, and if the plea be offered by a farmer to prevent a zemindar from being put in possession of his estate, under clause sixth, Section 3, Regulation I. 1795, the proof of the plea must be on the farmer.

May 30, 1807.

No. 30.

1806.
Reg. II. Sec 2.
1799.
Reg. VII. Sec. 15.
Benares, 1800. Reg. V. Sec. 14. C. C. P. 1803. Reg. XXXII. Sec. 32.

On a reference to the Sudder Dewanny, the register of the dewanny adawlut, zillah Purnea, was informed, on the 18th July, 1807, that the Court were of opinion, that the notice directed by Section 2, Regulation II. 1806, is not applicable to cases of summary process provided for by Section 15, Regulation VII. 1799.

July 18, 1807.

No. 31.

1804.
Regulation V.

In reply to a reference to the Sudder Dewanny Adawlut, the judge and magistrate of zillah Bareilly was informed, on the 1st August, 1807, that the Court were of opinion, that the provisions contained in Regulation V. 1804, were applicable to English writers, natives of India; and that their appointment and removal ought to be reported accordingly.

August 1, 1807.

See Regulation VIII. of 1809.

No. 32.

1803.
Reg. XL.
Bengal, 1793.
Reg. XXXIV.
Benares, 1795.
Reg. XLVII.

On a reference from the acting judge of zillah Cawnpore, he was informed, on the 1st August, 1807, that the Court were of opinion, that persons amenable to his authority, who may sell rum, the manufacture of Bengal, without a licence, are liable to the penalties prescribed by Regulation XL. 1803.

August 1, 1807.

See Regulation X. of 1813.

No. 33.

1799.
Regulation VII.
Benares, 1800.
Reg. V. 1793.
Reg. XVII. and 1795.
Reg. XXXV.
C. C. P. 1803.
Reg XXVIII.

The acting judge of Behar was informed, on the 21st January, 1808, that the Court were of opinion, that the rules contained in Regulation VII. 1799, as well as of Regulations XVII. 1793, and XXXV. 1795, relating to the power of landholders to proceed against their tenants for arrears of rent, being general, must be understood to apply to all claims for arrears of rent, whether due from lands paying revenue to Government, or from lands held exempt from public revenue.

January 21, 1808.

See Nos. 61, 313, 337, 837.

No. 34.

1793.
Reg. XLVI. Secs. 2 and 3.

On a reference from the judge of Mymensing, relative to sureties for paupers under Sections 2 and 3, Regulation XLVI. 1793, the Sudder Dewanny Adawlut determined, that the responsibility of hazirzamins and their property, ceases on their death; but in the event of their absconding, notice to cause the attendance of the parties for whose appearance they are sureties, should be proclaimed at their houses, and in the public cutcherry; after which, on failure to produce the parties, the fees and costs demandable may be recovered from their property.

February 13, 1808.

See Regulation XXVIII. 1814, Section 11, Clause 2.

No. 35.

1800.
Reg. V. Sec. 14, Ben. 1799.
Reg. VII. Sec. 15, C. C. P. 1803.
Reg. XXVIII. Sec. 32.

In reply to a reference from the acting judge, zillah Juanpore, the Court determined, on the 26th March, 1808, that the provisions of Section 14, Regulation V. 1800, are equally applicable to persons in possession of estates under deeds of mortgage, as to regular proprietors and farmers of land.

March 26, 1808.

No. 36.

1805.
Reg. II. Sec. 14, clause 2.

In answer to a reference to the Sudder Dewanny Adawlut, the register of the zillah court of Cuttack was informed, on the 18*th May*, 1808, *that adverting to the provisions of Clause* 2, *Section* 14, *Regulation II.* 1805, *as well as to the general spirit of that section, the Court were of opinion that the register is authorized to conduct to issue the summary inquiries referred to in the Regulation during the absence of the judge.*

May 18, 1808.

Registers abolished.

No. 37.

1793.
Reg. XVI.
Benares, 1795,
Reg. XV. 1793.
Reg. IV. Sec. 16.

The Court determined, that as the rules contained in Regulation XVI. 1793, *(extended to Benares by Regulation XV.* 1795, *and re-enacted for the Ceded Provinces by Regulation XXI.* 1793*), were not declared to be applicable to suits for landed property; and as Section* 16, *Regulation IV.* 1793, *strictly forbids a report of any matters of fact relating to depending causes, with the exception of cases in which special authority for that purpose is given by the Regulations, the reference of a*

claim for landed property to arbitration is not authorized by the Regulations.

June 10, 1808.

See Regulation VI. of 1813.

No. 38.

1793.
Reg. VII. Sec. 12, Benares, 1795. Reg. XIII. Sec. 2. C. C. P. 1803. Reg. X. Sec. 11.

On a reference to the Sudder Dewanny Adawlut, relative to the construction of Section 12, *Regulation VII.* 1793, *the Moorshedabad Provincial Court were informed, on the* 22*nd June,* 1808, *that as no distinct rule is established for levying the fee of the second pleader entertained by parties under the above section, the Court were of opinion, that it should be levied in common with other fees of pleaders, in conformity with the general rule contained in Section* 10, *and inserted in the decree as directed by Section* 9 *of the above Regulation.*

June 22, 1808.

See Section 30, *Regulation XXVII. of* 1814.

No. 39.

1793.
Reg. XLIX. Benares, 1795. Reg. XIV. C. C. P. 1803. Reg. XXXII.

The judge of zillah Beerbhoom was informed, on the 22*nd June,* 1808, *in answer to a reference regarding the construction of Regulation XLIX.* 1793, *that the provisions of that Regulation are applicable only to cases of dispossession by force, amounting to a breach of the peace; and that in all cases, the fact of forcible dispossession is the only subject of the summary inquiry authorized by the above Regulation, all matters of right being cognizable in the regular manner.*

June 22, 1808.

See Act IV. of 1840.

No. 41.

1799.
Reg. VII. Sec. XV. Benares, 1800. Reg. V. Sec. 14, C. C. P. 1803. Reg. XXVIII. Sec. 32.

In reply to a reference to the Sudder Dewanny Adawlut, the judge of zillah Jungle Mohauls was informed on the 13th September, 1808, that the Court were of opinion, that the whole of the provisions of Section 15, Regulation VII. 1799, are equally applicable to defaulting tenants and their malzamins; but they cannot be applied to the hazirzamins, unless the defaulters for whose appearance they are responsible abscond, in which case, the hazirzamin, as well as the malzamin, is answerable for what may be due from the defaulter, and may be proceeded against accordingly.

September 13, 1808.

No. 42.

1799.
Reg. VII. Sec. XV. Benares, 1800. Reg. V. Sec. 14, C. C. P. 1803. Reg. XXVIII. Sec. 32.

In reply to a reference to the Sudder Dewanny Adawlut, the judge of zillah Purnea was informed, on the 17th September, 1808, that under the provisions of Section 15, Regulation VII. 1799, as well as upon general principles of justice, a defaulting farmer is liable to be ousted from his farm at the end of the year for which an arrear of rent may be due from him, if he shall not discharge the same on demand. That the Court were further of opinion, that the proprietor of the land is authorized to oust his defaulting tenant, without application to the courts of justice, as declared by clause seventh, Section 15, Regulation VII. 1799, provided no violence be used, so as to bring the case within the provisions of Regulation XLIX. 1793.

September 17, 1808.

See No. 113, and Sec. 18, Reg. VIII. of 1819.

No. 43.

1794.
Reg. I. Benares, 1795. Reg. XLVII. Sec. 9.
1800.
Reg. VI. Secs. 27, and 28. C. C. P. 1803. Reg. XL., Sec. 30.

In reply to a reference to the Sudder Dewanny Adawlut, the judge of zillah Ramghur was informed, on the 10th November, 1808, that the Court did not consider the rules contained in Sections 27 and 28, Regulation VI. 1800, to supersede those contained in Regulation I. 1794, as far as relates to the reward to be given to informers on the conviction of persons concerned in manufacturing or selling spirituous liquors, &c., without a licence : that the Court, therefore, were of opinion, that a police darogah is entitled equally with other persons to one-half of the penalty levied on conviction from such offenders, upon his information.

November 10, 1808.

See Regulation X. of 1813.

No. 44.

1806.
Reg. II. Sec. 10.

In answer to a query from the judge of zillah Jungle Mohauls "Whether in the case of a party, at whose suit a debtor may be confined, having consented to discharge such debtor from confinement, on his executing an agreement to pay the amount of the debt by instalments, and such engagement having been acknowledged and accepted by the parties, and attested by their signatures, in presence of the judge, on failure of the performance of the conditions of such engagement, any process can be issued by the Court for enforcing its payment ; or, if it be necessary, that a new suit be instituted by the plaintiff for the recovery of any claim which may be due under such agreement :" the Court of Sudder Dewanny Adawlut determined, on the 7th December, 1808, that the spirit and intention of Section 10, Regulation II. 1806, appear to include

the above case, provided the kistbundee have been given in execution of a decree, and the enforcement of the decree have been suspended in consequence ; but that if any payment under the kistbundee be alledged by the party or his surety, he should be allowed to prove the same, if not admitted by the opposite party.

December 7, 1808.

No. 45.

1793.
Reg. VIII. Sec. 16.
1799.
Reg. VII. Sec. 29, Clause 5. Benares.
1800
Reg. V. Sec,. 26.

The Provincial Court of Moorshedabad were informed, on the 21st December, 1808, that Section 16, Regulation VIII. 1793, relates to sudder mohurrereedars holding mohurreree farms from Government, to the exclusion of the proprietors of the land ; and that clause fifth, Section 29, Regulation VII. 1799, relates to under-tenants holding the lease of land at a fixed rent from the proprietors.

December 21, 1808.

See Act I. of 1845.

No. 48.

1793.
Reg. V. Sec. 28.

Appeals against decisions founded upon award of arbitration not to be dismissed, under Section 28, Regulation V. 1793, without having been admitted. See Proceedings in case Daveepershaud Sein *v.* Indrajeet Sing.*

September 18, 1809.

No. 53.

1799.
Reg. VII. Benares, 1800. Reg. V.

On the 18th November, 1809, the Sudder Dewanny Adawlut, in reply to a reference from the Moorshedabad Provincial Court, determined that the Regulations in force did not admit of a summary investigation and decision upon claims of recovery against the nazirs of the civil courts, in cases of alleged injuries to parties from neglect of duty or other misconduct ; that the claimants in such cases must institute a regular suit, which should be tried and decided as speedily as possible ; but that security might be taken from the nazir complained against to perform the judgment upon such claims.†

November 18, 1809.

See No. 1014, and Rep. Sum. Cases, 2nd July, 1839.

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* This case was reported in the 1st vol. of Sudder Dewanny Adawlut's Reports, page 288.

† The Court had before determined, (on the 2nd of August, 1803,) that the nazirs of civil courts were not liable to pay the amount of sums due from persons who might escape from their custody, unless collusion on their part was proved.

No. 54.

1793.
Reg. XIII. Benares, 1795. Reg. XII. C. C. P. 1803. Reg. XII.

The magistrate of Purnea was informed, on the 21st November, 1809, that the Court did not consider the provisions of Regulation XIII., 1793, to preclude a criminal prosecution in cases of corruption, if there appear to be sufficient grounds for such a prosecution.

November 21, 1809.

See No. 58.

No. 55.

1793.
Reg. XXXVIII. Section 3.
Benares, 1795. Regulation XLVIII. Sec. 3. C. C. P. 1803. Reg. XIX. Sec. 3.

A Circular Order was written to the judges of the several civil courts, on the 28th of November, 1809, *acquainting them, that the Court were of opinion, that the courts of judicature are not authorized to give judgment in favour of any European for land situated without the limits of Calcutta, purchased, rented, or occupied without the sanction of the Governor General in Council; and that the Court were further of opinion, that previously to passing judgment against the European in such cases, he should be allowed an opportunity of applying for the sanction of Government.*

November 28, 1809.

See Act XI. of 1836.

No. 56.

1793.
Reg. XXVIII. Sec. 7.
1797.
Reg. XI. Sec. 2.
C. C. P.
1803.
Reg. XVIII. Sec. 7.

On the 12th of December, 1809, the Court of Sudder Dewanny Adawlut, in reply to a reference from the judge of Jessore, whether suits instituted by Indigo planters, being British European subjects, under the sum of 50 rupees against their ryots, could be tried by the native commissioners; stated it to be their opinion, that suits instituted by Europeans of the nature above specified, might be tried by the native commissioners on a reference from the zillah court, after the plaintiff should have executed the bond required by Section 7, Regulation XXVIII. 1793, and Section 2, Regulation XI. 1797.*

December 12, 1809.

No. 57.

1793.
Reg. XLVI. Sec. 3.
Benares, 1795.
Reg. XXIII. Sec. 2.
C. C. P. 1803.
Reg. XIV. Section 3.

The judge of the Jungle Mohauls having required information whether persons suing as paupers, whose suits, preferred under Regulation XLVI. 1793, might prove on trial groundless and vexatious, were liable to be committed to close custody in the jail of the dewanny or foujdaree court under Section 3 of that Regulation, was

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* This construction was superseded by clause 2, Section 13, Regulation XXIII. 1814, but revived by Act XI. 1836, and Section 7, Act VI. 1843.

told on the 19th January, 1810, that the description of persons referred to in Section 3, should be confined in the dewanny jail.

January 9, 1810.

See Regulation VI. of 1830.

No. 58.

1793.
Reg. XIII. 1803.
Reg. XII.

Regulations XIII. 1793, and XII. 1803, whereby parties injured have the option, in cases of corruption and extortion, of instituting a civil action, declared by a Circular Order of the 18th March, 1810, not to preclude a criminal prosecution, whenever there may appear to be sufficient grounds for it; the prosecution also directed to be public, and to be conducted by the vakeel of Government.

March 13, 1810.

See No. 54.

No. 59.

1805.
Reg. XIV. Sec. 6.

Upon summary application, the Sudder Dewanny Adawlut decided, that a promise to pay a debt contracted by the Raja of Cojung, before the 14th October, 1803, such promise having been made subsequently to the said date, did not constitute ground of action.

Also correspondence with Government on the subject.

March 28, 1810.

Cuttack was conquered, 14th October, 1803.

No. 60.

1806.
Reg. II. Sec. 11.

In reply to a question submitted by the judge of the Jungle Mohauls, "whether the provisions contained in Regulation II. 1806, for the release of insolvent debtors, were to be considered applicable to cases of persons in confinement on account of demands of rent decreed under summary investigation, or whether the operation of those rules in favour of insolvent debtors, was limited to persons confined under decisions of the courts passed on regular suits;" the Court gave it as their opinion, on the 22nd of May, 1810, that the provisions of the rule above quoted for the release of insolvent debtors, were applicable to cases of persons in confinement for arrears of rent under summary decrees.

May 22, 1810.

See No. 24.

No. 61.

1793.
Reg. XVII. 1795.
Reg. XXXV.
C. C. P. 1803.
Reg. XXVIII.

In a letter to the judge of the Jungle Mohauls, dated 22nd May, 1810, the Court determined that the rules for distraint contained in these Regulations, being general, must be understood to apply to the rents of lands held exempt from the public assessment, as well as to the rents of lands subject thereto.

May 22, 1810.

See No. 33.

No. 62.

1809.
Reg. VIII.

The Bareilly Courts of Appeal and Circuit were informed on the 19*th July*, 1810, *in reply to a reference made by them, whether, agreeably to Regulation VIII.* 1809, *they were competent to remove a native police or ministerial officer of their own accord, or whether a representation must be made in the first instance by the judge and magistrate; and also whether a single judge on the circuit, or a single judge at the sudder station, could exercise the powers vested in the whole court by the above Regulation; that the Sudder Dewanny and Nizamut Adawlut considered the courts of appeal and circuit in their collective capacity fully empowered, on sufficient ground, to remove, on their own motion, any of the officers whom, by Regulation VIII.* 1809, *they are competent to remove on reference from the judges and magistrates.*

July 19, 1810.

No. 64.

1793.
Reg. XL. Sec. 8, Benares, 1795. Reg. XXXI. C. C. P. 1803. Reg. XVI.

The provisions in Section 8, Regulation XL. 1793, and other Regulations, which declared the native commissioners liable to prosecution in the civil court for corruption, or any unwarranted and oppressive act of authority, declared by the Court of Sudder Dewanny Adawlut, on the 11th August, 1810, to be not meant to prohibit a criminal prosecution, in such cases where the nature and circumstances of the offence may appear to call for it.

August 11, 1810.

See Sec. X., Reg. XXIII. of 1814.

No. 66.

1810.
Reg. XIII. Sec. 4, Clause 4.

The Dacca Court of Appeal having stated a query, whether under the fourth clause of Section 4, *Regulation XIII.* 1810, *a single judge is competent to try and decide original causes instituted before the provincial court; were informed, on the* 16*th of*

August, 1810, *that the Court considered a single judge authorized by the second clause of Section* 2, *Regulation XIII.* 1810, *to try and decide original suits, as well as appeals, and that the provision in the fourth clause of Section* 4, *Regulation XIII.* 1810, *has reference to the possible completion of the trial before two or more judges, after having been commenced before a single judge.*

August 16, 1810.

See Reg. II. of 1833.

No. 67.

1793.
Reg. VIII. Secs. 59, 63, Benares, 1795. Reg. II. Sec. 14, Clause 5.

In reply to a reference from the judge of zillah Nuddea, he was informed, on the 16th August, 1810, "That the existing Regulations did not authorize any summary process in cases of complaints by ryots, or other under-tenants, against landholders, or farmers, for refusing to grant pottahs or give receipts. And that on ryots or other tenants, (who may prefer complaints of the above nature against the landholders, or farmers,) establishing their claims to receipts or pottahs by regular suit, they would be entitled to receive them, as well as damages, from the party refusing, under the provisions of Sections 59 and 63, Regulation VIII. 1793.

August 16, 1810.

See No. 257, and S. D. R., vol vi., p. 29.

No. 68.

1810.
Reg. XIII. Sec. 9, Clause 3.

On a reference from the Provincial Court of Benares, the Court of Sudder Dewanny Adawlut determined, on the 30*th August,* 1810, *that clause third, Section* 9, *Regulation XIII.* 1810, *does not preclude a special appeal to the provincial court, from the decision of a zillah or city judge, in suits tried in appeal from the decision of a native commissioner, not having been referred to the sudder ameen.*

August 30, 1810.

See Sec. 28, *Reg. V. of* 1831.

No. 69.

1808.
Reg. XIII. Sec. 2.

In reply to a reference from the Provincial Court of Patna, the Court of Sudder Dewanny Adawlut determined, on the 30*th August,* 1810, *that a claim for land and mesne profits thereof, the produce of the land and the amount of the mesne profits being*

each less than five thousand rupees, but the aggregate of both exceeding that sum, is cognizable in the provincial court in the first instance under Section 2, Regulation XIII. 1808.

August 30, 1810.

See Reg. II. of 1833.

No. 70.

1810.
Reg. XIII. Sec. 2, Clause 4.

In answer to a query, submitted by the third judge of the court of appeal for the division of Patna, the Court determined, on the 29th November, 1810, *that clause fourth, Section* 2, *Regulation XIII.* 1810, *must be construed, as restricting a single judge of a court of appeal from dismissing on default appeals from judgments or orders passed by himself, and as restricting a judge of a provincial court from sitting on the trial of appeals from judgments passed by himself, even in company with other judges.*

November 29, 1810.

See Act II. of 1851.

No. 71.

1803.
Reg. III. Sec. 9, and 1803. Reg. XXVI.

On a reference from the Provincial Court of Bareilly, the Court of Sudder Dewanny Adawlut determined, on the 29th November, 1810, that no sale of land of whatsoever description (whether paying revenue to Government, or exempt from the payment of revenue,) should be made otherwise than through the Board of Revenue and collectors, in the manner prescribed by Regulation XXVI. 1803.*

November 29, 1810.

No. 72.

1808.
Reg. XIII.

On a question, submitted by the third judge of the Patna Court of Appeal,† *"whether every case decided by the court of appeal, under Regulation XIII.* 1808, *should be appealable to the Sudder Dewanny Adawlut;" the Court, on the* 13*th December*, 1801, *declared their opinion, that under the spirit and intention of the Regulation, all cases tried and decided in the first instance by the provincial courts, were appealable to the Sudder Dewanny Adawlut, although the amount or value, or the annual produce of the land, adjudged against the appellant, should be less than five thou-*

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* But see the provisions contained in Section 2, Regulation VII, 1825 and Act IV, 1846.

† Circular letter to courts of appeal.

sand rupees; and that, accordingly, all appeals duly preferred in such cases should be admitted, provided the conditions of appeal are performed, as prescribed by the Regulations.

December 13, 1810.

See Clause 3, *Sec. XXVIII., Reg. V., of* 1831.

No. 73.

1793.
Reg. III. Sec. 8.
Benares, 1795. Reg. VII. Sec. 7. C. C. P. 1803. Reg. II. Sec. 5.

On the 4th January, 1811, the Sudder Dewanny Adawlut, in reply to a reference made by the judge of Rajeshahye, whether a suit for recovery of an excess of rent, collected by a surburakar, from a mokurruree mohaul situated in Nuddea, should be instituted and tried in Rajeshahye, the defendant's place of residence, or in zillah Nuddea; gave it as their opinion, that it should be brought forward and tried in the latter district, on the ground that the lands being situated in Nuddea, any local inquiry that might appear necessary could be made with greater facility and propriety, under the orders of the Court presiding over the jurisdiction in which the lands were included.

NOTE.—In suits for profits or rent of land, the rule of this Construction is to be followed in preference to Construction No. 739. *See* case of Gopeekaunth Misser, 19th February, 1848, Summary Reports.

January 4, 1811.

No. 74.

1810.
Reg. XIII. Sec. 4, Clause 4.

In answer to a query submitted by the third judge of the Patna Provincial Court, the Court of Sudder Dewanny Adawlut determined, on the 10*th January*, 1811, *that under clause fourth, Section* 4, *Regulation XIII.* 1810, *a single judge of a provincial court is competent to exercise the power vested in the provincial court collectively, by Section* 18, *Regulation V.* 1793, *as far as respects the admission of further evidence to be taken for the decision of the provincial court; but that it is not competent to a single judge to refer a suit back to a zillah or city court for further investigation and decision, without the concurrence of one or more of the other judges, in conformity with clause third, Section* 2, *of the above Regulation.*

January 10, 1811.

See Reg. II. of 1833

No. 75.

1793.
Reg. III. Sec. 2.
Benares, 1795. Reg.

A question having been agitated by the acting judge of the city of Moorshedabad, through the court of appeal, respecting the application of this rule to the gomashtahs of banking-houses, the Court,

VIII. Sec. 2. C. C. P. 1803. Reg. II. Sec. 2.

in a letter dated the 31st of January, 1811, gave it as their opinion, that a managing gomashtah, under the general and known powers vested in him, might institute and defend suits, and carry on all concerns connected with the kootee of which he was the ostensible representative, without producing any authority from his principals for so doing.

January 31, 1811.

No. 77.

1803. Reg. III. Sec. 10. Bengal, 1793. Reg. IV. Sec. 8. Benares, 1795. Reg. VIII. Sec. 2.

In reply to a question from the acting judge of zillah Agra, respecting the subsistence money of defaulters confined in jails of dewanny courts at the instance of collectors of land revenue under Section 11, Regulation XXVII. 1803, the Sudder Dewanny Adawlut determined, on the 31st January, 1811, that the judge should exercise the discretion vested in him by Section 10, Regulation III. 1803, (with regard to defaulters confined at the suit of plaintiffs,) in settling the amount of subsistence money to be allowed to defaulters confined at the suit of collectors.

January 31, 1811.

See Regulation VI. of 1830.

No. 80.

1806. Reg. XVII., Sec. 8.

In reply to a reference from the judge of zillah Jessore, the Sudder Dewanny Adawlut determined, on the 14th of March, 1811, that the provisions of Section 8, Regulation XVII. 1806, do not entitle a mortgagee to be put in possession, by judicial process, of the property mortgaged to him, although stated to be unredeemed at the expiration of the period notified, if the mortgager contest the right of the mortgagee to obtain possession; and that a judge is not authorized in such case to put the mortgagee in possession on a summary investigation, or otherwise than by a regular suit.

The judge was farther informed, that if the mortgager, on being called upon to show cause why the mortgagee should not obtain possession, denied the right of the mortgagee to possess the lands; the question of right could only be determined as directed by Section 5, Regulation I. 1798.

March 14, 1811.

No. 83.

1810. Reg. XIII. Section 2, Clause 3rd.

A question having been submitted to the Sudder Dewanny Adawlut, regarding the construction of this clause, the Court, on the 28th March, 1811, *gave their opinion in a Circular Order, that when a single judge of the provincial court, trying a cause*

in appeal from a zillah or city court, shall think the decision of the zillah or city court ought to be reversed or altered, and shall record his sentiments to that effect, another judge of the provincial court, sitting afterwards upon the same appeal, and concurring in the recorded opinion of the judge who first sat, may pass a final order or decree, under the spirit of the clause above-mentioned, without waiting the actual presence of two judges at the same sitting.

March 28, 1811.

See Regulation II, of 1833.

No. 86.

1806.
Reg. II., Sec. 11.

The judge of the 24-Pergunnahs was informed, on the 11th April, 1811, in reply to certain queries put by him, regarding the construction of Section 11, Regulation II. 1806, that the Court were of opinion, that Section 11, Regulation II. 1806, was applicable only to persons in confinement, under decisions passed by the civil courts ; and consequently that the provisions of the above section, though applicable to revenue defaulters, as well as other persons, when confined under a judgment of court, had no reference to the case of a defaulter in confinement, for arrears of revenue, at the instance of a collector against whom no judgment had been passed.

The Court further gave it as their opinion, that as no fixed period was specified in the Regulations, the time to be allowed the creditor to point out the property of a debtor, confined under execution of a judgment, should be left to the discretion of the court by whom the judgment might be enforced.

April 11, 1811.

See Nos. 24, 60 and 95.

No. 87.

1793.
Reg. XL. Secs. 13 and 14, and clause 11, Sec. 9. Benares, 1795. Reg. XXXI. C. C. P. 1803. Reg. XVI. Secs. 11 and 12.

The judge of zillah Dinagepore was informed, on the 12th April, 1811, in reply to a reference made by him respecting the powers of registers and native commissioners, in cases of perjury, that as the provisions of Sections 13 and 14, Regulation XL. 1793, restrict the native commissioners from confining parties, vakeels, or witnesses, and from enforcing their own decisions ; they have no power of taking persons into custody, and consequently cannot themselves commit witnesses for perjury.—The Court also expressed their opinion, that whenever a native commissioner might see sufficient ground for causing a witness to be brought to trial for perjury, he should, under the general rule prescribed by clause eleventh, Section 9, Regulation XLIX. 1793, record the circumstance and transmit his proceeding

to the judge, who, under the general discretion vested in him, with respect to cases referred to the native commissioners, should commit the party to take his trial in pursuance of Section 14, Regulation IV. 1793, or otherwise as he might deem proper.

Bengal, 1794. Reg. VIII. Secs. 3 and 8. Benares, 1795. Reg. LIV. Sec. 2. C. C. P. 1803. Reg. XLIX. Sec. 6, cl. 2nd.

The Court further remarked, that registers, under Sections 3 *and* 8, *Regulation VIII.* 1794, *and other rules prescribed for their guidance, being vested with the same powers as the judges in all suits referred to them for decision, were of course competent to commit to trial for perjury, persons whom they might consider guilty of the wilful delivery of false evidence before them.*

April 12, 1811.

See No. 285.

No. 90.

On the 12th September, 1811, the two following general points of regulation were submitted to the consideration of the Sudder Dewanny Adawlut, in a reference from the Benares Court of Appeal.

1808. Reg. XIII., Sec. 11, Clause 2nd.

1st. Whether under clause second, Section 11, Regulation XIII. 1808, the court of appeal were competent to restore an appellant to their court to possession, after the possession had been given to the respondent by the zillah judge ?

1810. Reg. XIII. Sec. 2, Clause 3rd.

2ndly. Whether a judge of the provincial court, sitting singly, is competent, under clause third, Section 2, Regulation XIII. 1810, to order possession to be restored to appellant, in the circumstances above supposed ?

The reply of the Court was to the following effect :

2. On the first point, the Court are of opinion, that cases may arise, in which the provincial court of appeal would be warranted in restoring the appellant to possession, after the respondent had been put in possession by the zillah or city court, in execution of its decree ; as for instance, where an appellant had regularly preferred his appeal, and tendered proper security to the zillah or city court, and moved it to suspend execution of its decree until the orders of the provincial court could be received. Should the zillah or city court, in such circumstances, proceed to execute its decree, and it should appear to the provincial court, that special ground existed for staying execution ; and that court should further judge, that no serious inconvenience would be likely to result from again changing the possession, the Court of Sudder Dewanny Adawlut are of opinion, that the provincial court would be warranted, under such circumstances, in restoring the appellant to possession.

3. The Court likewise observe, that other cases might occur, in which the provincial court would be competent to exercise the power in question ; but all of which cannot of course be foreseen and defined.

4. *The determination of the 2nd point must depend, the Court remark, on the question, how far the application to the provincial court is to be considered as an appeal from the order of the court below, and the order of the single judge may involve a difference of opinion with the court below.*

5. *In the case which the Court have supposed in the 2nd paragraph of these resolutions, the Court are of opinion, that the single judge would be competent to exercise the power of the Court, since his ordering the appellant to be restored, would obviously involve no difference of opinion with the lower court; and the application to the provincial court in such a case would be, merely for that court to exercise its own powers; and could not be considered as an appeal from the orders of the lower court. But supposing a case in which the zillah or city judge should have refused to stay his decree, after an appeal had been regularly preferred, on the ground of the security tendered not being valid, as the single judge could not in such a case order the appellant to be restored without admitting the validity of the security, his ordering that measure would involve a difference of opinion with the zillah or city judge, and would of consequence exceed his competence.*

September 12, 1811.

See No. 1077, and C. O. No. 81, 11th January, 1850.
Paras. 4 and 5, obsolete.—See Regulation II. 1833.

No. 92.

1793. Reg. VII. 1795. Reg. XIII. 1803. Reg. X.

The Court are of opinion, that the spirit of the provisions in Regulation VII. 1793, does not preclude a party in a suit, from authorizing a mokhtar duly constituted by a written mokhtarnama, to select one or more of the established pleaders, and execute a vakalutnama to him or them, for conducting the prosecution or defence of the suit.

Such practice enabling parties to ascertain through their mokhtars, what vakeels are best qualified to undertake their causes, appears unobjectionable, and has been sanctioned by the established usage of the Sudder Dewanny Adawlut.

To Judge Zillah Julalpore, 19th September, 1811, No. 16, Sudder Dewanny Adawlut.

September 19, 1811.

See No. 417.

No. 93.

1803. Reg. IV. Sec. 14, Clause 1st. Bengal.

The acting judge of zillah Goruckpore was informed, on the 26th September, 1811, *in reply to a query put by the late judge,—*

1798.
Reg. V. Sec. 4,
1803.
Reg. XXVII.
Sec. 53, Clause 3rd.

That the estates of persons who have obtained decrees, establishing their proprietary right in malguzaree lands, but who are excluded from possession of these estates by the operation of clause third, Section 53, Regulation XXVII. 1803, are not liable to be disposed of at public sale, in liquidation of the arrears of public revenue; the general principle of clause first, Section 14, Regulation IV. 1803, not being applicable to persons standing in the predicament described.

September 26, 1811.

No. 95.

1806.
Reg. II. Sec. 11.

A reference having been made by the acting judge of zillah Behar, the Sudder Dewanny Adawlut, on the 12th December, 1811, determined that this section was applicable only to persons in confinement under decisions passed by the civil courts ; and that the provisions of this section, though applicable to revenue defaulters as well as other persons when confined under a judgment of court, have no reference to the case of a defaulter in confinement, at the instance of a collector, for the arrears of revenue, against whom no judgment has been passed. This construction obviously comprehends the cases of insolvent abkars, confined on the process of a collector under Section 15, Regulation VI. 1800, to whom, therefore, Section 11, Regulation II. of 1806, cannot be applicable.

December 12, 1811.

See Nos 24, 60 and 86.

From the Acting Assistant Judge of Zillah Nuddea.

No. 96.

1799.
Reg. VII. Sec. 15.

I have to request the favour of your obtaining for me the opinion of the Court of Sudder Dewanny Adawlut, whether summary suits instituted under the VIIth Regulation of 1799, *are liable to be tried ex parte, on the defaulter evading the process of the Court, or if his attendance is indispensably requisite, and in the event of his not being forthcoming, the claim is to be rejected, and the claimant referred to a regular suit, for the recovery of the arrear.*

2. *In the XXXVth Regulation of* 1795, *an ex parte investigation was expressly provided for, by the second clause of the* 13*th Section ; but the rules therein laid down, have been superseded by the VIIth Regulation of* 1799, *and no provision is made for a decision on the proofs adduced solely by the claimant.*

3. *It has been the practice, for some years past in this court, to ishtihar the defaulter, on a return made by the nazir, that he has been unable to seize his person, and in the event of his not appearing, to contest the justness of the demand, to proceed to an investigation on the allegations and documents of the plaintiff only.*

4. *A different mode of proceeding is, I believe, adopted in some districts, but that which I have noticed, as prevailing here, although not in strict conformity with the letter of the Regulation, which appears to be grounded on the certainty of the defaulter being secured, is, I apprehend, agreeable to the spirit of it, as it could never have been the intention of the legislature, that the defaulter should derive any advantage, by avoiding the process of the court, or the claim of the plaintiff be rejected in consequence of the inability of the court to enforce its own orders, and especially as the very act of absconding affords strong presumption of the justness of the demand.*

To the Judge of Zillah Nuddea.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from Mr. Clark, assistant judge, under date the 26th ultimo, requesting the opinion of the Court, whether summary suits, instituted under Regulation VII. 1799, *are liable to be tried ex parte, on the defendant's evasion of process for his arrest, and non-attendance on proclamation.*

2. *The Court observe, that the professed object of the summary process authorized by Section* 15, *Regulation VII.* 1799, *(as declared in the first clause of that section,) is to enable landholders, and farmers, to whom arrears of rent may be due, which cannot be realized by distraining the personal property of their under-tenants, to cause the immediate arrest of the defaulter and his surety, and their subsequent detention in close custody, until the arrear be paid, with interest and costs; the proprietor or farmer to whom the arrear may be owing, being at the same time at liberty to attach the jote or other tenure of the defaulter, and to manage the same in such manner as he may think proper, until the rent due be liquidated, with interest, with further provision (in the seventh clause of the above mentioned section) for ousting the defaulting tenant, or bringing his tenure to sale, at the end of the current year, if the arrear be not recovered by the attachment, or discharged by the defaulter, or his surety.*

3. *The Court are therefore of opinion, that the summary inquiry provided for by Section* 15, *Regulation VII.* 1799, *was not intended to be made ex parte, but on the arrest of the defaulter,*

or his surety; and they are not aware, in what cases and for what purposes it would be advantageous to the landholders, or farmers, claiming an arrear of rent, that the inquiry directed in the above section should be made, without the arrest of the defaulter, or his surety; unless it be to warrant an application to the Dewanny Adawlut for the sale of a transferrible tenure, at the end of a year, in pursuance of the seventh clause before referred to.

4. *The Court, however, previously to forming a final opinion on the question referred by the assistant judge, wish to be informed in what cases it has been usual (as stated in the third paragraph of Mr. Clark's letter) to proceed to an investigation, on the allegation and documents of the plaintiff only; and to what effect judgments have been given on such investigations, as well as in what manner they have been executed.*

January 16, 1812.

See Clause 3, *Section* 18, *Regulation VIII.* 1819.

No. 100.

1799.

Reg. VII. Sec. 18; and 1803. Reg. XLIX. Sec. 24, Clause 1.

On a reference from the Patna Provincial Court, relative to an appeal admitted by the senior judge of the court, against a summary judgment for arrears of rent passed by the judge of Tirhoot, the Court observed, as to one of the points submitted for their decision, viz.—

"*Whether the senior judge was competent to admit the appeal in the case stated under the restriction contained in the* 18*th Section of Regulation VII.* 1799;" *that as the provincial courts are empowered, by the first clause of Section* 24, *Regulation XLIX.* 1803, *to admit a special appeal, in all cases, wherein a regular appeal may not lie to them, if the decree appealed from appear erroneous or unjust, the senior judge was competent to admit a special appeal in the case, on the ground stated in his proceeding of the* 7*th December,* 1811, *and more fully explained in his subsequent proceeding, of the* 30*th of that month.*

See also a letter to Benares Provincial Court, to the same effect, recorded 29*th August,* 1811.

N. B. The other point included in the above reference was, "whether the zillah judge was authorized, under the Circular Order of the 18th April, 1811, to state his objection to the provincial court in an English letter;" and the Court were of opinion that he was; the order alluded to expressly noticing, "Discussions regarding the relative powers of European officers."

April 23, 1812.

No. 103.

1803.
Reg. XXVIII. Sec. tion 30. Bengal.
1799.
Reg. VII. Sec. 13. Benares.
1800.
Reg. V. Sec. 13.
1803.
Reg. XVI. Sec. 26, Clause 11.

In reply to letters from the judge of zillah Allahabad, dated the 2nd and 5th May, 1812, submitting the following questions; 1st. "Whether a native commissioner in his capacity of moonsiff, was competent to receive and decide upon claims (within the prescribed limitation and instituted before him in the first instance) for the recovery of the amount of an unjust attachment and sale of personal property;" and 2ndly, "whether in appeals from the decisions of the native commissioners, referred under clause second, Section 9, Regulation XIII. 1810, to the sudder ameen, or to one of his law officers, empowered to act as head referee, the pleadings were required to be written on stamped paper, and the usual exhibit fees to be levied on the exhibits received upon such appeal, or not;" he was informed, on the 21st May, 1812, that the native commissioners were authorized, by Section 30, Regulation XXVIII. 1803, to take cognizance of the description of suits noticed by him; *and with respect to the second question, that the Court were of opinion, that under the general terms of the eleventh clause of Section* 26, *Regulation XVI.* 1803, *the use of stamp paper was not required, nor the exhibit fee demandable, in appeals referred to the head native commissioners, or the law officers acting as head referees*.*"

May 21, 1812.

See No. 480.

No. 105.

1806.
Reg. XVII. Sec. 8.

In answer to a letter from the judge of zillah Etawah, it was ruled, that an action on the part of the mortgagee for possession, at the expiration of the period of the deed of mortgage, cannot lie in the first instance against the mortgagor disputing his claim under the deed without application being made to foreclose, as directed by Section 8 of the Regulation quoted.

June 25, 1812.

No. 106.

1803.
Reg. III. Sec. 9.
1808.
Reg. XIII. Sec. 12. Clause 2.

The judge of zillah Allahabad requested the opinion of the Sudder Dewanny Adawlut, whether under any circumstances, besides that of the defect of the appellant to give security in cases of money or other moveable property for staying the decrees of the judge and register, he was competent to exercise any discretion in respect to the execution of them.

In reply the opinion of the Court was communicated to him, that under the Regulations in force, no discretionary power is vested in the courts, with regard to the enforcement or staying execution of

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* This has been superseded by the provisions contained in Regulation X. 1829. See Schedule B, Secs. 8 and 9.

decrees for money, or other moveable property, in cases of appeal; and that in such cases the decree cannot be carried into execution during the appeal, provided the appellant give good and sufficient security under the provisions of clause second, Section 12, Regulation XIII. 1808, for performing the decision which may be passed upon the appeal.

July 10, 1812.

See No. 284, and C. O. No. 81, 11th January, 1850.

No. 108.
1812.
Reg. V. Sec. 21.

In answer to a reference made by the judge of zillah Jungle Mohauls, the Sudder Dewanny Adawlut, on the 23rd July, 1812, *communicated their opinion, that the suits instituted under Regulation V. of* 1812, *might be referred for the report directed in Section* 21 *to the register at that station in his capacity of assistant to the collector of Burdwan, he being the only revenue officer on the spot.*

July 23, 1812.

See Regulation VIII. of 1831.

No. 109.
1803.
Reg. XLIX. Sec. 24.
1802.
Reg III. Sec. 5.

A petition for a special appeal, on which the institution fee has been received in conformity to the second clause of Section 24, *Regulation XLIX.* 1803, *being ultimately rejected by a court of appeal, the petitioner has not a right to demand restitution of the institution fee paid by him in the first instance.*

If the court, in any case, deem it just and proper that the institution fee be returned, they must submit the case to the Sudder Dewanny Adawlut, who are authorized by the latter part of Section 5, *Regulation III.* 1802, *to direct a return of the institution fee or otherwise**.

August 20, 1812.

Clause 5, *Section* 2, *Regulation XXVI.* 1814.

No. 110.
1803.
Reg. X. Sec. 9.

On the 3rd September, 1812, *the Sudder Dewanny Adawlut gave the following opinions, in answer to certain questions proposed in a letter from the judge of zillah Allahabad.*

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* See the provisions contained in the second clause of Section 2, Regulation II. 1825.

1*st.* *That as the security required by the Regulations to be furnished to stay the execution of decrees appealed from, is exclusive of costs; payment of costs should invariably be enforced, though execution may be stayed in other respects. It was at the same time pointed out to the judge, that an express rule to the above effect, with regard to the fees of pleaders, which form a principal part of the costs of suits, is contained in Section* 9, *Regulation X.* 1803.

2nd. That plaintiffs, in the summary suits authorized by the Regulations, have an option of preferring their claims, either in person or by vakeel, and are not required by any Regulation to prefer their claims, in such cases, upon oath or solemn declaration, as was stated by the judge to have been the practice in his court.

3*rd.* *That a witness, who has been fined in consequence of his refusal to take an oath, cannot, after discharging the fine, be admitted to give his evidence on a solemn declaration, unless the judge, by whom the fine was imposed, should see ground to change his opinion that the witness was not, in the first instance, a proper object of exemption from taking an oath; in which case, the fine might be remitted, and the witness admitted to give his evidence on a hulufnameh.*

The Court, at the same time, remarked, that the imposition of a fine upon witnesses refusing to take an oath is required by the Regulations to be grounded on the deliberate judgment of the Court by whom it is awarded, that the witness is not entitled to be exempted from swearing; and that the subsequent payment of the fine cannot alone affect that decision.

1803.
Reg. L. Sec. 2.

Further, that by the second clause of Section 2, *Regulation L.* 1803, *no limitation is fixed to the confinement which a court may award in commutation of fines adjudged in cases of this nature; and that the discretion of the courts, therefore, in this respect, must be regulated by the circumstances of each case: that according to the clause above quoted, a witness, who has been fined for refusing to swear, is to be discharged on paying the fine, if the suit in which his evidence was required have been decided; or still kept in confinement, under the latter part of the same clause, and the original provision of Section* 7, *Regulation III.* 1803, *whether he has paid the fine or not, if the cause in which his evidence is required be still pending, until he shall consent to give his deposition on oath as required.*

1806.
Reg. II. Sec. 11.

4th. That a person who has been admitted to sue as a pauper, and whose suit has been dismissed with costs, is liable to confinement at the instance of the defendant, and on the deposit of the prescribed subsistence money, if he fail to pay the amount adjudged against him by a decree, in like manner with any other suitors, and of course, in common with all insolvent debtors, equally entitled

to the benefit of the rules introduced by Section 11, Regulation II. 1806.

September 3, 1812.

See Act III. 1845 *and Act XIX.* 1853.

No. 112.

1812.
Reg. V. Sec. 21.

The judge of zillah Agra was informed, on the 23rd October, 1812, *that the Court were of opinion, that suits instituted, either to procure attachments of distraint issued by proprietors of rent-free lands to be withdrawn, or to recover damages for undue restraint exercised by them, are referrible to the collectors under this section, as well as similar suits respecting land paying revenue to Government.*

October 23, 1812.

See Regulation VIII. 1831.

To the Register to the Court of Sudder Dewanny Adawlut.

Sir,

No. 113.

1799.
Reg. VII. Sec. 15.

I request you will submit, for the consideration and orders of the superior Court, the accompanying copy of my proceedings of this date, in a miscellaneous case, Rajah Ramnath Roy *v.* Dost Mahomed Khan, which originated in a petition preferred by the former, alleging the latter to be in balance for the year 1218, B. S., and stating that he was about to resume possession of the farm of Turf Kulum, (which had been granted to the father of Dost Mahomed Khan on a lease of 10 years, in the year 1212, B. S.,) under the provisions of Regulation VII. 1799, and, therefore, requesting that the judge would issue such orders as would prevent any opposition being made by the farmer to the exercise of the right which was vested in him by the said Regulation. An order was accordingly passed by Mr. Cornish, directing the farmer to give up the farm, and to abstain from opposition to the claims of the zemindar. Shortly after this, Dost Mahomed Khan presented a petition, stating that the Rajah, in resuming possession of the farm, was dispossessing him of Gungarampore and other villages attached to his own talook of Kanso, which he had purchased at a sale at the collector's office in 1207, many years before the grant of the farm. The Judge, after examining the pottah and other vouchers produced by the petitioner, ordered that he should remain in possession of Gungarampore

and the other villages ; that the Rajah should have possession of the farm of Turf Kulum ; and evidence and more documents were required from both parties. In the mean time, both parties assembled large bodies of men, and retained possession of what they considered their respective rights, and very serious affrays would have taken place, but for the active measures adopted by Mr. Cornish to prevent them. The witnesses for both parties having attended, the case came before me, when it was clearly proved by the receipts produced by Dost Mahomed Khan, that the statement made by the Rajah, that he was in balance, was entirely false ; and that he had paid even more than the revenue which was due from him. This being the case, and as it is now proved in court that the demand of balance was false, and that the farmer has not only paid his revenue for 1218, but a considerable part for the present year, I am of opinion that the provisions of Regulation VII. 1799, cannot, upon principles of justice and equity, be allowed to take their course. I trust, therefore, that the superior Court will be pleased to allow of my revising the order of my predecessor, (who was not, when he passed the order, aware of the truth or falsity of the Rajah's statement,) and that Dost Mahomed may retain possession of his farm, on condition of fulfilling his engagements, until the expiration of his lease in 1222, B. S., within which time the Rajah may bring his claim regularly before the Court, on the ground of Dost Mahomed Khan's possessing himself of the villages of Gungarampore, &c. as part of his talook of Kanso. Should the Court sanction this order, it will at once prevent any further disputes, and will be the fairest and most expedient way of settling those which at present exist between the parties.

I cannot conclude this subject without humbly soliciting the superior Court to take into their consideration the expediency of modifying the rule of the seventh clause of Section 15, Regulation VII. 1799, which particularly relates to proprietors of land being allowed to oust their defaulting tenants (farmers) without any previous application to the courts of justice. The right was never known nor acknowledged in this district till within these few months, and it appears never without abuse. Petty or unproductive farms hold out no temptation to the lessor to resume them. It is in cases similar to that which I have detailed in this address, in which the farm has been gradually improved during a tenure of many years, and where the revenue is well paid up, that the proprietor finds his account in ousting his tenant and putting in a new farmer, who will readily engage to pay an increased rent, when the resources have been augmented by the care and assiduity of the former tenant. Taken in this point of view, it cannot, I think, fail to strike the Court that this power must tend to encourage a breach of good faith between the proprietor and his farmer, and to weaken that security in landed property, which it is the first object of the Regulations to strengthen and promote : and although it is provided in what manner

1799. Reg. VII. Sec. 15, Cl. 7.

a tenant, unjustly ousted, may recover his right, if infringed, yet the process of a regular suit is too tedious, and the benefit too remote to allow of many pursuing it. I trust I shall not be thought presumptuous in offering a few remarks on what appears to me the most expedient way of modifying the present rule, without making any material alteration of the Regulations at present in force respecting defaulting tenants.

Instead of the power given to proprietors of land to oust their farmers, without any previous application to the courts of justice, it would be sufficient that it should be necessary for them to proceed against the defaulter under the first six clauses of Section 15, Regulation VII. 1799, when, if the defaulter be taken into custody, and the arrear demanded be proved against him, the proprietor might be allowed to resume the farm ; and should he not be taken into custody, or attend after an ishtihar, similar to that directed in Section 2, Regulation IV. 1793, the proprietor might be called on to show cause for ousting the farmer, and, after an enquiry *ex parte* if proving the farmer to be in balance, might be empowered to resume the farm, and left to recover the amount of the arrear by a regular suit. The immediate inquiry which is made into suits under Regulation VII. of 1799, would prevent the proprietor from being a sufferer by this mode of proceeding, which would, at the same time, form a protection to the farmer against the present undefined power of the proprietor, and would be the means of preventing many serious affrays and breaches of the peace.

There is also another way in which it appears to me that the abuse of this rule may be corrected. It is provided in Sections 15 and 16 of Regulation V. 1812, that if any attachment of property of any tenant of whatever description, whether under-farmer, ryot, or dependant talookdar, shall have been made, that the tenant, if disputing the justness of the demand, shall bind himself to prosecute ; and on his doing so, that the attachment shall be immediately withdrawn, but no notice whatever is taken of the attachment or resumption of the whole farm. A clause to that effect, requiring the farmer to enter into a bond to the judge to prosecute within the given time the demand of arrears, would effectually prevent the proprietor from exercising improperly the power of resumption : for it seldom or perhaps never, happens that the personal property of a farmer is attached for arrears, which must be very trifling indeed to admit of their being liquidated by that process.

Zillah Rajeshahye, Dewanny Adawlut,
30th September, 1812.

Reply to the Judge of Zillah Rajeshahye.

Sir,

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 30th September last, with the

proceedings which accompanied it, relating to the complaint of Ramnath Roy *v.* Dost Mahomed Khan, and to communicate to you the following orders and observations in reply.

2. The Court remark, that the orders of the late judge, Mr. Cornish, on the case, appear to have proceeded upon a construction of the seventh clause of Section 15, Regulation VII. 1799, according to which, if a landholder, alleging his tenant to be in arrear, think fit to take upon himself to attach his tenure, the tenant is bound to give up his possession; and should the tenant deny that he is in arrear, and refuse to quit, the courts of justice are obliged, upon application from the landholder, to cause the tenant to be removed, and the tenure given up to the landholder, without any previous investigation into the justice of the landholder's claim. The Court cannot acquiesce in this construction of the clause in question, which, they observe, merely declares that a landholder may oust his defaulting tenant without application to the courts of justice; and leaves entirely open the question, what course is to be pursued if the tenant shall deny that he is a defaulter, and incur the responsibility of refusing to quit his tenure. That question is to be resolved independently of the clause under consideration, and the Court are clearly of opinion, that under the circumstances supposed, the landholder must have recourse to his legal remedies of distraint, summary suit, or regular action. The Court, indeed, regard the clause quoted, so far as it is applicable to such cases, to be merely declaratory of the right possessed by landholders, in common with all other claimants, to pursue their just demands by peaceable means; and to have been intended, not to confer any powers on landholders in addition to those which they previously possessed upon general principles, and by the usage of the country; but to give confidence to landholders in the lawful pursuit of their just claims, and to discourage undue opposition on the part of the tenants: by satisfying the former, that they would be in no danger of being treated as wrong-doers, in consequence of the just and peaceable exercise of their powers; and making the latter sensible, that in resisting rightful claims, until prosecuted in the courts of justice, they would render themselves liable to costs and damages. The Court are accordingly pleased to authorize your proposed review of the late judge's order in the case.

The Court direct me to add, that they trust the construction above given of the seventh clause of Section 15, Regulation VII. 1799, will obviate the inconveniences which have been experienced from the opposite construction of it, upon which the late judge appears to have acted; and that the Court will take into their future consideration the modifications of the clause in question, which you have suggested.

November 12, 1812.

See No. 475.

No. 115.

1812.
Reg. V. Sec. 26.

The judge of zillah Juanpore was informed, on the 3rd December 1812, in answer to a reference transmitted through him from the assistant judge, that the Court were of opinion, that in cases requiring the appointment of a manager of a joint and undivided estate, under the provisions of Section 26, Regulation V. 1812, endeavour should, in the first instance, be made to prevail on one of the family, or some friend of the sharers, to undertake that duty gratuitously ; but that in the event of its being necessary to make a pecuniary compensation to the person appointed to act as manager, the amount of such compensation must be fixed, on consideration of the circumstances of each case, by the judge making such appointment : and that the manager so appointed must account to the several proprietors for their respective profits arising from the estate, after discharging the public revenue, (to be paid to the collector in the same manner as the payment was before made by the proprietors,) and deducting the amount of the compensation which he may have been authorized to receive.

December 3, 1812.

See Sec. 3, Reg. V. of 1827.

No. 116.

1812.
Reg. V. Sec. 21.

The judge of zillah Midnapore was informed, on the 24th December, 1812, *that the Court considered it to be within his discretion to make the reference directed in Section* 21, *Regulation V.* 1812, *either to the collector of Midnapore, or to the collectors of Burdwan and Hidgellee, as he might, in each case, deem expedient.*

December 24, 1812.

See Regulation VIII. of 1831.

No. 119.

1812.
Reg. XX. Sec. 2.

The Court are of opinion, that copies of deeds brought for registry, as directed in Section 2, Regulation XX. 1812, being intended merely for record, should be admitted to be drawn out on plain paper.

References from the judges of Backergunge and Rajshahye, Proceedings Sudder Dewanny Adawlut, 28th January, 1813.

January 28, 1813.

No. 122.

1805.
Reg. XIV. Sec. 6.

The Court are of opinion, that the restriction contained in Section 6, Regulation XIV. 1805, from hearing suits in which the persons therein specified are parties, is not applicable to cases in which the

cause of action has arisen subsequently to the conquest of Cuttack, (14th October, 1803.)

Reference from the senior judge of the Calcutta Court of Appeal, recorded 17th March, 1813, Sudder Dewanny Adawlut.

March 17, 1813.

No. 125.

1793.
Reg. VIII. Sec. 51, Cl. 2, Sec. 52.

The Court are of opinion, that the penalties prescribed in the cases of exaction by zemindars or other actual proprietors of land, mentioned in these sections, must be considered exclusive of the refund of the sums proved to have been illegally levied.—To Calcutta Court of Appeal.

April 22, 1813.

No. 126.

1812.
Reg. V. Sec. 21.

In reply to a reference made by the judge of zillah Furruckabad, the Sudder Dewanny Adawlut, on the 29*th April*, 1813, *determined that all summary suits instituted under Section* 21, *Regulation V.* 1812, *must be referred to the collector for report, provided he be on the spot; but that, as the express object of the rule is to expedite the decision of such suits, the reference is by no means necessary, if the collector be absent from the sudder station.*

April 29, 1813.

See Regulation VIII. of 1831.

To the Judge of Zillah Mymensing.

No. 128.

1793.
Reg. VII. Sec. 15, Clauses 5, 6 and 7.

I am directed by the Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 22nd ultimo, with its enclosures, and to acquaint you that judgments for arrears of rent, passed under the fifth clause of Section 15, Regulation VII. 1799, and not satisfied within the current Bengal, Fussily, or Willaity year, by the confinement of the defaulting tenant and his security, under that section, or by the attachment of the defaulter's tenure, as authorized by the sixth clause of the above section, may, under the seventh clause of same section, be enforced on application to the Dewanny Adawlut, as therein directed, at the expiration of the Bengal, Fussily, or Willaity year for which the arrear may have been adjudged, by the sale of the defendant's talook or other transferable tenure of the defaulter, for the rent of which such judgment may have been passed; but that you were not warranted in applying to the Board of

Revenue, to cause the sale of the tenure upon the mere allegation of a balance being due, without any inquiry.

The Court must express their regret at learning that you have followed, for so long a period, a practice so injurious to tenants.

July 8, 1813.

See Regulation I. of 1820.

No. 129.

1799.
Reg. VII. Sec. 15, Cl. 7.
1793.
Reg. XLV. Sec. 17.
Reg. IV. Sec. 7.

The judge of zillah Nuddea, having ordered certain lands to be sold at his court-house, under this section, was informed, through the Calcutta Court of Appeal, that all sales of land in execution of judgment, should be made, under the general Regulations, through the Board of Revenue.

See also regarding sale of lakhiraj lands under this section, letters to the acting judge of zillah Cuttack, 13*th May,* 1813, *in answer to a letter from him, reporting that he had sold such lands at the court, under Section* 7, *Regulation IV.* 1793.

July 15, 1813.

See Regulation VII. of 1825, *and Act IV.* 1846.

No. 130.

Letter from the Calcutta Court of Appeal, dated 13*th June,* 1813.

1799.
Reg. VII.

We have the honor to submit, for the consideration and orders of the Sudder Dewanny Adawlut, the following copies of records, in compliance with a request made by the judge of zillah Nuddea, under the provisions of Section 11, Regulation X. 1796.

No. 1. Copy of a petition of Bykuntnauth and Cossynauth Paul Chowdry, plaintiffs, dated 21st April, 1813.

No. 2. Ditto of answer of Ramuschunder Mookerjee, defendant, dated 26th April, 1813.

No. 3. Ditto of kubooleut of defendant, dated 16th Assar 1214, B. S.

No. 4. Ditto of proceedings, held by Mr. Shakespear, dated 26th April, 1813.

No. 5. Ditto petition from defendant to the zillah court.

No. 6. Ditto from plaintiff to the zillah ditto.

No. 7. Ditto ditto, dated 29th March, 1813.

No. 8. Ditto Persian proceedings of the zillah court of Nuddea, dated 21st April, 1813.

No. 9. Copy of a petition from plaintiff to the zillah court, dated 10th March, 1813.

No. 10. Copy of a petition from defendant to the zillah court, dated 8th April, 1813.

No. 11. Copy of a petition presented to this court by defendant.

No. 12. Copy of Persian proceeding, dated 24th May, 1813.

No. 13. Copy of a precept from the Calcutta Provincial Court of Appeal, dated 24th May, 1813.

No. 14. Copy of a letter from Mr. Shakespear, dated 26th May, 1813.

No. 15. Copy of a letter from the Calcutta Provincial Court of appeal, dated 5th June, 1813, and the reply thereto, from Mr. Shakespear.

2. Adverting to the very great arrears of more important public business urgently requiring our uninterrupted attention, and that the order to which the zillah judge has objected, is very fully explained by our register's letter to him, dated the 5th instant, we do not think it necessary to discuss the merits of Mr. Shakespear's answer to that letter, under date the 10th instant, but merely content ourselves with stating, that we admit the oversight pointed out in the 3rd paragraph of Mr. Shakespear's remarks.

The superior Court will observe, that our order, to which the judge of zillah Nuddea objects, does not reverse his decree, or at all interfere with the merits of it. It has merely directed that this decree shall and ought to be satisfied by the payment of the sum demanded, with interest, and that such payment ought to be accepted, and the sale of the putnee talook desisted from.

To concur in opinion with Mr. Shakespear would be to suppose, that the object of the suit and the summary decree is, not to liquidate the balance, but to eject the putneedar.

To the Calcutta Court of Appeal, in reply to the above.

The Court of Sudder Dewanny Adawlut, having had under their consideration the correspondence and other papers submitted with your letter of the 13th ultimo, direct me to communicate to you the following observations and orders on the subject of them.

The Court remark, that by their Circular Orders of the 15th March, 1806, a special appeal is declared to lie to the provincial courts from the orders and judgments of the zillah and city courts, in all cases wherein a regular appeal may not lie; and that, under this construction of the Regulations, your court was clearly competent to revise and amend the summary judgment passed by the judge of zillah Nuddea against Ramuschunder Mookerjee.

The Court are further of opinion, that the sole intent of the summary process, provided by Regulation VII. 1799, being to enable proprietors of land to recover arrears of rents, the judge, upon the said Ramuschunder tendering to him the amount of the arrear adjudg-

ed to be due, should have received the same, and have desisted from the sale of his talook.

The Court remark, that in all cases the summary judgment is only provisional, and open to correction by a more deliberate investigation; and that in the particular case upon which the reference has arisen, the defendant appears to have claimed credit for the sum of 656 Rupees, upon several items which the judge did not consider a proper subject of inquiry in a summary proceeding: that under such circumstances to bring the defendant's tenure to sale, although he had tendered the amount awarded against him, would be a great and unnecessary hardship.

Whether, upon the zemindar, in such a case, establishing, by a regular suit, that a balance was due from the talookdar at the end of the year, he (the zemindar) would be entitled, in consequence of this failure in his engagements on the part of the talookdar, to insist upon the sale of the tenure, is a separate question, respecting which the Court in their present orders mean to give no opinion; but which they observe will be duly considered whenever it shall arise.

The Court observing, that the judge of zillah Nuddea advertized the talook for sale at his court-house, further direct that you acquaint him for his future guidance, that all sales of land in execution of judgments should be made under the general Regulations through the Board of Revenue.

July 15, 1813.

N. B. See further decisions of 27th September, 1814, corresponding with this, in summary appeal, Sutcowry Bhose *v.* Rajah of Burdwan.

See Nos. 254 *and* 273, *and Act IV. of* 1846.

No. 131.

1798.
Reg. I. Sec. 2.
1806.
Reg. XVII. Sec. 8.

On a reference occasioned by a difference of opinion between the provincial court for the division of Calcutta and the judge of zillah Nuddea, the Court of Sudder Dewanny Adawlut issued a Circular Order, dated 22nd July, 1813, (No. 37 of Circular Orders Sudder Dewanny Adawlut, page 27, Part 1. Vol. 1. Baptist Misssion Press Edition*,) containing a construction of the provisions of Section 2, Regulation I. 1798, and Section 8, Regulation XVII. 1806, relating to the foreclosure of mortgages and conditional sales under deeds of Bye-bil-wufa and Kut-kubala.

July 22, 1813.

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* See Page 8, Carrau's Edition.

To the Acting Judge and Magistrate of Zillah Cuttack.

No. 135.

1793.
Reg. XXXVI. Sec. 2.

I am directed by the Sudder Dewanny and Nizamut Adawlut, to acknowledge the receipt of a letter from you, dated the 3rd instant, with enclosure, from the register at your station; and in reply to communicate to you the opinion of the Court, that you are not authorized, under the Regulations, to register any description of deeds required to be registered by the register, and the Court desire that you will discontinue the practice in future.

The Court are further of opinion, that the offices established for the registry of deeds, by Section 2, Regulation XXXVI. 1793, should be fixed at the sudder station of the district.

3. You are desired to acquaint Mr. Ward accordingly, pointing out to him, at the same time, that an express provision is made for the occasional absence of a register from his station, by Section 15 of the Regulation above cited; in conformity to which, he is at liberty to appoint a deputy to act for him, during the period of his deputation as joint magistrate at Jugurnath.

4. A reference will be made to Government on the subject of the 9th and 10th paragraphs of your letter, and the orders of Government will be duly communicated to you.

5. In answer to the question contained in the 11th paragraph of your address, I am directed to acquaint you, that all prisoners committed by the joint magistrate for trial before the court of circuit, should be forwarded to the sudder station, and brought to trial at the regular session of the district, in like manner with prisoners included in commitments made by yourself*.

August 19, 1813.

See Act XXX. of 1838.

Extract of a Letter to the Acting Judge of Zillah Purnea, dated the 28th October, 1813.

No. 136.

1793.
Reg. III. Sec. 14.
1803.
Reg. II. Sec. 18, Clause 3.

" A decree not carried into execution, at the time of its being passed, may be executed on application being made for that purpose, within twelve years from the date of the decision, after calling upon the opposite party to show cause why the judgment should not be carried into effect against him; should the party, however, holding the decree, neglect to make application for enforcing the judgment in his favour within the period above specified, the Court are of opinion, that the application ought not to be admitted, without his

* Superseded by the provisions of Regulation XVII. 1825, but re-enacted by Section 12, Regulation VII. 1831.

establishing, to the satisfaction of the Court, good and sufficient cause for the delay."

October 28, 1813.

See No. 3 and Note.

No. 138.

1793. Reg. IV. Sec. 15. 1803. Reg. III. Sec. 16. Clause 1.

Kishen Mungul Dos and Joy Kishen Ghose, *v.* Kutcha Alee Khan.

The Mahommedan law declares, that a person cannot sell property not in his possession.

Q. Shall we adopt the Mahommedan law in such cases, or not ? The equity of the present case is against the admission of a special appeal.

Determined by Colebrooke and Fombelle, that the Court are not bound by the Mahommedan law in such cases.

December 11, 1813.

Extract from the Proceedings of the Nizamut Adawlut, under date the 16*th December*, 1813.

No. 139.

1801. Reg. III.

The Court are of opinion, that commitments for forgery of documents or instruments exhibited in the civil court, are not restricted to the civil courts, in which the alleged forged documents may have been exhibited; but that the magistrates are bound, by virtue of their general powers, to take cognizance of such charges, on the prosecutions of individuals.

The Court, however, are not aware of any objection to the magistrate's suspending his proceedings in any case, in which he may judge that it will be conducive to justice to allow a civil case to be determined before the criminal investigation is pursued: the Court, accordingly, in the present case, authorize the magistrate to suspend his proceedings, until the appealed cause now pending before the Sudder Dewanny Adawlut shall be determined by that Court, which the Court remark may shortly be expected, under the resolution to which that Court have this day come, to take up the suit without regard to the order of the file.

1801. Reg. III.

In coming to the resolutions above recorded, the Court concur with the magistrate, in thinking that considerable inconvenience may be experienced from the power allowed to parties, under the general Regulations, to prosecute charges of forgery, pending civil suits; in like manner as inconvenience was heretofore experienced from the same power being possessed by individuals, in cases of perjury, until they were deprived of that power by Regulation

III. 1801. *The Court will accordingly be glad to receive from the magistrate, through the prescribed channel, the draft of such provisions as he may deem proper for extending to cases of forgery, the principle on which Regulation III.* 1801, *relating to charges of perjury against parties in civil suits and their witnesses, is founded.*

The Court only think it further necessary, in this case, to point out to the magistrate the mistake into which he appears to have fallen, in supposing that instruments which the civil court may deem forged are to be returned to the parties under Section 6, Regulation IV. 1793. The Court remark, that this section refers to documents which a court may refuse to file as not being relevant, or not produced in proper time, or for other good and sufficient cause; but cannot be understood as applying to documents filed, but proved or suspected upon trials to be forgeries; to return which to the parties producing them, would obviously often tend to defeat justice.

1793. Reg. IV. Sec. 6. Benares.
1795. Reg. VIII. Sec. 2. C. C. Pro.
1803. Reg. III. Sec. 7.

December 16, 1813.

See No. 454 and Act I. of 1848.

No. 142.

Letter from the Chief Secretary to Government, dated the 11*th September*, 1813.

1812. Reg. V. Sec. 26.

I am directed to desire that you will lay before the Sudder Dewanny Adawlut the accompanying copy of a letter and its enclosure from the Board of Commissioners, and acquaint the Court, that the Right Honorable the Governor General in Council is desirous of being furnished with the sentiments of the Court regarding the provision contained in Section 26, Regulation V. 1812, and on the different points noticed in the Board's letter. In the mean time His Lorship in Council remarks, that it never could have been the intention of Government that the lands committed to the charge of managers by the courts of judicature, under that rule, should be exempted from sale, on account of arrears of public assessment; nor is he aware that the wording of the rule will bear that construction.

Copy of a Letter from the Board of Commissioners for the Western Provinces, to the Right Honorable the Governor General in Council, dated 20*th July*, 1813.

We do ourselves the honor of submitting for your Lordship's orders, the accompanying copy of a letter from the collector of Benares, on the subject of an estate to which a manager has, at his application, been deputed by the zillah court of Juanpore, under Section 26, Regulation V. 1812.

2. Several points arise out of this letter, on which the Regulation appears to be not sufficiently explicit, and on which we, therefore, beg leave to solicit your Lordship's instructions.

3. In the first place, it occurs to us, that some defined rule would be expedient for proportioning the scale of the expense of management to the income of the estate. On the present occasion, the establishment fixed by the Court for the manager amounts to 480 Rupees on a village assessed at only 1,651 Rupees, or nearly one-third of the entire jumma.

4. Some precise rule would also appear to be indispensable for defining the responsibility of the manager, and the right of interference and control, if any, which the revenue authorities are to exercise over him; or if not, the mode in which they may be able to bring him to a prompt and effectual account. In the present instance, your Lordship will observe, that of two years' jumma, not a single fraction of a Rupee has been paid into the public treasury.

5. It might also be expedient to define more distinctly the nature of the security which is to be required from such managers; whether mere personal bail for their appearance, or an absolute undertaking for the money which may come into their hands. The former would scarcely be a sufficient hold upon them, if exempted from all direct control of the revenue authorities.

6. A further question arises, and for which principally the present reference was brought forward by the collector,—Whether lands under charge of such managers are liable to be sold for balances accruing on them during such mannagement? From the silence of the Regulation on this point we infer, that it was intended not to exempt such estates from the general liability of all land. There would appear, at the same time, to be no small hardship in having, recourse to this extreme remedy for the payment of a balance arising on a management, over which, not only the proprietor himself, but even the revenue authorities, have no jurisdiction.

Copy of a Letter from the Collector of Benares to the Secretary to the Board of Commissioners for the Western Provinces, dated 29th June, 1813.

I beg leave to enclose a statement of proposed sale of Mouza Anjoorpoor, Pergunnah Bulleea.

2. Conceiving it necessary, that the Board should be informed of the particulars of this estate and its balance, previously to issuing orders for the usual advertisement of sale, I request you will acquaint them, that in consequence of the perpetual disputes between the malgoozars and putteedars, to which cause alone was to be attributed their constant default, I made application to the court of Juanpore under Section 26, Regulation V. 1812, for the appointment of a serberakar to collect the rents, and discharge the public revenue from

the estate. The Court, as will be observed from the enclosed copies of the proceedings, complied with my derkhaust, and appointed a serberakar ; but from that time to the present, neither the balances of 1219, nor the current kists of 1220 Fussily, have been paid into the mofussil treasury, or remitted from the court to this. The amount of balances at present outstanding against the estate, is

For 1219 Fussily, ... Rs. 1,651
„ 1220 ditto, ... „ 1,651

3. The section above-quoted contains no directions as to the measures to be pursued when balances of public revenue shall occur under the management of serberakars, and conceiving that the general tenor of the revenue code, namely, that the lands of proprietors are liable for their revenue engagements, cannot be affected by this Regulation, I have proposed the estate for sale ; but I have to solicit the Board's special orders on this case, to serve for my guidance in future.

4. In the interim, I have applied to the Adawlut to know the causes of the failure of the serberakar, and have requested the Court to take immediate measures to make good the public dues, and to prevent such delay in future.

5. I request that the Board will favor me with their opinion, whether serberakars appointed by the courts, under the above-quoted section and Regulation, either on the application of the revenue authorities, or of individuals, should not be required to execute the usual revenue engagements of kubooleut and kistbundee, &c., by which they bind themselves to the payment of the public instalments at stipulated times, and which documents may be produced against them as occasion shall require ?

Letter to the Chief Secretary to Government, dated 3rd February, 1814.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter, under date the 11th September last, desiring the sentiments of the Court on the points noticed in a letter from the Board of Commissioners for the Upper Provinces, dated the 20th July, 1813.

2. The Court are of opinion, that the public sale of lands for arrears of revenue, in all cases wherein the Governor General in Council, or the Board of Revenue, or Board of Commissioners, in cases left to the discretion of those Boards, may judge it proper to direct such sales, is not restricted or affected in any respect, by the appointment of a manager under Section 26, Regulation V. 1812. 1812. Reg. V. Sec. 26.

3. In forming this opinion, the Court have considered the terms and intention of the abovementioned section. They have also adverted to the provisions of Section 6, Regulation I. 1800, and of the 1800. Reg. I. Sec. 6.

1805. Reg. VIII. Sec. 29, Clause 13. 1803. Reg. LII. Sec. 5. Clause 3. 1793. Reg. VIII. Sec. 25.

thirteenth clause of Section 29, Regulation VIII. 1805, in cases wherein guardians to proprietors of joint undivided estates are appointed by the courts of judicature, as well as to the third clause of Section 5, Regulation LII. 1803, applicable to managers nominated by the collectors, and approved by the Board of Commissioners, in the cases provided for by that section, and corresponding with Section 25, Regulation VIII. 1793, in force for the Lower Provinces, till rescinded by Section 2, Regulation XVII. 1805. In noticing Section 5, Regulation LII. 1803, however, the Court judge it of importance to add, that a doubt may be entertained whether this section, though not repealed by Regulation XVII. 1805, confined to the Lower Provinces, has not been virtually superseded by Section 26, Regulation V. 1812, and beg leave, therefore, to suggest the expediency of determining this point in some future Regulation. The Court presume, that Section 5, Regulation LII. 1803, was acted upon in the Upper Provinces, before the promulgation of Regulation V. 1812, but are not informed whether the Board of Commissioners have considered it to be subsequently in force, or superseded by Section 26 of that Regulation.

1805. Reg. XVII. Sec. 2.

4. The Court entirely concur with the Board of Commissioners, in the expediency of establishing a rule for proportioning, as far as practicable, the expense of management to the extent and produce of the estate, when a manager may be appointed under Section 26, Regulation V. 1812 ; and beg leave to suggest, that the Board of Commissioners and Board of Revenue be consulted on the tenor and limitations of the rule which may appear proper to enact for this purpose.

5. With regard to the responsibility of managers of estates appointed under Section 26, Regulation V. 1812, the Court are of opinion, that as it is not particularly defined in that Regulation, it must be considered that of an agent, acting for the benefit of his principal, and bound to a faithful discharge of the trust committed to him. The Court are further of opinion, that "proper security," directed to be taken from managers appointed under the section abovementioned, is not restricted to personal bail for appearance, but extends to security for a faithful account of the manager's receipts ; and should be proportionate to "the extent thereof," as declared in Regulation V. 1799, Section 6, and Regulation III. 1803, Section 16, clause 6, with respect to administrators appointed by the civil courts in the cases therein provided for.

6. With respect to a further point noticed by the Board of Commissioners, *viz.* "the right of interference and control, if any, which the revenue authorities are to exercise over a manager appointed by a court of judicature, under Section 26, Regulation V. 1812," the Court see no reason to doubt, that, in the event of any arrear of the public revenue, or in any other case wherein the revenue authorities are authorized to interfere under the general Regulations, they have the same right of interference in an estate under

charge of a manager appointed in pursuance of Section 26, Regulation V. 1812, as if the manager had been appointed by the proprietors of the estate. The Court, however, observe, that it would be proper to give notice to the zillah court, with a view to the removal of such manager, whenever the revenue authorities might not judge it proper to employ him in managing the estate, during an attachment for arrears of revenue or otherwise.*

February 3, 1814.

See Section 10, Act I. of 1845.

No. 145.

1814.

Reg. I. Secs. 15, and 16.

A reference having been made by the acting judge of Rajshahye, through the Moorshedabad Court of Appeal, the Sudder Dewanny Adawlut, on the 19th March, 1814, determined, that under Sections 15 and 16, Regulation I. 1814, in the case of a person wishing to file several exhibits, or to procure the attendance of more than one witness, it is not necessary for such person to present a separate petition for leave to file each exhibit, or for a summons to be issued for each witness, but that a single petition may be admitted for two or more exhibits, or two or more witnesses, provided it be written on stamped paper of such a value as to secure Government the duty established on each exhibit that may be filed, or on each witness summoned†.

March 19, 1814.

See No. 1088, and Reg. X. 1829.

No. 146.

1814.

Reg. I. Sec. 15.

A reference having been made by the acting judge of zillah Rajshahye, through the Moorshedabad Court of Appeal, the Sudder Dewanny Adawlut, on the 19th March, 1814, determined that what has been usually considered a distinct exhibit, whether composed of one or more sheets, would be admissible as such, under the section of the Regulation cited in the margin.

March 19, 1814.

See Regulation X. 1829.

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* By Regulation V. 1827, all attached estates are now placed under the management of the collectors.

† This construction has been made law by Section 22, Regulation VI. 1814.

No. 148.

1803.
Reg II. Sec. 5, Bengal.
1793.
Reg. III. Sec. 8, Benares.
1795.
Reg. VII. Sec. 7.

The magistrate of Allahabad, on the complaint of A, ordered that B should give up to him his daughter, whom A alleged that he had married. The Benares Court of Circuit, considering that the case was not cognizable in the foujdary court, rescinded the magistrate's order, leaving the complainant the option of suing to prove his marriage in the regular suit in the civil court. On a reference by the magistrate, the court of Nizamut Adawlut, on 31st March, 1814, concurring with the court of circuit, stated it as their opinion that all suits or complaints relative to marriage were to be heard in the civil courts. The Court at the same time stated that they were of opinion, that it was expedient to provide a summary process for cases of a similar nature, and that they would accordingly include a provision for that purpose in some future Regulation.

March 31, 1814.

No. 150.

1803.
Reg. IV. Sec. 10. Bengal.
1793.
Reg. V. Sec. 10. Benares.
1795.
Reg. IX. Sec. 6.

On a reference from the senior judge of the Bareilly Court of Appeal, the Sudder Dewanny Adawlut determined, on the 7th April, 1814, that under Section 10, Regulation IV. 1803, should it appear from an abstract statement of decided causes transmitted to the provincial court by a zillah judge subject to their control, that such officer had not adjudged on trial the prescribed number of causes, it is within their competency to require him to furnish an explanation of the same.

April 7, 1814.

Now applicable to the Sudder Court.

No. 154.

1814.
Reg. I. Sec. 11.

In answer to a reference made by the acting judge of zillah Furruckabad, the Sudder Dewanny Adawlut, on the 21st April, 1814, determined that hoondees must be written on stamped paper.

April 21, 1814.

See No. 4, Sch. A., Regulation X. 1829.

No. 155.

1795.
Reg. XXXVIII. Sec. 9.

In answer to a reference made by the zillah judge of Rajshahye, through the Moorshedabad Court of Appeal, the Sudder Dewanny Adawlut declared, on the 21*st April,* 1814, *that the rule contained in Section* 9, *Regulation XXXVIII.* 1795, *for levying fees on miscellaneous petitions, must be considered as*

superseded by the provisions contained in Section 18, *Regulation I.* 1814.

April 21, 1814.

See No. 7, *Sch. B., Regulation X.* 1829.

No. 156.

1797.
Reg. VI. Sec. 27.
1803.
Reg. XLIII. Sec. 20.

In answer to a reference made by the zillah judge of Rajshahye, through the Moorshedabad Court of Appeal, the Sudder Dewanny Adawlut, on the 21st April, 1814, observed, that as Regulation I. 1814, is silent upon the deduction of 5 per cent. from the amount of all fees payable to the authorized vakeels, they concluded it was not the intention of Government to subject the vakeels to any charge beyond what they are liable to on account of the stamped paper to to be used in granting receipts for their fees.

See also letter to the acting judge of zillah Furruckabad, dated 17th August, 1814.

April 21, 1814.

No. 158.

1803.
Reg. XXXII. Sec. 3.
Bengal,
1793.
Reg. XLIX. Sec. 3,
Benares,
1795.
Reg. XIV. Sec. 2.

In answer to a reference made by the judge of zillah Allahabad, the Sudder Dewanny Adawlut, on the 28th April, 1814, stated it as their opinion, that in the case of the expiration of the plaintiff's lease before the summary action for possession and damages is determined, though it may not be requisite or proper to adjudge possession to the plaintiff, equitable damages equal to the loss sustained by the plaintiff during the period of his lease should be adjudged.

April 28, 1814.

No. 162.

1803.
Reg. II. Sec. 8.

On the 23rd March, 1814, the senior judge of Bareilly Provincial Court, requested to be informed

1st. Were the provisions of the treaty concluded with Nazir Jung, the Nuwaub of Furruckabad, on the 4th June, 1802, declared to extend to the successors of that chieftain ?

2nd. If they were, how should the courts proceed during the minority of the present Nuwaub, Shoukut Jung, in cases of suits instituted against any of his dependants ?

The Sudder Dewanny Adawlut, on the 26th May following, gave it as their opinion, in reply to the 1st question, "that the terms of the treaty concluded with the late Nuwaub Nazir Jung must be considered to extend to his successor Shoukut Jung, the present Nuwaub of Furruckabad ;" and in reply to the 2nd question, "that all suits

properly referrible to him, (the Nuwaub,) should be referred, during his minority, to his guardian or principal manager."

May 26, 1814.

No. 163.

1814.
Reg. I. Sec. 13.

In answer to a reference made by the Benares Court of Appeal, the Sudder Dewanny Adawlut, on the 2nd June, 1814, *communicated their opinion, that the duties prescribed in the section of the Regulation cited in the margin must be levied on all appeals admitted after the 1st May,* 1814, *on the valuation stated in Section* 14, *of the said Regulation.*

June 2, 1814.

See Regulation X. 1829.

No. 164.

1814.
Reg. I.
1810.
Reg. XIII. Sec. 11.

On a reference by the acting judge of zillah Furruckabad, the Sudder Dewanny Adawlut, on the 21st April, requested the orders of Government, "as to the mode in which the institution fee is to be refunded, under the provisions of Regulation I. 1814, *in cases wherein the Regulations authorize a return of that fee, either in whole or in part, to the party who may have paid the same." The following is an extract from Government's reply, dated 29th April, (Para.* 4,*) which was communicated for general information, by Circular Letter of 2nd June,* 1814.

Para. 4. *It is likewise proposed to revise the rules contained in Section* 11, *Regulation XIII.* 1810, *there being grounds to believe, that the return of the whole or of a moiety of the institution fee, so far as respects cases before the moonsiffs and sudder ameens, has produced exactly the contrary effect from what was anticipated from those provisions. In the mean time, however, the Sudder Dewanny Adawlut is requested to issue a Circular Order to the courts of judicature, authorizing them to apply to the collectors to pay the whole or a moiety of the value of stamp paper, (on plaints instituted subsequently to the 1st May,* 1814, *which may be adjusted by razeenama,) to the plaintiffs entitled to receive it in each case. Correspondent instructions will be issued to the Board of Revenue and Board of Commissioners.*

June 2, 1814.

No. 165.

1812.
Reg. V. Sec. 21.

The judge of zillah Mymensingh, having reported to the Sudder Dewanny Adawlut, that during the month of December, 1813, *two causes were instituted under this Regulation, but not*

referred to the collector, as the defendants were not apprehended; that Court, on the 19*th June,* 1814, *returned for answer, that they were not aware of the necessity for the apprehension of a defendant in a suit instituted under this Regulation previous to such suit being referred to the collector, but that after summons had been duly served on the defendant the reference in question might consistently be made.*

June 9, 1814.

See Regulation VIII. 1831.

No. 166.

1812.
Reg. V. Sec. 21.

The judge of zillah Rajshahye, having been called upon to report the reasons why he had referred no suits instituted under the provisions of this section of the Regulation to the collector during the months of December, 1813, *and January and February,* 1814, *stated "that he had referred several soon after the promulgation of the Regulation, but that he invariably found, on his proceedings being returned, a petition was presented to the court by the person dissatisfied with the collector's opinion, and the collector not having passed any definite order on the case, he was frequently compelled to go over the whole of the papers, and not only to pass his own decision on the merits of the case, but to combat the reasoning of the collector in cases wherein it differed from his own; in consequence of which he desisted from making the references to the collector." The Sudder Dewanny Adawlut, on the* 9*th June,* 1814, *returned for answer, that to authorize the practice followed by the judge, would be virtually to annul the rule, which must be complied with.*

June 9, 1814.

See Regulation VIII. 1831.

No. 168.

1809.
Reg. IX. Sec. 9.

On a reference from the commissioner of Chinsurah, through the Calcutta Court of Appeal, "whether a petitioner be entitled or not to receive the fees paid by him on instituting an appeal from the deputy commissioner to the commissioner of Chinsurah, previously to the enactment of Regulation IX. of 1809*;" the Sudder Dewanny Adawlut, on the* 13*th July, returned for answer, that "understanding the appeal from the judgment of the deputy commissioner, which formed the subject of the reference, was depending before the commissioner prior to the promulgation of Regulation IX.* 1809, *and was transferred to the court of appeal for decision under the provisions of Section* 9, *of that Regulation,*

in such case, as the provisions of Regulation IX. 1809, *were extended by Section* 9, *to all depending appeals, and as under Section* 8, *the appeal in question was not liable to any institution fee, the Court concur in the propriety of the order for refunding the amount paid by the appellant.*"

July 13, 1814.

No. 169.
1814.
Reg. I.

In answer to a reference made by the judge of zillah Tirhoot, the Sudder Dewanny Adawlut, on the 20*th July*, 1814, *stated it as their opinion, that as the stamp paper before given to the suitors whose indigence would not admit of their purchasing the same was no longer receivable under the provisions of Regulation I.* 1814, *on their returning the former, they should be furnished with the stamped paper prescribed by that Regulation, provided they could assign sufficient cause for the delay.*

July 20, 1814.

See Regulation XXVIII. 1814.

No. 170.
1814.
Reg. I. Sec. 17.

In answer to a reference made by the judge of the City Court of Patna, the Sudder Dewanny Adawlut, on the 20*th July*, 1814, *stated it as their opinion, that whenever the plaint could not be written on one sheet of stamped paper, the remainder should be drawn up on paper prescribed for supplements in Section* 17, *Regulation I.* 1814.

July 20, 1814.

See Construction No. 870 *last para.*

No. 171.
1814.
Reg. I. Sec. 19.

In reply to a reference made by the Calcutta Court of Appeal, the Sudder Dewanny Adawlut, on the above date declared their opinion, that under the provisions of the section of the Regulation in question, all copies of decrees or of other papers transcribed after the 1*st May*, (1814,) *must be upon the stamped paper prescribed by Regulation I.* 1814, *notwithstanding that the decree or order may have been passed prior to the above date.*

July 20, 1814.

Extract of a Letter to the Commissioner at Moorshedabad, dated the 27th July, 1814.

No. 172.
1793.
Reg. IV. Sec. 6.
C. C. P.
1803.
Reg. III. Sec. 7.

2. *It appearing from the papers transmitted by you, that Gungaram has been duly served with a summons, and has failed to attend, as promised in his written acknowledgment of the receipt of the summons, the Court remark that for such failure he is liable, under the provisions of Section* 6, *Regulation IV.* 1793, *to personal arrest, and fine not exceeding five hundred Rupees.*

3. *As the witness has evaded the warrant issued for the seizure of his person, the Court are of opinion, that it will be proper to issue a proclamation requiring his attendance within a certain period; and that if he should still neglect to attend within the time limited in the proclamation, you should impose such fine upon him as you may judge proper, not exceeding the amount above stated, and proceed to levy the same by attachment and sale of his property.*

With regard to the witness Govind Sirkar, the Court remark, that as the summons has not been served upon him, in consequence, as stated in the return made by the nazir, of his having quitted his place of abode some time previous to the issue of the summons, the rules contained in the section above cited cannot be considered applicable.

July 27, 1814.

See Act XIX, 1853.

To the Moorshedabad Court of Appeal, 27th July, 1814.

GENTLEMEN,

No. 174.
1797.
Reg. XI. Sec. 2.
C. C. P.
1803.
Reg. XVIII. Sec. 3.

The Court of Sudder Dewanny Adawlut, having had before them the papers submitted with your certificate, dated the 23rd May last, remark, that the questions proposed for their consideration in the extract from your proceedings of the 10th of that month, are as follows:—

1*st. Whether, under the statute* 53, *George III. chapter* 155, *it be necessary to require hereafter from British subjects, instituting a suit in the provincial court, the bond prescribed by Section* 2, *Regulation XI.* 1797 *?*

2*nd. Whether, in the event of the requisition of such bond being still necessary, it should be written on stamped paper ?*

3*rd. Whether the bond exhibited by the plaintiff in the suit pending before you having been written in Calcutta upon plain*

paper, it be necessary to levy from the plaintiffs ten times the amount of the stamp duty, which would have been payable upon such bond, if it had been prepared upon paper bearing the prescribed stamp, previously to your admitting the said instrument to be filed in the cause?

Para. 2. *In answer to the first question, I am directed to transmit to you the enclosed extract of a letter from the Advocate General*, from which you will observe, that the provisions of the statute above mentioned do not preclude the necessity of requiring the bond prescribed in Section* 2, *Regulation XI.* 1797.

3. *With respect to the* 2*nd question, the Court observe, that it has already been determined in the affirmative by their circular instructions, under date the* 4*th February*, 1801.

4. *Upon the remaining question, I am directed to acquaint you, that as the bond exhibited by the plaintiff in the suit appears to have been executed in Calcutta, and the Regulations establishing a stamp duty do not extend to the town of Calcutta until they have received the sanction of the Court of Directors, with the approbation of the Board of Commissioners, as directed by the* 98*th Section of the statute in question, the Court are of opinion that the bond should be admitted in evidence in the suit, although on plain paper.*

July 27, 1814.

See 3 *and* 4, *William IV. Cap.* 85.

Extract from a Letter to the Benares Court of Appeal, dated 3*rd August*, 1814.

No. 175.

1797.
Reg. III. Sec. 7, C. C. P.
1803.
Reg. XV. Sec. 7.

It appears to the Court to be within the spirit of Section 7, Regulation III. 1797, that an application for a review of a judgment, under a stated difference of opinion between your 1st and 2nd judges, should be brought before another judge, when the question may be decided by a majority of voices; I am directed, therefore, to desire you will proceed accordingly.

August 3, 1814.

See No. 756, and Section 3, Regulation II. 1825.

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* *Extract of a letter from the Advocate General, dated* 22*nd July*, 1814.

"In answer to your letter of the 13th instant, I have the honor to state, that as the 53 Geo. III. Cap. 155, Section 107, only gives jurisdiction over British subjects in the three cases therein mentioned, within none of which, unless the first, a demand for costs decreed against them in a zillah court can fall, I see no reason for departing from the security required from them when plaintiffs, by Section 2, Regulation XI. 1797; but that I do not think a British subject residing above ten miles from Calcutta should be called upon to execute the bond prescribed by Section 3, Regulation XXVIII. 1793, which should be therefore repealed, so far as it concerns that matter."

No. 176.

1793.
Reg. III. Sec. 21
C. C. P.
1803.
Reg. II. Sec. 17.

The Court, for the information of the judge of zillah Burdwan, delivered it as their opinion, on the 3rd of August, 1814, that as there was no specific provision in the Regulations for compelling native officers of Government in the Judicial Department to deliver over charge of the records of their office, such cases fall within the general provision of Section 21, Regulation III. 1793.

August 3, 1814.

Extract from a Letter from the Calcutta Court of Appeal, dated the 28th March, 1814.

No. 177.

1806.
Reg. II. Sec. 11.

"*The point for the Court's determination is, whether the court of appeal can legally direct the enforcement of Section* 11, *Regulation II.* 1806, *at Chinsurah, when the debt exceeds* 5,000 *Rupees.*"

Extract from a Letter from the Calcutta Court of Appeal, dated the 3rd August, 1814.

"*Upon the question submitted in your letter, I am directed to observe, that the jurisdiction of your court being restricted, under the provisions of Regulation IX.* 1809, *to cases wherein the amount or value adjudged or disallowed by the commissioner may be less than* 5,000 *Rupees, the Court are of opinion, that the enforcement of Section* 11, *Regulation II.* 1806, *in cases exceeding the above amount, is not within your competency.*"

August 3, 1814.

No. 178.

1814.
Reg. I. Sec. 19.

In the 8th paragraph of a letter from the judge of Rajshahye, dated 13th May, 1814, *(submitted through the Moorshedabad Court,) he requested instructions, "whether copies of papers made for records of court on delivery of the original papers to the parties, can be drawn out and authenticated on plain paper or not." The Court gave it as their opinion, on the 17th August, that the provisions of Section* 19, *Regulation I.* 1814, *appeared applicable only to copies of papers authenticated for individuals, and that it was not necessary that copies, merely for records of court, should be written upon stamped paper.*

August 17, 1814.

Superseded by Art. 3, *Schedule B., Regulation X.* 1829.

No. 179.

1814.
Reg. I. Sec. 15.

In reply to a query put by the Dacca Court of Appeal in the 7th paragraph of their letter of 9th May, they were informed on the 17th August, "that the Court were of opinion, that the copies of decrees in regular suits, if filed with petitions of appeal, (whether the appeal be special or not,) must be considered liable to the rule contained in Section 15, *Regulation I.* 1814, *but that if the copies of decrees be not filed, they will not fall under that rule."*

August 17, 1814.

See No. 289.

No. 180.

1814.
Reg. I. Secs. 13 and 14.

The judge of zillah Mirzapore, in the 4th paragraph of his letter, dated 25th May, requested to know, "in cases that were pending before the register and sudder ameens previously to the 1st May, and which may be subsequently appealed to the judge, is the value of the property to be assumed, as directed by the first and second clauses of Section 14, *Regulation I.* 1814, *or are these clauses to affect those persons only, who may file suits in the register's and sudder ameen's courts, subsequently to the 1st May, and the appeal of former ones to be considered as a continuation of the original investigation?" The Sudder Dewanny Adawlut were of opinion, that the provisions of Sections* 13 *and* 14, *Regulation I.* 1814, *are applicable to all appeals referred subsequent to the 1st May last, the date fixed for the operation of that Regulation.*

August 17, 1814.

See Regulation X. of 1829.

No. 181.

1814.
Reg. I. Sec. 14, Clause 4.

In consequence of doubts excited by the expression "under the existing rules," used in this clause, the judge of zillah Jungle Mehals, on the 1st August, requested instructions, whether the calculation of the fee receivable is to be made on the amount of the sum claimed, or on the value of the stamped paper for the plaint. He was informed in reply, that the Sudder Dewanny Adawlut understood the expression, "existing rules," to relate to the proportion of fees receivable by the register and native commissioners, on cases decided by them, or adjusted before them by the razeenama of the parties; and were of opinion, that the amount receivable by the register and native commissioners in such cases, should be calculated on the stamped duty actually paid in the cause, under Section 13, *Regulation I.* 1814.

August 17, 1814.

No. 182.
1814.
Reg. I. Secs. 15 and 16.

On a reference from the judge of zillah Bundlecund, dated 13th May, (paragraph 2,) "whether parties may be allowed to bring their own witnesses without making any application to the court, or whether it is intended that an application on stamped paper shall be made for every witness, whether summoned by the court, or offered to be produced by the parties;" the Sudder Dewanny Adawlut, (adverting to the original object, declared in the preamble to Regulation VI. 1797, for the fee on summonses to witnesses, established by the first clause of Section 5 of that Regulation, and the provisions of Sections 15 and 16, Regulation I. 1814, appearing to have been substituted for that clause,) gave it as their opinion, on the 17th August, 1814, "that no witness could be examined in a regular suit without a durkhast, as prescribed by Section 16, of Regulation I. 1814."

A similar construction given on the same date to a reference from the judge of Mirzapore, dated 25th May.

August 17, 1814.

No. 183.
1814.
Reg. I. Secs. 15, 16, 17, 18 and 19.

On a reference from the judge of zillah Chittagong, dated the 21st May, (last paragraph,) the Court gave it as their opinion, on the 17th August, 1817, "that as the courts of the registers, zillah and city judges, provincial courts, and the Sudder Dewanny Adawlut only are specified in these sections, the provisions in them could not be considered applicable to the native commissioners*."

August 17, 1814.

No. 184.
1814.
Reg. I. Sec. 19.

In reply to a reference from the judge of Cawnpore, dated 3rd August, for sanction to order the copies of decrees to be written upon Culpee paper, the Sudder Dewanny Adawlut informed him, on the 17th August, 1817, "*that as the Regulations in force did not require the copies of decrees prepared for records of court to be drawn up on English paper, they (under the circumstances stated by the judge) were not aware of any objection to the using for that purpose Culpee paper.*†"

August 17, 1814.

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* But see the subsequent rules contained in Regulation X. 1829, Schedule B.

† Superseded by Clause 2, Section 16, Regulation XXVI. 1814, which requires English paper.

No. 185.

1814.
Reg. I. Sec. 11.
1797.
Reg. VI. Sec. 16.
1800.
Reg. VII. Sec. 5. Clause 1.

In reply to the 10th paragraph of letter from Dacca Court of Appeal, dated 9th May, the Court, on the 17th August, 1814, observed, "that the whole of Section 16, Regulation VI. 1797, had been rescinded by Section 2, Regulation VII. 1800, and that under the first clause of Section 5 of the latter Regulation, marriage settlements (kabinnamas) ought to have been executed on stamped paper; at all events, that they are obviously included in the provisions of Section 11, Regulation I. 1814."

August 17, 1814.

See Schedule A. Regulation X. 1829.

No. 186.

1793.
Reg. XLVI.
1795.
Reg. XXIII.
1803.
Reg. XIV.
1814.
Reg. XXVIII.

In reply to the following query by the judge of city Patna, "Whether a plaintiff who has not instituted his suit as a pauper, may afterwards, in the course of it, be admitted to proceed as a pauper, on proof of his poverty;" the Court of Sudder Dewanny Adawlut, on the 31st August, 1814, acquainted him, "that as in the case supposed, the plaintiff must have already paid the institution fee, as well as given security for vakeel's fees, and costs of suit, the Court are of opinion, that he cannot be allowed to prosecute the suit *in formâ pauperis;* but that in the event of an appeal from the decision on the original suit, there would be no objection to his being admitted as a pauper on the appeal, on producing satisfactory proof of his poverty."*

August 31, 1814.

Question submitted to Government, on the 17*th August*, 1814, *and circulated for general information on the* 7*th September*, 1814.

No. 187.

1797.
Reg. VI. Sec. 3.
1803.
Reg. XLIII. Sec. 3.
1814.
Reg. I. Secs. 2, 13 14, 15, 16 and 17.

"Whether Section 3, *Regulation VI.* 1797, *and Section* 3, *Regulation XLIII.* 1803, *which are not rescinded, with the other sections of those Regulations, by Section* 2, *Regulation I.* 1814, *are to be considered still in force, with respect to the institution fee to be paid on suits instituted before native commissioners, vested with the power of moonsiff, or whether the fee prescribed in the section above-mentioned was meant to be superseded by the rule for stamped paper, prescribed in Section* 12, *Regulation I.* 1814, *supposing such rule applicable to suits instituted before the moonsiffs?"*

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* The Regulation first quoted in the margin has been rescinded by Section 2, Regulation XXXVIII. 1814, but the construction is equally applicable to the provisions of the latter Regulation.

2nd. "*Whether Sections* 13, 14, 15, 16, *and* 17, *of Regulation I.* 1814, *are meant to be restricted to regular suits and appeals, or to be extended to any, and what descriptions of summary suits?*"

3rd. "*What stamped paper is to be used under Section* 11, *Regulation I.* 1814, *for deeds of contract, partnership, agreement, security or engagement, when the deed may not relate to any specific sum or value, so as to admit of the stamped paper being regulated by the table contained in that section.*"

In reply, the Court were informed on the 30th August, that "the Vice-President in Council was of opinion, that Section 3, *Regulation VI.* 1797, *and Section* 3, *Regulation XLIII.* 1803, *should be considered to be in full force and effect for the present; but that in passing Regulation I.* 1814, *it was fully intended to substitute the stamp duty for the commission at present paid on suits instituted before native commissioners, which arrangement will accordingly be adopted the first convenient opportunity.*"

The Court were also informed, that Sections 13, 14, 15, 16, *and* 17, *of Regulation I.* 1814, *were only intended to apply to regular suits and appeals*; and that his Excellency in Council was not prepared to furnish the Sudder Dewanny Adawlut with any specific reply to the third object of their inquiries, but the question was in a course of discussion, and that a further communication would be made to the Court on the subject hereafter†.*

September 7, 1814.

See Section 7. *Regulation VIII.* 1831.

Extract from a Letter from the Register of the Sudder Dewanny Adawlut, to the Chief Secretary to Government, dated the 7th September, 1814.

No. 188.
1809.
Reg. VII. Sec. 7.
1814.
Reg. I. Sec. 18.

"*As Section* 7, *Regulation VII.* 1809, *whereby the judges* [*of the zillah and city courts*] *were directed to receive all applications of the collectors for the apprehension or confinement of defaulters, or on any other subject relating to the public revenue, upon common paper without a stamp, has been rescinded by Section* 2, *Regulation I.* 1814, *and no similar provision is included in the latter Regulation; the Court are of opinion, that all applications of the nature referred to must be upon stamped paper, under the rule contained in Section* 18, *Regulation I.* 1814, *until otherwise provided for by some new Regulation‡.*"

September 17, 1814.

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* See Section 20, Regulation XXVI. 1814.
† See Regulation X. 1829, Schedule A. Sec 3.
‡ Superseded by Section 21, Regulation XXVI. 1814.

Extract from a Letter to the Dacca Court of Appeal, under date the 14th December, 1814.

No. 190.

1806.
Reg. II. Sec. 5, Clauses 1 and 2.

The Court entirely concur with you in opinion, that in the case in question, it was clearly the duty of the judge of Mymensing, under clause first, Section 5, Regulation II. 1806, not to have proceeded to the attachment of the defendant's land till he had satisfied himself by proof that sufficient grounds, as set forth in the above-mentioned clause, for requiring malzaminee security from the defendant did actually exist ; and until the defendant had failed to furnish such security within a reasonable time, to be allowed for that purpose.

2. The Court direct me further to observe, that the second clause of the section above referred to, on which Mr. Ewer appears to rest his opinion that it is discretionary with the judge to attach the land in dispute without adopting the previous measures above referred to, is merely subsidiary to the first, and explanatory of the mode in which attachments of land that may become necessary, under that clause, shall be made.

December 14, 1814.

Extract from a Letter to the Acting Secretary to Government, in the Judicial Department, under date the 20th January, 1815.

No. 194.

1814.
Reg. XXIV. Sec. 12, Clause 3rd.

4. *In answer to the question contained in the 2nd paragraph of your letter above acknowledged, I am directed by the Court to observe, that under the terms of the third Clause of Section* 12, *Regulation XXIV.* 1814, *which provide only for "stationing the register or registers at any place or places within the jurisdiction of a zillah and city court of dewanny adawlut," the Court are of opinion, that the powers, ordinary and special, of the registers stationed at certain places within the jurisdiction of particular zillah or city courts of dewanny adawlut, must necessarily be restricted, as the Regulation now stands, to the cognizance of civil suits which are cognizable, under the general Regulations, by the zillah or city dewanny adawlut, within the jurisdiction of which they are respectively stationed.*

January 20, 1815.

Extract of a Letter from the Judge of Zillah Nuddea, under date the 24th February, 1815.

No. 196.
1814.
Reg. XXIII. Sec. 13.

Query 1st. Whether in suits cognizable by the moonsiffs, the origin of the cause of action, in cases of bonds or other instruments, is to be reckoned from the actual date of the execution of such instrument, or from the date on which the payment has become due, as provided for and specified in the bond or other instrument, and the defendant has failed to discharge it, and to make good his engagement ?

Query 2nd. Whether the defendants, having admitted the truth of the demand, by a written acknowledgment to that effect, can be construed to constitute a new ground of action, (cognizable by a moonsiff,) although the original cause of action is beyond the period of one year ?

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Extract of a Letter to the Judge of Zillah Nuddea, in reply to the above, dated 1st March, 1815.

In reply to the first question submitted by you, I am desired to inform you, that it is the opinion of the Court, that in the case of a bond or other instrument for the payment of money, the cause of action cannot be considered to arise previous to the money becoming payable.

In answer to the second question referred by you, I am further directed to communicate to you the opinion of the Court, that a simple acknowledgment to the truth of the demand would not be sufficient to constitute a new ground of action, so as to bring within the cognizance of a moonsiff a suit, the prescribed period for instituting which had elapsed.

March 1, 1815.

See Sel. Rep. vol. 7, p. 77.

Extract of a Letter from the Judge of Zillah Nuddea, under date the 21st February, 1815.

No. 197.
1814.
Reg. XXVII. Secs. 23 and 24.

2. *Few instances occur in which a party appears and prefers his plaint in person, and consequently there is generally a necessity of appointing an authorized vakeel attached to the Judge's court to file the plaint, whatever may be the amount of the suit.— The vakeel, thus entertained, seldom performs any other act in the suit, except putting his name to the plaint, and for which he has generally received a fee of four annas. If the suit has been referred to the register or a sudder ameen, a vakeel attached to their respective courts has afterwards been entertained, so that in*

all referred cases the plaintiff or appellant, if not himself present, has had to entertain two vakeels, one to present his petition of complaint, and the other to conduct the prosecution.

3. *By Section* 34, *Regulation XXVII.* 1814, *vakeels are entitled to receive a fee of four annas for presenting a miscellaneous petition or application, if it does not relate to any suit depending in court, wherein the person, in whose behalf they petition, is a party. This proviso, I imagine, must be presumed to have reference to the cases mentioned in the preceding paragraph, and the fee of four annas, hitherto received for filing a plaint, does not appear to be compatible with the existing Regulations. Moreover, by clause first, Section* 23, *Regulation XXVII.* 1814, *a vakeel is not competent to perform any act in a suit, until the party employing him has deposited in court the full and regular amount of his fees.*

Extract of a Letter to the Judge of Zillah Nuddea, in reply to the above, dated the 1*st March*, 1815.

2. *If the plaintiff in a regular suit, instead of preferring his plaint in person, employ a vakeel to prefer it, he must deposit the full fee, in conformity with Section* 23, *Regulation XXVII.* 1814.

3. *In the event of the suit being referred to a register or sudder ameen, such deposit must be kept for the pleader employed to prosecute the suit in the court of the sudder ameen or register.*

4. *If such pleader be not the vakeel employed to file the plaint, the Court are of opinion, that under the provisions of Section* 35 *of the above Regulation, the judge may award to the latter four annas, or such fee as he may consider adequate, under the limitation prescribed in the section referred to ; but it appears to the Court, that in general the fee of four annas will in such cases be sufficient.*

March 1, 1815.

See Act I. 1846.

Extract from a Letter from the Benares Court of Appeal, under date the 28*th February*, 1815.

No. 198.

1795. Reg. VI. Sec. 23. 1808. Reg. XXVII. Sec. 23, 1808. Reg. XIII. Sec. 11.

We request to be instructed by the Sudder Dewanny Adawlut, whether an appeal preferred to this Court, under Section 23, *Regulation VI.* 1795, *or Section* 23, *Regulation XXVII.* 1803, *against a decision in the zillah court, decreeing the forfeiture of an estate to Government, for the offence specified in Section* 22 *of those Regulations, is to be received as a regular appeal, upon*

payment of the stamp duty under Regulation I. 1814, *and deposit of a pleader's full fee under Section* 23, *Regulation XXVII.* 1814 ; *or may be admitted as a summary appeal, upon the paper prescribed by Section* 18, *Regulation I.* 1814, *and on deposit of one-fourth of a pleader's full fee, as prescribed in Section* 32, *Regulation XXVII.* 1814.

2. *We further request to know, whether it is competent to the court of appeal to take security from the appellant to stay the execution of the zillah decree, under the discretion vested in it by Section* 11 *of Regulation XIII.* 1808.

Extract of a Letter to the Benares Court of Appeal, in reply to the above, dated the 8*th March,* 1815.

2. *In reply to the first question submitted by you, the Court desire me to communicate their opinion, that an appeal preferred to your Court, under Section* 23, *Regulation VI.* 1795. *or the corresponding Section of Regulation XXVII.* 1803, *against a decision in the zillah court, decreeing the forfeiture of an estate to Government for the offence specified in Section* 22 *of those Regulations, is to be received as a regular appeal under the general rules applicable to regular appeals.*

3. *In answer to your* 2*nd Question, I am desired by the Court to inform you, that they are of opinion, that the provincial court is competent to stay the execution of the zillah decree, under the provisions of Section* 11, *Regulation XIII.* 1808.

March 8, 1815.

No. 199.

1814.
Reg. XXVII. Sec. 23.

The Court informed the Bareilly Provincial Court, on the 29*th March,* 1815, *that the amount to be deposited for Vakeels' fees, under Section* 23, *Regulation XXVII.* 1814, *instead of the security required by the Regulations before in force, must be made in all cases of vakalutnamas, filed subsequently to the* 1*st of February,* 1815, *in which security would have been demandable under the rules in force before that date.*

March 29, 1815.

See Act I. 1846.

Extract of a Letter to the Benares Court of Appeal, dated the 18th April, 1815.

No. 201.

1814.
Reg. XXVI. Sec. 4.

The Court concur with you in opinion, that as a general rule of practice, all applications for a review of judgment should be brought before the judge or judges, by whom the judgment may have been passed; excepting the case noticed by you of the final removal of such judge or judges from the court; or when material inconvenience may be likely to arise, from the long absence of the judge who has passed the decision from the sudder station*.

April 18, 1815.

Letter from Benares Court of Appeal, dated the 12th April, 1815.

No. 202.

1814.
Reg. I. Sec. 17.
Reg. XXVI. Sec. 20.

We refer the enclosed papers for the consideration of the Sudder Court respecting the proper construction of Section 17, *Regulation I.* 1814.

PARA. 2. *The first is an order passed by the first and third judges, on the* 1st *of December,* 1814, *in enforcement of the section above cited.*

3. *The other is a petition from the pleaders of the court, in substance, that the petition for which a tax of four Rupees is to be paid, must mean a petition which shall contain arguments or other matter relative to the merits of the suit or appeal, and showing why it should be decreed or dismissed, and cannot be meant to extend to every little miscellaneous matter growing out of every case, an enumeration of many of which is subjoined.*

4. *With what is urged by the vakeels, the second judge entirely agrees. The tax, he conceives, was meant to check the former practice of going beyond the prescribed set of pleadings under the name of a petition, and was never meant to apply to collateral and miscellaneous matters, which, though they grow out of the case, have no immediate connection with its merits. Such petitions, he thinks, might be received on one Rupee paper, under the* 18*th Section, or even the object of them be moved verbally by the pleaders or parties without any petition at all. To present them on four Rupees paper must be felt as an intolerable expense and grievance.*

Extract of a Letter to the Benares Court of Appeal, in reply to the above, dated the 26*th April,* 1815.

Considering Section 17, *Regulation I.* 1814, *with the explanation of it contained in Section* 20, *Regulation XXVI.* 1814,

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* *Since made law by Regulation II.* 1825.

the Court are of opinion, that all petitions filed in original regular suits, or in appeals, regular or special, must be written on the stamped paper prescribed in the former.

April 26, 1815.

See Arts. 7 *and* 9, *Schedule B. Regulation X.* 1829.

No. 203.

1812.
Reg. V. Sec. 21.

The Court decide that all suits instituted under Section 21, *Regulation V.* 1812, *must be referred to the collector for report, provided he be on the spot. But that the reference is not necessary if the collector be absent from the sudder station, the object being to expedite the decision in such suits.*

May 18, 1815.

See Regulation VIII. 1881.

Extract of a Letter to the Bareilly Court of Appeal, dated the 1*st June*, 1815.

No. 207.

1814.
Reg. I. Sec. 19.
Reg. XXVI., Sec. 16, Clause 3.

Para. 2. *The Court observe, that when original documents which have been filed in court are delivered up to parties, the copies of such documents kept as records of court need not, under the explanation contained in clause third, Section* 16, *Regulation XXVI.* 1814, *be written upon stamp paper.*

1814.
Reg. I. Secs. 11 and 18.

3. *When authenticated copies of the legal documents specified in Section* 11, *Regulation I.* 1814, *are required as legal vouchers to be exhibited instead of the originals, the Court are of opinion, that the copies must be written on the same stamp paper as the originals, in conformity with Section* 18, *Regulation XXVI.* 1814, *whether prepared by a cazee or mooftee, or by any other authorized person.*

June 1, 1815.

See Article 3, *Schedule B. Regulation X.* 1829.
See No. 20, *Schedule A. Regulation X.* 1829.

Letter to the Judge of City of Benares, dated the 1*st June*, 1815.

No. 208.

1810.
Reg. XIII. Sec. 11, Clause 1.

"I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 17th ultimo, relative to a refund of the stamp duty, substituted for the institution fee, in cases decided in favour of the plaintiff on the acknowledgment of the defendant, without investigation of the merits.

2. The Court observe, that, in such cases, where the plaintiff's claim is not disputed by the defendant, it may generally be expected that the suit will be adjusted by razeenama, in which case the provisions in force for the return of the institution fee, or the stamp duty substituted for it, in suits adjusted by razeenama would of course be applicable.

3. But the Court are of opinion, that the existing Regulations do not authorize a return of the institution fee, or of the stamp duty substituted for it, in the case stated by you, without a razeenama.

June 1, 1815.

See also No. 977, and Circular Order No. 122, 23rd January, 1846.

Letter to the Judge of Zillah Mymensing, dated the 1*st June*, 1815.

No. 209.

1814.
Reg. XXVII. Sec 31.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 24th ultimo, relative to the payment of the fees of pleaders, in a case decided in favour of the plaintiff, on the acknowledgment of the defendant without investigation of the merits, as well as without a razeenama being filed, so as to bring it within the provisions of Section 31, Regulation XXVII. 1814.

2. The Court observe, that in such cases, the claim of the plaintiff not being disputed by the defendant, it may be generally be expected, a razeenama will be filed, when the second clause of Section 31, Regulation XXVII. 1814, would of course be applicable.

3. But if not, and the suit be allowed to proceed to a judgment in favour of the plaintiff, the Court are of opinion, that the vakeels are entitled to the full amount of the established fee : subject, of course, to the provisions of Regulation XXVIII. 1814, in suits of paupers.

June 1, 1815.

See No. 418.

Letter to the Acting Judge of Zillah Allahabad, dated the 15th June, 1815.

No. 211.

1814.
Reg. XXVI. Sec. 15, Clause 5.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 26th ultimo, with its enclosure from the register of gour district stationed at Futtehpore, and in reply to acquaint you, for Mr. Middleton's information, that under the provision of clause fifth, Section 15, Regulation XXVI. 1814, and the general Regulations in force, the Court are of opinion, that registers are fully competent, and required, to execute their own decrees under the same rules as are applicable to the execution of decrees by the zillah judge.

June 15, 1815.

Letter from the Judge of Zillah Agra, dated the 27th May, 1815.

No. 212.

1814.
Reg. XXIII. Sec. 49, Clause 2.
Reg. XXI. Sec. 25, Clause 1,

Clause second, Section 49, Regulation XXIII. 1814, prescribes, that the moonsiffs shall be entitled to receive the full value of stamped paper on which the plaint may have been written, on every suit that may be adjusted before them by razeenama; and clause first, Section 25, Regulation XXVI. 1814, confirming the rule contained in Section 11, Regulation XIII. 1810, provides for the whole or part of it being paid to the party who, by filing the razeenama, may have entitled himself to it.

It would appear from the above, that Government are to be twice charged with the value of the stamped paper in cases adjusted by razeenama, but having doubts whether this interpretation of the rules above quoted be correct, I beg leave to solicit the instructions of the Court of Sudder Dewanny Adawlut on the point.

Letter to the Judge of Zillah Agra, in reply to the above, dated the 15th June, 1815.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 27th ultimo, and to acquaint you that your construction of the provisions therein cited appears to the Court to be perfectly correct.

June 15, 1815.

Extract of a Letter to the Acting Judge of Zillah Tirhoot dated the 30th June, 1815.

No. 213.

1813.
Reg. VI. Sec. 5, Clause 3.

As no provision is made by clause third, Section 5, Regulation VI. 1813, for delegating to the collector the power of appointing a manager to disputed lands placed under attachment by order of the zillah court, such appointment, in the cases referred to in that section, can only take place from the zillah court.

June 30, 1815.

See Regulation V. 1827.

Extract from a Letter to Dacca Court of Appeal, dated the 6th July, 1815.

No. 214.

1814.
Reg. XXVII. Sec. 31.

The provisions of Section 31, Regulation XXVII. 1814, must be deemed applicable to all suits, whenever instituted, which may be withdrawn or dismissed on default after the 1st February, 1815, the date fixed for the operation of the Regulation.

July 6, 1815.

No. 216.

1814.
Reg XXVI. Sec. 4, Clause 2.

On the 27th July, 1815, the judge of zillah Goruckpore was informed, in reply to an application for authority to review a decision of the register, "that the provisions of clause second, Section 4, Regulation XXVI. 1814, being restricted to cases decided by the Provincial, Zillah, and City Courts, the Court of Sudder Dewanny Adawlut do not consider themselves authorized to comply with the application for a review in this case." The Court at the same time observed, "that an appeal from the register's decision to the zillah judge might of course, be still admitted, under the provisions for such appeals, sufficient reason being assigned for delay."

The terms of the clause referred to in the margin apply to "regular suits," but the Court decided that the spirit of the rule is also applicable to "summary suits," in letters to the acting judge of zillah Furruckabad, dated 15th March, 1816, and the Register in charge of zillah Bundelkund, dated 20th April, 1818.

July 27, 1815.

See No. 1249.

Letter from the Judge of the City of Benares, dated the 7th August, 1815.

No. 219.

1814.
Reg. XXIII. Sec. 13, Clauses 1, 2. 3, and Sec. 68.

A difficulty has arisen from the operation of the several clauses of Section 13, *Regulation XXIII.* 1814.

2. *By clause the first, suits cannot be received by persons invested with the powers of moonsiff, unless the cause of action shall have arisen within the period of one year previously to the institution of such suit. Clause the second prohibits these persons from hearing or determining suits in which themselves, their dependants, or an European, or an American may be party. And by clause the third, suits cannot be received or determined by them, which persons may desire to prefer in formâ pauperis.*

3. *The question, therefore, which arises, is, who is to hear and determine these suits. It can hardly have been intended that the time of the judge should be taken up by suits not exceeding in amount or value the sum of sixty-four Sicca Rupees; to impose upon the registers the suits referred to in clause the second would be a hardship; and if the suits described in clauses first and third are to be imposed upon the sudder ameens, it will make the situation of those officers worse than it was before.*

4. *It is quite clear that, under existing rules, these suits must be heard and determined somewhere. By the clause in question, the moonsiffs alone are prohibited from hearing them, and the rule allowing a period of twelve years for the institution of civil suits without exception, has not been rescinded.*

5. *The suits which persons invested with the powers of moonsiff are thus prohibited from receiving will be numerous, and I beg to be informed in what manner the Court of Sudder Dewanny Adawlut understand they are to be disposed of.*

P. S. The number of suits withdrawn from the moonsiffs under the second clause of Section 13, *Regulation XXIII.* 1814, *that were instituted previously to the promulgation of that Regulation, amount to eighty-four.*

To the Judge of the City of Benares, in reply to the above, dated the 17*th August,* 1815.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 7*th instant, requesting the Court's instructions regarding the trial of the suits referred to in the several clauses of Section* 13, *Regulation XXIII.* 1814.

2. *With respect to suits instituted in formâ pauperis, the sudder ameens, as well as the mofussil commissioners, being expressly restricted from taking cognizance of them, the Court observe, that such suits, as also the suits excepted from the jurisdiction of the sudder ameens by the latter part of Section* 68,

Regulation XXIII. 1814, *can only be tried by the judge or register.*

3. *The other suits mentioned in your letter, as not cognizable by the moonsiffs under the first clause of Section* 13, *and the first part of clause second of that section, may be referred, at your discretion, either to the register or sudder ameens.*

August 17, 1815.

See Act VI. 1843.

Letter to the Judge of the City of Moorshedabad, dated the 31*st August*, 1815.

No. 220.

1799. Reg. VII. Sec. 15.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 10*th May last, requesting the Court's instructions on two points relative to the course of proceeding in summary suits, under the provisions of Regulation VII.* 1799.

2*nd. The Court observe, that the summary inquiry authorized by Section* 15 *of the above-mentioned Regulation, being expressly restricted by the fourth clause to cases in which the under-tenant or his surety may be arrested and brought in to the zillah court, under the preceding clauses of the same section, the inquiry authorized cannot take place without the arrest of the under-tenant or his surety. But a reasonable time should be allowed to the plaintiff to point out the under-tenant or his surety, before the petition of arrest received under the second clause of Section* 15, *Regulation VII.* 1799, *is finally disposed of; and if there be no default of the plaintiff, it would, the Court think, be proper to extend the period originally granted, if the plaintiff desire it, with a view to save his right of summary action, under the first clause of Section* 4, *Regulation II.* 1805.

3*rd. On the second point noticed in your letter, the Court are of opinion, that the provisions of Section* 15, *Regulation VII.* 1799, *suppose the under-tenant, or his surety, at the time of a petition being preferred for their arrest, to be within the zillah or city jurisdiction in which the land, for which the arrear of rent is claimed, may be situated; as the summary inquiry provided for could not be regularly or conveniently made in a different jurisdiction, and the Regulation contains no provision for arresting an under-tenant or surety in one zillah or city, in which he may be resident, and sending him to another in which the land is situated. It may be desirable to include a provision for this purpose in*

some future Regulation, but in the mean time, the Court desire, that you will be guided by the construction above stated.

August 31, 1815.

See Sections 9 *and* 18, *Regulation VIII.* 1819.

Extract from a Letter from the Judge of Zillah Mymensingh, dated the 20*th September*, 1815.

No. 223.
1814.
Reg. I. Secs. 15, 16 and 17.
Reg. XXIII. Sec. 75, Clause 3.
Reg. XXIV. Sec. 9, Clauses 4 and 6.

Do the provisions of Sections 15, 16 *and* 17, *Regulation I.* 1814, *apply to the court of an additional register stationed in the mofussil, and invested with special powers under clauses fourth and sixth of Section* 9, *Regulation XXIV.* 1814, *as well as to that of the ordinary register.*

To the Judge of Zillah Mymensingh, in reply to the above, dated 7*th December*, 1815.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 20*th September last, and in reply to acquaint you, that referring to the rule contained in the sixth clause of Section* 9, *Regulation XXIV.* 1814, *the Court are of opinion, that a register, (at whatever place he may be stationed,) who is vested with the special powers provided for by that clause, or by the* 4*th clause of the same section, should be guided in the trial of all causes of the nature therein mentioned by the rules in force for the trial of similar causes before the judge; that consequently the durkhasts for exhibits and witnesses, specified in Sections* 15 *and* 16, *Regulation I.* 1814, *and the pleadings and other papers mentioned in Section* 17 *of the same Regulation which may be filed in the causes in question, must be written on stamped paper of the value of* 1 *Rupee, instead of* 8 *Annas, the value prescribed for causes before registers vested with the ordinary power.*

2. *The Court are further of opinion, that the same construction of the third clause of Section* 75, *Regulation XXIII.* 1814, *is applicable to appeals from the decisions of moonsiffs which may be referred to sudder ameens, under the provisions of that section.*

(N. B. Circulated on the same date for general information.)

December 7, 1815.

To the Judge of Zillah Midnapore, dated the 21st September, 1815.

No. 224.

1801.
Reg. VI. Sec. 32.

I am directed by the Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 11th instant, and in reply to the question therein contained, to communicate to you the opinion of the Court, that suits instituted in conformity with Section 32, Regulation VI. 1801, [*for the recovery of fines for the illicit manufacture, &c. of salt,*] *must be received and tried as regular suits, there being no provision for a summary process in such cases.*

The Court are also of opinion, that the plaint in the suits referred to should be drawn out on stamped paper, under the rule contained in Section 21, *Regulation XXVI.* 1814.

September 21, 1815.

See Sections 30 *to* 33, *Regulation X.* 1819, *and Act XXIX. of* 1838.

No. 225.

1813.
Reg. VI. Sec. 3, Clause 2.

On the 31st of October, 1815, the Court of Sudder Dewanny Adawlut determined, in reply to a reference from the Judge of Bundelcund, that "applications made to the Courts for the execution of awards by private arbitration, under the second clause of Section 3, Regulation VI. 1813, are to be received and enforced under the rules applicable to summary process, as directed in the said clause."

October 31, 1815.

To the Acting Judge of Zillah Cawnpore, dated the 3rd November, 1815.

No. 226.

1793.
Reg. XXXVI. Sec. 9. C. C. P.

1803.
Reg. XVII. Sec. 9.

I am directed by the Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from the Judge, under date the 22nd July last, with its enclosures, requesting the Court's construction of Section 9, Regulation XVII. 1803, relative to the forms to be observed in the registry of deeds.

The Court understand the intention of the Section to be, that the person executing the deed, or his authorized representative (mookhtar), must attend to acknowledge the execution, and that one or more witnesses to the execution of the deed must also attend to prove the execution by their testimony on oath.

When the person executing the deed may depute a mookhtar with a mookhtarnama, instead of attending himself, to acknowledge

the deed, the execution of the mookhtarnama should also be proved by the examination of two witnesses on oath.

But the Court do not consider it to be required by the Regulation cited, that either the party executing the deed, or his mookhtar, should be examined on oath.

November 3, 1815.

See Circular Order No. 62, of 31st January, 1845.

To the Benares Court of Appeal, dated 9th November, 1815.

No. 227.
1808.
Reg. XIII. Sec. 3.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 13th ultimo, and to observe to you, in reply, that the provisions of Regulation XIII. 1808, *have been modified by Regulation XXV.* 1814; *under Sections* 3 *and* 5 *of which all original regular suits in which the value or amount of the claim, calculated according to the provisions of Section* 14, *Regulation I.* 1814, *may exceed five thousand Sicca Rupees, are to be instituted and tried in the first instance in the provincial court.**

November 9, 1815.

Extract of a Letter to the Bareilly Court of Appeal, under date the 12th January, 1816.

No. 230.
1793.
Reg. XXIV.
1795.
Reg. XXXIV.
1803.
Reg. XXIV.

2. "The Court direct me to observe to you, that as all claims upon Government to pensions are cognizable only by the collectors under the provisions of Regulation XXIV. 1803, subject to an appeal to the Board of Commissioners and the Governor General in Council, the case to which the above papers relate does not appear subject to the cognizance of your court."

January 12, 1816.

See No. 343.

No. 231.
1793.
Reg. XIII. Sec. 9, Clause 8.
1803.
Reg. XII. Sec. 12, Clause 8.

The Court, on the 12th January, 1816, in reply to a reference from the Bareilly Court of Circuit, determined, that a person who had been punished for corruption or extortion on a criminal prosecution would not afterwards be liable to the fine provided by Section 12,

* This however has been superseded by Section 2, Regulation XIX. 1817.

Regulation XII. 1803, on a civil prosecution; though he would of course be subject to a civil action for restitution of the money received by him.

January 12, 1816.

Extract of a Letter from the Judge of Zillah Rungpore, under date the 28th July, 1815.

No. 234.

1812.
Reg. V. Secs. 9, 10 and 15.
1794.
Reg. IV. Sec. 7.

4. The number of summary suits instituted annually since the year 1810 is exhibited in the margin. The increase is to be attributed to the operation of Regulation V. 1812, which seems to have been understood by the farmers and zemindars as authorizing them to consider the ryots, on the expiration of their leases, as tenants at will, and has consequently led them to demand enhanced rents in most parts of the district. The provisions of Section 15 have also induced many, who had demands against their tenants on old engagements, to substitute summary prosecutions for the former mode of distraint.

5. By far the greater number of summary suits preferred last year were for arrears of rent due on kubooleuts; but many of those that have lately been instituted are consequent to the more general operation of Section 10, Regulation V. 1812, and are preferred, either by the ryots, after releasing their property from distraint, or by the farmers or zemindars, to recover increased rents, on the grounds of having served their tenants with the notice described in the above section and Regulation, the general principles of which, although it is professedly enacted for the guidance of persons purchasing lands sold for arrears of revenue, appear to be applicable to all cases where no written engagements exist; as the respective rights of the proprietors and the ryots, considered independently of their mutual agreements, cannot be supposed to be altered by the mere circumstance of the sale of the estate.

6. On first view of Section 10, Regulation V. 1812, it might be inferred that the zemindars or their representatives possess the power of exacting in the first instance, by distraint or by a summary process, whatever amount they may have thought proper to insert in the notification required to be conveyed to their tenant, the latter having only the option of resigning his land, or continuing to hold it subject to pay the enhanced rent, until he can prove the injustice of the demand by a regular suit. Such an interpretation, however, does not seem to be easily reconcileable with that part of Section 7, Regulation IV. 1794, which, being declaratory of the rates at which the ryots were entitled to demand pottas, and, of course, to continue in possession of their lands, cannot be considered as abrogated by Section 3, Regulation V. 1812, and I have hitherto deemed it

necessary to require zemindars and farmers prosecuting summarily for enhanced rent, or defending suits instituted against them under Section 15, Regulation V. 1812, to show that the amount demanded in the notification served on their tenants was conformable to the pergunnah rates, and the actual extent of land.

7. Should this construction of the Regulation be correct, (and I beg the favour of your informing me, should the Court consider it otherwise,) it is evident, that in the generality of suits denominated summary, it will now be necessary to adduce evidence to prove the pergunnah rates, the quality of the cultivator's land, and frequently the quantity thereof, all of those points being usually disputed, and even the last very frequently remaining doubtful until actually measured, in consequence of the fraudulent reduction made by the zemindars before the decennial settlement in the nominal extent of every farm or jote on their estates, for the purpose of imposing upon Government, and obtaining their lands in perpetuity on favorable terms.

Extract from the Proceedings of the Court of Sudder Dewanny Adawlut, under date the 3rd February, 1816.

The Court entirely concur in the construction of Section 10, Regulation V. 1812, stated in the 6th paragraph of Mr. Scott's letter, dated the 28th July, 1815, and resolve, that he be informed accordingly. The Court observe, that the written notice, required by Section 9 of that Regulation, when no written engagement may have been entered into, expressly refers to tenants subject to an enhancement of rent "under subsisting regulations," including, of course, the unrepealed provisions in Section 7, Regulation IV. 1794, relative to the renewal of pottahs at the established rates of the pergunnah.

February 3, 1816.

See Section 10, Regulation VIII. 1831.

To the Judge of Zillah Mymensingh, dated the 16*th February,* 1816.

No. 238.

1814.

Reg. XXVI. Sec. 15, Clause 8.

I am directed by the Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 27th ultimo, requesting the opinion of the Court, whether the provisions of clause eighth, Section 15, Regulation XXVI. 1814, are intended to apply to decrees passed before the 1st February, 1815.

2. By the third clause of the Section above cited, it is declared, that decrees passed previously to the promulgation of Regulation XXVI. 1814, (viz. 1st February, 1815,) shall be executed accord-

ing to the Regulations before in force, and in the same manner as they had formerly been enforced.

3. The fourth clause of the same section empowers the several courts not to carry into execution any decree passed subsequently to the 1st February, 1815, except in conformity with the rules prescribed in the following clause of that section.

4. Under these provisions the Court are of opinion, that clause eighth is not expressly applicable to decrees passed antecedently to the 1st February. But if any doubt should arise on the propriety of executing a prior decree, it appears just and proper that notice should be given, and proceedings held in the manner directed by the clause in question.

February 16, 1816.

See Section 7, Regulation VII. 1825.

To the Acting Judge of Zillah Rajshahye, dated the 17*th February,* 1816.

No. 239.

1814.
Reg. XXIII. Secs. 73 and 45.
Reg. XXVI. Sec. 15.

I am directed by the Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from the late judge, dated the 10th instant, and to acquaint you, that a list of Errata in the Persian translation of several Regulations of 1814, was published a short time since by the present translator of the Regulations; including the inaccuracy pointed out by Mr. Shakespear in the translation of Section 73, Regulation XXIII. 1814, whereby Section 45 is erroneously made applicable to sudder ameens.

The Court at the same time direct me to observe, that the rules regarding the execution of decrees passed by sudder ameens, in common with the decrees of the judge and registers of the zillah and city courts, are contained in Section 15, *Regulation XXVI.* 1814, *the fifth clause of which particularly mentions sudder ameens.*

February 17, 1816.

To the Judge of Zillah Etawa, dated the 17*th February,* 1816.

No. 240.

1803.
Reg. XXXVII. Sec. 3, Clause 7, Bengal. 1793.
Reg. XXXI. Sec. 3, Clause 7.

I am directed by the Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 31*st ultimo, relative to certain suits instituted by the commercial resident at Etawa, for the recovery of the penalty prescribed in clause seventh, Section* 3, *Regulation XXXVII.* 1803, *against persons failing in their engagement for the delivery of saltpetre, and*

requesting the Court's opinion, whether the provisions in the said clause and section are applicable to such engagements or not.

2. *In reply, I am directed to state, that if saltpetre be an article of the Company's investment in zillah Etawa, the principles of the rules contained in Regulation XXXVII.* 1803, *are, by Section* 14 *of that Regulation, declared applicable to manufacturers and other persons employed in the provision of it.*

3. *But whether the penalty prescribed in the clause cited, or the sixth clause of the same section, be recoverable in the suits referred to in your letter, the Court can give no opinion, without having the proceedings in such cases judicially before them.*

February 17, 1816.

See Regulation IX, 1829.

To the Acting Judge of Zillah Jungle Mehals, dated the 17*th February*, 1816.

No. 241.

1814.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 18th ultimo, stating doubts on the construction of Section 8, Regulation XXVI. 1814. Reg. XXVI. Sec. 8.

2. The Court observe, that the 10th clause of the section above-cited modifies the rules before in force, and directs that the respective periods limited by the Regulations for the admission of appeals, in the cases therein referred to, shall be calculated from the date on which the decisions may have been passed, excluding from the calculation of such periods the interval which may have elapsed, in each instance, between the date on which the requisite stamp paper may have been furnished by the party to the court, and that on which the copy of the decree may have been tendered or delivered to the party in the open court in the mode prescribed by the Regulations.

3. The Court, therefore, consider the rules contained in the section above cited to be applicable to appeals from all decisions passed subsequent to the 1st of February, 1815, the date fixed for the operation of the Regulation in question.

February 17, 1816.

See No. 413.

To the Judge of Zillah Goruckpore, dated the 24*th February*, 1816.

No. 242.

1814.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 13*th instant, with its enclosure from your register, and to observe in* Reg. I. Secs. 15, 16 and 17.

reply, that Sections 16 *and* 17, *Regulation I.* 1814, *cited by Mr. Smith, as well as Section* 15 *of that Regulation, must be considered applicable to all suits tried by a register of whatever description, and on the decision of such suits the register is entitled only to a moiety of the institution fee, or of the amount of the stamp duty substituted for such institution fee, by Regulation I.* 1814, *as expressly declared in the* 2*nd clause of Section* 8, *Regulation XXIV.* 1814.

February 24, 1816.

Regulation II. 1821.

To the Judge of Zillah Jessore, dated the 15*th March*, 1816.

No. 243.

1814.
Reg. I. Secs. 15, 16, 17, 18 and 19.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 9th instant, and in reply to communicate to you the opinion of the Court, that in the suits, noticed in your letter, viz. original suits referred for trial to the sudder ameens, it is not necessary that applications for the attendance of witnesses should be drawn out on stamp paper, under Section 16, Regulation I. 1814, the provision contained in that section, as well as in Sections 15, 17, 18 and 19, not being applicable to such suits.

March 15, 1816.

See Arts 5 and 11, Schedule B, Regulation X. 1829.

Memorandum of Constructions of Regulations determined by the Court of Sudder Dewanny Adawlut in the English Department, on the 15*th March*, 1816, *ordered to be translated for the information of the vakeels.*

No. 245.

1814.
Reg. XXIV. Sec. 8, Clause 7.

1. *The rule contained in this clause is applicable to all decrees passed by the zillah and city judges since the* 1*st February*, 1815, *on appeals from the decisions of their registers, whether the suits may have been referred to the register before or after the above date.*

1814.
Reg. XXV. Sec. 5.

2. *Under the provisions of this section, which are construed to modify all former rules in force for regular appeals to the Sudder Dewanny Adawlut, the regular appeals to this Court, (viz. not being special or summary appeals,) are restricted to regular civil suits tried and determined in the first instance by the provincial courts. In suits, therefore, which may have*

been originally tried in the zillah or city courts, and subsequently in appeal by the provincial courts, if the decision of the latter have been passed subsequently to the 1st *February,* 1815, *whatever may be the amount adjudged or disallowed by the decree of the provincial court, a second regular appeal is not open to the Sudder Dewanny Adawlut. This court can admit a special appeal only in such cases, under the provisions of Section* 2, *Regulation XXVI.* 1814, *with an exemption of paupers from the use of the stamp paper required by the third clause of that section; provided they shall appear entitled to appear as paupers, under the provisions of Regulation XXVIII.* 1814.

3. *Should the Court of Sudder Dewanny Adawlut reject a special appeal in any such case, which from the amount or value may be appealable to the King in Council, the appellant may appeal to His Majesty in Council under the rules which have been established for such appeals, and a translation of the whole of the proceedings held in the zillah or city, and provincial courts, will be transmitted to England, with a view to enable the King in Council to form a judgment on the merits of the case.*

1814.
Reg XXV. Sec. 5, Clause 3.
Reg. XXVI. Sec. 2, Clause 6.

4. *Under the provisions in the two clauses referred to,* [*in the margin,*] *the Court are of opinion, that the only second or special appeals now admissible by the Sudder Dewanny Adawlut in regular suits, are those specifically mentioned in the third clause of Section* 5, *Regulation XXV.* 1814, *(or in the terms of the Regulations,) "from the judgments passed by provincial "courts on regular appeals admitted by them, from original "decisions of zillah and city judges, and assistant judges, or "from the original decisions of registers passed under the pro-"visions of clause sixth, Section* 9, *Regulation XXIV.* 1814;" *viz. in regular suits originally tried and decided by the zillah or city judges, or assistant judges, or by registers specially empowered under the sixth clause of Section* 9, *Regulation XXIV.* 1814, *and subsequently heard and determined in appeal by the provincial courts: consequently that judgments of the provincial courts passed after the* 1st *February,* 1815, *upon second appeals to those courts, in suits originally tried by the registers, and afterwards in appeal by the judges of the zillah or city courts, are final.*

1814.
Reg. XXVI. Sec. 2, Clause 6.

5. *The Court understand the intention of this clause to be, that all judgments upon second appeals to the provincial courts, which might be passed by those courts, after the* 1st *February,* 1815, *should be final, whether the appeal have been admitted by the provincial court before or after that date.*

March, 15, 1816.

Letter from the fourth Judge of Calcutta Court of Appeal, dated the 24th April, 1816.

No. 246.

1814.

Reg. XXVI. Sec. 2, Clause 1.

We beg to be favoured with the opinion of the Court of Sudder Dewanny Adawlut, whether a special appeal may be admitted under clause 1, *Section* 2, *Regulation XXVI.* 1814, *to reverse an error in the determination of facts, where the judgment is manifestly without, or contrary to, evidence; or where exorbitant damages have been given; or whether a special appeal lies exclusively on matter of law, practice, and usage, &c. arising on the face of the decree, and not requiring evidence to substantiate or support it.*

Letter to the Calcutta Court of Appeal in reply to the above, dated the 1st May, 1816.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from your fourth Judge, dated the 24th ultimo, requesting the Court's construction of clause 1, *Section* 2, *Regulation XXVI.* 1814, *regarding the admission of special appeals.*

2. *Upon the first question proposed by your fourth judge, viz, whether a special appeal may be admitted to reverse an error in the determination of facts, when the judgment may appear to be manifestly without, or contrary to, evidence, the Court are of opinion, that a special appeal cannot be admitted on such grounds under Section* 2, *Regulation XXVI.* 1814; *which requires that all the facts of the case must be assumed as stated in the decree.*

3. *Upon the second point, viz., when exorbitant damages may appear to have been given, the Court can offer no opinion without more particular information of the case, and the damages awarded; such as might enable them to judge, whether the case is within any of the special grounds stated in the first clause of Section* 2, *Regulation XXVI.* 1814. *The Court, therefore, can only suggest, that you should exercise your own judgment on the case, in determining whether it falls within any of the prescribed grounds for the admission of special appeals or otherwise.*

May 1, 1816.

See Act XVI. of 1853.

No. 248.

To the Dacca Court of Appeal, dated the 6th May, 1816.

1814.

Reg. XXVI. Sec. 2, Clause 3.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 27th ultimo, and to acquaint you, that supposing the omission therein noticed, (viz.;

to state distinctly, as required by the third Clause of Section 2, *Regulation XXVI.* 1814, *the specific ground, or grounds, under the first clause of that Section, on which a special appeal is solicited,) in the petitions for special appeals not yet disposed of, to have proceeded from inadvertence, the Court are of opinion the appellants should be allowed to supply it by a supplementary petition, drawn out on the paper prescribed in Section* 17, *Regulation I.* 1814.

May 8, 1816.

See Act XVI. of 1853.

To the Judge of Zillah Rajshahye, dated the 15*th May,* 1816.

No. 249.

1814.
Reg. XXVI. Sec. 20, Clause 1.
1829.
Reg. X.
No. 11, Sch. B.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 10th instant, and in reply to refer you to the first clause of Section 20, Regulation XXVI. 1814, whereby the provisions of Section 16, Regulation I. 1814, regarding applications for summoning witnesses, is expressly restricted to original regular suits, and to appeals regular or special, and declared not applicable to summary suits.

May 15, 1816.

See Circular Order, 25th August, 1854.

Letter from the Judge of Bundlecund, dated the 6*th May,* 1816.

No. 250.

1814.
Reg. XXIII.

In Clause 4, Section 32 of Regulation XXVIII. of 1803, it is stated, respecting summary suits for arrears of rent, that the judge "may refer the case to the collector of the district for adjustment and report, when neither the judge nor his register may be able, from other avocations, to try and determine it without delay, and where the case may not be cognizable by the native commissioners acting under them."

2. I take the liberty of soliciting the sentiments of the Court, whether it is to be inferred from the latter words of the above quotation, that the native commissioners and sudder ameens are competent to receive and try summary suits for arrears of rent, if under 64 Rupees, under the rules established for the receipt, trial, and execution of summary suits.

To the Judge of Zillah Bundlecund, in reply to the above, dated the 22*nd May,* 1816.

I am directed by the Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 6th instant, and in reply to commu-

nicate to you the opinion of the Court, that summary suits are not cognizable by sudder ameens or moonsiffs, under the provisions of Regulation XXIII. 1814, or any other regulation at present in force.

May 22, 1816.

See Nos. 322 and 332.

No. 251. *To the Judge of Zillah Nuddea, dated the 29th May,* 1816.

1814.
Reg. XXIV. Secs. 8 to 12.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 16th instant, and to acquaint you, that under the general powers vested in registers of the zillah and city courts by Regulation XXIV. 1814, *in suits referred to them under that Regulation, the Court are of opinion, that they are competent to proceed against persons charged with resistance to the process issued by them in such suits, in the same manner as the zillah and city judges are empowered to proceed in similar cases, subject to a summary appeal from the decisions passed by them to the judge of the zillah or city court.*

2. *The Court at the same time observe, that under the powers reserved to the judges of the zillah and city courts, by Section* 10, *Regulation XXIV.* 1814, *they may, at all times, recall from their registers the suits referred to them wherein a resistance of process may have taken place, including, of course, any depending investigation of the stated resistance.*

May 29, 1816.

No. 252. *From the Judge and Magistrate of Zillah Cuttack, dated the 30th May,* 1816.

1813.
Reg. X. Sec. 22.

The acting collector of this district having petitioned the Court to commit a witness for perjury, who is stated to have given, on oath, a false deposition before him in a case under investigation by him, in conformity to the rules contained in Section 22, Regulation X. 1813; it becomes necessary to ascertain, whether a collector is authorized by Regulation X. 1813, to examine witnesses on oath without having previously obtained the authority of the judge; for should it appear that the oath administered is illegal, I conceive no prosecution will hold good against this witness.

By Section 13, Regulation VIII. 1794, a collector must be authorized by the judge to examine witnesses on oath, in cases

referred to him for investigation, prior to his administering the oath; Section 22, Regulation X. of 1813, is silent as to the mode in which the examinations are to be made; and I am not aware that any other Regulation directs collectors to examine witnesses on oath, excepting in cases pending before them which may regard the conduct of any of their native officers.

You will oblige me, therefore, by obtaining for me the opinion of the Courts of Sudder Dewanny and Nizamut Adawlut, whether a collector, by the existing Regulations, is authorized, either in the investigation of cases referred to him for report by the judge, or of cases pending before him in conformity to the rules contained in Section 22, Regulation X. 1813, to examine witnesses on oath; or whether it is not necessary that the collector should obtain the sanction of the judge for his administering the oaths to witnesses in the investigation of such cases.

To the Judge and Magistrate of Zillah Cuttack, in reply to the above, dated the 5th June, 1816.

I am directed by the Sudder Dewanny and Nizamut Adawlut to acknowledge the receipt of a letter from you, dated the 30th ultimo, and to acquaint you, that under the provisions of Section 22, Regulation X. 1813, which suppose a charge or information upon oath, and direct that the investigation shall be conducted by the collector or other public officer intrusted with the charge of the abkaree mehal, the Court are of opinion, that such officer is empowered to administer an oath, in cases within the provisions referred to.

June 5, 1816.

See Nos. 1106 and 1008.

From the Judge of Zillah Allahahad, dated the 2nd July, 1816. No. 253.

1803. Reg. XXI. Bengal. 1793. Reg. XVI. 1813. Reg. VI.

I request you will obtain for me the orders of the superior Court, on the following points; 1st.—Can a regular suit respecting the proprietary right to land, in which the amount of suit is more than 200 Rupees, be referred by the court to arbitration, under Section 3, and Clause 2 of Section 2, Regulation VI. 1813, which direct that the rules of Regulation XXI. 1803, should be held applicable to such references? 2ndly.—Can a regular suit, in which the amount may be 200 Rupees, or less, respecting the property of land, be referred by the Court to arbitration, under the provision of Section 3, Regulation VI. 1813, provided the parties make application for that purpose?

To the Judge of Zillah Allahabad, in reply to the above, dated the 17th July, 1816.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 2nd instant, and to acquaint you, in reply, that the terms of Section 2, Regulation VI. 1813, appearing to be clear and express upon the subject of the questions referred for their consideration, the Court, previously to returning any distinct answers to them, desire you will state what grounds of doubt have occurred to occasion the reference.

From the Judge of Zillah Allahabad, in reply to the above, dated the 26th July, 1816.

I have the honor to acknowledge the receipt of your letter, under date the 17th instant.

It having been the practice of this Court, in the time of my predecessors, to refer to arbitration suits respecting the property in land, &c. whatever might be the amount, and it appearing to me that the limitation of the amount of suit to the sum of 200 Rupees was a fundamental rule of Regulation XXI. 1803, and therefore applicable by Clause 2, Section 2, Regulation VI. 1813, to all suits referred to arbitration under the provisions of that section, I was induced to make the reference contained in my letter of the 2nd instant, that I might be guided by the orders of the superior Court in the determination of several suits now pending in this court, which had been referred to arbitration, although the amount of them exceeded the sum of 200 Rupees.

To the Judge of Zillah Allahabad, in reply to the above, dated the 7th August, 1816.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 26th ultimo.

The Court observe that Section 3, Regulation XXI. 1803, relates to the appointment of a single arbitrator in suits not exceeding 200 Rupees. But Section 2 applies expressly to suits exceeding that amount.

The provisions of this Regulation being extended generally to suits respecting property in land or limited tenures therein, by Regulation VI. 1813, the Court are of opinion, that under Section 2 of the latter Regulation, all suits of this description may be referred to arbitration for whatever amount.

August 7, 1816.

From the second Judge of the Benares Court of Appeal, dated the 15th July, 1816.

No. 254.

1800.
Reg. V. Secs. 14 and 17.

I submit a copy of a proceeding of the judge of the city of Benares, dated the 14th ultimo, and of a proceeding of this court, dated the 10th instant.

2. *It is certain, as urged by Mr. Bird, that Section 24, Regulation XLIX. 1803, the first clause of which was cited in the acting register's letter of the 29th of August, 1811, as authorizing a special appeal in summary suits for revenue, is rescinded in toto by the second section of Regulation XXIV. 1814; but I confidently trust, the Sudder Dewanny Adawlut will see ground for deciding that the provisions of Regulation XXVI. 1814, for the admission of special appeals, are not exclusive of summary suits of the description above-mentioned; as, considering the hasty and superficial inquiry upon which these decisions are usually passed, I think it would be highly mischievous and unjust to leave the defendants of these suits in all cases without any remedy, but that which is pointed out in Section 17, Regulation V. 1800, and Section 35, Regulation XXVIII. 1803.*

To the Benares Provincial Court, in reply to the above, dated the 31st July, 1816.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from your second judge, dated the 15th instant, with its enclosures.

2. *Upon the general question therein referred, the Court are of opinion, that if the summary judgment passed by the city judge, be within his competency under the provisions of Section 14, Regulation V. 1800, an appeal to the provincial court, whether regular or special, is precluded by Section 17 of that Regulation.*

3. *But if it should appear upon the face of the summary judgment, that the city judge has exceeded his legal competency, a summary special appeal would lie to the provincial court, in conformity with established usage, and the reason and necessity of the case, (although not expressly provided for by any Regulation,) with a view to correct the irregularity without the expense and delay of a regular suit.*

July 31, 1816.

See Regulation VIII. 1831.

From the Judge of Zillah Rungpore, dated the 11th August, 1816.

No. 255.
1812.
Reg. V. Sec. 15.

I beg to be informed, whether, in the opinion of the Sudder Dewanny Adawlut, the provisions of Section 15, Regulation V. 1812, can be considered as applicable to cases in which the zemindars and their representatives attach the jotes of their tenants, or oust them at the end of the year for disputed arrears of rent, accruing on notices served on the cultivators in the manner described in Sections 9 and 10 of the above Regulation.

2. I make this reference in consequence of frequent applications being made to me by the ryots, for injunctions upon farmers and others to refrain from ousting them from their jotes, the petitioners being ready to pay the amount of such part of the demand against them as they admit to be legal into court, and to give security, and contest the justice of the remaining part of it, in the manner provided for in Section 15, Regulation V. of 1812.

To the Judge of Zillah Rungpore, in reply to the above, dated the 21st August, 1816.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 11th instant, requesting the opinion of the Court, whether the provisions of Section 15, Regulation V. 1812, can be considered applicable to cases, in which a landholder may attach the jote of his tenant, or oust him at the end of the year for a disputed arrear of rent.

2. In reply, I am directed to state, that although the provisions of the section cited apply directly to the case only of an attachment of property for an alleged arrear of rent, the spirit and equity of the rule must, in the judgment of the Court, be considered applicable to the case put by you, supposing the requisite conditions, as specified in the section above-mentioned, to be performed by the tenant for bringing the question of rent in dispute to a speedy determination in the civil court.

August 21, 1816.

To the Judge of Zillah Beerbhoom, dated the 4th September, 1816.

No. 257.
1794.
Reg. IV. Sec. 5.
1812.
Reg. V. Secs. 9 & 10.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 29th ultimo, and to observe in reply, that Regulation V. 1812, contains no provisions for a summary suit to compel ryots to take pottahs and give

kubooleuts; but that landholders may proceed in conformity with Section 5, Regulation IV. 1794, and Sections 9 and 10, Regulation V. 1812.

September 4, 1816.

See No. 67.

To the Judge of Zillah Chittagong, dated the 26th December, 1816.

No. 260.
1814.
Reg. XXIII. Sec. 49, Clause 2.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from the acting judge, dated the 19th August last, and to acquaint you, that under the second clause of Section 49, Regulation XXIII. 1814, (extended to the sudder ameens by Section 73 of that Regulation,) the native commissioners are entitled to the full amount of stamp duty paid on the institution of the suit, in all cases adjusted before them by razeenamas.

2. *This point was determined by the Court, on the 15th June, 1815, in answer to a similar reference from the judge of Agra.*

December 26, 1816.

To the Benares Provincial Court, dated the 26th December, 1816.

No. 261.
1814.
Reg. I. Sec. 18.
Reg. XXVIII. Secs. 7 and 8.

In compliance with the request contained in your second judge's letter of the 17th instant, the question therein stated, relative to the right of a pauper to file a vakalutnama upon plain instead of stamped paper of the prescribed value, has been submitted to the consideration of the Court of Sudder Dewanny Adawlut; and I am now directed to communicate to you the opinion of the Court collectively, that in all cases when a pleader may be appointed by a party, the vakalutnama must be drawn out on stamp paper; vakalutnamas not being included in Section 8, Regulation XXVIII. 1814, which specifies the stamp duties from which paupers are exempted.

2. In the cases specially provided for by the second clause of Section 7 of the Regulation in question, viz., where the pleader may have been appointed by the court, no vakalutnama is of course necessary. But the Court do not consider this clause applicable to any case in which a vakeel is appointed by a party.

December 26, 1816.

Extract from a Letter to the Bareilly Provincial Court, under date the 26th December, 1816.

No. 262.

1810. Reg. XIII. Sec. 4, Clause 3.

2. *Under the powers vested in single judges of the provincial courts by the third clause of Section* 4, *Regulation XIII.* 1810, *to determine on the admission or rejection of applications for special appeals to those courts, the order of a single judge, holding a regular sitting of the court, for the admission of a special appeal, must, in the judgment of the Sudder Dewanny Adawlut, be deemed conclusive, in like manner as if it had been passed by two or more judges of the provincial court.*

3. *This point has been already determined by the Court, under date the* 31*st July last, on a reference from the second judge of the Dacca provincial court.*

1814. Reg. XXV. Sec. 9.

4. *With regard to the mode of proceeding adopted by your senior judge in the two cases noticed in the present reference, I am directed to observe, that as the opinion of the senior judge, on the competency of the court at large to revise the grounds on which the special appeal had been admitted by a single judge, differed from that of the third judge, the question should have been brought before the fourth judge, (the second judge not being at the sudder station,) in conformity with the provisions of Section* 9, *Regulation XXV.* 1814.

December 26, 1816.

See Act XVI. 1853.

From the Patna Court of Appeal, dated the 8*th January,* 1817.

No. 263.

1806. Reg. XVII. Sec. 8.

Doubts have been entertained of the meaning of Section 8, Regulation XVII. of 1806, and it has been construed different ways, which has occasioned contradictory decisions. We therefore request to be favored with the opinion of the Sudder Dewanny Adawlut, whether the period of one year, allowed for the redemption of a mortgage or conditional sale, is to be calculated from the date of the perwannah issued to the mortgager or seller ; or from the day of his being served with the perwannah. If the latter, it is possible that the mortgager or seller may be absent, or may withdraw himself to prevent his being served with the perwannah, and the Regulation in question makes no provision for this : it therefore would be desirable that the Sudder Dewanny Adawlut should also point out the course which is to be pursued in such a case.

To the Patna Provincial Court, in reply to the above, dated the 23rd January, 1817.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 8th instant, and in reply to communicate to you the opinion of the Court, that the period of one year, allowed for the redemption of mortgages or conditional sales by Section 8, Regulation XVIII. 1806, must be calculated from the date of the written notification, as expressly mentioned in that section, as well as in the Persian translation thereof.

January 23, 1817.

See Circular Order No. 7, dated 9th April, 1817.

To the several Provincial, Zillah and City Courts, dated the 29th January, 1817.

No. 264.
1816.
Reg. XV. Sec. 10, Clause 2.

A question having arisen, whether the provisions contained in Regulation XV. 1816, were intended to include officers and soldiers belonging to native invalid corps, the Court of Sudder Dewanny Adawlut deemed it proper to ascertain the sentiments of Government upon the point, as being immediately connected with the military department; and it being possible, that the native invalids attached to invalid battalions, [who are understood to be employed as guards and sentries,] might be considered in that department as coming within the description (in Section 10) of "native officers or soldiers entertained in regular corps, and on the actual strength of the army on the establishment of the presidency at Fort William."

2. You will receive herewith, for your information and guidance, an extract (paragraph 2), of a letter from the Secretary to Government in the Judicial Department, dated the 17th instant: together with extract of a letter from the acting adjutant general, from which you will observe, that the native invalid battalions are considered within the description above-mentioned, and consequently entitled to benefit of the Regulation in question.

January 29, 1817.

To the Calcutta Provincial Court, dated the 19th February, 1817.

No. 265.
1799.
Reg. VII. Sec. 15.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from your first, second, and officiating judges, dated the 3rd instant, with the papers accompanying it, relative to the summary suit—Obeychurn Bonerjia and

others, plaintiffs, versus Ramkanye Badooree and others, defendants.

2. *With regard to the general question referred in the second paragraph of your letter, viz. "whether in a suit instituted under the provisions of Regulation VII.* 1799, *the judge is warranted in deputing an ameen, for the purpose of local investigation;" the Court are of opinion, that although such deputation should not be ordered in summary suits without necessity, the zillah judge is not restricted by any provision in Regulation VII.* 1799, *from directing a local inquiry, when it may appear to him indispensably requisite for the purpose of ascertaining the rent demandable in the case.*

3. *In the present instance, it is stated by the defendants, and does not appear to be denied by the plaintiffs, that the kubooleut of the former stipulates for the payment of rent according to an actual measurement of the lands; and the zillah judge considered it necessary, in consequence, to depute an ameen for the purpose of making a measurement and jummabundee of the lands, limiting his commission to fifteen days.*

4. *Without going into a consideration of the merits of the case, the Court have no hesitation in stating their opinion, that the zillah judge was, under the above circumstances, competent to order the deputation of an ameen, and the plaintiffs having in consequence declined to proceed on the summary suit, the judge was of course at liberty to dismiss it, subject to the institution of a regular suit.*

5. *You are desired to transmit a copy of this letter for the information of the judge of zillah Nuddea, and are, at the same time, authorized to revise the orders passed by your second and fourth judges, on the* 18*th December*, 1816*.

February 19, 1817.

See Regulation VIII. 1831.

No. 266.

1793. Reg. XLIX. 1803. Reg. XXXII.

To the Calcutta Provincial Court, dated the 19*th February*, 1817.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from your first, second, and officiating judges, dated the 3*rd instant, with the paper accompanying it, relative to a question referred at the request of judge of zillah Nuddea, viz. whether in a summary suit instituted on the* 14*th March*, 1816, *under Regulation XLIX.* 1793, *and*

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* The orders of the 18th December 1816, reversed the decision of the zillah judge, and directed him to re-admit the suit, and decide it in a summary manner without deputing an ameen.

struck off the file on the 27*th of that month, in consequence of the non-attendance of the plaintiff, the zillah judge was competent to receive the suit on the* 10*th April following, (being satisfied with the reasons assigned by the plaintiff for his non-attendance,) and to proceed upon it under the provisions of the Regulation above-mentioned.*

2. *This appears to the Court, from the letters and proceedings of the judge of zillah Nuddea, to be a more accurate statement of the question referred by Mr. Paton, than that which is given in the* 2*nd paragraph of your letter, viz. "whether he is competent to revive a summary suit, which he has once determined, and to pass a second decree," which might be understood to mean the revival of a suit already determined on its merits.*

3. *With regard to suits dismissed on account of non-attendance and neglect by the plaintiff, the Court observe, that no particular rule has been established for summary suits; but that, with respect to regular suits dismissed under Section* 10, *Regulation IV.* 1793, *the zillah and city courts were informed by a circular notice from the Sudder Dewanny Adawlut, under date the* 22*nd August* 1795, *that the plaintiffs in causes dismissed under this rule have the option of re-instating them under the Regulations.*

4. *Applying the principal of this construction to summary suits, and considering that no fee is payable on the institution of such suits; that the suit was originally struck off the file without calling on the plaintiff to show cause for not having attended and proceeded in the suit; that little delay occurred in the plaintiff's subsequent attendance; and that the reasons stated by him for his previous non-attendance appeared satisfactory, the Court are of opinion that the judge of zillah Nuddea was fully competent to revive and proceed upon the summary suit referred to in the papers accompanying your letter; viz., that of Chedam Poraee, and others, plaintiffs, versus Huneef Biswas, defendant.*

5. *You are accordingly desired to transmit a copy of this letter to the judge of zillah Nuddea for his information, and are, at the same time, authorized to revise the orders passed by your second and fourth judges on the* 18*th December,* 1816.

February, 19, 1817.

See Act IV. 1840.

From the Judge of Zillah Etawah, dated the 11th February 1817.

No. 267.

1803. Reg. XXXVII. Sec. 3, Clause 5, Bengal. 1793. Reg. XXXI. Sec. 3, Clause 5.

I have the honor to submit for such order as the Court of Sudder Dewanny Adawlut may be pleased to pass thereon, a copy of a petition presented to this court by the vakeel of Government, at the suggestion of the commercial resident at Etawah, requesting to be informed in what mode tulubana on warrants issued in conformity with clause 5, Section 3, Regulation XXXVII. of 1803, is recoverable.

To the Judge of Zillah Etawah, in reply to the above, dated the 26th February, 1817.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter, dated the 11th instant, with its enclosure; and in reply, to inform you, that if the peons employed under the fifth clause of Section 3, Regulation XXXVII. 1803, be not in the receipt of a salary from Government, the Court consider any tulubana payable to them to be recoverable from the person failing in his engagement, whether for the delivery of Saltpetre, or any other article of the Company's investment.

2. *The Court are further of opinion, that if the amount of such tulubana be not paid on demand, it may be debited to the defaulter by the commercial resident, and deducted from any sum due to him.*

3. *The Court at the same time observe, that the Regulations do not contain any special provision for enforcing payment against the defaulter in such cases, and that consequently recourse must be had, when necessary, to the general means of recoverg by a suit in the civil court.*

February 26, 1817.

See Regulation IX. 1829.

To the Secretary to Government in the Judicial Department, dated the 5th March, 1817.

No. 268.

1814. Reg. XXIV. Secs. 9 and 12.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter, dated the 21st ultimo, with its enclosure, relative to the competency of registers, vested with special powers under Sections 9 and 12, Regulation XXIV. 1814, to refer summary suits for adjustment to the collectors.

2. *The Court are of opinion, that the provisions in the existing Regulations, which authorize a reference of civil suits, regular*

or summary, to the collectors for adjustment; (viz. Section 13, *Regulation VIII.* 1794; *clause fourth, Section* 15, *Regulation VII.* 1799; *clause fourth, Section* 14, *Regulation V.* 1800; *clause fourth, Section* 32, *Regulation XXVIII.* 1803; *Section* 13, *Regulation II.* 1805; *Section* 21, *Regulation V.* 1812; *and Section* 2, *Regulation VII.* 1813,) *were meant to be exercised by the judges of the zillah and city courts; but not by the registers of those courts.*

3. *In support of this construction, the Court observe, that several of the Regulations adverted to require the judge to refer the suit to the collector for adjustment, in cases only wherein neither themselves nor their registers may be able to try and determine the same without delay. And with regard to summary suits, it is provided in Section* 13, *Regulation II.* 1805, *that "all summary inquiries and processes are to be conducted, as far as practicable, by the judges in person, with the assistance of the collectors in adjusting accounts of arrears of rent between proprietors and farmers of land and their under-tenants, as expressly authorized by Section* 15, *Regulation VII.* 1799, *and Section* 32, *Regulation XXVII.* 1803." *It is added, that "whenever, from the urgency of other depending causes and business before the zillah and city judges, they may not be able to make the summary inquiries above noticed, with the expedition requisite in such cases, they are authorized to refer the same to their registers, to proceed thereupon according to the Regulations;" viz. as the Court understand the rule, to try the merits of the case, not to refer it to the collector, which the judge might have done if such reference had been intended.*

4. *Under the seventh clause of Section* 12, *Regulation XXIV.* 1814, *registers stationed at a place not being the station of the zillah or city Dewanny Adawlut, may be invested with original jurisdiction, within local defined limits, "for the cognizance and trial of summary suits." But it is provided in the next clause, that "in receiving and trying such summary suits, the register shall possess the same authority, and shall proceed in the same manner as if the case had been referred to him by the zillah or city judge."*

5. *The Court, therefore, do not consider the register competent to refer to the collector any original summary suits instituted under the section above-mentioned, but are of opinion that he should try the same himself, if cognizable by him, whether within the description of suits referrible to the collector, under Section* 21, *Regulation V.* 1812, *or otherwise; that rule being so far modified by the subsequent provisions in clauses seventh and eighth of Section* 12, *Regulation XXIV.* 1814.

March 5, 1817.

See Regulation VIII. 1831.

To the Dacca Provincial Court, dated the 26th March, 1817.

No. 269.

1814.
Reg. XXIII. Sec. 64.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from your register, dated the 19th instant, with its enclosure from the judge of zillah Mymensingh, recommending the appointment of Mr. Stephens, the civil surgeon of that station, to the office of sudder ameen.

2. Under the express terms of Section 64, Regulation XXIII. 1814, that "in the future nomination of individuals for the office of sudder ameen, the zillah judges are not restricted to persons of any particular class or religious persuasion, but are required carefully to select such individuals as may be best qualified for the trust;" the Court are of opinion that all individuals duly qualified for the trust, are eligible to the office of sudder ameen, and under the testimony given by you and by the zillah judge to the qualifications of Mr. Stephens, the Court are not aware of any objection to the proposed appointment.

March 26, 1817.

To the Judge of Zillah Agra, dated the 26th March, 1817.

No. 270.

1803.
Reg. III. Sec. 7.
Reg. VIII. Sec. 25, Bengal.
1793.
Reg. IV. Sec. 6.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 11th instant, requesting their instructions, regarding the power of the civil courts "to enforce the production of a mahajun's books, which are necessary in cases before them."

2. The Court are of opinion, that in all cases wherein it may be necessary to call upon a witness to produce documents of the nature referred to, which are known, or presumed on strong and sufficient grounds, to be in his possession, if the witness refuse or neglect to produce the documents required from him, and fail to assign satisfactory cause for not producing the same, he is liable to be proceeded against in conformity with the spirit of the rules for compelling witnesses to give their testimony, contained in Section 7, Regulation III. and Section 25, Regulation VIII. 1803.

3. If, therefore, you have just reason to be satisfied that the witness, in the case which forms the subject of your letter, possesses documents material to the elucidation of the merits of the cause, the Court are of opinion, that you will be warranted in proceeding against him in conformity with the provisions above cited, viz. by imposing a fine not exceeding 500 rupees, and detaining him in custody until he shall consent to produce the documents required.

March 26, 1817.

From the Benares Provincial Court, dated the 27th March, 1817.

No. 272.

1808.
Reg. XIII. Sec. 12.
1814.
Reg. XXIII. Sec. 46, Clause 5.

By Section 12, Regulation XIII. 1808, and the rules therein alluded to, in appeals from decrees for money or other movable property, the appellant has a right to stay the execution of the decree, by giving good and sufficient security.

2. That Section is no where rescinded; yet in Clause 5, Section 46, Regulation XXIII. 1814, the word "empowered" being used, the judges seem to be of opinion that in appeals from the moonsiffs, even in cases of money or other movable property, they have a discretion to reject security tendered by the appellant, and to direct the execution of the decree appealed from.

3. Against orders to this effect petitions have been presented to this court, and as the unrescinded Section of Regulation XIII. 1808, appears to us to cast some doubt upon the intent of the clause cited from Regulation XXIII. 1814, we request to be furnished with the Sudder Dewanny Adawlut's instructions upon the point.

To the Benares Provincial Court, in reply to the above, dated the 9th April, 1817.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from your senior and late second judges, dated the 27th ultimo, and to acquaint you in reply, that the Court do not understand the word "empowered," used in the 5th clause of Section 46, Regulation XXIII. 1814, as intended to modify the general rule prescribed by Section 12, Regulation XIII. 1808, which is still in force.

April 9, 1817.

See No. 284, and Circular Order No. 81, 11th January 1850.

From the Judge of City Benares, dated the 12th May, 1817.

No. 273.

1814.
Reg. XXIV. Sec. 6, Clause 2.
1796.
Reg. X. Sec 2.

I beg leave to submit the accompanying papers for the consideration and orders of the Court of Sudder Dewanny Adawlut.

Copy of a petition from Hurbunslol, Brijruttun Dos, and Luchmun Dos, with the orders annexed.

Copy of the proceedings of the additional register, Mr. S. M. Duntze, dated the 8th instant.

2. *The petitioners are defendants in a civil suit referred for trial to the additional register, and that officer having refused to*

receive their answer to the plaint, I recalled the suit, and at the same time requested him to name the Regulation, under which he considered himself authorized to proceed to try it ex parte, notwithstanding the appearance of the defendants.

3. *My competence to make this request Mr. Duntze has thought proper to question, and assuming to himself an authority with which he thinks I am not invested, he has proceeded to call upon me to name the Regulation that authorizes me to call upon him to name one. Of this authority no doubt, I imagine, will be entertained by the superior Court. At all events, if there is no such authority in me, there certainly can be none in Mr. Duntze, and it is not a little curious, that while questioning the competence of his official superior to exercise it, he should nevertheless be fully satisfied that he is competent to exercise it himself.*

4. *Should the Court concur with me in opinion upon this point, I beg that the necessary orders may be issued for Mr. Duntze's information and guidance.*

To the Judge of the City of Benares, in reply to the above, dated the 21*st May,* 1817.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 12*th instant, with its enclosures.*

2. *Upon the question stated by your register, I am directed to acquaint you for his information, that as all decisions and orders of the register of a zillah or city court are appealable to the judge, the Court are of opinion, that the latter is fully competent to call upon the register for an explanation of any order passed by him, which may appear to the judge in opposition to, or unwarranted by the Regulations in force.*

3. *The Court are further of opinion, that the register is not authorized to call for an explanation of orders passed by his official superior; but that if the requisition of a judge to his register should appear to the latter unauthorized by the Regulations, he is at liberty to state his objections to the judge, in a respectful manner, and in the English language, according to the spirit of Section* 2, *Regulation X.* 1796, *and the Court's circular instructions of* 18*th April,* 1811*.

4. *In the present instance, the Court are concerned to observe, that the Persian roobukaree of Mr. Duntze was not only in opposition to the Circular Order above noticed, but also obviously deficient in the respect due to a superior Court.*

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* See printed Circular Order Sudder Dewanny Adawlut No 26, page 18, part 1st, Vol. I. Baptist Mission Press Edition; page 5, Carrau's Edition.

5. *You are desired to transmit a copy of this letter to your register; and require from him a more careful observance in future of the rules prescribed for his guidance.*

May 21, 1817.

To the Acting Register of Zillah Bundlecund, dated the 18*th June,* 1817.

No. 274.
1814.
Reg. I. Secs. 11. and 14.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, without date, but received on the 16*th instant with the papers therein mentioned, relating to cause, Seetaram and Jeewunram, plaintiffs, versus Rajaram and others, defendants.*

2. *In reply to the question stated in your letter, I am directed to communicate to you the opinion of the Court, that the valuation of land paying revenue to Government, assumed in the first clause of Section* 14, *Regulation I.* 1814, *for regulating the stamp duty on plaints in civil suits, is not applicable to the valuation of landed property in transactions between individuals coming within the provisions of Section* 11, *Regulation I.* 1814.

3. *The Court are further of opinion, that a mortgage bond, or deed of mortgage, such as that submitted with your letter, may be considered within the provisions for bonds, or other instruments for a specific sum of money; consequently that the deed executed on stamp paper of two Rupees value, on a loan of* 1,000 *Rupees, is regular and admissible in evidence.*

June 18, 1817.

See Regulation X. 1829.

To the Judge of Zillah 24-*Pergunnahs, dated the* 2*nd July,* 1817.

No. 275.
1814.
Reg. I. Sec. 11.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 26th ultimo.

2. In answer to the question submitted in that letter, I am directed to communicate to you the opinion of the Court, that account books (khata-buhees) cannot be considered to fall within the description of any of the documents required to be written on stampted paper, by the provisions of Section 11, Regulation I. 1814.

July 2, 1817.

See No. 592 and page 134, Sudder Dewanny Reports, 1852.

To the Acting Judge of Zillah Nuddea, dated the 2nd July, 1817.

No. 276.

1814.
Reg. XXIII. Sec. 25.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 24th ultimo.

2. *In reply to the question submitted in that letter, I am directed to communicate to you the opinion of the Court, that the fourth clause of Section* 25, *Regulation XXIII.* 1814, *which provides that "the answer, reply, and rejoinder in suits tried by the moonsiffs are not required to be written on stamp paper," and which is extended by Section* 11, *Regulation III.* 1817, "*to original suits and appeals not exceeding in amount or value the sum of* 64 *rupees,* which may be instituted in the zillah or city courts," must be considered applicable to all pleadings in suits within the above limitation, including supplementary pleadings, razeenamas, solanamas, and ruffanamas, which are specified in Section* 17, *Regulation I.* 1814, *with the answer, replication, and rejoinder.*

July 2, 1817.

See Clause 3, *Section* 9, *Regulation V.* 1831.

From the Judge of Zillah Etawah, dated the 14*th June,* 1817.

No. 277.

1803.
Reg. XXXIV. Secs. 9, 10 and 12. Bengal.
1793.
Reg. XV. Secs. 10. and 11.
1798.
Reg. I. Sec. 2.
1806.
Reg. XVII. Sec. 7.

I beg leave to solicit the opinion of the Sudder Dewanny Adawlut on the following points :—

1. Are cases, which may be brought before the civil courts, under the provisions of Sections 9 and 10, Regulation XXXIV. of 1803, to be disposed of by a summary inquiry and decision ; or are they to be considered as subject to all the rules prescribed for regular suits ?

2. Is the specification of a stipulated period in deeds of mortgage, not coming under the denomination of bye-bil-wuffa, legal and binding on the mortgager ; or may the mortgaged property be redeemed at any time, under Section 9 of the above Regulation, whenever the principal sum, with interest thereon, shall have been liquidated by the mortgager, although the mortgage bond may contain a condition that the mortgagee shall remain for a stipulated period in possession of the mortgaged property ?

3. In the event of any objection or demur on the part of the holder of a deed of mortgage and conditional sale, to the surrender of the mortgaged property which may be in his possession, in such

* Extended to original suits and appeals not exceeding in amount or value 150 Rupees, by Regulation X, 1829, Schedule B, Article 9.

case are suits instituted under Section 12, Regulation XXXIV. of 1803, and Section 7, Regulation XVII. 1806, to be investigated and decided in a summary way or otherwise ?

To the Judge of Zillah Etawah, in reply to the above, dated the 9th July, 1817.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 14th ultimo, and in answer to the first question therein stated, (respecting cases of mortgage within the provisions of Sections 9 and 10, Regulation XXXIV. 1803,) to acquaint you, that the Court are not aware of any provision in the Regulations for a summary suit in the cases therein referred to.

2. Upon the second question submitted by you, (concerning the legal operation of a stipulated period in deeds of mortgage, not coming under the denomination of bye-bil-wuffa,) I am desired to acquaint you, that the Sudder Dewanny Adawlut can offer no opinion on the legality of specific deeds of mortgage, without having such deeds judicially before them.

3. In answer to the third question proposed in your letter, the Court direct me to refer you to their circular instructions, under date the 22nd July, 1813.*

July 9, 1817.

See No. 830.

From the Judge of Zillah Dinagepore, dated the 24th April, 1817.

No. 278.

1799.

Reg. VII. Sec. 15, Clause 4.

I beg leave, through you, to inform the Court of Sudder Dewanny Adawlut, that under an impression that the practice of under-farmers, who rent malgoozaree lands from actual proprietors, re-letting them to others, and these latter again to others, so that the person with whom the actual cultivators have to deal may be many removes from the under-farmer holding immediately from the actual proprietor, has a tendency injurious to the welfare of the cultivators : and it appearing to me, that this practice had met with encouragement from the practice of the Dewanny Adawlut, in its having admitted under-farmers of every description to the benefit of a summary suit instituted under Section 15, Regulation VII. 1799, which section appeared to me to relate, so far as farmers are concerned, to sudder farmers only, I, agreeably to the above impressions, dismissed the suits of several under-farmers, who had sued for the recovery of

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* See printed Circular Order Sudder Dewanny Adawlut No. 37, page 26, part 1st, Vol. I. Baptist Mission Press Edition ; page 8, Carrau's Edition.

arrears of rent by virtue of that section. A party in one of the dismissed suits appealed against my order, and I have this day received a precept from the court of appeal, together with the proceedings of that Court, informing me that my order has been reversed, and purporting, as I understand the proceedings, that all suits of the nature described are triable under the provisions of the aforesaid section. The proceedings designate the appellants, or petitioners, dur-ijaradars ; but do not teach, in a manner that satisfies my mind, how my order is otherwise than strictly conformable with the Regulation with which the Court orders me to conform.

2. I esteem the matter important, and am induced to submit it for the consideration and orders of the Court of Sudder Dewanny Adawlut, anticipating that, should I happen to be right, the Court, by the support they will afford me, will discountenance a practice injurious to the welfare of the cultivators of the soil.

3. I beg leave to enclose a copy of the proceedings of the court of appeal which are above-mentioned.

To the Judge of Zillah Dinagepore, in reply to the above, dated the 9th July, 1817.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 24th April last, with the roobukaree of the Moorshedabad Provincial Court therein referred to, in the case of Kishen Mohun Rai and others, farmers of Turruf Rughoonathpore.

2. It appears to the Court, that the term "farmer of land" in the fourth clause of Section 15, Regulation VII. 1799, is used in a general sense, and includes the description of under-farmers described in your letter.

3. I am directed to add, that as you wished to obtain the determination of the Sudder Dewanny Adawlut upon the construction given by the provincial court, your reference should have been submitted through the channel of that court, in conformity with Section 2, Regulation X. 1796, and you are desired to observe that rule more carefully in future.

July 9, 1817.

No. 280.

1807. Reg. I. Sec. 7. 1810. Reg. XIII. Sec. 4, Clause 2.

To the Bareilly Provincial Court, dated the 28th August, 1817.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 9th instant, submitting copies of the papers required in my letter of the 23rd ultimo.

2. *On consideration of the above papers, and of your letter of the 25th June, and its enclosures, the Court direct me to communicate to you the following observations and opinion.*

3. *The Court remark, that the original powers of single judges of the provincial courts, under the provisions of Regulation I.* 1807, *were much enlarged by Regulation XIII.* 1810, *and that the powers vested in two or more judges by Section* 7, *Regulation I.* 1807, *were modified by Section* 4, *Regulation XIII.* 1810; *the fourth clause of which defines the cases wherein two or more judges may abrogate the orders of a single judge; viz. on the trial of depending causes, and respecting "points connected with the trial of the suit before the court."*

4. *In the case under consideration, the order of your third judge, passed on the 22nd February,* 1817, *whereby the sons of Bacharam, deceased respondent in an appealed cause decided by two former judges on the 14th August,* 1812, *were made answerable for the costs of suit adjudged against the respondents, appears to have been given by him in pursuance of the second clause of Section* 4, *Regulation XIII.* 1810, *and must therefore, in the opinion of the Court, be considered of the same force and validity as if it had been passed by two or more judges.*

5. *Viewing the order therefore as a final judgment perfecting the decree passed on the 14th August,* 1812, *the Court are of opinion, that it could not be regularly revised without the permission of the Sudder Dewanny Adawlut; but it appearing to be the opinion of your second and third judges, that there are grounds for revising the order in question, and taking a further bywusta from the pundit on the Hindu law applicable to the case, the Court authorize a review accordingly.*

August 28, 1817.

To the Dacca Provincial Court, dated the 18th September, 1817.

No. 281.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from your acting register, dated the 10th instant, requesting their opinion as to the competency of a provincial court to enter into the merits of a suit appealed from the decision of a zillah judge, passed under Section 5, *Regulation VI.* 1813.

1813. Reg. VI. Sec. 5.

1798. Reg. V. Sec. 7.

2. *In reply I am directed to acquaint you, that the Court concur in the opinion which you have expressed on this question, viz. that the rule contained in Section* 7, *Regulation V.* 1798, *regarding appeals from the summary processes of the zillah*

courts, must be considered applicable to the summary judgments passed by them under Section 5, Regulation VI. 1813, *and that consequently, where the decision of the zillah judge may have been passed in conformity with the provisions of that section, no appeal can lie to the provincial court, except on the irrelevancy of the Regulation to the case appealed.*

September 18, 1817.

See Act IV. 1840.

From the Additional Register at Ghazeepore to the Benares Provincial Court, dated 7th September, 1817.

No. 282.

1794. Reg. III. Secs. 16 and 19, Benares. 1800. Reg. V. Sec. 27.

I had the honor, on the 10th current, to forward a roobukaree in reply to a precept received from your court, certifying my having forwarded a copy of your order for the information and guidance of the acting collector, and likewise that the Nawab Syud Ubdoolah, late acting tehseeldar of Buliah, is at large.

2. As however the order of your court appears to me to set aside the course prescribed by the Regulations ; as the present case is, I believe, the first of this nature which has occurred in the province of Benares ; as the importance of it, with regard to the interests of Government, the authority of the collector and of the courts respectively, and the responsibility to which a judicial officer, who shall be found to exceed his competence in matters relating to the public revenue, may be held liable, appear to me to require that the course to be pursued, and discretion to be exercised by a judicial officer, on occasions of applications from the collector for the confinement of native revenue officers alleged to be defaulters, should be clearly defined, I have taken the liberty of stating the reasons which appear to me to be against the validity of your order, and request you will be pleased to forward them, together with the papers of the case, for the information and orders of the superior Court.

First.—It appears to me, that under Section 16, Regulation III. 1794, (extended to Benares by Section 27, Regulation V. 1800,) the courts are not authorized to enter into any previous inquiry as to the justice of the demand against a tehseeldar, or other officer, forwarded by the collector as a defaulter, but are bound by the tenor of that section straightway to commit him, until he shall pay the amount demanded, or adopt the course pointed out by Section 19 of that Regulation.

Second.—It appears to me, that when a public officer, forwarded by the collector as a defaulter, has furnished the prescribed security, he must bring a suit before the court by which he has been committed, to prove the injustice of the demand against him, although he may not have paid the demand, or any part thereof ; and that the

suit is to be tried as a summary suit, and therefore is cognizable by a zillah court under the provisions of Section 7, Regulation XIII. 1808, whether the amount thereof exceed or fall short of 5,000 Rupees.

Third.—That the suit is to to be brought to a hearing and decided upon, after examining the documents, and weighing the statements of both parties, and not on any *ex parte* exhibits or allegations.

Fourth.—That if the alleged defaulter omit to bring a suit within the period prescribed, the amount claimed is to be immediately levied and paid over to the collector.

Fifth.—That since the Regulation directs that personal security alone shall be taken from tehseeldars and others, and contains no provision for proceeding against the security, unless the principal shall not be forthcoming, the courts cannot, on a motion on the part of the collector, adopt any summary proceeding against the security, unless the principal shall have absconded.

Sixth.—That Regulation XXI. 1806, in no way affects the responsibility of the tehseeldars with respect to the papers and public assets under their charge, or deprives the collector of the remedy allowed him by the laws existing at the time when that Regulation was passed.

3. On the above grounds, it appears to me that your court has exceeded its competence, under the existing laws, in entering into a previous inquiry, and directing the total discharge of Ubdoollah, and I request the opinion of the superior Court may be taken on that point.

4. I have the honor herewith to forward the papers of my court in the above case, for the purpose of being transmitted to the Sudder.

Letter from the Benares Court of Appeal, dated the 6th October, 1817, enclosing the above.

By the desire of the additional register of Ghazeepore, we transmit an original letter of that officer, dated the 7th ultimo, with the Persian papers connected therewith.

2. Of our competency to pass the order of the 1st ultimo, to which Mr. Bird objects, we see no reason to doubt, and we are persuaded that if the collector pursues the course we prescribed, of urging Rooddeerram, the malzamin, to payment, the result will be perfectly satisfactory, both as regards the justice of the case, and as relates to the realization of the public revenue.

3. We see no sufficient ground for Mr. Bird's appealing from our order, and are of opinion that the regular course would have been for the collector of Ghazeepore, if he thought that order irregular, (which does not yet appear,) to have submitted his sentiments upon it to the commissioner of Benares and Behar, and have

acquiesced in it, or appealed against it, as he might have been instructed from the Board to which he is subordinate.

4. For not entering into any detailed discussion of Mr. Robert Bird's letter, we beg leave to assign our total want of leisure from the regular and ordinary business of the appeal and circuit courts.

To the Benares Provincial Court, in reply to the above, dated the 29th December, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 6th October, with the proceedings and letter from the additional register stationed at Ghazeepore, therein mentioned.

2. The case referred to in these papers has been separately brought before the Court by a petition from the vakeel of Government, at the instance of the acting collector at Ghazeepore, and the orders of the Court thereon, passed on this date, will be communicated to you in the usual course from the Persian department.

3. It is sufficient, therefore, to notice the general questions referred by the additional register at Ghazeepore, particularly those specified under the first and second heads subjoined to the second paragraph of his letter ; and in answer to these, I am directed to communicate to you the following sentiments of the Court.

4. The Court are of opinion, that in the cases provided for by Sections 16 and 19, Regulation III. 1794, (extended to Benares by Section 27, Regulation V. 1800,) the civil courts are not authorized, on the application of a collector for the confinement of a defaulting tehseeldar or other native officer, in pursuance of Section 16, to proceed in any other manner than according to the provisions of that section and Section 19.

Secondly.—In the event of the alleged defaulter's denying the justness of the collector's demand upon him, and giving the security required by Section 19, to institute a suit in 15 days against the collector to try the demand, the Court are of opinion, that under the declaration in Section 21, Regulation III. 1794, (that the rules in Regulation XIV. 1793, are to be considered applicable to such suits,) the suit in such cases must be instituted and proceeded upon as a regular suit.

5. The original papers which accompanied your letter, are returned herewith.

December 29, 1817.

A Letter from the Judge of the City of Benares to the Benares Court of Appeal, dated the 8th September, 1817, enclosed in the following letter.

No. 284.

I have perused a copy of your letter to the register of the Sudder Dewanny Adawlut, dated the 27th March last, and of the register's answer thereto, on the subject of the word "empowered," in the 5th clause of Section 46, Regulation XXIII. 1814.

1808. Reg. XIII. Sec. 12.

1814. Reg. XXIII. Sec. 46, Clause 5.

2. I am fully aware, that the word alluded to was never intended to modify the rule prescribed by Section 12, Regulation XIII. 1808 ; but the question is whether an appellant has, under that rule, a right to stay the execution of the decree of a moonsiff by giving security. The section declares, that decrees for money and other moveable property shall be stayed or enforced in cases of appeal according to the rules now established, and by those rules, (see Section 24, Regulation XL. 1793, extended to Benares by Section 2, Regulation XXXI. 1795,) the judge of a zillah or city court has, in appeals from the moonsiff, a discretion to reject security tendered by an appellant, and to direct the execution of the decree appealed from, if he thinks proper.

3. In support of this opinion, I beg leave to subjoin the opinion of Mr. Fortescue, the late judge of Allahabad, extracted from the report of that officer to the Governor General, dated the 1st of September, 1814—

"The power of executing the decrees of the native commissioners and sudder ameens pending a trial in appeal, is, under the Regulations, discretionary with the zillah judge; and I have experienced the advantage of carrying them into effect when no sufficient reason could be alleged to the contrary, and the party who would become the respondent was able and willing to give security in case of reversed judgment. No immediate profit resulting from an appeal under such circumstances, it has very frequently been relinquished altogether. My predecessors had adopted the general mode of staying execution immediately on appeal, which proved an encouragement to that proceeding, as appears from consulting the records of this court, which show that the proportion of appeals to decisions were formerly much greater than at present. I cannot learn that the measure I have adopted has been productive of any injury, nor has one person out of forty, now imprisoned under decrees of the commissioners, preferred an appeal. I would therefore recommend the exercise of a sound discretion in this particular."

4. I beg the favor of you to forward a copy of this letter, for further instructions from the Sudder Court.

Letter from the Benares Court of Appeal, dated the 6th October, 1817, enclosing the above.

We subjoin a copy of a letter from Mr. Bird, judge of Benares, dated the 8th ultimo, upon the subject of your letter of the 9th

of April last, regarding security in cases of money and other moveable property.

2. We see no reason to doubt the accuracy of the superior court's decision of the 9th of April ; and the passage cited from Mr. Fortescue's letter appears to us to show nothing, but that Mr. Fortescue, who gave that opinion when he was a zillah judge, laboured under the same mistake as Mr. Bird himself.

To the Benares Provincial Court, dated the 29th December, 1817, in reply to the above.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 6th October last, with its enclosure from the judge of the city of Benares.

2. In my letter of the 9th April last, you were advised of the opinion of the Court, that the provisions contained in Section 12, Regulation XIII. 1808, must be considered in full force, notwithstanding the expression "empowered," in the 5th Clause of Section 46, Regulation XXIII. 1814.

3. I am now directed to transmit for your information, and for the information of the city judge, the enclosed copy of a letter from the late judge of Allahabad, under date the 26th June, 1812, and copy of a letter written in reply on the 10th July following ; containing the determination of the Sudder Dewanny Adawlut, that execution of judgment for money or other moveable property must be stayed, if good and sufficient security be given by the appellant for performing the decision which may be passed upon the appeal.

4. At the period of this correspondence, the section cited by Mr. Bird, *viz.*, Section 24, Regulation XL. 1793, (the terms of which correspond nearly *verbatim* with the 5th Clause of Section 46, Regulation XXIII. 1814,) was in force, but has been since rescinded by Section 2 of the last-mentioned Regulation.

5. The Court further direct me to observe, that the terms of the 4th and 6th Clauses of Section 45, Regulation XXIII. 1814, appear to imply, that if an appeal from a moonsiff's decree be admitted, and the prescribed security for staying execution in cases of appeal be given, the enforcement of the decree should be suspended during the trial of the appeal.

December 29, 1817.

See Nos. 272 and 106, and Circular Order 181, 11th January, 1850.

From the Register of Zillah Bundlecund, dated the 31*st December,* 1817.

No. 285.

1817.
Reg. XVII. Sec. 14, Clause 2.
Reg. XIX. Sec. 16, Clause 2.
1814.
Reg. XXIV. Sec. 12.

By Section 14, *Regulation XVII.* 1817, *in cases of perjury, registers are directed to send the case to the judge for commitment. It appears to me to be an anomaly, that I, as register with full powers stationed at a distance from the sudder station, must send a case for commitment to the judge at Bandah, whence it must be returned to me to be put on my calendar as joint magistrate; and that as joint magistrate I should have authority to commit in all cases.*

2. *By clause* 2, *Section* 16, *Regulation XIX.* 1817, *the judge is authorized to take security from defendants in summary suits, but registers with full powers, deputed to a distance from the sudder station, do not appear to have that power granted them. To apply to the judge for his sanction to their being admitted to bail would be useless, for summary causes are generally soon decided.*

3. *I request you will do me the honor to obtain the opinion of the Court on these points, and to inform me of the result.*

4. *I should have sent this letter through the judge of this zillah, if he had not been absent on duty with his Excellency the Governor General.*

To the Register of Zillah Bundlecund, at Culpee, in reply to the above, dated the 4*th February,* 1818.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 31*st ultimo, and to communicate to you the following observation of the Court upon the points therein referred.*

2. *Upon the question stated in the* 1*st paragraph of your letter, the Court remark, that the rule of procedure against persons who may be guilty of perjury in a civil suit before a register, is clearly laid down in the second Clause of Section* 14, *Regulation XVII.* 1817, *viz. that the proceedings, on which the charge of perjury may be grounded, shall be referred to the judge for his consideration and orders; but that it is not necessary, as you suppose, that the case should be returned to the register to be put on his calendar as joint magistrate, it being expressly declared in the same clause, that if the judge be of opinion, that there are sufficient grounds for bringing the accused party to trial before the court of circuit, he shall record his opinion to that effect; after which the whole of the papers relative to the case are to be transferred to the cutcherree of the magistrate, that the order of the judge may be carried into effect, and the case brought before the*

court of circuit in the same manner as if the charge had been instituted and proceeded upon in the court of the magistrate.

3. *With regard to the next point referred to in your letter, viz. whether a register vested with special powers under Section* 12, *Regulation XXIV.* 1814, *is competent, under the provisions of Section* 16, *Regulation XIX.* 1817, *to admit alleged defaulters and their sureties to bail pending a summary inquiry for recovery of arrears of rent, I am directed to communicate to you the opinion of the Court, that, as a register vested with full powers by Section* 12, *Regulation XXIV.* 1814, *and stationed at a place not being the station of the zillah or city court, is declared competent by the 7th clause, with the sanction of Government, to exercise original jurisdiction in the cognizance and trial of summary suits, the spirit of the rule in the 2nd clause of Section* 16, *Regulation XIX.* 1817, *for admitting defendants to bail in such suits, must be considered applicable to registers so empowered and stationed, although not expressly included in the terms of the clause in question.*

February 4, 1818.

To the Benares Court of Appeal, dated the 4th February, 1818.

No. 286.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt, on the 14th ultimo, of a letter from you, dated the 25th November last, with the correspondence therein mentioned, submitted at the request of Mr. F. C. Smith, acting register of zillah Bundlecund stationed at Culpee.

1796. Reg. X. Sec. 3.

2. On consideration of these papers, the Sudder Dewanny Adawlut are of opinion, that the prohibitory and general order issued by your court to the acting register on the 29th July, 1817, and confirmed on the 8th September following, directing him "not to call upon the canoongoes to attend punchayets, or act as arbitrators," exceeded your competency under the Regulations in force.

1803. Reg. XXI. 1813. Reg. VI.

3. The Court have, therefore, annulled the order referred to, and direct me to communicate the following instructions for the future guidance of Mr. Smith in regard to the employment of canoongoes as arbitrators.

4. These officers not being declared by any Regulations to be exempted from acting as arbitrators, and it being optional with them to accept or decline the office, as they may think proper, when elected by parties, the Sudder Dewanny Adawlut are of opinion, that it is sufficient to provide for their free exercise of this option.

5. There being some reason to apprehend, from the representations made to the collector, that, in the instances brought to the notice of the Board of Commissioners by that officer, the canoongoes

were taken from their proper duties by the chuprassees of the register's court, and compelled to act as arbitrators, although this may have been done without the sanction or knowledge of the register, it is requisite that measures should be taken to prevent so objectionable a practice.

6. It may be left to the collector to notify to the several canoongoes under his authority, that they are at liberty to decline the office of arbitrator when proposed to them by individuals ; but the Court direct, that the acting register be enjoined not to require their attendance on any future arbitration, without having ascertained that they are willing to undertake the duty.

7. The Court further desire, that in cases where the nomination of an arbitrator may rest with the civil court, the acting register will avoid, as far as practicable, the appointment of canoongoes ; and, at all events, whenever the selection of them may be unavoidable, an immediate communication of the appointment should be made to the collector, to enable him to provide for the discharge of the duties on which the canoongoe may be engaged, and thereby obviate the inconveniences which are stated to have resulted from the employment of these officers without such communication.

8. You are desired to transmit a copy of this letter to the acting register at Culpee for his information and guidance.

February 4, 1818.

To the Register of Zillah Backergunge, at Beerbhoom, dated the 25th February, 1818.

No. 288.
1793.
Reg. XXXVI.
Sec. 15.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 5th instant, and to a quaint you in reply, that the Court are not aware of any objection to your nomination of Mr. Gardner, the assistant surgeon at Backergunge, to officiate for you in the registry of deeds, under Section 15, Regulation XXXVI. 1793, until the appointment of an acting register at that district*.

February 25, 1818

See No. 611.

* See the rules on this subject contained in Regulation IV. 1824.

To the Provincial, Zillah, and City Courts, dated the 16th March, 1818.

No. 289.

1814.
Reg. I. Sec. 15,
Reg. XXVI. Secs. 2, 22 and 24.

A doubt having been entertained, whether copies of decrees and other documents filed with petitions for a special appeal, under Section 2, Regulation XXVI. 1814, should be considered liable to the rule contained in Section 15, Regulation I. 1814, as modified by Section 22, Regulation XXVI. 1814, I am directed to communicate to you the opinion of the Sudder Dewanny Adawlut, that all copies of decrees and other documents filed with petitions of appeal in regular suits, (whether the appeal be special, or not,) must be considered within the rule above cited; with an exception to vakalutnamas, and other documents exempted from the stamp duty on exhibits by Section 24, Regulation XXVI. 1814.

3. *The Court at the same time are of opinion, that Section 15, Regulation I. 1814, and its modification in Section 22, Regulation XXVI. 1814, are not applicable to copies of decrees, or other documents, which may not be filed for record.*

March 16, 1818.

See Reg. X. 1829.

To the Acting Chief Secretary to Government, dated the 6th May, 1818.

No. 291.

1799.
Reg. VII. Sec. 29, Clause 3.

1801.
Reg. I. Sec. 10.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 28th ultimo, and its enclosure, relative to several estates attached by the acting judge of zillah Cuttack, as having been purchased under a fictitious or substituted name, in opposition to the third clause of Section 29, Regulation VII. 1799, and desiring the sentiments of the Court on the regularity of such attachment; as well as upon the course of proceeding which should be generally adopted under the clause above-mentioned, whenever a breach of the provisions contained in it may be brought under the notice of the local officers, either in the judicial or revenue department.

2. *On the general question above stated, the Court beg leave to cite the following extract from Section 10, Regulation I. 1801. "All purchasers of lands at the public sales, are required to attend the collector of the district wherein the lands may be situated, either in person or by their representatives duly authorized, and to execute the usual kubooleut and kistbundee for the public revenue, assessed upon the lands purchased by them. In cases of doubt as to the real purchaser, or of suspicion that the purchase*

has been made in opposition to the rules contained in clauses third and fourth of Section 29, *Regulation VII.* 1799, *the collector is authorized to cause the personal attendance of the alleged purchaser at his cutcherree, if resident within his jurisdiction; or, if the purchaser be resident in any other zillah, the collector of such zillah is authorized and required to cause the attendance of the purchaser at his cutcherree, on the application of the collector in whose district the lands may lie, and to make any examination or inquiry that may be desired by the latter collector, or by the Board of Revenue, to whom a full report is to be made in such cases for the orders of the Governor General in Council, as directed in clause fourth of Section* 29, *Regulation VII.* 1799."

3. *Under the rule prescribed in the section above-cited, the Court are of opinion, that the attachment made by the acting judge of zillah Cuttack of the estates referred to in his letter of the 2nd ultimo, was irregular; and that he should be instructed to withdraw such attachment, and to communicate all information and evidence obtained by him relative to the illegal purchase of the estates in question to the collector of the district, for the purpose of enabling the latter to make the inquiry and report prescribed in Section* 10, *Regulation I.* 1801.

4. *The Court direct me to add, that a similar mode of proceeding should in their judgment be adopted, whenever a breach of the provisions contained in the third or fourth clause of Section* 29, *Regulation VII.* 1799, *may be brought under the notice of the local officers of Government.*

May 6, 1818.

See Section 21, *Act I. of* 1845.

To the Judge of Zillah Allahabad, dated the 9th July, 1818.

No. 292.

1814.
Reg. I. Sec. 9.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 24th ultimo, and in reply to communicate to you the opinion of the Court, that the construction given by Mr. Smith to Section 9, Regulation I. 1814, does not appear to be warranted by the terms of that section, which directs only that documents, which may not have been written on paper bearing the prescribed stamp, shall not be admitted in evidence, or otherwise received or filed in any court of judicature.

If the plaintiff can prove his claim by other satisfactory evidence, the courts of justice are not precluded from receiving such evidence by any part of the Regulation above-mentioned.

July 9, 1818.

See page 487, Sudder Dewanny Reports, 1850, 17th September.

From the Judge of the Southern Division of Seharunpore, dated 18th June, 1818.

No. 293.

1814. Reg. XXVI. Sec. 15.

I request you will have the goodness to obtain and communicate to me the opinion of the Judges of the Sudder Dewanny Adawlut whether the provisions of Section 15, Regulation XXVI. 1814, preclude the zillah courts from executing a decree on the property of persons against whom it is given, (not at the request of the persons on whose favor it was passed, but) in satisfaction of a former decree given in favor of a third person against those in whose favor the second decree was passed, who has not been able to recover the amount from any property belonging to these persons, and who, it is stated, are about to adjust their claim with those against whom the petitioner solicits the decree may be enforced, in order that the amount may not be attached, should the decree be executed by application to the court.

To the Judge of the Southern Division of Zillah Seharunpore, in reply to the above, dated 9th July, 1818.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 18th ultimo.

2. In reply I am directed to communicate to you the opinion of the Court, that the provisions of Section 15, Regulation XXVI. 1814, were not meant to preclude the execution of decrees on the application of any party interested in the execution of them, and applying in the form prescribed by the fifth clause of that section.

3. In the case stated, supposing the holder of the former decree to have made the prescribed application, and that no other property is forthcoming from which the decree passed in his favor can be satisfied, the Court are of opinion, that he would have an equitable claim to attach the property receivable by his debtor, under the judgment in favor of the latter, and to cause execution accordingly, unless good and sufficient reason against the enforcement be shown by the party against whom such judgment may have been passed.

July 9, 1818.

See Nos. 1248 and 1341.

To the Judge of Zillah Burdwan, dated the 20th August, 1818.

No. 294.

1795.
Reg. LXI. Secs. 2, 3, 4 and 5.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from the late judge of zillah Burdwan, (Mr. Bayley,) dated so long since as the 12th September 1811, and containing a reference respecting the allowance of batta in the adjustment of summary suits between landholders and their tenants, which by an oversight, does not appear to have been answered.

2. *The Court find nothing in Regulation LXI. 1795, which can be construed to warrant a landholder in charging batta upon Sicca Rupees of the 19th Sun, when paid to him by his under-tenants; whether such Rupees may be deficient in weight, more or less than six annas per cent.*

3. *It is declared in Section 2 of that Regulation, that "all Sicca Rupees of the nineteenth sun, which shall not have lost by wear a greater proportion of their full standard weight than six annas per cent. or six-sixteenths of a Rupee in one hundred Rupees, shall be considered as of standard weight, and be received as such in all public and private transactions."*

4. *In Section 3 of the same Regulation it is explained, that the above rule "is to be considered applicable to those nineteenth sun Rupees only, in which the loss of weight has been occasioned by wear;" and in Section 4, it is added, that "Rupees of the nineteenth sun, deficient in weight from any other cause excepting wear, or deficient in weight from wear in a greater amount than six annas per cent. are to be received agreeably to the following rule. For one hundred Sicca weight of such light nineteenth sun Sicca Rupees, the payer is to receive credit for one hundred nineteenth sun Sicca Rupees."*

5. *It appears to the Court, that the above rules should be observed in all payments of rent made by under-tenants of land to the zemindars and other landholders, as well as in the payment of the latter to the public treasuries; and the orders of Government, under date the 20th June, 1810, (a copy of which was transmitted by the collector of Burdwan to the judge, with his letter of the 19th August, 1811,) as understood by the Court, are perfectly consistent with the rules above-mentioned.*

6. *Those orders, which direct the officers of the revenue department to observe the rule suggested in the 6th paragraph of a letter from the Accountant General, dated the 16th June, 1810, provide only against an abuse, which had arisen from mixing Rupees more deficient in weight than those described in Section 2, Regulation LXI. 1795, with Rupees which had not lost by wear so large a proportion of their standard weight as six annas per cent.; and causing them to be weighed together at the public trea-*

suries, in the manner prescribed by Section 5 of the Regulation above-mentioned.

7. *To guard against this abuse, it was proposed by the Accountant General, and ordered by Government, "that it be the duty of the proper officers to examine the Rupees separately, and to reject all those which are more deficient in weight, than in the proportion of six annas per cent. and that the remainder be then weighed by fifties, according to the present rule, viz. that contained in Section 5, Regulation LXI. 1795."*

8. *By the term "reject," in the above extract from the Accountant General's letter, the Court understand it to be intended, that Rupees deficient in weight in a greater proportion than six annas per cent. are not to be admitted as of standard weight, under Section 2, Regulation LXI. 1795, but are to be received according to the rule prescribed for the receipt of light Rupees, in Section 4 of that Regulation; while, at the same time, all Rupees of the nineteenth sun, which, by a separate examination, may not appear to have lost by wear a greater proportion of their standard weight than six annas per cent. are to be considered as of standard weight, and received as such in all public and private transactions, without any deduction of batta, or otherwise, in conformity with Section 2, of the Regulation above-cited.*

9. *In communicating to you the above construction of the Regulations in force, relative to the receipt of nineteenth sun Sicca Rupees, I am directed to add, that in the judgment of the Sudder Dewanny Adawlut, this construction should guide your future decisions, in summary, as well as regular suits; and that no vague indefinite claim of batta should be admitted.*

August 20, 1818.

See Act XIII. 1836.

From the Acting Judge of Zillah 24-*Pergunnahs, dated the* 18*th September,* 1818.

No. 296.

1801.
Reg. VI. Sec. 7, Clause 1.

By Section 7, *clause* 1, *Regulation VI.* 1801, *zumeendars on whose estates khillaries shall be proved to exist, are liable to a fine to Government of* 5,000 *Rupees; the same to be recovered by the sale of the village in which such khillaries may have been established.*

2. *I request you will do me the favor to submit for the opinion and orders of the Sudder Dewanny Adawlut, whether, under the provisions above quoted, a separate penalty is recoverable for the khillaries in each village, or whether one action only will lie against the proprietor of the estate, whatever may be the number of salt works existing on it.*

To the Judge of 24-Pergunnahs, in reply to the above, dated the 24th September, 1818.

In reply to your letter of the 18th instant, I am directed to state, that under the terms of the first clause of Section 7, Regulation VI. 1801, the Court are of opinion, that one fine only, of 5,000 Rupees, can be sued for, whatever may be the number of khillaries within the same estate.

September 24, 1818.

See Section 31, Regulation X. 1819 and X. 1826, and Secs. 16-17, Act XXIX. 1838.

To the Benares Court of Appeal, dated the 11th December, 1818.

No. 297.

1814. Reg. XXVI. Sec. 3. Clause 11.

1814. Reg. XXVII. Sec. 32.

1817. Reg. XIX. Sec. 9.

I am directed to acknowledge the receipt of your letter, under date the 15th September last, submitting a question, at the request of Mr. Bird, the joint register stationed at Ghazeepore, relative to the fees of vakeels in certain summary suits.

2. *The Court observe, that the summary suit termed the Kurmaha case, which appears to have given rise to the reference, was a suit arising out of forcible dispossession from rent-free land.*

3. *The provisions of Clause 11, Section 3, Regulation XXVI. 1814, which leave a discretion to reduce the vakeels' fees below a fourth of what would have been payable if the case were a regular one, and to fix them at such sum as shall be deemed a reasonable compensation, relate specifically to summary appeals against non-suits or dismissals on default.*

4. *By the provisions of Section 32, Regulation XXVII. 1814, pleaders employed in summary suits or appeals for arrears of rent, for recovering possession of land, and generally in all suits and appeals in which a summary process is authorized by the Regulations, were entitled specifically to one-fourth of the fee which they would have received, had such suits been instituted as regular and not as summary ones. To the provisions of this section, under which the Kurmaha case, (or case of dispossession from land,) would have come, the rules contained in Section 3, Regulation XXVI. 1814, had not been considered applicable, and therefore while the rules in question were in force, there was no discretion in such a case to reduce the fees below one-fourth of what they would have been in a regular suit. As the Regulations then stood, it is obvious, that the degree of trouble imposed on vakeels in many of the summary suits or appeals to which Section 32, Regulation XXVII. 1814, had reference, must have*

been very inadequate to the specific rate of compensation to which that rule entitled them. The above Section, therefore, (32, of Regulation XXVII. 1814,*) with the one which follows it, were rescinded by Section* 9, *Regulation XIX.* 1817, *which makes the rule contained in Clause* 11, *Section* 2, *Regulation XXVI.* 1817, *(wherein a discretion was given to reduce the fee,) applicable to all summary suits and appeals; and applicable therefore to the Kurmaha case, in which consequently the court of appeal might reduce the fees to such sum as it might deem reasonable; the maximum being one-fourth of what would have been payable had the suit been a regular one for the lands; and calculable on so many times the annual produce, in conformity to Section* 25, *Regulation XXVII.* 1814.

December 11, 1818

See Act I. 1846.

To the Acting Judge of Zillah Dacca Jelalpore, dated the 29*th January,* 1817.

No. 300.

1814.

Reg. XXVII. Sec. 32.
Reg. XXVI. Sec. 3.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 14*th instant, requesting instructions regarding the amount of fee to which pleaders are entitled in summary suits and appeals, which may be withdrawn; or dismissed on default; or adjusted by razeenama.*

2. *The Court are of opinion, that, under the general terms of Section* 32, *Regulation XXVII.* 1814, *the rule contained in the section, viz. that the vakeels employed in summary suits "be allowed for pleading such suits, a fee equal to one-fourth of the fee which they would have received, had such suits been instituted as regular suits," must be understood to comprehend summary suits and appeals withdrawn or adjusted by razeenamas, or dismissed on default, as well as those decided on investigation; and that, consequently, the rate of fee in all such cases must be a fourth of what it would have been, if the suits had been regular, instead of summary; viz. a fourth of the several proportions payable in regular suits under Section* 31, *Regulation XXVII.* 1814; *except in the summary appeals specially provided for by Section* 3, *Regulation XXVI.* 1814, *the eleventh clause of which authorizes the courts to award such fee as may be considered a sufficient compensation, not exceeding one-fourth of the fee to which the pleader would have been entitled in a regular suit or appeal.*

January 29, 1817.

See Act I. 1846.

To the Acting Judge of Zillah Backergunge, dated the 28th May, 1819.

No. 302.

1806. Reg. II. Sec. 11.
1814. Reg. XXIII. Sec. 45, Clause 7.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 17th instant, together with its enclosure; and in reply to acquaint you, that the Court do not consider the case of the petitioner referred by you* to come within the provisions of Section 11, Regulation II. 1806.

2. In reply to the question contained in the fourth paragraph of your letter above acknowledged, I am further directed to communicate to you the opinion of the Court, that the rule contained in Clause 7, Section 45, Regulation XXIII. 1814, cannot be held applicable to the cases of individuals in confinement, at the requisition of the collector; it being provided for by that clause, "that no person, from "and after the 1st February 1815, shall be liable to personal con- "finement in satisfaction of a decree for any sum not exceeding "sixty-four rupees, beyond a period of six months."

May 28, 1819.

To the Calcutta Court of Appeal, dated the 27th August, 1819.

No. 305.

1805. Reg. II. Sec. 14, Clause 3.

I am directed to reply to a certificate, signed by your senior judge, and accompanied by a proceeding of the court of appeal held before him on the 23rd ultimo; which submits a question, whether a cause having come by special appeal before a zillah judge, the appeal being from a decision by himself as register, the provincial court are competent to remove the proceedings and try the appeal, under the provisions of Clause 3, Section 14, Regulation II. 1805; there being no particular mention made of special appeals.

2. *The Court direct me to answer the question in the affirmative; the word appeals used in the clause quoted being general, and special appeals coming equally within the reason of the rule.*

August 27, 1819.

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* The petitioner, confined for arrears of Abkaree Rents due to Government, applied to the zillah court to be released, under the provisions of Section 11, Regulation II. 1806.

To the Moorshedabad Court of Appeal, dated the 3rd September, 1819.

No. 306.

1809.
Reg. VIII, Sec. 3.

The Sudder Dewanny Adawlut have had before them your senior judge's letter, under date the 28th ultimo, on a general question regarding the removal of ministerial native officers of the provincial courts, and particularly adverting to the cases of Buncharam and Ramsoonder, sherishtadar and paishkar of the Moorshedabad Court.

2. The Sudder Dewanny Adawlut do not undertake to give you instructions how to act in these cases, which must be left to your discretion ; but direct me to offer the following observations.

3. Under the provisions of Regulation VIII. 1809, Section 3, the power of removing their own ministerial native officers is vested in the provincial courts ; by which is implied the power of removal on such grounds as the Regulations declare sufficient for such a measure.

4. The fifth clause of Section 5 contains a general declaration with regard to all native officers, and must, in the opinion of the Court, be considered to include ministerial officers of the provincial courts, and that they shall be removable, without proof of any specific act of misconduct, whenever there shall be sufficient reason to deem them incapable, or in any respect unworthy of public confidence.

5. If Moonshee Ramsoonder cannot give a reasonable account of his possessing so much more property than the lawful emoluments of his office seem to authorize, the Court would deem the fact of his possessing that property a sufficient ground for presuming him a person unfit for public confidence.

6. With regard to the stated incapacity of the sherishtadar, if this be the conclusion of the provincial court, from the present mode in which the duties of his office are performed, it is a ground recognized by the Regulations as sufficient for removing him.

September 3, 1819.

To the Judge of the City of Benares, dated the 19th November, 1819.

No. 308.

The Sudder Dewanny Adawlut have had before them your letter, under date the 25th September last, with its several enclosures, and direct me to communicate the following observations and orders.

1806.
Reg. II. Sec. 11.
1814.
Reg. XXIII. Sec. 45, Clause 7.

2. In this case, [of Baboo Gobind Das *v.* Koosager,] the point submitted is, how far there is, or is not, a discretion in the civil courts, as to enlarging imprisoned persons under the rules contained in Section 11, Regulation II. 1806, regarding insolvent debtors confined in execution of decrees of the civil courts. The Court are of opinion, that under those rules a debtor is entitled to his release

on making what the civil court, [subject to the controul of the court of appeal,] shall deem a fair discovery and surrender of all the property he possesses, without regard to the amount of his debt, or the time he may have been imprisoned under the decree. The provisions of Clause 7, Section 45, Regulation XXIII. 1814, make no alteration in the above rules, except in fixing a maximum of time, during which a debtor shall be subjected to imprisonment in satisfaction of a decree for a sum not exceeding 64 rupees.

3. The Court desire to be considered as not giving an opinion whether the above construction would, or would not, include the case, (or one of similar features,) in which a native officer should be confined in execution for the refund of embezzlements made by him.

Summary interference of the provincial courts to prevent dispossession.

4. The point here [in the case of Mussamut Jurao and Soobdee] is, whether the provincial court (two judges sitting) were competent to order the city judge to interfere by summary process to prevent Munsa and others from molesting the petitioners in the possession of a bagh or garden, the city judge contending that they must be left for redress, if they required any, to a regular suit.

5. It appears from the city judge's proceedings of the 9th June, that the petitioners were then in peaceable possession of the garden in question, and that the defendants acknowledged the fact, and engaged not to molest them again ; that they complained afterwards of the defendants' again molesting them in the peaceable possession. Under such circumstances, the Court are of opinion, that the provincial court could properly direct Mr. Bird to interfere summarily to prevent the petitioners being ejected, though the order should have gone from the criminal department to Mr. Bird as magistrate.

6. The cases cited by Mr. Bird do not appear to be in point. In one, the Sudder Dewanny Adawlut held, that a claim for arrears of wages could only be tried in a regular suit, under the then existing law ; in the other, that a ryot, ousted as a defaulter, rightly or wrongly, but without force, had no redress after he had been dispossessed, except in a regular suit. There the dispossession had taken place, and, as it turned out, without a breach of the peace : in the case now in question, dispossession had not taken place, but was only apprehended, and a breach of the peace must be assumed as not improbable.

1807.
Reg. I. Sec. 4, Clause 2.

7. *In this case, [of the execution of a decree,] the Court have not a copy of the decree ; but they observe that it was a decree for a sum of money, passed in an original suit tried before the provincial court, and they conclude it to have been passed by Mr. C. Smith, and sent to the city court to be executed. When the plaintiff pointed out certain immovable property as belonging to the defendants and required its sale to satisfy the decree, a third party, a stranger, comes in and states part of the said property to be his, which, as far as then appeared, the city judge was inclined to believe, and ordered its sale to be stayed till he should inquire further into the matter, and the plaintiff should explain*

his own alleged title. The question is, whether, under such circumstances, Mr. C. Smith, having the subjects collaterally brought before him, and not by petition from one of the parties, could, sitting alone, set aside the city judge's order for staying the sale, and direct the sale of the property claimed by the third party to be proceeded in.

8. *The Sudder Dewanny Adawlut are of opinion,*—1. *That the city judge, though not under any obligation so to do, might without impropriety have referred the matter at once for the court of appeal's orders, as to whether the property should or should not be sold in execution of their decree; and only inquired into the truth of the matter stated by the third party, if the court of appeal had desired him.* 2. *That the city judge having undertaken to pass an order provisionally suspending the sale of the property, until he should be further satisfied as to the matter, it required two judges of the court of appeal to set aside that order, viewed as a miscellaneous order of the city court, and to direct the sale to be proceeded with.*

9. *The Sudder Dewanny Adawlut therefore rescind the order to that effect, passed by Mr. Smith singly, unless it shall be confirmed by another judge of the court of appeal, to whom you will recommend the party interested to apply.*

November 19, 1819.

See No. 328. *See Regulation VII.* 1825.

To the Judge of Zillah Moradabad, dated the 17*th December*, 1819.

No. 309.

1803. Reg. XXVIII. Sec. 17, Clause 1.

1806. Reg. II. Sec. 11.

The Sudder Dewanny Adawlut have had before them your letter of the 20th ultimo, with its enclosure, relative to the case of Radha and Pran.

2. It is observed from your proceedings, that these persons were imprisoned on the 18th September, 1816, under a summary sentence passed by you as judge, in pursuance of Clause 1, Section 17, Regulation XXVIII. 1803, for having aided and abetted in withdrawing certain cattle, attached for arrears of revenue due to Government; the sentence reciting, in pursuance of that rule, that the defendants were to pay the costs of suit, and to be imprisoned until the property withdrawn for attachment should be restored; or until the balance for which the attachment was made, amounting to above 800 Rupees, should have been made good. And it is further observed, that neither of these conditions have been fulfilled; but that the defendants, alleging insolvency, and having made oath thereto, demand the benefit of the rules contained in Section 11, Regulation II. 1806, in favour of persons in confinement under decrees of the civil courts.

3. The above terms, which are taken from the Regulation quoted, are general, so that the Court have held in former instances, that they include certain classes of summary cases, where any thing in the form of a summary decree by a civil court has actually been passed, and the defendant is in confinement under it as a debtor; but they are of opinion that the case in question does not, taken altogether, come within the provision of those rules.

4. The Court observe, however, that the case of these defendants, who have been in jail more than three years, is a hard one; and they recommend that you suggest to the defendants, to petition the Board of Commissioners, affording them a copy of this letter and of the proceedings in their case, for the purpose. It is probable that the revenue authorities may afford them relief, or at all events, that they will ascertain whether the proper steps have been taken towards recovering the balance of revenue. You will report the result for the Court's information, in order that if relief should not be afforded under the orders of the Board of Commissioners, the Court may consider what further measures on their part the case will demand.

5. I am directed to add, that, in respect of the costs of suit, should the defendants ultimately be confined for these solely, the other parts of the sentence having been got over, the benefit of the insolvent rules may be granted.

December 17, 1819.

To the Acting Judge of Zillah Mymensingh, dated the 1st January, 1820.

No. 310.

1799.
Reg. V. Secs. 3 and 4
1800
Reg. I.

The Sudder Dewanny Adawlut have had before them your letter, under date the 18th ultimo, reporting the decease of Bhowanee Chowdraen, widow of the late proprietor of one anna, five gundas, forming part of the nine annas share of Pergunnah Sheerpore, now in course of partition, in pursuance of a decree of this Court.

2. It is observed, that you mention an adoption by the widow under alleged authority from her husband, which alleged authority is denied by the husband's collateral heirs, who have failed, however, in a criminal prosecution to establish that the written authority was a forgery; and that you submit to the Court two points; 1, that the adopted son's right be acknowledged; 2, that the natural father of the adopted son, now a minor, be nominated his guardian and manager of the estate.

3. I am directed to state, with respect to the first point, that the right being disputed, all that can be now admitted, is the possession of the fractional portion of the estate held by the deceased widow; and the nine annas estate being stated to be under attachment, there can at present be only a symbol of possession, consisting of being

registered as the person holding the fractional share, and being acknowledged as the person to whom the profits are payable. Your letter does not state, whether any or what part of this has taken place in favour of the alleged adopted son.

4. Should it have so taken place, and the possession, as far as possession can be now had, rest with the alleged adopted son, or even if there be no possession at all on either side, it appears to the Court, that, under the provisions and spirit of Regulation V. 1799, the adopted son's possession should be acknowledged and upheld, provided you are satisfied, from what you have seen, that there is reasonable ground to believe his title good, and provided, on the collateral heir of the adoptive father filing a regular suit to try the question of right, sufficient security be given on his (the adopted son's) part for compliance with the judgment which may be passed: on failure of which security, and on its being given by the other claimants, their possession should, on the other hand, be acknowledged.

5. With regard to the second point, namely, appointing a guardian to the minor; if he be considered the adopted son of the widow's husband, you must be guided by the provisions of Regulation I. 1800, which authorize the appointment, by the civil court, of a guardian to a minor landholder, provided he be a sharer in a joint estate paying revenue immediately to Government, and all the other sharers be not disqualified persons. Your appointment of a guardian in such case would be subject to the control of this Court, in the mode provided for by Section 7 of the above-quoted Regulation.

January 1, 1820.

See No. 912.

No. 311.

1813.
Reg. VI. Sec. 5, Clause 1.
1793.
Reg. XLIX.
1798.
Reg. V. Sec. 7.

To the Patna Court of Appeal, dated the 7th January, 1820.

I am directed to acknowledge the receipt of your letter, dated the 19th June last, submitting a question relative to summary decrees passed under clause 1, *Section* 5, *Regulation VI.* 1813.

2. *The Court are of opinion, that those decrees must be considered open to appeal, but on the question of irrelevancy only. The summary decrees passed under Regulation XLIX.* 1793, *are expressly declared open to appeal on that ground by Section* 7, *Regulation V.* 1798, *and the rule must equally apply to the decrees in question.*

January 7, 1820.

See Act IV. of 1840.

To the Moorshedabad Court of Appeal, dated the 1st April, 1820.

No. 312.
1814.
Reg. I.

The Court having had before them your second judge's letter, under date the 13th ultimo, I am directed to communicate their opinion, that, under Regulation I. 1814, a deed of gift, drawn on unstamped paper by an attorney in Calcutta, for the conveyance of property at Moorshedabad, the donor being at the time a resident of Calcutta, and the donee a resident of Moorshedabad, is not admissible as evidence in our courts, as not being on the paper required by the Regulation above quoted.

2. Your second judge has not stated the date of the deed to which his letter has reference, but the Court have assumed its execution to have been subsequent to the period at which the operation of Regulation I. 1814, commenced.

April 1, 1820.

See 324, and Regulation X. 1829.

To the Acting Judge of Burdwan, dated the 5th May, 1820.

No. 313.
1793.
Reg. XXVII.
1795.
Reg. XXXV.
1799.
Reg. VII.
1803.
Reg. XXVIII.
1819.
Reg. VIII. Sec. 8.

The Sudder Dewanny Adawlut have had before them your letter of the 29th ultimo.

2. On the second of the two points submitted, *viz.* whether the provisions of Regulation VII. 1799, are applicable to lakhirajdars, the enclosed extract (paragraph 5) from the resolutions of the Court, under date the 22nd January, 1805, is transmitted for your information and guidance. This, you will perceive, decides the point in the affirmative, assigning as the reason, that the words in the Regulation are general.

3. With regard to the other point, whether lakhirajdars can have the advantage of Section 8, Regulation VIII. 1819, the Court observe, that the words of that section expressly specify "zemindars, that is, proprietors under direct engagements with Government," and that, therefore, the provisions of it must be considered restricted to the person specified.

Extract from the Resolutions of the Court of Sudder Dewanny Adawlut, under date the 22nd January, 1805.

PARA. 5. The Court further observe, that the original decision of the judge, dismissing the summary suit brought by the plaintiff under Regulation VII. 1799, on the ground of that Regulation not being applicable to claims for arrears of rent due from lands exempt from

the public revenue, was erroneous and unwarranted by the Regulations. The terms of Regulation VII. 1799, as well as Regulations XVII. 1793, and XXXV. 1795, therein referred to, being general, must be considered applicable to all claims for arrears of rent, whether due from lands paying revenue, or from lands held exempt from the public revenue, as has been declared by this Court in former instances.

May 5, 1820.

See Nos. 33, 61, 461, 523.

To the Judge of Zillah Furruckabad, dated the 26th May, 1820.

No. 315.

1803.
Reg. XXVII. Sec. 11.

The Sudder Dewanny Adawlut have had before them your letter, dated the 27th ultimo.

2. In reply I am directed to state the opinion of the Court, that the process described in Section 11, Regulation XXVII. 1803, for confining the person of a revenue defaulter at the instance of the collector, may be had recourse to on account of all arrears of revenue of whatever standing, and cannot be considered as limited to balances arising within a period not exceeding one year.

May 26, 1820.

To the Judge of Zillah Moradabad, dated the 2nd June, 1820.

No. 316.

1803.
Reg. XXVII. Sec. 14.
Reg. XXVIII. Sec. 17.
1805.
Reg. II. Sec. 6.

The Sudder Dewanny Adawlut have had before them your letter of the 16th ultimo.

2. It is understood by the Court to embrace two points: First, what is the limitation of time as to process by a collector for arrears of revenue, under Section 14, Regulation XXVII. 1803, by attachment and sale of a defaulter's personal property? Secondly, what is the limitation of time in respect to the summary proceedings at the collector's instance, under Section 14, Regulation XXVII. 1803, and Section 17, Regulation XXVIII. 1803, in the event of the attached property being removed, by force or fraud, by the defaulter, or his people.

3. On the first point, I am directed to state, that the Court hold it to be competent to a collector to resort to the process described in the Regulation first quoted for balances of whatever standing. On the second point the Court hold, that the summary proceeding under Section 17, Regulation XXVIII. 1803, which clearly involves the adjudication of a penalty by the civil court for having withdrawn

attached property, is limited in point of time, under Section 6, Regulation II. 1805, to one year from the occurrence of the act which gives rise to the proceeding; unless Government being the party suing, (which it virtually is, in the person of the collector), there be good cause shown for delay, beyond that period.

June 2, 1820.

To the Judge of the City of Benares, dated the 21st July, 1820.

No. 319.
1806.
Reg. II. Sec. 11.

The Sudder Dewanny Adawlut have had before them your letter, dated the 8th instant.

2. I am directed to state, that the Court, in former instances, have held that the terms of Section 11, Regulation II. 1806, ("in confinement for satisfaction of decrees of the civil courts,") being general, the benefit of the section might be claimed by all persons in confinement under a decree, regular or summary; but not, where no sentence of the civil court, regular or summary, had issued.

July 21, 1820.

See Nos. 24, 60 and 372.

To the Judge of Zillah Nuddea, dated the 28th July, 1820.

No. 320.
1819.
Reg. II. Sec. 30.

The Sudder Dewanny Adawlut have had before them your letter, dated the 21st instant, with its enclosure.

2. The Court are of opinion, that the collector cannot, on the ground of the plaintiff being a public officer on his establishment, decline to take up the case referred to him under Section 30, Regulation II. 1819; inasmuch as the rule there laid down, that suits for the right of holding land free of assessment shall, when instituted in the zillah court, be referred to the collector for investigation, is general and peremptory; and the plaintiff might, if he chose, have preferred the claim in the first instance to the collector, who could not then have avoided the jurisdiction.

3. Had it been the intention that any exception to the rule should be made, as in Regulation VIII. 1794, Section 13, and Regulation V. 1812, Section 21, it appears to the Court that the same would have been expressly stated.

July 28, 1820.

To the Acting Judge of Shahabad, dated the 4th August, 1820.

No. 321.

1814.
Reg. I. Sec. 12.

The Sudder Dewanny Adawlut have had before them your letter, dated the 19th ultimo.

2. *On the question proposed, viz. whether under Section 12, Regulation I. 1814, a security bond for the rent of malgoozaree land, executed to a landholder on behalf of his tenant, (the Government not being a contracting party,) is, or is not, within the description of instruments which are receivable in evidence though written on unstamped paper, the Court are of opinion, that such security bonds, being within the reason of the exemption provided by that section, were meant to be included in it, and may be received in evidence, without a stamp.*

August 4, 1820.

See Regulation X. 1829.

To the Acting Judge of Burdwan, dated the 4th August, 1820.

No. 322.

1799.
Reg. VII.
1814.
Regs. XXIII. and XXIV.

The Sudder Dewanny Adawlut have had before them your letter of the 24th ultimo.

2. *On the question contained in the last paragraph, I am directed to state, that the Court do not consider summary suits for rent under Regulation VII. 1799, to be referable to sudder ameens. The provisions of Regulations XXIII. and XXIV. 1814, which provide for civil suits being referred for trial to sudder ameens, intend regular suits, and the Court are not aware of any separate provision which allows summary suits to be tried by those officers.*

August 4, 1820.

See Nos. 250 and 332, Regulation VIII. 1831.

To the Judge and Magistrate of Moradabad, dated the 11th August, 1820.

No. 323.

1803.
Regs. XXVIII. and XXII.

The Sudder Dewanny Adawlut have had before them two letters from you, dated the 21st and 24th ultimo.

2. *In reply to the first, I am directed to state, that from a decree in a summary suit for arrears of revenue under Regulation XXVIII. 1803, no appeal lies, as to the merits of the summary decree. But, in such a case, as well as in other summary*

suits, an appeal would lie on the question of relevancy, that is to say, on the question, whether the lower court had tried as a summary suit, what it had no jurisdiction so to try.

3. *In reply to the second of the letters acknowledged, I am directed to state, that if you deem any order of the provincial court to have been irregular, as issuing to you, regarding civil matters, from the criminal department of that court, you should make your application to the Nizamut Adawlut, through the provincial court, under Regulation XXII.* 1803, *in order that the provincial court's reasons and explanation of their act may come before the Nizamut Adawlut at the same time with your objections.*

August 11, 1820.

See Regulation VIII. 1831.

To the Judge of Moradabad, dated the 11*th August,* 1820.

No. 324.

1814.

Reg. I. Secs. 9 and 11.

The Court have had before them your letter of the 21st ultimo, on the subject of hoondies written on plain paper.

2. In reply, I am directed to state, that under Sections 9 and 11, of Regulation I. 1814, bills of exchange executed on unstamped paper, within the provinces subject to the presidency of Fort William, would not be receivable in evidence in our courts; but if they were executed without our provinces, the Regulation would not apply to them.

3. If, on a bill of exchange, written on plain paper, and purporting to have been drawn without our provinces, being produced in evidence in a suit, the party interested in its rejection allege that it was drawn within our provinces, it would be incumbent on you to inquire into the point, with a view to determine the validity of the defendant's plea. And further, if, in the course of the evidence in a suit, it should appear, that an instrument adduced, and purporting to have been executed out of our provinces, had, on the contrary, been executed within them, and on plain paper, it would be incumbent on you to treat it as an instrument which ought to have had a stamp, but had none.

August 11, 1820.

See No. 312, and Art. 4 to 6, Schedule A. Regulation X. 1829.

To the Dacca Provincial Court, dated the 18th August, 1820.

No. 325.
1814.
Reg. I. Sec. 9.

The Sudder Dewanny Adawlut have had before them your senior judge's letter of the 11th instant, with its enclosure.

2. As to the case which it represents, namely, where in a separate leaf of a merchant's books an entry of a sum advanced to an individual has been made in the form of a bond by the debtor, bearing interest, and regularly signed and attested, the Court consider, that the leaf having no stamp, the writing must be treated as a bond on plain paper, and rejected *in toto*.

August 18, 1820.

See No. 970 and Sudder Dewanny Reports, 19th January, 1852, p. 21.

To the Acting Judge of Burdwan, dated the 1st September, 1820.

No. 326.
1819.
Reg. VIII. Sec. 9.

The Court having had before them the petition from the Raja, which was forwarded with your letter of the 25th ultimo, and the object of which was to obtain an order from the Court that sales, under Section 9, Regulation VIII. 1819, of putnee tenures in the Raja's zemindaree, should be made by the register of Burdwan at that station, even though the tenures should be situated in other zillahs, I am directed to communicate to you, that as the provisions of the Regulation quoted appear to the Court to require that such sales should be made by the register of the district where the tenures are, and at the cutcherry of such district, the Court are not competent to give a contrary order.

September 1, 1820.

See Act VI. 1853.

To the Acting Judge of Etawa, dated the 1st September, 1820.

No. 327.
1803.
Reg XXVIII. Sec. 6.
1812.
Reg. V. Sec. 17.

The Court having had before them your letter of the 3rd ultimo, I am directed to state in reply, that the rule of Section 6, Regulation XXVIII. 1803, which provides, that in cases of illegal distraint, there should be adjudged to the injured tenant restitution of the value lost to him by the distraint, and as much again as damages, is considered by the Court to be equally intended by Section 17, Regulation V. 1812; which latter rule provides, that the tenant may have his

remedy by a summary suit, which was before confined to a regular one. The quantum of the remedy allowed him is not considered to be altered.

September 1, 1820.

See No. 467.

To the Judge of Beerbhoom, dated the 1st September, 1820.

No. 328.

1806.
Reg. II. Sec. 11.
1814.
Reg. XXIII. Clause 7, Sec. 45.

I am directed to state as follows, in reply to your letter of the 20th ultimo.

2. The rules of Section 11, Regulation II. 1806, for the relief of insolvent debtors, are construed by the Court to extend to all persons in confinement under decrees, regular or summary, of the civil courts, but not to those in confinement under any process where a decree of a civil court has not been given.

3. The rules of Clause 7, Section 45, Regulation XXIII. 1814, make no alteration in this respect, except, that when the amount due under the decree does not exceed 64 rupees, six months is the maximum of imprisonment in satisfaction of it.

4. It does not follow, that the benefit of the insolvent rules may not be allowed within the six months under the Regulation of 1806.

September 1, 1820.

See No. 308.

To the Acting Judge of Burdwan, dated the 15th September, 1820.

No. 329.

1819.
Reg. VIII. Sec. 8.

The Sudder Dewanny Adawlut have had before them your letter of the 31st ultimo, and direct me to state in reply, that according to the spirit of Section 8, Regulation VIII. 1819, as the day for the presentment of petitions on the part of zemindars for the next half-yearly sale falls in the vacation, it must be deemed commutable for the next day after the re-opening of the civil court, and the sale must not take place until a month from and after such day. It will be requisite that you should give due notice of this construction in the district under your charge.

September 15, 1820.

From the Acting Judge of Zillah Bareilly, dated the 26th September, 1820.

No. 330.

1803.
Reg. XXVII. Sec. 16.

I beg leave to request the opinion of the Court of Sudder Dewanny as to the construction to be put on the provisions of Section 16, Regulation XXVII. of 1803, as applicable to the following case.

2. A malgoozar is sent to the civil jail for confinement, on account of the non-payment of an alleged balance of revenue, due for a former, as well as the current year. Denying the justice of the demand, and furnishing the security required, he is released from confinement, and immediately enters a suit against the collector to try the justice of the claim. Is such suit to be considered and investigated as summary or regular? It appears to me that the Regulation above quoted provides for all such suits being considered as the former, and particularly points out a summary process and investigation as the proper mode of procedure. But as difference of opinion seems to exist on the subject, I beg leave to refer it in the decision of the Sudder Dewanny Adawlut.

To the Acting Judge of Bareilly, in reply to the above, dated the 17th November, 1820.

In reply to your letter under date the 26th of September last, I am directed to state the Court's opinion, that in the instance you represent, the suit instituted by the alleged revenue defaulter, under Section 16, Regulation XXVII. 1803, can only be tried as a regular suit.

November 17, 1820.

Extract of a Letter from the Fourth Judge of the Bareilly Court of Appeal, dated the 15th September, 1820.

No. 331.

1803.
Reg. XXXIV.
1808.
Reg. XIII. Sec. 11.

PARA. 4. With reference to the provisions of Regulation XIII. 1808, [Section 11,] as Mr. Robertson conceives, that they do not extend to suits instituted under Regulation XXXIV. of 1803, I beg to solicit the opinion of the Sudder Dewanny.

To the Bareilly Court of Appeal, in reply to the above, dated the 24th November, 1820.

The Court have had before them your fourth judge's letter, with enclosures, under date the 15th September last.

2. On the point proposed for the Court's opinion in the last paragraph, I am directed to state, that in summary suits under Regulation XXXIV. 1803, if an appeal take place to the provincial court, on objections against the relevancy of that Regulation to

the real facts of the case, the appeal court must exercise the same power as in other appeals with regard to staying execution, and the zillah judge must follow the same course as in other appealed decrees.

November 24, 1820.

To the Judge of the Southern Division of Bundlecund, dated the 22nd December, 1820.

No. 332.

1814.

Reg. XXIII. Sec. 13.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 5th instant, requesting the Court's construction of Section 13, Regulation XXIII. 1814.

2. The Court, understanding your query to be "whether, under the above section, moonsiffs are empowered to receive and try summary suits instituted for the recovery of arrears of rent, provided such arrears do not exceed 64 rupees," direct me in reply to acquaint you, that they do not consider summary suits for rent to be cognizable by moonsiffs.

3. The provisions of Regulation XXIII. 1814, which relate to the trial of civil suits to a certain amount by moonsiffs, intend regular suits, and the Court are not aware of any separate provision which allows summary suits to be tried by these officers.

December 22, 1820.

See Nos. 250 and 322, Regulation VIII. 1831.

To the Judge of Zillah Cawnpore, dated the 29th December, 1820.

No. 333.

1803.

Reg. XXVII. Secs. 1 and 16.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 7th instant, requesting the Court's constructions of two passages in Regulation XXVII. 1803.

2. In reply, I am directed to communicate to you the opinion of the Court, that the term "property," which occurs in Section 19 of the Regulation above cited, "lands or other property," must be considered to mean real property: of which, security given by the defaulter, and the institution of a suit by him under Section 16 to try the justness of arrears of revenue demanded of him, would prevent the sale; but not the distraint and sale of that personal property, which the collector is, under the rule contained in Clause 2, Section 14 of the Regulation in question, authorized to distrain and sell.

3. The Court are not apprized in the 6th paragraph of your letter above acknowledged, what description of property (belonging to the petitioners) the collector proceeded to sequester and to sell. If personal property, under the clause last cited, the Court are of opinion, that he was authorized in so doing, and that the civil court has no right of interference.

4. If, on the other hand, the collector proceeded to the sale of the land or other real property of the petitioners, the Court, under the construction given to Section 19, of Regulation XXVII. 1803, are of opinion, that such proceeding was illegal; and might be legally prevented by the civil court in which the security had been given, and the suit instituted by the defaulter to try the justness of the arrears of revenue demanded: it being of course understood, that the balance [for which the collector would proceed to sell] is the same with that for which the defaulter has furnished security and instituted a suit.

December 29, 1820.

See No. 853, and Act I. 1845.

From the Acting Judge of Zillah Mirzapore, dated the 10th December, 1820.

No. 334.

1817.
Reg. XVIII.

I have the honor to acknowledge the receipt of your letter of the 7th ultimo, and in reply beg leave to state, for the information of the Court, that a summary sentence, in strict conformity with Regulation XVIII. 1817, adjudging the particular sums recoverable from the late treasurer, Rammohun Mozoomdar, has not been passed by me; although the fullest inquiry has been made, and the sums due from him have been ascertained, as stated in my letter to your address, with enclosures, dated the 20th October last.

2. I enclose copies of two roobukarees, dated the 24th October and 16th November last, which will show the nature of the proceedings I deemed it proper to hold in the civil court in this case. It will be observed, that on the commitment of Rammohun Mozoomdar for trial to the court of circuit, considering the sums specified in my proceedings as due from the treasurer to have been sufficiently ascertained, (for he even does not deny that these sums are due,) I proceeded to recover the amount in the manner prescribed for the execution of decrees.

3. Having however omitted to pass a summary decree in strict conformity with the Regulation, I request to be favored with the Court's instructions, whether, with reference to the proceedings already held by me, such a course is still necessary. It does not appear to me to be too late to pass a summary decree, which would

have the effect of sanctioning the measures that have been adopted to recover the balance.

To the Acting Judge of Zillah Mirzapore, in reply to the above, dated the 29th December, 1820.

I am directed by the Court of Sudder Dawanny Adawlut, to acknowledge the receipt of a letter from you, dated the 18th instant, together with its enclosures, and in reply to desire, that you will now proceed, in conformity with Regulation XVIII. 1817, to hold a summary inquiry relative to the embezzlements of the late treasurer of your court, Rammohun Mozoomdar, and to pass a summary decree, (adjudging the particular sum recoverable from him,) according to the rule laid down in the Regulation above quoted.

December 29, 1820.

See Regulation III. 1827.

To the Judge of Zillah Beerbhoom, dated the 2nd February, 1821.

No. 335.

1793.
Reg. X.
1799.
Reg. VII. Sec. 26.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 22nd ultimo, submitting queries relative to suits in which minors and other disqualified landholders may be parties.

2. In reply I am directed to acquaint you, that the Court do not consider it necessary to reply separately to each of the queries contained in your letter above acknowledged, but direct me to communicate their opinion generally, that the surburakar, or manager, should, in all cases affecting the estate, real or personal, of the minor, or disqualified landholder, both sue and defend in the civil court, under the instructions which he may receive from the court of wards; and that, as the interests of Government cannot be ordinarily supposed to be concerned in such suits, he (the surburakar) has no more right to command the aid of the Government pleader, than any other individual suitor, or defendant.

3. In the case of a minor, whose estate is not under the court of wards, the executor or guardian must, during the minority, stand in the place of the minor, and be subject to all the rules of suit and defence to which the minor himself would be subject were he not a minor.

February 2, 1821.

To the Judge of Zillah Midnapore, dated the 23rd February, 1821.

No. 336.

1819. Reg. IX. Sec. 3, Clause 1.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 17th instant, and under the explanatian therein contained, to acquaint you, that the Court do not consider it necessary, under Clause 1, *Section* 3, *Regulation IX.* 1819, *that any report should be made to a provincial court of appeal by the judge of a zillah or city court, previously to his admission of a special appeal from the decision of a register; and consequently that he is at liberty to reject or admit an application for such special appeal, without any reference to the provincial court of appeal.*

February 23, 1821.

To the Judge of Zillah Ghazeepore, dated the 23rd February, 1821.

No. 337.

1799. Reg. VII. 1800. Reg. V.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 9th instant, and in reply to acquaint you, that the Court have frequently determined upon former references, that the rules for distraint, under Regulation VII. 1799, [extended generally to Benares by Regulation V. 1800,] being general, must be understood to apply to the rents of lands held exempt from the public assessment, as well as to the rents of lands subject thereto.

February 23, 1821.

See Nos. 33, 61 and 313.

To the Judge of Zillah Midnapore, dated the 18th May, 1821.

No. 338.

1817. Reg. XIX. Sec. 9, Clause 3. 1819. Reg. II. Sec. 30, Clause 7.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 10th instant.

2. In reply I am directed to communicate to you the opinion of the Court, that with reference to the value of the stamped paper, on which the appeals referred to in your letter are directed to be written by the clause and section of the Regulation cited, (Clause 7, *Section* 30, *Regulation II.* 1819,*) the appeals should be considered summary in as far as relates to the fees to which the pleaders employed in such suits may be entitled; but that, with reference to Clause* 12 *of the same section, the Court consider, that*

the trial and decision of such causes should be regulated by the mode of procedure observed in a regular appeal.

3. *Under the opinion above expressed, and with reference to the rule contained in Clause* 3, *Section* 9, *Regulation XIX.* 1817, *it will of course be requisite that a deposit be made in the first instance for the fees of the pleaders employed in such appeal.*

May 18, 1821.

See Nos. 768 *and* 987, *and Act I.* 1846.

To the Judge of Zillah Ghazeepore, dated the 25*th May,* 1821.

No. 339.

1798. Reg. I. Sec. 2.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 11th instant.

2. In reply, I am directed to acquaint you, that the Court, with reference to the last paragraph of the Circular Orders of the 22nd July, 1813, consider it to have been determined, that the borrower is entitled to receive possession summarily on depositing the principal sum borrowed, as required by Section 2, Regulation I. 1798, leaving the interest to be settled on an adjustment of the lender's receipts and disbursements, during the period he has been in possession.

3. The case, therefore, put in your letter, of the borrower alleging the principal of the debt to have been realized from the usufruct, which allegation the lender in possession denies, must be the subject of a regular suit, and cannot be decided summarily.

4. If however the borrower, persisting in his allegation, deposit the principal sum, merely for the purpose of regaining possession of his lands, he may, of course, subsequently sue the mortgagee for the restitution of the amount deposited, and recover it with costs upon his proving that it really was not due.

May 25, 1821.

To the Acting Judge of Zillah Jungle Mehals, dated the 1st June, 1821.

No. 341.

1814.
Reg. I. Sec. 11.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 23rd ultimo.

2. In reply to the first question contained in your letter, the Court have directed me to communicate to you their opinion, that a person becoming security for the payment of a bond, and affixing his name to the deed in recognition of his responsibility, is liable to be sued as a party with the principal, the transaction being as it were a joint one; and that it is not necessary to the admissibility of an action against him, that he should have entered into a regular security bond, on separate stamped paper of the same value as that of the original obligation.

3. In answer to the second question, the Court have directed me to acquaint you, that they do not consider acknowledgments of partial liquidations of the amount of a bond due, of the nature contemplated in this question, (by instalments it would seem,) to be of the description alluded to in Section 11, Regulation I. 1814, and therefore that it is not necessary that each separate acknowledgment of this kind should be executed on stamped paper of the value prescribed by the Section above quoted, to render it admissible in evidence of payment.*

4. In reply to the third query contained in your letter, the Court desire me to communicate to you their opinion, that they do not, in the transfer by sale, &c. of a house or other real property, consider an acknowledgment by the seller of the receipt of the purchase-money to the purchaser, written on the back of the original title-deeds, to be sufficient. The transaction in the case in question is evidently a distinct one between the parties concerned, and as such the Court are of opinion, that a separate acknowledgment should be executed on paper bearing the prescribed stamp, before it could be received in evidence in the course of a suit on the subject of such transfer.

June 1, 1821.

To the Court of Appeal for the Division of Benares, dated the 6th July, 1821.

No. 343.

1805.
Reg. XXIV.
Secs. 2 and 16.
1817.
Reg. VI. Sec. 2.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a certificate from your senior judge, under date the 15th of May last, together with the correspondence and Persian proceedings which accompanied it.

2. In reply I am directed to acquaint you, that the Court concur in the opinion expressed by the senior Member of the Board of Commissioners for the Upper Provinces in his letter, under date the 27th

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* A stamp is required if the amount is above 50 Rs.

April last, that claims, similar to those wished to be preferred by Mohummud Nuseer, are cognizable only by the revenue authorities, and that therefore the suit which the person above-mentioned is desirous of bringing in your court against the collector of Allahabad cannot be legally entertained by your court.

3. The Court observe, from the proceedings held by your senior judge on the 3rd April, 1821, that it is therein distinctly stated, that the pension granted to Mohummud Nuseer's father, Shah Jaroollah, was not in commutation of, or indemnification for land, so as to bring the case within the scope of the rule of Section 2, Regulation XXIV. 1803, which circumstance alone is sufficient to exclude the Court from receiving and trying such claim preferred against the Government.

4. The Court further remark, that even had Mohummud Nuseer's claim been receivable under the section of the Regulation above cited, it would have been inadmissible under the explanation given to that section by Section 2, Regulation VI. 1817, which declares, that it was not thereby intended to authorize the courts of civil justice to take cognizance of claims to any pensions of the nature alluded to in that section, the original title to which had not been previously recognized and confirmed by the revenue authorities, or by Government; whereas it would appear, from the Acting Secretary's letter to the Board of Commissioners, under date the 23rd February, 1821, that, in the case in question, the claim of Mohummud Nuseer and others had been adjudged by the Board of Commissioners in the year 1808, to be inadmissible.

5. As the Government cannot in such a case be sued, so it is equally clear from the 16th Section of Regulation XXIV. 1803, that the collector cannot be liable to an action for declining to pay an unauthorized pension.

July 6, 1821.

See No. 230.

Letter from the Judge of Midnapore, dated the 25th July, 1821.

No. 346.

1793.
Regs. III., IV. and XIX.

I request you will obtain the opinion of the Sudder Dewanny Adawlut on the following query, for my information.

2. Can a zemindar institute and maintain one and the same suit for the recovery of the revenue of land exceeding one hundred beegahs, held exempt from the payment of revenue, which may have been alienated by two or more grants prior to the 1st December, 1790; provided that each of the said grants does not exceed one hundred beegahs, and provided further, that the plaintiff, prior to the institution of the suit, has no means of ascertaining the exact quantity of land comprised in each of the said grants.

3. The grants alluded to are of course presumed to have been made since the 12th August, 1765, and not to have been subsequently confirmed by any competent authority.

To the Judge of Zillah Midnapore, in reply to the above, dated the 3rd August, 1821.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, under date the 25th ultimo, and in reply to acquaint you, that as the Court cannot find any provision or provisions in Regulations III., IV. and XIX. of 1793, which *primâ facie* can be construed as prohibitory of the institution of such a suit as supposed in your letter, they are of opinion, that it ought to be entertained, leaving its legality and the plaintiff's right to be decided upon investigation of the facts of the case.

August 3, 1821.

To the Judge of Zillah Allahabad, dated the 19th April, 1822.

No. 348.

1812.
Reg. V. Sec. 15.
1799.
Reg. VII. Sec. 9.

The Court of Sudder Dewanny Adawlut have had before them your letter, under date the 1st instant.

2. *In reply to your first query, I am desired to state, that in the opinion of the Court, individuals other than the alleged defaulter or his surety, who may lay claim to distrained property, are not entitled to the release of such property on furnishing security, nor can their claims to it be investigated, according to the provisions of Section* 15, *Regulation V.* 1812.

3. In reply to your second query, the Court direct me to acquaint you, that in the event of an alleged defaulter's property being sold from his inability to furnish security, he may have a summary action ; *but that any claim to such property preferred by a third person, not being the alleged defaulter or his surety, must be investigated in a regular suit, under Section* 9, *Regulation VII.* 1799.

April 19, 1822.

See Act X. 1846.

To the Judge of Zillah Midnapore, dated the 26th April, 1822.

No. 349.
1793.
Reg. XLV.
1819.
Reg. VIII.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 19th instant, requesting to be informed by whom the public sales of putnee and durputnee tenures in execution of decrees are to be conducted.

2. *In reply, I am desired to communicate to you, that in the opinion of the Court such sales should be conducted by the collector.*

April 26, 1822.

See Act IV. 1846.

To the Judge of Zillah Allahabad, dated the 24th January, 1823.

No. 351.
1793.
Reg. III. Sec. 8.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 8th instant, together with its enclosed copy of a petition of plaint instituted in your court by Ramchunder Waugh, and requesting the Court's opinion as to whether the suit is cognizable by you, "the debt having been originally incurred in Nagpore, the bond, which is the immediate ground of the present action, having been executed at Allahabad, and the defendants being at the date of the institution of the suit resident at Nagpore."

2. In reply, I am desired to acquaint you, that under the circumstances stated, the Court do not perceive any ground on which you can assume jurisdiction. The cause of action, that is to say the debt, originated in a foreign territory, where the defendants still continue to reside. The subsequent execution of the bond within your jurisdiction is immaterial to the present question, as that instrument cannot be termed the cause of action, being merely evidence of the debt, which is the cause of action.

3. The Court are therefore of opinion, that you should not take cognizance of the suit.

January 24, 1823.

See Circular Order, No. 142, 6th November, 1846.

To the Calcutta Court of Appeal, dated the 30th May, 1823

No. 354.

1819.
Reg. IX. Sec. 3, Clause 1.

1814.
Reg. XXVI. Sec. 2, Clause 6.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 24th instant, transmitting a copy of a proceeding held by the present judge of Burdwan, and requesting the Court's opinion, as to whether, under Clause 1, *Section* 3, *Regulation IX.* 1819, *you are competent to authorize him to admit a special appeal, which had before been rejected by the former judge.*

2. *In reply, I am desired to acquaint you, that you appear to have mistaken the intent and meaning of the clause and section quoted by you; which provision was merely intended to afford a facility to an appellant desirous of preferring a special appeal to the provincial court, in obtaining the admission of such appeal, by authorizing the zillah judge whenever, from peculiar circumstances, he may deem it desirable that the further appeal should be admitted, to certify to the superior court his opinion to that effect; and that it was by no means intended to confer on the provincial court the competency to authorize an admission by the zillah judge in his own court of a special appeal from the judgment of an inferior court, when under the general Regulations such appeal is inadmissible.*

3. *Under the circumstances of the case submitted by you, it appearing that the former judge rejected the petition of special appeal preferred after two decisions, I am desired to acquaint you, that his order must, by clause* 6, *Section* 2, *Regulation XXVI.* 1814, *be considered final, and that no special appeal can now be admitted.*

May 30, 1823.

To the Judge of Zillah Allahabad, dated the 26th September, 1823.

No. 355.

1821.
Reg. II. Sec. 12.

The Court of Sudder Dewanny Adawlut have had before them your letter, under date the 2nd instant, soliciting the opinion of this Court, as to whether an appeal from an order passed by a register fixed at any other than the sudder station, in a case of execution of a moonsiff's decree, taken up and decided by him under the authority vested in him by Section 12, *Regulation II.* 1821, *is to be made to the judge, in the same manner as if the case had been referred to him by the latter, under Clause* 2, *Section* 7, *or whether it must be made to the court of appeal; and also whether the special appeal from an order passed by such register, in appeal from a sudder ameen in a case of the kind*

referred to him for execution by the latter, under the section first alluded to, is to be made to the judge or court of appeal.

2. *In reply, I am desired to communicate to you the opinion of the Court, that in both cases the appeal lies to the judge, and not to the court of appeal.*

September 26, 1823.

To the Judge of Zillah Moradabad, dated the 24th October, 1823.

No. 356.

1814. Reg. XXIV. Sec. 9, Clause 6.

1817. Reg. XIX. Sec. 2.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 10th ultimo, requesting the opinion of the Court, as to whether a register having the additional powers specified in Regulation XXIV. 1814, *is authorized to try suits to an amount exceeding* 5,000 *rupees, and also, whether a register exercising the additional powers above specified, is authorized to try cases in appeal from the decision of the collector or assistant collector.*

2. *In reply to your first query, I am desired to communicate to you the opinion of the Court, that agreeably to the spirit and intent of Clause* 6, *Section* 9, *Regulation XXIV.* 1814, *a register specially empowered under that clause is authorized to try and decide any suits referred to him by a judge, whether instituted under the provisions of Section* 2, *Regulation XIX.* 1817, *or under the rules previously existing.*

3. *With reference to your second query, I am desired to state, that you have not been sufficiently specific, and to direct, that you will name the description of decisions passed by a collector, (quoting the particular Regulations under which they are passed,) regarding which you request the opinion of the Court, as to whether or not they are cognizable by a register especially empowered.*

October 24, 1823.

To the several Courts of Appeal in the Western and Lower Provinces, dated the 19th December, 1823.

No. 359.

1793. Reg. XV. Sec. 6.

1803. Reg. XXXIV. Sec. 5.

The Court of Sudder Dewanny Adawlut having reason to believe, that a variance of opinion exists among the different courts as to the intent and meaning of the provision contained in Section 6, Regulation XV. 1793, and the corresponding provision in Section 5, Regulation XXXIV. 1803, I am desired to call your attention to the precedent established in the cause Musst. Mukhun, appellant, *versus* Mohunt Rampersaud, respondent, decided on the 13th of July, 1808,

by two judges of the Sudder Dewanny Adawlut, (page 172 of the printed civil reports*,) and at the same time to acquaint you, that the Court at large have resolved to adhere to the construction contained in that decision; namely, that the restriction contained in the section above quoted, against a judgment for interest exceeding the amount of the principal, when the legal interest shall have accumulated so as to exceed the principal, is not applicable when the accumulation is subsequent to the institution of a suit; and therefore not ascribable to procrastination on the part of the creditor.

2. You will be pleased to furnish the several judges within your division with a copy of this letter for their information and guidance.

December 19, 1823.

See No. 690 and page 296, Sudder Dewanny Reports, 1847, 21st June.

To the Patna Court of Appeal, dated the 9th April, 1824.

No. 363.

1793. Reg. XLVII. Sec. 2. 1814. Reg. XXV. Sec. 9.

The Court of Sudder Dewanny Adawlut have had before them your letter, under date the 1st instant, requesting the Court's opinion as to the proper mode of disposing of two special appeals, regarding which your first and second judges differ, and in the trial of which your third and fourth judges are incapacitated from sitting, they having formerly decided the cases in their respective capacities of judge and register of zillah Tirhoot.

2. *In reply, I am directed to acquaint you, that the casting voice conferred by Section* 2, *Regulation XLVII.* 1793, *having been taken away by Section* 9, *Regulation XXV.* 1814, *and no new rule enacted by which to give the senior judge a casting voice, it is essential, that he should concur with some one of the other judges. The decision in both cases must necessarily be postponed, until some other judge joins your court.*

3. *The same course, the Court observe, must be adopted in the case to which you allude, in the second paragraph of your letter, viz. supposing all the four judges of your court to be of different opinions.*

April 9, 1824.

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* Page 242, Vol. I. of the Bishop's College Press Edition.

To the Judge of Zillah Bhaugulpore, dated the 25th June, 1814.

No. 366.
1824.
Reg IV.

I am directed by the Court of Sudder Dawanny Adawlut, to acknowledge the receipt of your letter of the 14th instant, and its enclosures, requesting to know whether Mr. W. B. Jackson, the officiating 2nd register of your court, is authorized to register deeds while officiating as collector of the district, or whether he must be re-appointed to act in that capacity, under the provisions of Regulation IV. 1824.

2. As Mr. Jackson has been already appointed to officiate as register of deeds, the Court do not think it necessary that you should re-appoint him to officiate in the capacity, whilst acting as collector, under the Regulation above-mentioned.

June 25, 1814.

To the Judge of Zillah Moradabad, dated the 2nd July, 1824.

No. 367.
1803.
Reg. VII. Sec. 29, Clause 3.

I am directed by the Court of Sudder Dewanny and Nizamut Adawlut to acknowledge the receipt of your letter of the 11th ultimo, requesting the Court's opinion, as to whether the civil court is competent to receive a suit for actual costs against a plaintiff whose complaint had been dismissed in a criminal court.

2. In reply, I am directed to inform you, that the Court are of opinion, that the civil courts are not authorized to take cognizance of such suits, as Clause 3, Section 29, Regulation VII. 1803, authorizes the criminal courts to adjudge a reimbursement of costs actually incurred upon a prosecution before them by either of the parties thereto, if they shall consider such reimbursement just and equitable.

3. The Court however are of opinion, that if a magistrate, from oversight, have omitted to order a reimbursement of costs to the party whom he may think justly entitled thereto, he is at liberty to supply the omission by a subsequent order, upon application from the party for that purpose.

July 2, 1824.

Sel. Rep., Vol. 7, page 40, 2nd July, 1841.

To the Judge of Zillah Allahabad, dated the 2nd September, 1824.

No. 368.
1813.
Reg. VI.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 19th ultimo, requesting to know whether it is allowable, during the vacation, to take

cognizance in the dewanny court of cases transferred from the foujdaree under Regulation VI. 1813.

2. *In reply, I am directed by the Court to inform you, that you cannot take up the cases in question under the Regulations as they at present stand. A Regulation has however been passed, and will speedily be published, for enabling the magistrates to take summary cognizance of cases of forcible dispossession from or disturbance in the possession of land or other property, subject to a regular suit in the civil court.*

September 2, 1824.

See Act IV. 1840.

Extract from a Letter to the Bareilly Court of Appeal, dated the 21st September, 1824.

No. 369.

1803.
Reg. IV. Sec. 12, Clause 6.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from your senior judge, dated 21st ultimo, in reply to my letter of the 23rd July last, regarding his rejection of a petition of appeal, without first having called on the petitioner to show cause why he did not furnish security for costs; and also containing his observations regarding the cases of Zorawur Singh.

2. *With regard to the question submitted by your senior judge, "whether, under the sixth clause of Section* 12, *Regulation IV. of* 1803, *a superior court is bound to receive a petition of appeal from the decision of an inferior court in any regular suit, when the petitioner, though not a pauper, omits to file along with it security for the costs of other party," the Court are of opinion that although no appeal can be admitted before the security for costs be filed, yet the superior courts are competent, (and such is the practice of this Court,) provided good and sufficient reason be shown why the security was not filed with the petition, to receive the petition, and to allow the petitioner sufficient time to furnish the security; which course of proceeding appears to have been adopted by your late fourth judge in the cause of Mukundram.*

September 21, 1824.

See Act III. 1845.

Extract from a Letter to the Judge of Zillah Furruckabad, dated the 21st September, 1824.

No. 370.
1806.
Reg. XVII.

3. The Court observe, that the spirit and intention of Regulation XVII. of 1806, appear applicable to every description of real property, as well as to landed estates.

September 21, 1824.

To the several Provincial, Zillah, and City Courts, &c., dated the 31st December, 1824.

No. 372.
1806.
Reg. II. Sec. 11.

Doubts having been entertained whether the provisions for the relief of insolvent debtors, contained in Regulation II. 1806, should be considered applicable to the cases of persons in confinement for arrears of rent, I am desired to acquaint you, that, in the opinion of the Court, the rules contained in Section 11, Regulation II. 1806, extend to all persons in confinement under decrees, regular or summary, of the civil courts; but not to those in confinement under any process in cases wherein the decree of a civil court has not been passed.

2. You are accordingly desired to adopt this construction in future, whatever construction may have been heretofore given in your court to the section in question.

December 31, 1824.

See Nos. 24 and 319.

To the Dacca Court of Appeal, dated the 4th February, 1825.

No. 375.
1806.
Reg. II. Sec. 3.
1793.
Reg. IV. Sec. 11.

The Court of Sudder Dewanny Adawlut have had before them a letter from the officiating judge of zillah Sylhet, dated the 17th ultimo, forwarding a copy of his correspondence with your court, relative to the practice of defendants in regular civil suits filing their answers at any stage of the proceedings antecedent to final decisions.

2. On the subject of that reference, I am desired to acquaint you, that the Court are not prepared to adopt to its full extent the principle laid down in your letter to the address of Mr. Turquand, dated the 13th ultimo, namely, that "a defendant in a regular civil suit is entitled to file his answer to the plaint at any stage of the trial antecedent to final decision, although the inquiry may have been commenced *ex parte*." On the contrary, under a strict construction of the rule contained in Section 3, Regulation II. 1806, the cause should be proceeded on *ex parte*, notwithstanding the defendant's

subsequent appearance, if he do not appear, either in person or by vakeel, within the time limited in the proclamation prescribed by Section 11, Regulation IV. 1793.

3. The Court however are of opinion, that consistently with the spirit of the rule above quoted, whenever a defendant appears, at any time antecedent to the decision of the suit, and assigns satisfactory reasons, to show that the default was not wilful, he should be permitted to file his answer, notwithstanding the commencement of an *ex parte* investigation ; and to adduce evidence in support of it, if the merits of the case appear to require it.

4. You will be pleased to forward a copy of this letter to the officiating judge of Sylhet, for his information and future guidance.

February 4, 1825.

To the Judge of Zillah Meerut, dated the 8th April, 1825.

No. 376.

1814.

Reg. XXVI. Sec. 12, Clause 3.

The Court of Sudder Dewanny Adawlut have had before them your letter of the 9th ultimo, suggesting the expediency of the fines levied in cash under the third clause of Section 12, Regulation XXVI. of 1814, being paid into the court, by the persons fined presenting a petition on stamped paper equal to the amount of the fine.

2. I am directed by the Court to inform you, that they are not aware of any necessity for the adoption of the measure proposed by you, as a little precaution would, they conceive, be sufficient to prevent irregularity, or fraud in crediting the fine referred to, and your proposition could not be adopted without a new Regulation ; which, however, you are at liberty to propose in the prescribed form, if you think it expedient.

April 8, 1825.

To the Agent to the Governor General, Moorshedabad, dated the 8th April, 1825.

No. 377.

1812.

Reg. IV.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, under date the 31st ultimo, requesting to know if a suit can be instituted in the manner prescribed by Regulation IV. 1812, in favor of His Highness the Nuwab Nizam.

2. In reply I am directed to inform you, that under the provisions of the Regulation adverted to, the solution of your question depends upon whether Government consider His Highness the Nizam

in the light of a sovereign prince or not, and that you should therefore apply direct to Government for information on that point.

April 8, 1825.

To the Judge of Zillah Tirhoot, dated the 15th April, 1825.

No. 380.

1819. Reg. VIII. Secs. 18 and 19.

1799. Reg. VII. Sec. 15, Clause 4.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 25th ultimo, requesting the opinion of the Court, as to whether the explanation of Section 15, Regulation VII. 1799, as given in the latter sections of Regulation VIII. 1819, extends beyond Bengal; and whether a written engagement is necessary to enable a person to sue under Regulation VII. 1799.

2. In reply to your first query, I am desired to refer you to Section 22, Regulation VII. 1822, by which Sections 18 and 19, Regulation VIII. 1819, are extended to all the provinces immediately subject to the presidency of Fort William.

3. In reply to your second query, I am directed to state, that the Court do not hold the existence of a kubooleut, or written engagement on the part of the ryot, to be essentially required to enable the landholder to institute a summary suit against him under Regulation VII. of 1799; but that, on the contrary, the courts are competent to decree such arrears as may be proved to be *bonâ fide* and equitably due by an examination of the vouchers and accounts of the parties, as prescribed by Clause 4, Section 15, Regulation VII. 1799.

April 15, 1825.

See No. 574.

To the Judge of the Southern Division of Zillah Bundlecund, dated the 27th May, 1825.

No. 386.

1803. Reg. XXVII. Sec. 23.

I am desired by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, dated the 3rd instant, soliciting the opinion of the Court, as to whether it is intended that stamped paper should be used in causes tried by the zillah courts, under Section 23, Regulation XXVII. of 1803; and if so, whether the courts are to be guided, in the value of the stamped paper, by the amount of the arrears of revenue due by the defaulter, or by the amount of the annual produce of the estate, for the confiscation of which the collector sues.

2. In reply, I am desired to communicate to you the opinion of the Court, that in the cases in question stamps should be used; the

value of which should be calculated according to the amount of the annual jumma of the estate, for the confiscation of which the collector sues.

May 27, 1825.

See No. 808.

To the Benares Court of Appeal, dated the 24th June, 1825.

No. 395.

1793.
Reg. XVI. Sec. 5.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 3rd instant, requesting their opinion as to the necessity or otherwise of the whole, or a majority merely, of the members associated in cases referred to arbitration coinciding in the decision returned by them; and stating the difficulty which occurs in many cases before your court, where no umpire has been named, and the arbitrators are divided among themselves.

2. In reply, I am desired to acquaint you, that whenever a suit shall be submitted to arbitration, the court in which it may have been instituted is required, previous to the arbitrator or arbitrators entering upon the arbitration, to cause the parties to agree to some one of the provisions detailed in Section 5, Regulation XVI. 1793, for completing the award, in the event of the arbitrators' not delivering it by the limited time, either from disagreement or other cause; and that, where these preliminary engagements may not have been specified in the bond and the arbitrators may not be unanimous in their decision, their proceedings must of course be considered void and of no effect, and the case must be tried *de novo*; but I am desired to observe, that no difficulty can occur where the precautionary measures prescribed by the Regulation, as to the conditions of the bond, have been duly executed.

June 24, 1825.

To the Bareilly Courts of Appeal and Circuit, dated the 29th July, 1825.

No. 397.

1803.
Reg. XIX. Sec. 3.

The Courts of Sudder Dewanny Adawlut and Nizamut Adawlut have had before them your letter, dated the 7th instant, with its enclosure from the judge and magistrate of Bareilly, requesting the opinion of the Court as to whether a person named Dubois, who was born at Chandernagore of European parents, should be considered an European, and consequently subject to the prohibition contained in Section 3, Regulation XIX. 1803.

2. In reply, I am desired to communicate to you the opinion of the Court, that the parents of the individual above-named having

been Europeans, the place of his birth is immaterial; and that he should therefore be considered an European.

July 29, 1825.

To the Acting Judge of Zillah Sylhet, dated the 5th August, 1825.

No. 398.
1800.
Reg. I. Sec. 1.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 25th ultimo, requesting to be informed, whether a minor can execute a power of attorney to a constituted vakeel of the court to defend a suit instituted against the minor's father in his life time, or whether the suit must remain for investigation until the minority of the boy expires.

2. By Section 1, Regulation I. of 1800, it is provided, that whenever any objections to conferring the trust on the next of kin may exist, the judge shall nominate some other person of character and respectability to act as guardian of the minor. But in the case out of which your reference originated, it appears, that the minor has no relation whatever: under which circumstances, the Court are of opinion, that the provisions of the rule above quoted might, by analogy, be extended to his case, and that you should select some competent person to act as his guardian.

3. You will be pleased therefore to make a selection of some individual accordingly, attending to the rules laid down in Regulation I. of 1800; and the person so appointed by you will be competent to nominate a vakeel to conduct the defence of his ward.

August 5, 1825.

To the Judge of Zillah Dinagepore, dated the 12th August, 1825.

No. 400.
1814.
Reg. XXIII. Secs. 19 and 29.
1821.
Reg. II. Sec. 4.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 22nd ultimo, noticing certain malpractices by the moonsiffs of your court, in employing peons to levy illegal sums on subpœnas, et cætera; and requesting the Court's opinion as to whether the moonsiffs are competent to try suits for rents of land alleged to be due, or for the value of crops, trees, and fruits.

2. *On the first point, I am desired to observe, that it should be your duty to see, that in causing notices to be served, the moonsiffs adhere to the existing Regulations, by allowing the*

plaintiff to serve the notice himself, or through any other person whom he may choose to employ for that purpose, and that the remuneration of persons so employed be perfectly voluntary; taking care to punish any violation of his duty in this particular on the part of a moonsiff.

3. *You appear to be of opinion, that the employment of established peons in serving the notices from the moonsiff's cutcherree, and the fixing certain rates of allowance to be received by such peons, would be desirable. On this point I am desired to observe, that you are at liberty, should you think the existing rules are objectionable, or that better ones can be substituted, to submit your sentiments in the draft of a Regulation through the proper channel, agreeably to the provisions contained in Regulation XX.* 1793.

4. *On the other point, namely, the competency of the moonsiffs to try suit for rents of land, or for the value of crops, trees, and fruit, I am desired to call your attention to Section* 4, *Regulation II.* 1821, *the provisions of which you seem to have overlooked, and which expressly authorize the trial of suits for rent by the moonsiffs. With respect to suits for the other descriptions of property noticed by you, I am directed to observe, that if the suit be instituted bonâ fide for the value of crops, trees, or fruit, or other description of personal property detached from, and involving no question of right as to real property, it is cognizable by the moonsiffs, but not otherwise.*

August 12, 1825.

See Regulation V. 1831 *and Regulation VII.* 1832.

To the Calcutta Court of Appeal, dated the 7th October, 1825.

No. 406.

1814. Reg. XXVI. Sec. 12, Clause 1.

1806. Reg. I. Sec. 3.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 24th ultimo, submitting copies of a letter from the judge of zillah Burdwan, and of its enclosure from the acting register of that district, relative to a difference of opinion, which has arisen between those two officers on certain points connected with the suit of Ramdulal Bundojia, appellant, versus Ramdulal Mudduck, respondent.

2. *The question at issue is stated by the judge as follows: Is it competent to a court to dismiss a case on default on the first hearing, after a party in it may have appeared to answer for a default, which he was called upon to do by the circular order of the Sudder Dewanny Adawlut, dated 5th November,* 1812, *without his being allowed the benefit of the notice prescribed in Clause* 1, *Section* 12, *Regulation XXVI.* 1814?

3. *In reply to this question, I am desired to state, that it is clearly competent to a court to dismiss a case on default on the first hearing, after the notice prescribed by this Court's Circular Order, dated the 5th of November,* 1812; *provided, (as is stated by the acting register to have been the case in the present instance,) the defaulting party be not able to show reasonable cause for the default; and that it is not necessary in such case to issue the notice prescribed in Clause* 1, *Section* 12, *Regulation XXVI.* 1814; *that notice, as justly remarked by the acting register, not being intended to call on the parties to file their pleadings; but that they should be prepared to file their exhibits, and name their witnesses to prove what they have set forth in their pleadings. Had the defaulting party shewed reasonable cause, and on that ground been admitted to plead, he, after pleading, of course becomes entitled to the notice of eight days, which the above cited rule prescribes.*

4. *The points on which the acting register solicits the opinion of the Court, as stated in the 8th and 9th paragraphs of his letter, are as follows: In cases decided ex parte, under Section* 3, *Regulation II. of* 1806, *is it necessary that the notice prescribed by Section* 12, *Regulation XXVI. of* 1814, *should have been given, to render that decision legal? If a plaintiff in an original suit defaults at any stage of the proceedings previous to the completion of the pleadings, and neglects to proceed, although called upon by the notice required by the Circular Order of the Sudder Dewanny Adawlut, dated 5th November,* 1812, *is it necessary that the notice prescribed by Section* 12, *Regulation XXVI. of* 1814, *should be given previous to passing an order of dismissal?*

5. *In reply to those questions, I am desired to observe, that the notice above alluded to is not requisite in the latter of the cases stated, but is requisite in the former to the plaintiff, whom the circumstance of the case being tried ex parte does not exempt from the necessity of proving his suit, and who, of course therefore, is entitled to due notice before he is compelled to exhibit his proof.*

6. *I am directed to add, that the Court, who have not had the full proceedings before them, do not mean to interfere at all in the particular case to which this correspondence relates: the respondent, if dissatisfied with the judge's order for restoring the suit to the file, is of course at liberty to appeal against it to your court.*

7. *You are requested to furnish the judge of Burdwan, and the acting register, with a copy of these opinions for their information and guidance.*

October 7, 1825.

To the Judge and Magistrate, Southern Division of Bundlecund, dated the 11th November, 1825.

No. 407.
1825.
Reg. VIII. Sec. 2.

I am desired by the Courts of Sudder Dewanny and Nizamut Adawlut, to acknowledge the receipt of your letter, under date the 25th ultimo, requesting to be informed, whether the provisions of Section 2, Regulation VIII. 1825, are meant to be applicable to individuals usually attendant in every court, civil and criminal, under the designation of omedwars, who are neither directly nor indirectly private servants of the judge and magistrate.

2. In reply, I am desired to acquaint you, that the prohibition contained in the Regulation above quoted extends to all individuals not being duly constituted officers of the court, and that the latter description of persons alone can legally be employed in the transaction of any official duties. The enactment in question, however, need not, in the opinion of the Court, be construed to preclude persons other than the regularly appointed officers of the courts from taking copies of public documents, with the sanction of the judge and magistrate, for the use of private individuals, at the expense of those who may employ them.

3. Should you deem the provisions of Regulation VIII. 1825, under the construction now given, to be objectionable, you are of course at liberty to submit, through the prescribed channel, and with due observance of the provisions of Regulations I and IX. of 1803, any proposed modification of them, which in your opinion may be expedient and proper.

November 11, 1825.

To the Acting Register and Joint Magistrate of Futtehpore, dated 2nd December, 1825.

No. 408.
1814.
Reg. XXVI. Sec. 16, Clause 4.
1824.
Reg. XVI.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 14th ultimo, requesting their opinion as to whether, under the provisions of Regulation XXVI. 1814, you are permitted to allow unauthenticated copies of proceedings and papers to be taken from your office on plain paper.

2. In reply, I am desired to acquaint you, that as clause 4, Section 16, Regulation XXVI. 1814, (which authorises individuals to make, with the permission of the courts, copies of papers for their private use, and at their own expense, on any paper which they may prefer,) has not been rescinded by the provisions of Regulation XVI. 1824, you are at liberty to permit the continuance of the same practice.

December 2, 1825.

See Reg. X. 1829.

To the Judge of Zillah Etawah, dated the 2nd December, 1825.

No. 409.
1814.
Reg. I. Sec. 11.
Circular Order Sudder Dewanny Adawlut, 20th April, 1818.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 12th ultimo, together with its enclosures, bringing to the Court's notice, a practice which has prevailed in your court, of calculating the value of stamps upon the principal only of a suit without interest, and representing the loss to which Government has been subjected by the practice in question.

2. In reply, I am desired to acquaint you, that you are perfectly correct in your construction of the Court's Circular Order, bearing date the 20th of April, 1818, which had no reference whatever to the value of the stamp paper for plaint, to be used in suits instituted for the recovery of money, principal and interest; and consequently that the Persian proceeding of your predecessor, dated the 7th of July, 1818, was clearly founded on a misapprehension of the order above quoted, which misapprehension you will of course take the requisite measures to remove.

3. With reference to the suggestion contained in the fourth paragraph of your letter, namely, that letters from this office should be accompanied by a Persian translation for the use of the amla, I am directed to observe, that the Court do not deem that measure to be either necessary or expedient.

December 2, 1825.

To the Judge of Zillah Dacca Jelalpore, dated the 16th December, 1825.

No. 410.
1814.
Reg. II. Sec. 3, Clause 1.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 10th instant, requesting to be informed, whether you are competent to entertain a suit instituted by a minor and his guardian, against the collector, for having, under the authority of the court of wards, disposed of the minor's estate.

2. In reply, I am desired to acquaint you, that the Court are not aware of any Regulation which debars a minor, under these circumstances, from the same rights and privileges with respect to the mode of seeking redress for an alleged grievance, as are enjoyed by the community generally; and that in the Court's opinion he is, with his guardian, fully competent to institute a suit of the nature alluded to.

3. It will of course be the duty of the judge, to whom the petition of plaint is preferred, to forward the same under the first clause of Section 3, Regulation II. 1814, for the consideration of the Board of Revenue, and to proceed to the trial of the suit under the

fourth clause of the above section, in the event of its not being deemed requisite by that authority that direct redress should be afforded.

December 16, 1825.

To the Moorshedabad Court of Appeal, dated the 27th January, 1826.

No. 412.

1824. Reg. XVI.

1814. Reg. I. Sec. 11.

The Court of Sudder Dewanny Adawlut have had before them your officiating judge's letter, dated the 23rd instant, requesting the Court's construction of two points of Regulation XVI. 1824.

2. *In reply to his first question, I am desired to communicate to you the opinion of the Court, that in the case of powers of attorney, filed previous to the promulgation of the Regulation referred to, copies thereof should be written on stamp paper of the value used for the original instrument, under the Regulations in force at the time such original instrument was executed.*

3. *The Court are at a loss to furnish you with a satisfactory reply to the second question, as there does not appear to be any rule extant by which the value of security bonds for a specific amount should be determined; Section* 11, *Regulation I.* 1814, *having been rescinded by Section* 3, *Regulation XVI.* 1824, *and being the only rule which was applicable to the case.*

4. *A copy of your officiating judge's letter, and of this reply, will be submitted to Government for such orders as may be deemed necessary on the subject.*

January 27, 1826.

See No. 431 *and Regulation X.* 1829.

To the Moorshedabad Court of Appeal, dated the 3rd March, 1826.

No. 413.

1814. Reg. XXVI. Sec. 8, Clauses 7 to 10.

The Court of Sudder Dewanny Adawlut have had before them your officiating judge's letter, dated the 20th ultimo, with its Persian enclosure, stating that it has been the practice of your court, in calculating the periods limited for admitting regular appeals preferred direct to the court, not to allow the deduction of the interval, between a party furnishing the prescribed stamp paper in the zillah court, and the copy of the decree being tendered or delivered to him, as prescribed by Clauses 7, 8, 9, 10, Section 8, Regulation XXVI. 1814;

and stating also his opinion, that it was decidedly intended by Clause 10 to provide for the deduction in question.

2. In reply, I am desired to observe, that the Court entirely concur with your officiating judge in the construction which he has adopted, and that the deduction in question should be considered applicable to all, regular as well as summary and special, appeals.

March 3, 1826.

See No. 241.

Extract from a Letter to the Secretary to Government in the Judicial Department, dated the 14*th April*, 1826.

No. 416.
1824.
Reg. XVI.

I am desired by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, dated the 6th instant, together with its enclosed copy of a letter from the judge of zillah Meerut, requesting information as to whether the rules contained in Regulation XVI. 1824, *relative to mookhtarnamas, should be considered applicable to those documents filed in the courts of the moonsiffs.*

2. *In reply, I am directed to communicate to you the opinion of the Court, that it never could have been intended to subject mookhtarnamas filed in the courts of the moonsiffs to the heavy stamp duty, prescribed by the Regulation above quoted.*

April 14, 1826.

See Regulation X, 1829.

To the Moorshedabad Court of Appeal, dated the 28*th April*, 1826.

No. 417.
1814.
Reg. XXVII. Sec. 21.
1793.
Reg. VII. Sec. 8.

The Court of Sudder Dewanny Adawlut have had before them your officiating judge's letter, dated the 16th ultimo, enclosing copies of two petitions from Kasheepershaud Rai, of your court's proceedings, and of a correspondence between your court and the judge of zillah Rajshahye, regarding certain doubts entertained by Mr. Pringle upon the legality of an order passed by your court on a petition presented by the mookhtar of Rajinder Mitter.

2. In reply, I am desired to observe, that the question which has given rise to this reference seems to be simply as to the legality or otherwise of the practice of permitting mookhtars to file vakalutnamas, in suits wherein their principals are parties ; and to acquaint you, that the opinion entertained by you on the subject, corresponds in every respect with the view which this Court have taken of it.

3. The Court observe, that to execute *per alium*, [that other being duly authorized,] is to execute *per se*; and that the Regulations consider these acts as one and the same; as is clear from the more explicit wording of Section 13, Regulation XXVII. 1814, which prescribes the performance of certain acts to be done by the party or his authorized agent. Although the wording of Section 8, Regulation VII. 1793, is not different from that of Section 21, Regulation XXVII. 1814, yet, from the time of its enactment (two and thirty years ago), vakalutnamas executed by agents duly authorized, have, by all the courts, been regarded as equally good and valid with those executed by the parties themselves.

4. The Court therefore are of opinion, that it would be inexpedient to put a stop to a practice which has been sanctioned by universal usage, which is attended with much convenience to parties in suits, and which the Regulations in force do not appear to prohibit.

5. You will be pleased to furnish the judge of Rajshahye with a copy of this letter, for his information and future guidance.

April 28, 1826.

See No. 92.

To the Moorshedabad Court of Appeal, dated the 5th May, 1826.

No. 418.

1814.

Reg. XXVII. Sec. 31.

The Court of Sudder Dewanny Adawlut have had before them your officiating judge's letter, dated the 24th ultimo, requesting to be informed, whether it is competent to the courts to order the whole fees to be paid to the vakeels in cases adjusted by razeenama after evidence has been taken; or whether the rule in Section 31, Regulation XXVII. 1814, for giving one-half the established fee in cases so settled, after the requisite pleadings shall have been filed, is applicable after evidence has been taken.

2. In reply I am desired to communicate to you, for the information and guidance of your officiating judge, that in cases adjusted by razeenama after evidence has been completed, the vakeels are entitled to their whole fees, in like manner as if no razeenama had been admitted.

May 5, 1826.

See Act I. of 1846.

To the Judge of Zillah Rajshahye, dated the 26th May, 1826.

No. 420.

1814.
Reg. XXVII. Sec. 37, Clause 3.
1824.
Reg. XVI.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 19th instant, submitting for the consideration and opinion of the Court, the following question, namely: in causes where the Hon'ble Company in their commercial capacity are one of the parties, is the written order on unstamped paper, filed as directed in Clause 3, Section 37, Regulation XXVII. of 1814, sufficient legal authority for the vakeel of Government to conduct the suit or defence on the part of the Company? Or, if Azeem prosecute Kurreem Oolla, the agent on the part of the commercial resident of Rungpore at the Bograh factory, and, on the plaint being forwarded to the Board of Trade, under Regulation II. of 1814, it is resolved that the suit shall be defended by the Company, is an unstamped order, prepared according to Clause 3, Section 37, Regulation XXVII. 1814, by the commercial resident of Rungpore in his official capacity, sufficient authority for the Government vakeel to conduct the defence?

2. In reply, I am desired to communicate to you the opinion of the Court, that Clause 3, Section 37, Regulation XXVII. 1814, not containing any mention of stamp paper, and not having been rescinded by any subsequent enactment, such order having always hitherto been received by the courts though upon unstamped paper, and the words, "commercial transactions," in the appendix to Regulation XVI. 1824, not appearing to the Court to be properly construable as inclusive of the order of Government, or an officer of Government, to plead in a suit in which Government is a party, the Court are of opinion that such order may be accepted as a sufficient authority, though written upon unstamped paper.

May 26, 1826.

To the Judge of Zillah Allahabad, dated the 2nd June, 1826.

No. 421.

1812.
Reg. V. Sec. 15.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 23rd ultimo, requesting the opinion of the Court on the following point. An individual, whose property is attached for a balance of revenue, executes the bond required by Section 15, Regulation V. 1812, but omits to prefer his suit within the prescribed period, and the amount of the demand is in consequence realized from him or his surety: can a suit subsequently instituted by him, to try the justness of the claim, be decided on a summary inquiry under the spirit of Section 17 of that Regulation, or must such suit be a regular one?

2. In reply, I am desired to communicate to you the opinion of the Court, that although the omission on the part of the tenant and

his surety to institute a suit, within the period named in the bond, subjects his property to re-attachment and sale, according to the ordinary process, yet it does not deprive him or his surety of the benefit of a summary suit, for the recovery of damages on account of injury sustained by the illicit sale of the property.

June 2, 1826

See Sudder Dewanny Reports, 10th May, 1849.

To the Judge of Zillah Allahabad, dated the 14*th July,* 1826.

No. 425.

1824.
Reg. XIV.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 26*th ultimo, requesting to be informed, whether, in referring summary suits to a collector, under Regulation XIV.* 1824, *it is necessary, that each individual case should be accompanied by a separate English precept.*

2. *In reply, I am desired to communicate to you the opinion of the Court, that under Clause* 2, *Section* 2 *of the Regulation above cited, it is necessary, that each case referred should be accompanied by a separate precept.*

July 14, 1826.

See Regulation VIII. 1831.

To the Calcutta Court of Appeal, dated the 28*th July,* 1826.

No. 427.

1819.
Reg. II. Sec. 30, Clause 1.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 19th of May last, requesting their opinion on the following points:

First.—Whether in a suit brought in the first instance in a zillah court, under Clause 1, Section 30, Regulation II. 1819, and decided by that court under Clause 6, after receiving the report of the collector made in pursuance of the latter clause, a regular appeal is open to the provincial court from such decision, or whether the appeal can be admitted on special grounds only.

Secondly.—Supposing the zillah court to try and decide a suit instituted under the clause and section above cited, without making the reference therein required, does such omission invalidate the whole proceeding and decision of the zillah court, and render a new trial necessary *ab initio*, or what is the proper course to correct the error?

2. On the first question, I am desired to communicate the opinion of the Court, that the parties in the suits therein referred to

are entitled, as a matter of right, to a regular appeal from the decision of the zillah court; and on the second question, that under the circumstances therein stated, a new trial would not be necessary, but that, on such occasions, your court should send back the case to the court below for re-trial, after having obtained the collector's report; this course of proceeding appearing to be a sufficient remedy for the defect, without exposing the parties to any increase of expense.

July 28, 1826.

See No. 455.

To the Judge of Zillah Midnapore, dated the 4th August, 1826.

No. 428.
1793.
Reg. XXXVI.
1814.
Reg. XVI.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 25th ultimo, with its enclosure from your register, requesting the opinion of the Court as to the description of stamp paper on which copies, required by individuals, of deeds registered under Regulation XXXVI. 1793, should be written, in conformity with Regulation XVI. 1814.

2. In reply, I am desired to observe, for the information and guidance of your register, that supposing such deeds not to have been filed in any court of judicature, and that copies of them are required from the office established for the registry of deeds, such copies must, agreeably to the rule for copies contained in the Regulation last quoted, be written either on paper bearing the same stamp as the original deed, or on paper of the value of eight *rupees*, according as the party taking out the copy may, or may not, have a direct interest in the subject matter of the deed.

3 *The Court however cannot concur with your register, that it must follow from this construction, that all copies of deeds which may have been filed in civil suits, must also be written on stamp paper of the value of eight rupees; inasmuch as that, having been filed, they become records, which are especially exempted from the description of stamps required for other deeds, not of record.**

August 4, 1826.

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* See Regulation X. of 1829, Schedule A, Articles 20 to 23, and Schedule B, Article 3.

To the Judge of Zillah Shahabad, dated the 4th August, 1826.

No. 429.

1793.
Reg. IV. Sec. 2.

1814
Reg XXVI. Sec. 5, Clause 4.

The Court of Sudder Dewauny Adawlut have had before them your letter, dated the 22nd ultimo, with its enclosure from your register, requesting the Court's opinion relative to the construction of Section 2, Regulation IV. 1793, *and Clause* 4, *Section* 5, *Regulation XXVI.* 1814.

2. *In reply, I am desired to observe, for the information and guidance of your register, that the former rule is not modified by the latter, and that no plaint can legally be filed, but by the parties, or their vakeels duly empowered.*

3. *The Court, however, do not deem it necessary, that the plaintiff should be nonsuited in a case where the plaint may have been irregularly filed, as described by your register* [*viz. by a mookhtar:*] *in such cases they are of opinion, that the parties should be instructed to appoint vakeels to conduct their suit, or attend and conduct them in person: on their complying with which instructions, the cases should be tried and decided, as if the irregularity had not occurred.*

August 4, 1826.

See Act I. of 1846, *Sudder Dewanny Reports,* 14*th March,* 1853, *p.* 295.

To the several Courts of Appeal, dated the 22*nd September,* 1826.

No. 431.

1814.
Reg. I. Sec. 11.

1824.
Reg. XVI. Sec. 3.

It having been brought to the notice of the Court of Sudder Dewanny Adawlut, that there is no rule extant by which the value of security bonds for a specific amount should be determined; Section 11, *Regulation I.* 1814, *having been rescinded by Section* 3, *Regulation XVI.* 1824, *and being the only rule which was applicable to the case; I am desired to communicate to you the opinion of the Court, that under such circumstances, instruments of the nature above specified should be received on plain paper, until the Government may declare, by a formal enactment, the amount of the stamp paper on which they should be executed.*

2. *You will be pleased to furnish the several judges within your division, with a copy of the above construction for their information and guidance.*

September 22, 1826.

See Regulation X. 1829, *Article* 1, *Schedule B.*

No. 432.

1805.
Reg. II.

In the case of Murdun Sing and others versus Nujub Ali and others, it was held, that notwithstanding the sixty years mentioned in Regulation II. 1805, no claim can go back beyond the date of the cession of the province ; and this, without reference to defendant's possession having been fair or unfair.

September 26, 1826.

See No. 478.

Extract of a Letter to the Judge of the Southern Division of Bundelcund, dated 26th November, 1826.

No. 438.

1824.
Reg. XVI. Sec. 6. Clause 3.
Sec. 7, Clause 1.

PARA. 3. The only point upon which the Court deem it necessary to pronounce an opinion is, as to whether the register was, or was not, competent to decline registering a deed brought to him for that purpose on paper not bearing the prescribed stamp ; and on this point I am desired to observe, with reference to the provisions contained in clause 3, Section 6, Regulation XVI. 1824, and clause 1, Section 7, of the same enactment, to which your attention is particularly directed, that it was not only competent to, but incumbent on the register to decline registering an instrument not drawn upon the paper required by that Regulation, provided that, with reference to Section 8, the irregular stamp does not equal or exceed in value the stamp which ought to have been used. If it equal or exceed the regular stamp in value, the register has clearly no right to take exception to it, or to decline registering the deed so stamped.

To the Secretary to Government in the Judicial Department, dated the 24th November, 1826.

No. 439.

1803.
Reg. II. Sec 5.
1825.
Reg. XXI.

I am desired by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, under date the 9th instant, together with its enclosed correspondence, relative to a difference of opinion between the assistant to the commissioner in Kumaoon and the judge of zillah Seharunpore, upon the construction of Section 5, Regulation II. 1803, requesting the Court to issue instructions upon the subject to the judge of the latter district.

2. In reply, I am desired to state, for the information of his Excellency the Right Honorable the Vice-President in Council, that, in the opinion of the Court, the suits which form the subject of the correspondence adverted to were clearly cognizable in the zillah court of Seharunpore, the defendants in both instances residing within that

district ; but I am directed to add, the Court cannot form any opinion relative to matters arising within the jurisdiction of the Deyra Doon, which tract of country has, by Regulation XXI. of 1825, been annexed to Kumaoon, where the laws and Regulations of Government are not in force. Instructions to this effect will be issued to the judge of zillah Seharunpore.

November 24, 1826.

To the Judge of Zillah Burdwan, dated the 8th December, 1826.

No. 440.

1819.
Reg. VIII. Sec. 10.
1793.
Reg. III. Sec. 10.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 27th ultimo, together with its enclosure from the register of your district, requesting information as to the mode of proceeding to be adopted, in the event of a suit being preferred against him for an act done by him in his official capacity, under Section 10, *Regulation VIII.* 1819.

2. *In reply, I am desired to observe, for the information and guidance of yourself and of your register, that there appearing to be no provision either in Section* 10, *Regulation III.* 1793, *or any other enactment, which declares a register amenable to the jurisdiction of a zillah or city court for an act done by him in his official capacity, and the specific Regulation also, under which the register of Burdwan presides at the sale of putnee tenures, not containing any provision of this nature, the Court are of opinion, that a suit will not lie against such officer, and should not be admitted.*

3. *The Court at the same time remark, that the exemption of the register from the jurisdiction of the court cannot operate injuriously to persons deeming themselves aggrieved, who will always be able to obtain redress, by an action against the zemindar, whose allegation of arrears occasioned the sale, or the purchaser, or both ; by which course of proceeding the merits of the case may be as fully investigated as if the officer who presided at the sale had been made a defendant.*

December 8, 1826.

From the Calcutta Court of Appeal, dated the 15th February, 1826.

No. 441.
1825.
Reg. XVIII.

With reference to the superior Court's letter, dated the 6th ultimo, we have the honor to transmit the subjoined copy of a letter from the judge of Hooghly, bearing date the 11th instant, and of the list which accompanied it.

From the Judge of Hooghly, to the Calcutta Court of Appeal, dated the 11th February, 1826.

1. *I have the honor to acknowledge the receipt of your letter, No. 71, of the 26th ultimo, together with a copy of a letter from the Court of Sudder Dewanny Adawlut, dated the 6th of January, regarding certain causes lately pending before the Chinsurah Court of Appeal.*

2. *In compliance with the 3rd paragraph of the letter from the Sudder Dewanny Adawlut, I have the honor to submit a list of the causes, agreeably to the form prescribed by the superior Court; and at the same time, beg permission to state, that the causes contained in the paper marked A, were actually admitted by the Chinsurah Court of Appeal, and were pending before that tribunal, upon the transfer of the settlement to the British commissioners.*

3. *The papers marked B and C contain respectively, a list of such summary appeals, and miscellaneous petitions as were depending before the same authority, at the time of the transfer.*

4. *The records in the several causes having been duly made over to the Hooghly Court of Dewanny Adawlut by the commissioners for Chinsurah, the late judge was desirous of being informed, whether these causes were to be transferred to the Calcutta Provincial Court of Appeal for decision, or in what other way they should be disposed of.*

To the Calcutta Court of Appeal, dated the 3rd March, 1826, in reply to their letter of the 15th February, 1826.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 15th ultimo, with its subjoined copy of a letter from the judge of zillah Hooghly, and of the list which accompanied it, relative to certain causes lately pending before the Chinsurah Court of Appeal.

2. *In reply, I am desired to acquaint you, that the Court of Sudder Dewanny Adawlut, under the discretion vested in them by clause 4, Section 4, Regulation XVIII. 1825, direct that you will call for the proceedings in the cases in question, and try the appeals, having first served the prescribed notice on the parties.*

From the Calcutta Court of Appeal, in reply to the above, dated the 19th December, 1826.

With reference to the orders of the Sudder Dewanny Adawlut conveyed in your letter of the 3rd of March last, we request you will report to the Court, that having called for the proceedings in the several cases therein referred to, we see reason to doubt whether they are properly referrible to this Court, under the provisions of Regulation XVIII. 1825.

2. *The second clause of Section* 4 *of that Regulation refers to appeals from decisions in civil suits which had been decided by the European Court at Chinsurah, and which were appealable to the superior Court at Batavia; whereas on examination of the proceedings in the cases in question we observe, that they are appeals from decisions passed by an European Court of inferior jurisdiction at Chinsurah, [Mr. Herklotts, acting 2nd resident,] pending before a higher tribunal [the court of appeal, consisting of Mr. Overbeck, the 1st resident, and Messrs. Bowman and T. Michel,] at the same place, and consequently, as we presume, (especially considering the trifling amount or value in action, some of them for* 8 *and* 9 *Rs.) not appealable to the superior Court at Batavia.*

3. *Under these circumstances, and considering the very heavy pressure of business already before this court, we are induced to solicit the superior Court's re-consideration of their orders, under date the 3rd March last, and to suggest, that the cases above-mentioned be sent back for trial by the zillah judge of Hooghly, subject to further appeal to this Court or otherwise, as the case may be, under the general Regulations in force.*

To the Calcutta Court of Appeal, in reply to the above, dated the 29th December, 1826.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 19th instant, in reply to my letter of the 3rd March last, on the subject of certain appeals from the European Court at Chinsurah, and suggesting, for the reasons assigned, that those cases be sent to the judge of zillah Hooghly for trial and decision.

2. *In reply, I am desired to acquaint you, that as there is no provision in Regulation XVIII.* 1825, *which authorizes a reference of such cases to the zillah judge; as it was evidently intended, that appeals from the decisions in question should lie somewhere, and as, agreeably to the spirit of the enactment, your court appears the proper tribunal for hearing and deciding such*

appeals, the Court see no reason to depart from their former instructions, which you will be pleased to follow accordingly.

December 29, 1826.

To the Judge of Zillah Burdwan, dated the 29th December, 1826.

No. 442.
1826.
Reg. III. Sec. 2.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 12th instant, requesting their construction of Section 2, Regulation III. 1826, regarding the appointment and removal of native officers attached to the civil jail.

2. In reply, I am desired to acquaint you, that, as the magistrate is now responsible for the safe custody of the Dewanny, as well as of the Foujdaree prisoners, the appointment and removal of the native officers attached to the jails of both establishments should be vested exclusively in that officer ; but that there does not appear to be any necessity for making a formal transfer of the Dewanny jail amla to the establishment of the Foujdaree court.

December 29, 1826.

To the Judge of Zillah Goruckpore, dated the 23rd February, 1827.

No. 443.
1825.
Reg. XX.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 8th instant, together with its enclosures from your register, requesting, for the reasons assigned, permission to review his judgment in the case of DeSouza versus Wroughton, or to be furnished with such instructions as the court may deem necessary on the occasion.

2. In reply I am desired to observe, that Regulation XX. 1825, which has reference to the act of parliament passed in the fourth year of the reign of his present Majesty King George the Fourth, not having been promulgated until after the date on which your register had passed his decree in the above cause, he must be held to have been competent to exercise jurisdiction therein, and consequently that such prior decree must be considered to all intents and purposes as good and valid as if the Regulation of posterior date, and the act of parliament which it promulgated, had never been passed. It appears therefore to the Court to be unnecessary to authorize a review, or to issue any special instructions relative to the case in question.

February 23, 1827.

See Advocate General's opinion in Circular Order, No. 114, 20th December, 1850.

To the Patna Court of Appeal, dated the 2nd March, 1827.

No. 444.

1824.
Reg. XV. Sec. 4.
1813.
Reg. VI. Sec. 5, Clause 1.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 10*th ultimo, together with its enclosed correspondence with the judge of Goruckpore, requesting the Court's opinion as to the proper construction of Regulation XV. of* 1824.

2. *In reply, I am desired to acquaint you, that the Court are disposed to concur in opinion with Mr. Bird, that all cases pending before him under Regulation VI. of* 1813, *are not necessarily referrible to the magistrate under the provisions of Section* 4, *Regulation XV. of* 1824, *but only such of them as may be brought de novo to the cognizance of the magistrate under Section* 3, *and certified by him to the judge under Section* 4 *of that enactment; in other words, that the original certificate from the Foujdaree to the Dewanny court, made under clause* 1, *Section* 5, *Regulation VI.* 1813, *is not a sufficient certificate for the purpose contemplated in Section* 4, *Regulation XV.* 1824. *In all cases, under Regulation XV.* 1824, *of course it is peremptory on the magistrate to send a copy of his proceeding to the civil court under Section* 4, *and on such proceeding appearing to relate to any case that may be pending before the judge under Regulation VI. of* 1813, *it will be the duty of the judge to transmit his proceedings therein to the magistrate for his consideration and orders, and to proceed no further in the investigation of such case, otherwise than on the institution of a regular suit.*

March 2, 1827.

Act IV. of 1840.

To the Moorshedabad Court of Appeal, dated the 30*th March,* 1827.

No. 449.

1793.
Reg. XXXVIII.
1812.
Reg. V. Secs. 26 and 27.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 19*th instant, submitting a question, as to whether an European British subject can or cannot, under the provisions of Regulation XXXVIII.* 1793, *be appointed manager of an estate, conformably to Sections* 26 *and* 27, *Regulation V.* 1812.

2. *In reply, I am desired to acquaint you, that in the opinion of the Court an European British subject is not eligible to the management in question.*

March 30, 1827.

To the Judge of Zillah Burdwan, dated the 30th March, 1827.

No. 450.

1819.
Reg II. Sec. 30.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 15th instant, and its enclosures, requesting the instructions of the Court as to certain suits instituted under the provisions of Regulation II. 1819, in which Government is not a party concerned.

2. In reply, I am desired to acquaint you, that suits referred to the collector under clause 1, Section 30 of the Regulation above quoted, which are referred, not for decision but for report only, should not be considered as having been transferred from the file of the judge in consequence of such reference ; and therefore, that on their being returned with the required report from the collector, the judge should proceed to try and decide them in like manner, as if no such reference had been made. From this you will perceive, that the practice of your predecessor in treating such description of cases, when returned with the report of the collector, as actually decided, in permitting them to remain as decisions until appealed from, and then entering them under the head of miscellaneous cases, was irregular.

3. The Court therefore direct, that you re-admit all such cases on the regular file of your court, whether petitions objecting to the report of the collector may or may not have been presented.

4. With regard to suits, instituted in the collector's office in the first instance, and appealed to your Court under clause 7, Section 30, Regulation II. 1819, the Court are of opinion, that the monthly abstract, and annual report of civil causes decided and depending are deficient, in not having a column to show the number of such appeals. The Court desire therefore, that in your future statements, immediately under the line " Appeals from Registers," you will introduce the words " Appeals under Regulation II. 1819," for the purpose of enabling the Sudder Dewanny Adawlut to discriminate these from other description of appeals.

[N. B. The last paragraph was circulated for general information on the same date.]

March 30, 1827.

See Sudder Dewanny Adawlut Reports, 1849, 27th December, page 487.

To the Joint Magistrate and Additional Register of Azimghur, dated 30th March, 1827.

No. 451.

1821.
Reg. II. Sec. 7.
Reg. III. Sec. 4.

The Courts of Sudder Dewanny and Nizamut Adawlut have had before them your letter, dated the 6th instant, requesting their opinion upon the following points :

1*st.*—In cases of moonsiffs' and sudder ameens' decrees referred for execution to the sudder ameens, under the provisions of Section 7, Regulation II. 1821, have the sudder ameens authority to order the imprisonment of civil debtors, or of persons resisting the process of the court, or in short the authority of confining any persons connected with the execution of those decrees, without reference to the presiding European authority?

2*nd.*—In cases of the nature above described, have the sudder ameens authority to issue perwannahs to the moonsiffs or other mofussil civil officers?

3*rd.*—In cases referred for investigation and decision to the sudder ameens by the magistrate, under the provisions of Section 4, Regulation III. 1821, have the sudder ameens authority to issue perwannahs to the thannahdars, police darogahs, or other mofussil police officers?

2. In reply, I am desired to acquaint you, that the Court entirely coincide with you in opinion, that no power is vested by the Regulations in the sudder ameens, in any of the three mentioned cases, and that it is the duty of the sudder ameens, where the necessity may exist, to represent the matter to the judge, magistrate, or additional register, as the case may be, and that the order should issue from the superior court.

March 30, 1827.

See Section 7, Regulation VII. 1832.

To the Judge of Zillah Beerbhoom, dated the 15th June, 1827.

No. 452.

1814.

Reg. XXIII. Sec. 13, Clause 1.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 8th instant, requesting to be informed whether clause 1, *Section* 13, *Regulation XXIII.* 1814, *is intended to bar the cognizance of a suit by a moonsiff, if the defendant be not a resident inhabitant of his jurisdiction.*

2. *In reply, I am desired to communicate to you the opinion of the Court, that a moonsiff is not competent to take cognizance of a suit for money or other personal property in which the defendant is not resident within his jurisdiction.*

June 15, 1827.

Rescinded by Regulation V. 1831.

To the Moorshedabad Court of Appeal, dated the 20th July, 1827.

No. 455.

1819.
Reg. II. Sec. 30.
Clause 1.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 3rd instant, submitting, agreeably to the desire of the officiating judge, copies of minutes recorded by the several judges of your court, relative to the proper construction to be put upon certain provisions of Regulation II. 1819.

2. In reply I am desired to forward to you, for your information and guidance, the accompanying copy of a letter, dated the 28th of July, 1826, written by order of the Sudder Dewanny Adawlut to the Calcutta Court of Appeal, in answer to a reference made by them on the subject of suits instituted under Clause 1, Section 30, Regulation II. 1819, and decided under Clause 6 of the above quoted section; and I am directed to add, that the Court concur in the opinion expressed by your officiating judge, that the parties referred to in the seventh and eighth clauses are also entitled, as a matter of right, to a regular appeal from the decision of the zillah court.

July 20, 1827.

See No. 427.

To the Judge of Zillah Jungle Mehals, dated the 17th August, 1827.

No. 456.

1799.
Reg. VII. Sec. 15.
1819.
Reg. VIII. Sec. 18.

I am desired by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, under date the 2nd of June last, requesting information on the following point, *viz.* whether a zemindar is at liberty to attach the talook of a defaulter through the agency of a sezawul, without having previously instituted a summary suit, under Section 15, Regulation VII. 1799.

2. In reply, I am desired to communicate to you the opinion of the Court, that a zemindar is not competent, under the provisions of Section 18, Regulation VIII. 1819, to send a sezawul of his own authority to attach and collect the rents of the actual cultivators immediately from themselves, without having previously instituted a summary suit, under Section 15, Regulation VII. 1799, against the talookdar or other intermediate holder between himself and the actual cultivators.

August 17, 1827.

To the Judge of Zillah Jessore, dated the 7th September, 1827.

No. 461.

1819.
Reg. VIII. Sec. 8.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 8th of May last, requesting their opinion on the construction of Section 8, Regulation VIII. 1819, as to the following points :

First.—Whether the zemindars, entitled to obtain periodical sales of certain descriptions of tenures for arrears of revenue under the above Section and Regulation, can transfer that right to their ijaradars, or whether the proprietor of an estate paying revenue direct to Government, is debarred from the advantages of Section 8, by the circumstance of having let his estate in farm.

Secondly.—Should the opinion of the Court be in favour of the power of the zemindar to transfer his right of obtaining those sales to his farmer, you request to know whether the same right of transfer is to be considered as existing also in the ijaradar, in favour of a third party, to whom he may have similarly under-let the estate.

2. In reply, I am desired to communicate to you the opinion of the Court, that a zemindar is not entitled to transfer to an ijaradar his right of obtaining periodical sales of putnee tenures for arrears of revenue, under Regulation VIII. 1819, the individuals specified in the Section above quoted, as entitled to apply for periodical sales, being proprietors under direct engagements with the Government. This construction involves of course a reply to your second question.

September 7, 1827.

See Nos. 313 and 523.

To the Officiating Commissioner of Zillah Cuttack, dated the 7th September, 1827.

No. 462.

1814.
Reg. I. Sec. 14, Clause 1.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 30th ultimo, stating, that a petition has lately been presented to you, by a person claiming to succeed to one of the tributary mehals, the peshkush of which is 4,780 rupees 5 annas 12 gundas 2 cowries, and the produce of which is stated to be 1,02,000 rupees 4 annas 12 gundas ; and requesting the opinion of the Court, as to whether the value of the estate sued for should be assumed at the peshkush, or at the estimated produce.

2. In reply, I am desired to communicate to you the opinion of the Court, that in conformity to the first clause of Section 14, Regulation I. 1814, the value of the property should be assumed at the peshkush, which may be held to be the amount of the annual jumma payable to Government. Such indeed appears to have been

the construction already adopted by your court, as may be seen on reference to the Dekenal case, filed on the 17th of October, 1816, and decided in this Court in March, 1825.

September 7, 1827.

To the Judge of Zillah Tipperah, dated the 12th October, 1827.

No. 463.
1821.
Reg. II. Sec. 5, Clause 3.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 6th ultimo, bringing to notice a practice which prevails in your district, and soliciting the Court's construction of clause 3, Section 5, Regulation II. 1821.

2. *In reply, I am desired to communicate to you the opinion of the Court, that the construction adopted by the sudder ameens attached to your court is correct, and that it was not intended that parties in suits referred to these authorities should be subjected to the expense of stamp paper, though the amount or value of the property in dispute should exceed* 150 *Rs.*

October 12, 1827.

Article 8, *Schedule A, Regulation X. of* 1829.

To the Calcutta Court of Appeal, dated the 7th December, 1827.

No. 465.
1793.
Reg. IV. Sec. 6.

The Court of Sudder Dewanny Adawlut have had before them your two letters with their respective enclosures, dated the 16th and 22nd ultimo, relative to the fine imposed by the judge of Burdwan, on an individual named Ramruttun Bose.

2. *In reply to the question involved in your reference, namely, as to the propriety or otherwise of imposing a fine on a witness, on whom a subpœna may not have been served, I am desired to state, that the Court see no reason to depart from the construction laid down in their letter to the commissioner at Moorshedabad, dated the 27th of July,* 1814, *that the rules contained in Section 6, Regulation IV.* 1793, *cannot be considered applicable to the case of a person whose attendance may be required as a witness, but on whom a summons may not have been served.*

3. *You will be pleased to furnish the judge of Burdwan with a copy of this letter for his information and future guidance.*

December 7, 1827.

See Act XIX. of 1853.

To the Judge of Zillah 24-Pergunnahs, dated the 25th January, 1828.

No. 467.

1805. Reg. II. Sec. 4, Clause 1.

1812. Reg. V. Secs. 17 and 20.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 17th instant, requesting their opinion as to the period in which it is incumbent on a ryot's farmer, or dependent talookdar, to institute a suit under the provisions of Section 17, Regulation V. 1812.

2. In reply, I am desired to communicate to you the opinion of the Court, that a suit of the nature in question should be instituted within one year from the date of the injury alleged to have been sustained by the illegal sale, conformably to the rules contained in Section 20 of the above cited Regulation, and clause 1, Section 4, Regulation II. 1805.

January 25, 1828.

See Sudder Dewanny Reports, 1849, 10th May, page 147.

From the Acting Judge of Zillah Jessore, dated the 5th January, 1828.

No. 469.

1822. Reg. XI. Sec. 28, Clause 4.

I request you will have the goodness to obtain for me the opinion of the Court of Sudder Dewanny Adawlut on the intent and spirit of clause 4, Section 28, Regulation XI. of 1822. It is there specified that, "If any other person, not being the late "possessor of the estate sold," on account of balance of revenue, "shall claim or assert an interest in any portion of the land "delivered to the purchaser, on the plea, that whether included "in the sale or not, it formed no part of the property liable for "the Government revenue assessed on the mehal sold, he shall be "at liberty to institute a suit for the recovery thereof jointly "against the former possessor of the mehal sold and the pur-"chaser."

First.—I request to be informed whether such suit, under this clause, shall be decided by a summary or miscellaneous investigation, or whether such claimant must have recourse to a regular suit to recover his claim.

Secondly.—When an estate has been sold on account of the public revenue, and the collector has not been able to give possession to the purchaser, from the circumstance of parties asserting a claim to a portion of the land sold, on the plea that it formed no part of it in any way, and consequently the collector has applied by a proceeding to the civil court to put the purchaser in possession, under clause 1, Section 28 of this Regulation: I am desirous of being informed, if a petition should be presented to the judge, previous to his complying with the collector's request, he

is at liberty, under the spirit of clause 4, *Section* 38 *of this Regulation, summarily to ascertain the rights of the respective parties, and award possession accordingly; or whether he is compelled to carry the collector's request into execution without listening to the petition of the claimant, leaving him to prosecute his demand by a regular suit.*

2. *A case similar to the above is now pending before me, and as this clause is not sufficiently explicit, I have deferred complying with the collector's requisition, till I have first obtained the opinion of the Court of Sudder Dewanny Adawlut. The case is simply this: The estate of A was sold on account of balance of public revenue: B became the purchaser, and the collector could not put B in possession, because C, the proprietor of an adjoining estate, came forward and stated his claim to a mozafat as belonging to his estate, which had been sold with the estate of A. The collector decided that it belonged to the estate of A, because it was so written in his office so far back as* 30 *years, but C has proved his possession to this mozafat since the year* 1801, *by various documents, and there is no doubt of the circumstance. The question therefore ensues,—Is C to be ousted from this mozafat, after retaining undisturbed possession for* 25 *or* 26 *years, on the proceeding of the collector, because it might have appertained to the estate of A previous to that time? or is the judge at liberty summarily to ascertain the respective right to possession of A and C, and decide accordingly? Surely the spirit and intent of this clause could never have been intended to convey the meaning, that a person situated as C, (in possession for* 25 *or* 26 *years), should only have redress by a regular suit. It does not appear in this case that the collector has been invested with any of the powers of commissioner, as specified in clause* 2, *Section* 28 *of this Regulation, which induced him to determine the right of A to this mozafat, and consequently the right of B to possession as purchaser.*

To the Acting Judge of Zillah Jessore, in reply to the above, dated the 8*th February,* 1828.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 5*th ultimo, requesting their opinion as to the proper construction of clause* 4, *Section* 28, *Regulation XI. of* 1822.

2. *In reply to your first question, as to whether a suit instituted under the clause above-mentioned, should be decided by a summary or miscellaneous investigation, or whether recourse should be had to a regular suit, I am desired to communicate to you the opinion of the Court, that such suit should be regular.*

3. *With reference to your second question, I am desired to acquaint you, that you should exercise your own discretion, and*

proceed in such mode as you may deem conformable to the Regulations, leaving any party who may be dissatisfied to sue for his remedy by a summary appeal to the provincial court.

February 8, 1828.

See Act XII. 1841 *and Act I.* 1845.

To the Calcutta Court of Appeal, dated the 22nd February, 1828.

No. 470.

1814.

Reg. XXVI. Sec. 3, Clauses 8 and 9.

The Court of Sudder Dewanny Adawlut have had before them a letter from your fifth (now fourth) judge, dated the 8th instant, with its enclosures, submitting for the Court's consideration, copies of a letter from the Judge of Burdwan, and of the decrees passed by him and the zillah court in the case of Chytun Chowdree, appellant, versus Kartick Churn Sircar, respondent, and requesting the Court's opinion thereon.

2. *In this case it appears, that Mr. Millet calls in question the legality of the judgment of your court, upon the ground of its not being in conformity with the intent and meaning of Section* 3, *Regulation XXVI.* 1814, *the 8th and 9th clauses of which section, he thinks, render it incompetent to a provincial court of appeal to pass a conditional reversal of an appeal from the decision of a zillah judge.*

3. *In reply, I am desired to acquaint you, that the Court see no objection to your order in the abstract, and that, had the judge omitted to issue the notice required by the Court's circular letter, dated the 5th of November,* 1812, *or, the appellant having attended under it, had he refused to hear what the party might have had to allege in excuse for his default, an order from your court, directing the judge to hear the excuse, and if it proved sufficient, to restore the case to the file, would appear to be entirely unobjectionable.*

4. *I am at the same time desired to observe, that the Court do not by this construction intend at all to interfere with the particular case out of which the reference originated.*

5. *You will be pleased to furnish Mr. Millet with a copy of this letter for his information and guidance.*

February 2, 1828.

Act XXIX. 1841.

To the Acting Judge of Zillah 24-*Pergunnahs, dated the* 22*nd February*, 1828.

No. 471.
1819.
Reg. X. Sec. 67.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 18th instant, and its enclosures, submitting the case of certain individuals seized with illicit salt, and soliciting the opinion of the Court, relative to the intent and meaning of Section 67, Regulation X. 1819.

2. In reply, I am desired to acquaint you, that the Court are disposed to be of opinion, that under the rule above cited, the fine should be in proportion to the quantity of illicit salt seized, and not according to the number of persons engaged in the illicit transaction.

3. You are not however to consider this construction as operating to prevent the exercise of your own discretion, or to exempt you from an adherence, in the particular case, to the rules prescribed for your guidance in the Regulation cited by you.

February 22, 1828.

See No. 494.

To the Acting Judge of Zillah Shahabad, dated the 22*nd February*, 1828.

No. 472.
1813.
Reg. VI.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 8th instant, requesting the Court's opinion on a point connected with Regulation VI. 1813; the defendant in a civil process for the summary execution of an award of arbitration under the provisions of Section 3 of the above-mentioned regulation, having put in a plea, that the provisions of the section and Regulation above quoted exclusively provide for awards respecting lands and rights dependent on them, and that an award for debts, disputed accounts, and partnership, &c. is not cognizable under that Regulation.

2. In reply, I am desired to communicate to you the opinion of the Court, that Regulation VI. 1813, as appears from its preamble, relates exclusively to contests and suits respecting lands, and is inapplicable to other matters.

February 22, 1828.

See Sudder Dewanny Reports, 19th November, 1851, page 661.

To the Calcutta Court of Appeal, dated the 22nd February, 1828.

No. 473.

1793.
Reg. V. Sec. 7.

The Court of Sudder Dewanny Adawlut have had before them a letter from your fifth (now fourth) judge, dated the 8th instant, with its enclosures, submitting sundry papers in the cases of Lalchand versus Ramruttun Dutt, and Rajchunder versus Kumlakaunt Chund, and requesting the Court's opinion, as to whether, in a case of appeal, when a vakeel is present, it is necessary or not, previously to dismissing the suit on default, to issue a written notice to the party himself, calling upon him to show cause for not having proceeded in his appeal.

2. *In reply, I am desired to communicate to you the opinion of the Court, that such notice is not necessary in a case in which a vakeel is present.*

February 22, 1828.

See Act XXIX. 1841.

To the Judge of Zillah Ghazeepore, dated the 7th March, 1828.

No. 475.

1813.
Reg. VI.
1824.
Reg. XV.
1793.
Reg. XLIX.
1819.
Reg. VIII. Sec. 18, Clause 5.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 16th ultimo, submitting a copy of the proceedings of this Court, relative to certain opium cultivators in your district, with copy of a letter from the Secretary to Government in the Territorial Department, and requesting, under the circumstances stated by you, that the Court would re-consider their orders.

2. *In reply, I am desired to forward to you, for your information and guidance, the accompanying copy of a letter, under date the 2nd of March,* 1827*, written by order of this Court to the Patna Court of Appeal, which letter, as you will perceive, contains the construction which, in the opinion of this Court, should be put upon the provisions of Regulation VI.* 1813, *when considered with relation to those of Regulation XV.* 1824.

3. *I am further directed to furnish you with the accompanying copy of a letter to the address of the Patna Court of Circuit, dated the 13th of July,* 1827, *showing the description of suits which, in the opinion of the Court, are properly cognizable under the provisions of Regulation XV.* 1824.

4. *With reference to your remark, that if without distraint of property an ejectment has actually taken place, in consequence*

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* See construction of this date, page 166, No. 444.

of the ryot being compelled to quit by force or intimidation, and his former possession shall be disputed and denied by the zemindar, you cannot discern to whom the investigation of such a case would belong; I am desired to communicate to you the opinion of the Court, that either the rules of Regulation XLIX. 1793, *or those of Regulation VIII.* 1819, *would be applicable; the former where the dispossession may have been effected by force, and the latter where these means may not have been resorted to.*

5. *The declaration contained in the fifth clause of Section* 18, *Regulation VIII.* 1819, *that it is illegal to oust or disturb resident cultivators, unless under certain stated circumstances, necessarily implies a remedy in case of the contravention of such rule; and the Court are of opinion, that in the spirit of the enactment cited, such remedy should be afforded by the judge on the summary application of the ejected ryot, by an order for his being restored to possession, and his retaining it until the process prescribed by the Regulation shall have been observed.*

March 7, 1828.

See Act IV. *of* 1840,

To the Judge of Zillah Shahabad, dated the 8th April, 1828.

No. 477.

1814.
Reg. XXIII. Secs. 46 and 73.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 10th ultimo, together with its enclosed copy of your Persian proceedings in the case of Bhichook Pandee versus Hurrukh Pandse and others, requesting the Court's permission to admit a summary appeal from the decision of the sudder ameen in the above case, though the proper time for appealing has elapsed.

2. In reply, I am desired to acquaint you, that this reference was wholly unnecessary, inasmuch as by Sections 46 and 73, Regulation XXIII. 1814, you are vested with discretionary power to admit an appeal from the decision of a sudder ameen, although the petition may not be presented within the prescribed period, if the appellant shall show satisfactory cause for not having before presented the petition.

April 18, 1828.

See Sudder Dewanny Reports, vol. II. page 298, 7th May, 1819.

To the Judge of Zillah Goruckpore, dated the 18th April, 1828.

No. 478.

1803.
Reg. II. Sec. 18, Clause 3.
1805.
Reg. II.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 2nd instant, requesting their opinion, as to whether the prohibition set forth in the latter part of clause 3, Section 18, Regulation II. 1803, against hearing suits for private claims, has been superseded by the provisions of Regulation II. 1805.

2. In reply, I am desired to communicate to you the opinion of the Court, that notwithstanding the mention of the period of 60 years in the Regulation last cited, no claim can now be heard which had its origin beyond the date of the cession, and this without any reference to the mode in which the possession may have been, or may be alleged to have been, acquired; and that consequently the rule contained in clause 3, Section 18, Regulation II. 1803, remains in full force.

April 18, 1828.

See No. 432.

To the Calcutta Court of Appeal, dated the 18th April, 1828.

No. 479.

1796.
Reg. X. Sec. 2.

The Court of Sudder Dewanny Adawlut have had before them a letter from your third judge, dated the 25th ultimo, submitting, at the request of the judge of zillah Burdwan, for the consideration and orders of this Court, certain documents connected with the case of the Rajah of Burdwan versus Nubkishore Chatoorjea.

2. The reference now submitted involves, the Court observe, two questions. First, as to whether a judge is competent, under Section 2, Regulation X. 1796, to offer any objection to an order of a provincial court in the shape of a decree; and secondly, whether in cases of default, the vacation should be deducted in calculating the time allowed for the performance of any act.

3. On the first point, I am directed to communicate to you the opinion of the Court, that the Regulation above cited was only intended to apply to difference of opinion relative to the proper construction of Regulations in miscellaneous matters, and not to the provisions of a decree; the remedy against which, if deemed erroneous by either of the parties interested, consists in appeal or review, to be applied for in the mode prescribed by the Regulations.

4. On the subject of deducting established holidays, I am directed to forward to you the accompanying copy of an opinion delivered by the Court on the 24th of February, 1816, in favor of making such deduction in calculating the period allowed for preferring appeals, when the period of appealing may expire during an adjournment of

the Court ; and to acquaint you, that the same rule should be applied to cases of default of any other description.*

5. You will be pleased to furnish the judge of Burdwan with a copy of this letter for his information and guidance.

April 18, 1828.

See also No. 536.

To the Judge of Zillah Jungle Mehals, dated the 19th April, 1828.

No. 480.

1793. Reg. VIII. Sec. 51, Clause 2. Sec. 63, Clause 1.
1821. Reg. II. Sec. 4.
1814. Reg. XXIII. Sec. 13, Clause 1.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 31st ultimo, requesting their opinion on the following points.

First.—Is it competent to a moonsiff to receive, try, and decide suits for the recovery of rent, or other claim arising from land or other real property, not being a claim to the actual right and title to hold the land or other real property?

Secondly.—Is it competent to a moonsiff to receive, try, and decide suits brought to recover the penalties leviable from a zemindar, talookdar, or other person, entitled to receive rent, under clause 2, *Section* 51, *and clause* 1, *Section* 63, *Regulation VIII.* 1793, *for undue exaction of rent, or for a refusal to grant a dakhila or receipt for rent paid?*

Thirdly.—Is it competent to a moonsiff to receive, try, and decide suits brought by a tenant to compel a zemindar, talookdar, or other person, entitled to receive rent, to refund a sum of money unjustly extorted as rent, or to prove the payment of a sum of money as rent for which no dakhila or receipt has been granted, provided the tenant do not sue at the same time to receive the penalty alluded to in the clauses quoted in the second question?

2. *On the first point, namely the competency of moonsiffs to try suits for rent, I am desired to call your attention to Section* 4, *Regulation II.* 1821, *the provisions of which you seem to have overlooked, and which expressly authorize the trial of suits for rent by the moonsiffs.*

3. *On the second point the Court observe, that the penalties alluded to in the clauses quoted in the second question are not of the nature of personal damages, such as the moonsiffs are prohibited from trying by the concluding part of Clause* 1, *Section* 13, *Regulation XXIII.* 1814, *and consequently that there does not appear to be any objection to the institution of suits for the recovery of such penalties in the courts of the moonsiffs. The*

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* See Circular Order Sudder Dewanny Adawlut, 7th February 1831, No. 25, page 23, Vol. II. Baptist Mission Press Edition.

foregoing reply renders unnecessary any observation on the third point submitted to you.

April 19, 1828.

See Sec. 8, Act VI. 1843.

To the Judge of Zillah Beerbhoom, dated the 2nd May, 1828.

No. 481.

1814. Reg. XXIII.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 15th ultimo, requesting the Court's instructions as to the competency of a moonsiff to try and determine three several suits between the same parties, the case being the sum of 150 Rs. for each of which sum bonds were given on the same day.

2. In reply, I am desired to acquaint you, that there does not appear to be any rule in Regulation XXIII. of 1814, or other enactment, which can be held to prohibit the cognizance of such suits by a moonsiff.

May 2, 1828.

To the Judge of Zillah Ghazeepore, dated the 9th May, 1828.

No. 482.

1824. Reg. XV. 1793. Reg. XLIX. 1819. Reg. VIII.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 3rd ultimo, requesting, under the circumstances therein stated, a further construction of the Court with regard to the provisions of Regulation XV. 1824.

2. *In reply, I am desired to acquaint you, that the Regulation in question has been held to be not applicable to disputes relative to the right of cultivation only, and the Court are of opinion, that all differences between landholders and their tenants or ryots, involving the question, whether the landholder can legally oust the tenant or ryots from the lands which the latter considers himself entitled to occupy, should come under the provisions of Regulation XLIX.* 1793, *or Regulation VIII.* 1819.

May 9, 1828.

See Act IV. 1840.

To the Judge of Zillah Jessore, dated the 23rd May, 1828.

No. 483.
1819.
Reg. X.
Secs. 104 and 113.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 15th instant, requesting their opinion on certain points connected with the construction of Regulation X. 1819.

2. In reply to your first question, I am desired to communicate to you the opinion of the Court, that in cases forwarded to the judge by the salt officers, under the 113th Section of the enactment above quoted, regarding illicit manufacture of salt, &c., the person accused is at liberty to employ a vakeel, and to put in a written defence, if he deem that course preferable to pleading personally; and that such written defence should be on stamped paper of the value prescribed for miscellaneous petitions presented in the judge's court.

3. On the second point, I am directed to observe, that the Regulation apparently does not provide for cases wherein the defendants are absent, or against whom the agent has recorded his opinion of guilty *ex parte;* its provisions being confined to an indication of the course of proceeding to be followed by the judge where the person of the defendant is produced; but that it is, of course, the duty of the judge to assist the agent in his endeavours to apprehend any offender, who may have evaded or resisted his process.

4. As to the meaning of the 104th Section, I am desired to communicate to you the opinion of the Court, that it gives the same powers for the apprehension of those charged by the agent to those officers, as the magistrates are authorized to use; inasmuch as the general magisterial powers, vested in the agents by the section cited, do not appear to be limited by any other provision of the enactment.

May 23, 1828.

To the Judge of Zillah Allahabad, dated the 12th September, 1828.

No. 487.
1803.
Reg. XXXIV.
1793.
Reg. IV. Sec. 6.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 18th ultimo, containing the following queries:

First.—Are the provisions of Regulation XXXIV. 1803, respecting the legal rate of interest, applicable to loans of grain as well as loans of money, or to the latter only?

Second.—Can a witness, who has evaded the summons of a civil court, be proceeded against by dustuck and fine, supposing that no doubt exists, as to the summons having been carried by the serving peada to the actual residence of the witness, and all proper means used to serve it upon him?

Third.—Whether any and what further measures are allowable to enforce the attendance of a witness, who, having been duly served with a summons, has neglected to attend, and evades the second process of dustuck issued against him ?

2. In reply to the first question, I am desired to communicate to you the opinion of the Court, that the provisions of the Regulation above cited are applicable to loans of money only ; in reply to the second question, that a witness, upon whom a summons may not have been personally and actually served, cannot be proceeded against, either by dustuck or fine ; and in reply to the third question, that Section 6, Regulation IV. 1793, contains the proper rule of proceeding in such case, namely, the imposition of a fine not exceeding 500 rupees.

September 12, 1828.

See Act XIX. 1853.

To the Moorshedabad Court of Appeal, dated the 15th December, 1828.

No. 490.

1825.
Reg. II.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 22nd ultimo, suggesting, under the circumstances therein stated, that a section and clause should be added to Regulation II. 1825.

In reply, I am desired to communicate to you the opinion of the Court, that the suggested addition to the enactment cited, does not appear to be necessary ; and to observe, that the enhanced cost attending the presentation of a petition after a lapse of three months, is merely with reference to such delay, and the probable inconveniences that may attend it ; and the Court, to whom the petition for a review may be presented, is competent to reject it on any ground ; it not being requisite, according to the rule contained in Clause 2, Section 4, Regulation XXVI. 1814, to admit a review, unless the parties preferring applications for the same shall be able to show just and reasonable ground, to the satisfaction of the court, for not having preferred such application within the limited period.

December 15, 1828.

To the Judge of Zillah Jungle Mehals, dated the 9th January, 1829.

No. 491.

1819.
Reg. VIII. Sec. 17, Clause 2.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 29th ultimo, stating, that under the provisions of Regulation VIII. 1819, *a putnee talook was sold by you on the* 11*th of December, for* 3,225 *rupees, and the required deposit of* 15 *per cent. made ; that as the balance was not paid, the lot was again sold on the* 20*th of December for* 2,468 *rupees, and the required deposit of* 15 *per cent. paid ; but, that the balance of the purchase-money remaining unliquidated, the talook was again put up to sale on the* 29*th of December, and purchased by the zemindar for* 1,703 *rupees : and, under these circumstances, requesting the opinion of the Court, as to whether the commission of one per cent. leviable for the use of Government, under the provisions of clause* 2, *Section* 17, *Regulation VIII.* 1819, *should be levied on the sums for which the lot was knocked down on the several days of sale, or merely on the deposits of* 15 *per cent. made on the first two days, and on the amount for which the lot was finally sold to the zemindar.*

In reply, I am desired to inform you, that the commission in question should be levied only on the net proceeds of the sale whatever that may be ; the several deposits of fifteen per cent. (together with the difference between the first, second, and third sale, claimable from the first and second purchasers, if any sum on this account should have been realized,) being reckoned as part of the gross proceeds.

January 9, 1829.

See Act XXV. 1850.

To the Judge of Zillah Jungle Mehals, dated the 9th January, 1829.

No. 492.

1828.
Reg. III. Sec. 10, Clause 5.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 2nd instant, requesting to be informed whether the provisions of the fifth clause of Section 10, Regulation III. 1828, are applicable to appeals from all decisions of the revenue authorities, declaring land heretofore held on a rent-free tenure liable to assessment ; or merely to appeals from decisions which award to Government the right to resume and assess such land.

2. In reply, I am desired to communicate to you the opinion of the Court, that the fifth clause of the section cited is clearly applicable only to appeals from decisions of the Boards of Revenue, or,

in other words, only to appeals from decisions which affect the rights of Government.

January 9, 1829.

To the Judge of Zillah Cawnpore, dated the 30th January, 1829.

No. 493.

1803. Reg. XVIII. Secs. 3 and 7. 1793. Reg. XXVIII. Secs. 3 and 7.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 12th instant, requesting their opinion on the following points:

First.—Whether the Circular Order, dated 22nd September, 1826, has reference to the bond alluded to in Section 3, Regulation XVIII. of 1803, as well as to the bond of arbitration referred to in Section 7 of the same Regulation?

Second.—If to both, whether such bonds, being on plain paper, can be received as exhibits in a regular suit, notwithstanding the Regulations to the contrary?

Third.—If the bonds, alluded to above, shall not be filed in regular suits except on stamp paper, of what value shall such stamp paper be in case of both bonds?

Fourth.—For what amount is the obligation to be, in the case of the bond under Section 3rd? And, as in the case of the bond of arbitration required by Section 7, the amount of costs, &c. cannot be known until the suit has been decided, for what specific sum ought that bond to be?

Fifth.—As the bond, under Section 3, renders the party bound amenable to zillah courts in all suits brought by natives for a sum not exceeding 500 rupees, whether the courts are authorized to receive suits brought by or against a bounden party for sums greater than 500 rupees?

Sixth.—In the event of a suit having been instituted without a bond having been filed under Section 7, and in the absence of the bond required by Section 3, whether the judge is at liberty without further notice to nonsuit? If not at liberty so to do, whether a petition of plaint being presented, without copy of the bond required by Section 3, and without the original arbitration bond required by Section 7, the judge is to issue notice, or verbally to direct the party or his vakeel to enter the said documents within ten days, and on failure nonsuit?

2. In reply, I am desired to communicate to you the following instructions:

Firstly.—In reply to your first question, the accompanying copy of a letter from the Advocate General, under date the 22nd of July,

1814, will suffice to show you, that it is unnecessary to require the execution of the bond alluded to in Section 3, Regulation XVIII. 1803.

Secondly.—In reply to your second, third, and fourth questions, the Court observe, that had not the provisions of Section 11, Regulation I. 1814, been cancelled by Section 3, Regulation XVI. 1824, the value of the stamp required for the bond prescribed by Section 7, Regulation XVIII. 1803, would have been calculated according to the rule in question, it being easy to estimate the probable amount of costs in each case; but that, there being no existing rule for determining the value of security bonds for a specific amount, as explained in the Court's circular letter, dated the 22nd September, 1826, the security bond required under Section 7 should be on plain paper.

Thirdly.—In answer to your fifth question, I am desired to acquaint you, that the jurisdiction given by the 53rd George III. C. 155, Section 107, over British subjects cannot be superseded by the rule cited, and that the courts are authorized to receive suits brought by or against a bounden party for sums greater than 500 rupees.

Fourthly.—On the sixth question I am desired to observe, that you have already been informed of its not being necessary to require the execution of the bond alluded to in Section 3, Regulation XVIII. 1803, and that in the event of plaint being presented to you unaccompanied by the bond prescribed by Section 7, you are authorized to reject it, intimating to the plaintiff or his vakeel, either verbally or by a written notice, the necessity of executing such bond; but that you should admit the suit, on the plaint being re-produced accompanied by the requisite document.

January 30, 1829.

Under 3 and 4, William IV. Cap. 85, the bond is unnecessary.

To the Secretary to Government in the Judicial Department, dated the 20th February, 1829.

No. 494.

1824.
Reg. VII. Sec. 18.
1819.
Reg. X.

I am desired by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter, dated the 10th instant, with its annexed extract from the proceedings of Government in the Territorial Department, under date the 30th ultimo, communicated for the Court's construction of clause 4, Section 18, Regulation VII. 1824.

2. With respect to the first point noticed in the letter from the Board of Revenue in the Lower Provinces, I am desired to state, for the information of the Right Honourable the Governor General in Council, that the Court concur in the opinion expressed by the Board of Revenue in the Central Provinces, namely, that the penalty

prescribed by clause 4, Section 18, Regulation VII. 1824, cannot, in any case, exceed 500 rupees, whether there be one or more persons convicted of illicit dealing. I am directed to submit at the same time, the accompanying copy of a construction, dated the 22nd of February last, given by the Court on the same principle, on a reference from the 24 Pergunnahs, concerning the provisions of Regulation X. 1819.

3. With respect to the second point, on which there is a difference of opinion among the Members of the Board, the Court cannot concur in either of the opinions expressed by them ; and in the case put, where the opium forfeited is worth 200 rupees, and the individuals convicted of illicit dealing are four in number, the Court conceive that each individual would be liable to be amerced in the sum of seventy-five rupees, to make up, with the value of the opium forfeited, the total amount prescribed, namely 500 rupees.

February 20, 1829.

See No. 471.

To the Judge of Zillah Dinagepore, dated the 27th February, 1829.

No. 495.

1793.
Reg. III. Sec. 14.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 18th instant, requesting their opinion as to whether a suit, instituted fourteen years subsequent to the date of a moonsiff's decree, is subject to the limitations prescribed by Section 14, Regulation III. 1793.

In reply, I am desired to acquaint you, that the cause of action in the case in question must be held to have arisen on the expiration of one year after the date of the decree, and that this Court are not aware of any sufficient reason for excepting the case from the general rule furnished in the section above cited, by which you should be guided accordingly, leaving the party dissatisfied to appeal from your judgment in the ordinary course ; and consequently, a suit instituted for the execution of a decree, fourteen years after the date of it, unless satisfactory cause can be shown for the delay, is inadmissible under the rule above cited.

February 27, 1829.

See No. 3.

To the Judge of Zillah Tipperah, dated 13th March, 1829.

No. 496.

1819.
Reg. VIII. Sec. 18, Clause 4.
1824.
Reg. XIV. Sec. 5.
1799.
Reg. VII.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 28th ultimo, stating that in clause 4, Section 18, Regulation VIII. 1819, it is laid down, that "no summary award for arrears shall be considered to warrant the subjecting real property belonging to the defendant, in such an action, to sale in execution;" but in Section 5, Regulation XIV. 1824, it is enacted, that "the award shall be executed by the judge under the usual process of the civil court;" and, under these circumstances, requesting to be informed, whether real property can be sold in realization of a summary decree of Regulation VII. 1799.

2. In reply, I am desired to refer you to the words "consistently with the Regulations," contained in Section 5, Regulation XIV. 1824, and to acquaint you, that the rule in question does not supersede the former provision cited by you, and consequently that real property cannot be sold in execution of a summary decree.

March 13, 1829.

See No. 4.

No. 497.

1810.
Reg. XIII. Sec. 2, Clause 4.

Mr. Walpole, in his capacity of zillah judge, passed a decree in favour of A, for possession of certain lands with wasilat. This decree was appealed to, and confirmed by, the provincial court. Previous to the execution of the decree, Mr. Walpole was promoted to the court of appeal, and when the decree was about to be executed, a question arose as to the quantum of wasilat to be granted. From the order passed by the zillah judge as to this question, an appeal was preferred to the Calcutta Court of Appeal, of which Mr. Walpole had become a member. It thus became a doubt, whether or not Mr. Walpole was competent, with reference to clause 4, Section 2, Regulation XIII. 1810, to give an opinion in the case. The Court of Sudder Dewanny Adawlut however ruled, that Mr. Walpole was competent, the order appealed from as to the quantum of wasilat not having been passed by him, and the question for decision not being one on which he had before recorded an opinion.

March 13, 1829.

See Act II. 1851.

Letter from the Judge of Zillah Cawnpore, dated the 2nd March, 1829.

No. 498.

1825.
Reg. XX. Sec. B, Clause 4.

It appears that the rule of this Court, hitherto, has been to receive any and every suit for sums even less than 200 rupees, against residents of cantonments, and these suits have, in the general course, been made over to the law officers as under 500 rupees ; the consequence has been that, in one instance lately, the military authorities declined aiding the execution of a writ, even after judgment, on the ground that the case was not cognizable in the civil courts, as being under 400 rupees.

2. The present case is Fukhuroodeen Hyder versus Duhan, a shop-keeper residing in cantonments, in which judgment went against defendant in the pundit's court, the cause of action being 155 rupees : I therefore request to know whether the execution shall be stopped, on the ground of the incompetency of the court to hear and try it, and the holder of the decree be referred to the military authorities ; or whether I shall review the pundit's decision.

3. It appears to me that there are two rules in these cases ; one, for European British subjects registered as attached to bazars and residing in cantonments, British soldiers, officers, et cætera ; and the second for European foreigners, native soldiers, natives, et cætera, registered and residing in cantonments : that with regard to the first, the 4th of Geo. IV. is to be our guide, and 400 rupees the limit ; with regard to the second, Section 22 of Regulation XX. of 1810, and 200 rupees the limit ; and I request to be informed, whether I am right, as I shall put a stop to filing of suits, except the parties conform to Section 24, Regulation XX. of 1810.

To the Judge of Zillah Cawnpore, in reply to the above, dated the 27th March, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, bearing date the 2nd instant, requesting to know whether in the case, Fukhurooddeen Hyder versus Duhan, a shop-keeper residing in cantonments, the execution of a decree given in a pundit's court shall be stopped, on the ground of the incompetency of the court to hear and try it, or whether the defendant is to be referred to the military authority ; or whether the pundit's decision in the case is to be reviewed by yourself.

2. In reply, I am desired to acquaint you, that the cause of action in the case cited by you having been under the sum of 200 rupees, and the defendant being, (as the Court conclude he is from your letter,) a person amenable to martial law, the suit was not cognizable by the civil authorities, and that you must therefore consider the pundit's decision as null and void, leaving the plaintiff to prefer his suit to the military court of requests.

3. The Court concur in the opinion expressed in the concluding paragraph of your letter, it being conformable with the rule contained in clause 4, Section 3, Regulation XX. 1825, and the provisions therein referred to.

March 27, 1829.

See No. 876.

To the Commissioner of Cuttack, dated the 27th March, 1829.

No. 499.

1814.
Reg. XXVI. Sec. 2, Clause 2.
1819.
Reg. II. Sec. 30.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 14th ultimo, requesting their instructions as to the proper course of proceeding with respect to certain decisions which have been appealed to your authority.

2. With reference to the case which was referred for trial to the sudder ameen, after a decision had been passed by the collector, I am desired to communicate to you the opinion of the Court, that there appears to be ample ground for the admission of a special appeal, with a view to determine the legality or otherwise of the proceedings ; and that, should you be of opinion that they were illegal, you ought to proceed in the mode suggested by yourself, namely, to return the case to the judge, with orders for him to try it on the original plaint.

3. As to the second point, the Court direct me to acquaint you, that you should exercise your own discretion ; but that, in the Court's opinion, the decision of the two cases alluded to, without reference to the award of the arbitrators, affords sufficient reason to justify the admission of a special appeal in each of them.

March 27, 1829.

See Act XXVI. 1852.

To the Judge of the City of Moorshedabad, dated the 3rd April, 1829.

No. 500.

1814.
Reg. XXVII. Secs. 30 and 25.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 28th February last, submitting the following questions for their opinion, with reference to the provisions contained in Section 30, *Regulation XXVII.* 1814.

First.—Whether in the event of two defendants in a civil suit choosing to employ the same vakeel, under separate vakalutnamas, and each allotting to him the full amount of fees prescribed by

Section 25 of the Regulation in question, such vakeel would be authorized in receiving the same?

Secondly.—Whether in the event of two separate vakeels being employed by two separate defendants, they would each be entitled to receive the full amount of fees, and, in that case, what amount of fees would be chargeable to the plaintiff, on the dismission of the suit?

2. *In reply to your first question, I am directed to communicate to you the opinion of the Court, that where a vakeel is employed by two defendants, under separate vakalutnamas, he is entitled to receive from each the full amount of fees prescribed by Section* 25, *Regulation XXVII.* 1814; *and in reply to your second question, that where two separate vakeels are employed by two defendants, they are each entitled to the full amount of fees, and that the whole amount of fees so due is chargeable to the plaintiff on the dismission of his suit.*

April 3, 1829.

Rescinded by Circular Order, No. 48, 30*th June*, 1848.

To the Judge of Zillah Tipperah, dated the 24*th April*, 1829.

No. 502.

1799. Reg. VII. Sec. 15, Clause 7.

1819. Reg. VIII. Sec. 18, Clause 4.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 7th instant, requesting to be furnished with their opinion and orders on the following point: An ijaradar obtains a farm from a zemindar for five years, and enters into agreements with the ryots for that term; but after holding it for two years, he becomes a defaulter, is ousted, his engagement with the zemindar annulled according to clause 7, Section 15, Regulation VII. 1799, and a new man obtains a farm for the remaining period of three years. Under these circumstances, is it in the power of the new ijaradar to annul the above leases granted by the former ijaradar, and to enter into agreements with the ryots for the three years which are to come?

2. In reply, I am desired to refer you to the provisions contained in clause 4, Section 18, Regulation VIII. 1819, as meeting the point contained in your reference.

April 24, 1829.

To the Judge of Zillah Jungle Mehals.

No. 503.
1812.
Reg. V. Sec. 13.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 25th ultimo, requesting their opinion on the following point: Is a zillah judge authorized to take up and investigate, in a summary manner, a complaint preferred by a zemindar or his gomashta against the ryots for breach of attachment of crops, made under the provisions of Section 13, Regulation V. 1812.

2. In reply I am desired to refer you to the provisions contained in Section 15, Regulation VII. 1799, and to acquaint you, that the Court determined on the 9th of August, 1806, that all suits instituted under the section in question shall be tried in a summary manner.

See Regulation VIII. 1831, and No. 23.

To the Benares Provincial Court of Appeal, dated the 8th May, 1829.

No. 507.
1816.
Reg. IV. Sec. 4.
1826.
Reg. III. Sec. 2.
1829.
Reg. I. Sec. 3.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 15th ultimo, annexing copy of a letter from the acting judge of the Southern Division of Bundlecund, requesting the Court's opinion relative to the competency of commissioners of circuit to exercise, under Section 3, *Regulation I. of* 1829, *the powers vested in judges of circuit by Section* 4, *Regulation IV. of* 1816.

2. *In reply, I am desired to refer you to Section* 2, *Regulation III.* 1826, *which you appear to have overlooked, by which the control of the civil jails is vested in the magistrates, and by which, consequently, the duty alluded to in Section* 4, *Regulation VI.* 1816, *was transferred from the judges of the provincial court to the judges of circuit.*

3. *You will be pleased to furnish the acting judge of zillah Allahabad, with a copy of the above remark, for his information and guidance.*

May 8, 1829.

See Act XVIII. 1844.

To the Acting Judge of Zillah Purnea, dated the 22nd May, 1829.

No. 508.

1828. Reg. III.
1819. Reg. II.

I am desired by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, dated the 11*th instant, requesting to be informed whether you should forward to the commissioner appointed under Regulation III. of* 1828, *any suits of Regulation II.* 1819, *pending in your Court.*

In reply, I am desired to acquaint you, that the suits in question should be retained in your own file, the district of Purnea not having been enumerated in the resolution of Government, under date the 19*th of June last, as one of those subject to the jurisdiction of a special commissioner appointed under Regulation III. of* 1828.

May 22, 1829.

Temporary.

To the Acting Judge of Zillah Allahabad, dated the 29th May, 1829.

No. 509.

1814. Reg. XXIII. Sec. 52.
1825. Reg. VII. Sec. 3.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 12th instant, requesting to be informed, whether the courts are authorized to employ their nazirs in the attachment and sale of personal property for the purpose of realizing the amount of fines, or of decrees regular and summary ; and if so, whether the nazirs in such cases are entitled to receive a commission on the proceeds of the sales, in the same manner as moonsiffs, under Section 52, Regulation XXIII. 1814.

On the first point, I am directed to refer you to the provisions of Section 3, Regulation VII. 1825, wherein you will find recognized the practice alluded to by you, of employing the nazirs in the attachment and sale of property ; but the Court are of opinion, that those officers are not entitled to receive any commission on the proceeds of such sales, the rule cited by you with regard to moonsiffs, who are not, in the discharge of their ordinary functions, ministerial officers of the courts, not being analogous to the case in point.

May 29, 1829.

See Nos. 587 and 824.

To the Dacca Court of Appeal, dated the 5th June, 1829.

No. 510.

Rules for distribution of the business of Provincial Courts, dated 14th January, 1819.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 28th ultimo, stating that the distinction of senior and second judges being abolished by Regulation III. 1829, *the rules for the distribution of business, under date January 14th,* 1819, *issued by the Sudder Dewanny and Nizamut Adawluts, are no longer applicable to the present constitution of the Court; and requesting other instructions in the room of those rules.*

2. *In reply, I am desired to acquaint you, that the rules to which you refer were framed chiefly with reference to the duties formerly required of the judges in their capacity of judges of circuit; that no fresh instructions appear necessary; and that you should adopt such rules and make such arrangements as may be most convenient and conducive to the prompt and efficient discharge of the business of your office.*

June 5, 1829.

To the Dacca Court of Appeal, dated the 24th July, 1829.

No. 514.

1814.
Reg. XXIII. Sec. 8, Clause 2, and Sec. 63.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 26th ultimo, suggesting that some provision be made, empowering you to nominate persons to officiate for sudder ameens, who may be absent on leave.

2. *The Court conclude that you refer to your power of confirming the temporary nominations made by the judges within your jurisdiction of persons to officiate during the occasional absence of the permanent incumbents; but they observe, that as you are already vested with the power of confirming permanent appointments to any vacancies that may occur, there can be no objection to your exercising the same authority in cases of a temporary nomination.*

3. *I am desired to add, that the rule cited by you in the third paragraph of your letter, namely, clause* 2, *Section* 8, *Regulation XXIII.* 1814, *may be considered applicable to temporary officiating moonsiffs.*

July 24, 1829.

See Section 13, *Regulation V.* 1831.

To the Judge of Zillah Jessore, dated the 24th July, 1829.

No. 515.

1823.
Reg. VI.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 15th instant, requesting the Court's construction of Regulation VI. 1823, as to whether the engagement executed by parties applying for possession of indigo crops, under the provisions of clause 9, Section 3 of the above enactment, can be enforced under the summary award.

2. In reply, I am desired to answer your question in the affirmative, and to acquaint you, that the summary decree should contain a provision for the payment, by the party cast, of the sum specified in his engagement. In the event of the amount not being paid, it should be realized by the process prescribed for giving effect to summary judgments ; and, with reference to the remark contained in the third paragraph of your letter, I am desired to observe, that the case is not altered by the fact of the party cast being British born subjects, such individuals being, by Section 107, Chap. 155, 53rd George III. declared amenable, equally with natives, to the local courts of civil judicature.

July 24, 1829.

See Act X. 1836.

To the Judge of Zillah Beerbhoom, dated the 21st August, 1829.

No. 519.

1799.
Reg. VII.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 10th instant, requesting to be informed whether the present practice of receiving summary petitions and issuing process against defaulting cultivators for arrears of rent, however small the amount, is to be permitted to continue, and whether you are at liberty to dismiss the whole of such summary suits now pending.

2. In reply, I am desired to acquaint you that, under the existing Regulations, a person to whom arrears of rent may be due is authorized to proceed against the defaulter, either by distraint of his property or attachment of his person ; and that he may exercise the option allowed him in such mode as he may conceive most convenient to himself.

3. You are consequently not at liberty to reject summary suits instituted under Regulation VII. 1799, whatever may be the amount sued for, and you will be pleased to proceed in due course to the adjudication of those now pending.

August 21, 1829.

See Regulation VIII. 1831.

Extract from a Letter from the Judge of Mymensing, dated the 3rd August, 1829.

No. 520.
1793.
Reg. XIII. Sec. 8.

PARA 1. May I request the favour of your obtaining for me the superior Court's opinion on the following queries :

1*st*.—Whether, under Section 8, Regulation XIII. 1793, sudder ameens and moonsiffs are included among the native officers directed not to interfere, publicly or privately, in any cause or matter depending before the court (judge's) to which they may be attached ?

2*nd*.—Whether there is any exception in the event of the matter or cause being before any other court, but that of the judge, or the court over which the sudder ameens or moonsiffs may preside ?

3*rd*.—Whether the circumstance of the cause or matter being pending in appeal from the orders of the lower courts, either before the Sudder Dewanny Adawlut, court of appeal, judge's court, or the court of sudder ameen, (more particularly in appeal before the judge's court, to whose authority they may be subordinate,) exempts them from the prohibition in the section quoted ?—In other words, are they allowed to interfere, publicly or privately, in any cause or matter originally decided or brought to a hearing in the judge's court, but which may be pending in appeal before the appellate or superior Court, or which may be pending in appeal before the judge's court from decisions passed by the register, sudder ameens, or moonsiffs ?

To the Judge of Zillah Mymensing, in reply to the above, dated the 21st August, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 3rd instant, requesting the Court's construction of Section 8, Regulation XIII. 1793, and submitting various observations in relation to that subject.

2. In reply I am desired to communicate to you the opinion of the Court, that sudder ameens and moonsiffs are not included in the prohibitory provisions of the rule cited by you.

August 21, 1829.

No. 523.
1819.
Reg. VIII.

On the question, as to whether a farmer under the Court of Wards has the right of bringing to sale dependant talooks under Regulation VIII. 1819, the Court, on the 4th September, 1829, observed, that the collector, (or more strictly speaking the Court of Wards,) stands in the place of the zemindar ; and that a surburakar, appointed by the collector, has the same powers as a surburakar appointed by the zemindar, (were he of age,) would have, and is answerable to the collector for every thing he does in the management of the estate ;

and that a farmer, under a lease from the collector, being responsible to the Collector for nothing but the rent he has agreed to pay, stands exactly in the same predicament as a farmer under a lease from a zemindar; and that it had been held by the Court, (see construction, dated 7th September, 1827,) that farmers holding of proprietors cannot exercise the privilege given to the latter by Section 8, Regulation VIII. 1819.

2. The reason which induced the Court to adopt that construction was, that the enactment cited, specifying only proprietors, could not be held to give the large powers it confers to any but proprietors.

September 4, 1829.

See Nos. 313 and 461.

No. 524.

The following question being proposed to the Court, "An individual, whose security has been tendered in a cause about to be appealed to the King in Council, has petitioned against the acception by this Court of the security so tendered. The document, intimating his willingness to become the security, was delivered into court by the appellant, who claims it to be restored to him, upon the ground of his actual presentation of it; against this the security protests, and prays, the document being his, and now cancelled by him, that he, and not the appellant, may receive it: under these circumstances what course should be pursued?" the majority of the Court declared their opinion, that the document in question should be returned to the appellant, as the party by whom it was filed, a copy of the same being retained in the office; and the petitioner's application was rejected accordingly.

September 4, 1829.

To the Judge of Zillah Tipperah, dated the 30th October, 1829.

No. 527.

1819.
Reg. II. Sec. 30.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 16th instant, requesting the Court's construction of Section 30, Regulation II. 1819.

2. In reply, I am desired to acquaint you, that the Court entirely concur with you as to the question referred, and that in conformity with Section 30, Regulation II. 1819, suits of every description, in which lakhiraj land is in dispute, are properly cognizable by the collectors, and not those only in which Government is a party.

3. *You are requested to communicate this construction to the collector of Tipperah, and in the event of his still refusing to*

entertain the suits referred to him, you will inform the parties concerned that they are at liberty to appeal against his order to the commissioner of revenue for the 15th division.

October 30, 1829.

See S. D. R., 21st January, 1851, p. 35.
Clause 3 superseded by Construction No. 981.

No. 531.
1799.
Reg. VII.
1819.
Reg. VIII.

At a Court of Sudder Dewanny Adawlut, held on the 27th day of November, 1829, it was determined, that according to the intent and meaning of Regulation VII. 1799, Regulation VIII. 1819, and the constructions of this Court, bearing date the 27th of June and the 14th of November, 1809, a sudder putneedar cannot exercise the same authority as is possessed by a zemindar, with respect to his under-tenants, of selling the tenure of his dur-putneedar without previous application to the Court.

November 27, 1829.

See Nos. 523 and 461.

To the Commissioner of Cuttack, dated the 14th December, 1829.

No. 532.
1825.
Reg. VII.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 20th ultimo, with its enclosed reference from the judge of Cuttack, on the subject of the construction of Regulation VII. 1825, contained in this Court's circular instructions, bearing date the 6th of June, 1828.*

2. In reply, I am desired to acquaint you, that those instructions did not refer to the case of a purchaser who refused to take possession of the property purchased within a reasonable period after possession has been tendered to him; and that the purchase-money should, in such case, be paid to the decree-holder, the purchaser being warned that he must abide by the consequences of refusing to take possession.

December 4, 1829.

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* See Circular Order, Sudder Dewanny Adawlut, No. 1, page 1, vol. II.

To the Special Commissioner for the Patna Division, dated the 1st January, 1830.

No. 534.

1819. Reg. II.

1828. Reg. III. Sec. 2, Clause 1.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 18th November last, requesting their opinion in a suit appealed from the decision of the collector and Board of Revenue, and tried by the late third judge of the Patna Provincial Court under the provisions of Regulation II. 1819.

2. In reply, I am desired to observe as follows: by clause 1, Section 2, Regulation III. of 1828, suits for the resumption of lands held rent-free, in districts in which a commissioner has been appointed under that Regulation, can only be finally determined by the commissioner.

3. By clause 4 of the same section, all such suits which may be pending in the ordinary courts are directed to be transferred to the commissioner; and by the same clause, it is expressly provided that no appeal shall lie to any established courts of judicature from any decision that has been or shall be passed by a Board of Revenue, or a collector, previously to, or pending the appointment of a commissioner.

4. By those rules, therefore, the Court consider, that they are precluded from admitting the appeal in the case referred to, and they direct me to communicate to you their opinion that clause 6 of Section 4 should be considered as authorising you to admit an appeal from the decree of the Patna Provincial Court; otherwise, the Court observe, the party deeming himself aggrieved by that decree would be deprived the right of appeal which was open to him prior to the passing of that Regulation.

January 1, 1830.

To the Judge of Zillah Cawnpore, dated the 1st January, 1830.

No. 536.

1808. Reg. XIII. Sec. 11, Clause 2.

1814. Reg. XXVI. Sec. 2, Clauses 1 and 4.

1796. Reg. X. Sec. 2.

1803. Reg. XXII. Sec. 2.

The Court of Sudder Dewanny Adawlut have had before them your letter, soliciting the Court's opinion of the following questions:

First.—Can a judge carry into execution his own decree on a first appeal from a register's or sudder ameen's or moonsiff's court, before the expiration of three months, and without requiring security under clause 2, *Section* 11, *Regulation XIII.* 1808, *from the party in whose favor he may have decreed? Or must he wait three months, and allow the party, against whom the award may be, the benefit of the period limited for the admission of appeals?*

Secondly.—If a decree passed on a first appeal is not to be executed until the three months allowed for special appeals be

expired, may it not, nevertheless, be executed on the party holding the decree, if not in possession. giving security under Clause 2, *Section* 11, *Regulation XIII.* 1808 ?

Thirdly.—With reference to clause 4, *Section* 2, *Regulation XXVI.* 1814, *if a provincial court, or other competent court pass an order admitting a special appeal, and yet it shall appear, that their order was passed on other grounds than those stated in clause* 1, *Section* 2, *Regulation XXVI.* 1814, *is it competent to the judge, against whose decision the special appeal may have been admitted, to refer the subject to the Sudder Dewanny Adawlut, as an appeal upon the construction of clause* 1, *Section* 2, *Regulation XXVI.* 1814 ?

2. *In reply to your first and second questions, I am desired to communicate to you the opinion of the Court, that in all cases, in which an appeal is allowed by the Regulations, the decree-holder should not be put in possession without furnishing security to abide by the ultimate award, until after the period allowed for the appeal shall have elapsed; but that possession may, of course, be awarded on the tender of such security, under clause* 2, *Section* 11, *Regulation XIII.* 1808.

3. *To your third question, I am desired to furnish a reply in the negative, as a reference by the judge, under such circumstances would be placing himself in the light of an advocate of one of the parties of the suit.*

January 1, 1830.

See Nos. 90 *and* 1077.
Rescinded by para. 3, *Circular Order No.* 81, 11*th January*, 1850.
See also No. 479.

No. 537.

1814.
Reg. XXVI. Sec. 20, Clause 3.

On the 8th of January, 1830, the Court of Sudder Dewanny Adawlut resolved, that exhibits filed along with petitions for the admission of special appeals, under clause 3, Section 20, Regulation XXVI. 1814, are not subject to the payment of a fee on being filed.

January 8, 1830.

See No. 961.

No. 538.

1810.
Reg. XIII. Sec. 6, Clause 3.

The following question having been proposed to the court: " A obtains a decree in the zillah court against B, who appeals to the provincial court. The judges of the latter call for a bywusta, which is furnished by the acting pundit of the court; and upon this only the zillah decision is reversed. A appeals to the Sudder Dewanny Adawlut, where the bywusta given (as

above) appears to be at variance with the shasters and inadmissible, but the evidence is deemed sufficient to establish the right of B : on this evidence the reversal of the zillah decision is confirmed, the bywusta of the provincial court being rejected. Must the proceedings be submitted to another judge of this court? or is the judgment given thus, by one affirming judge, final?" the Court determined that under all the circumstances of the case, and especially the rejection by the sitting judge of the law opinion delivered in the court below, it was necessary that the case should be sent to another judge for his concurrence.

January 29, 1830.

See Act XV. 1853.

No. 540.

On the question, "as to whether a decree against the guardian of a minor can be executed to the detriment of a farmer, holding a lease of the estate decreed under a pottah from the Court of Wards; the minor having been acknowledged by the Court of Wards as the adopted son of the deceased malik, but the asserted adoption having been disproved in the courts, and the claim maintained upon it set aside; and the decree-holder petitioning to oust the farmer holding the lease as above, and to be put in possession of the land free from such engagement:" the Court were of opinion that the lease should stand, supposing absence of collusion.

February 26, 1830. *N. S. S. R. 43. Ap. 26. 18*

To the Judge of Zillah Backergunge, dated the 19*th March*, 1830.

No. 541.

1799.
Reg. V. Sec. 7.
1803.
Reg. III. Sec. 16, Clause 7.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 6th instant, requesting the Court's instructions as to the mode necessary to be adopted respecting the disposal of sundry bonds, tumussooks, &c. deposited in your court, belonging to persons dying intestate.

In reply, I am desired to refer you to the rule contained in Section 7, Regulation V. 1799, by which you will perceive, that an inventory of all personal property, unclaimed after the period of twelve months from the decease* of the proprietor, should be transmitted to the Governor General in Council for his orders; and to

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* From the date on which the publication of the advertisement is certified, Circular Order, 23rd December, 1846, No. 144.

direct that, with regard to the description of property specified in your letter, you adopt the same course of proceeding.

March 19, 1830.

To the Judge of Zillah Cawnpore, dated the 19th March, 1830.

No. 542.

1821.
Reg. I. Sec. 3, Clauses 1, 2, 3, 4, 5 and 6.
1829.
Reg. I. Sec. 10.
Reg. XVIII. Sec. 3, Clause 2.
1823.
Reg. I. Sec. 2, Clause 2.

I am desired by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, dated the 27th ultimo, soliciting the Court's instructions as to the following questions:

First.—As commissioners of revenue and circuit are, under Section 10, Regulation I. 1829, vested with all the powers formerly vested in the special commission by Regulation I. 1821, requesting to be informed, whether under the 1st, 2nd, 3rd, 4th, 5th and 6th Clauses of Section 3, Regulation I. 1821, the trial of every kind of zemindaree or putteedaree claim is not institutable before the commissioners of revenue?

Second.—If a claim be made by a putteedar against the sudder malgoozar for a share of a mehal, and that sudder malgoozar should not have instituted a suit himself, still is not such claim by the putteedar institutable before the commissioner of revenue, at the option of the parties?

Third.—Are not appealed suits, in whatever court pending, for lands and shares of zemindaries, equally subject to clause 2, Section 3, Regulation XVIII. 1829?

Fourth.—In future what steps are the zillah courts to take on a zemindaree claim being filed? At once to call upon the defendant, under clause 2, Section 3, Regulation XVIII. 1829, or to refer the plaintiff at once to the commissioner of revenue?

2. *In reply, to your first question, the Court can only observe, that all cases which were formerly cognizable, under the rules cited by you, by the special commissioners under Regulation I.* 1821, *are equally cognizable by the commissioners of revenue appointed under Regulation I.* 1829.

3. In reply to your second, that the rules cited by you have been extended by clause 2, Section 2, Regulation I. 1823, which authorises the cognizance of all cases, wherein it may appear that any plaintiff has been deprived of his right by an illegal sale, without reference to his being a sudder malgoozar or otherwise.

4. In reply to your third, that appealed suits are, in like manner as original suits, subject to clause 2, Section 3, Regulation XVIII. 1829.

5. And in reply to your fourth, that Regulation XVIII. 1829, refers to cases actually pending in the courts of judicature, and has no reference to cases which may arise hereafter, and which must of course be instituted in the revenue or the judicial courts, according

as the subject matter may render them cognizable in the one or other tribunal.

March 16, 1830.

See No. 562.

No. 550.

Execution of a decree stayed on special grounds, without demand of security.

A decree having been passed against certain persons, under which they have been declared, with their families, the slaves, and as such the property of the decree-holder, was affirmed in the provincial court; but a special appeal was admitted by the Sudder Dewanny Adawlut, on the grounds of the appellants, (the slaves under the judgments already given,) not appearing to be so under what, by the Mahomedan law, is required to constitute slavery. The appellants did not give security to stay the execution of the decree, for which the decree-holder had made application. Under these circumstances, it became a question whether execution should be ordered; or if stayed, upon what terms.

The Court were of opinion, that as the special appeal was admitted on the presumption that the appellants had been wrongfully declared to be slaves, and as they would be unable to prosecute their appeal if delivered over to the custody of the decree-holder as slaves, the execution of the decree should, in this special instance, be stayed without demanding security from the appellants.

May 7, 1830.

See Act V. 1843.

To the Judge of Zillah Cawnpore, dated the 7th May, 1830.

No. 551.

1805. Reg. II. Sec. 10.
1814. Reg. XXVI. Sec. 4, Clause 2.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 21st ultimo, requesting the Court's answer to certain questions, involving the construction of Section 10, Regulation II. 1805; clause 2, Section 4, Regulation XXVI. 1814; and clause 1, Section 2, Regulation II. 1825.

2. In reply, I am directed to communicate to you the opinion of the Court, that under the circumstances stated in your letter, a second regular suit would be inadmissible; but that the plaintiff, whose suit had been dismissed by the sudder ameen, on the strength of the decree of the judge which was afterwards reversed in appeal by the provincial court, might petition for the summary appeal under Section 3, Regulation XXVI. 1814, as from a dismissal without an investigation of the merits of the case; or, had the case been dismissed

by a judge, on a decree of the provincial court afterwards reversed by the Sudder Dewanny Adawlut, the facts stated by you would be sufficient to authorize the judge to apply for a review of judgment, which the Court would grant; or, had the plaintiff preferred a regular appeal from the decision of the sudder ameen, the facts stated would be sufficient to authorize the admission of the appeal, notwithstanding the expiration of the period allowed by the Regulations.

May 7, 1830.

No. 552.

Special appeal from a decision on its merits by the provincial court of a case dismissed on default by the zillah judge.

The following question having been proposed to the Court: "A case being nonsuited by the zillah judge, the plaintiff appeals to the provincial court, where his case having been heard on its merits, a decision is passed in his favor. The respondent presents a petition for the admission of a khas or special appeal. As the provincial court ought, strictly speaking, to have merely tried the justice of the nonsuiting order—should a special appeal be admitted? or should the appeal be considered as a first or regular appeal?" the Court were of opinion, that the most regular course would be to admit a special appeal.

May 14, 1830.

To the Judge of Zillah Futtehpore, dated the 28th May, 1830.

No. 553.

1829.
Reg. X.
Sch. B. No. 7.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 7th instant, requesting to know, whether the petitions of all persons confined in jail are to be considered as coming under the exemptions specified in No. 7, Schedule B, Regulation X. 1829.

2. In reply, I am directed to inform you, that the Court are of opinion, that the exemptions referred to should be construed to allow the prisoners, confined under civil process, to petition on plain paper, only in matters relating to their treatment in jail; and persons confined under criminal process, in matters relating to their treatment in jail, and to the case in which they are confined.

May 28, 1830.

To the Acting Judge of Zillah Futtehpore, dated the 28th May, 1830.

No. 554.

1825.
Reg. VII. Sec. 2.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 30th ultimo, requesting the Court's instructions as to the mode of proceeding to be adopted by a judge, in the event of the purchaser of property sold by the officers of the court in execution of a decree refusing to pay the purchase-money, and take possession of the property; and in the event of a second sale taking place, in what manner the judge is to realize the amount bid at the first sale, should the property be disposed of for a smaller sum.

2. In reply, I am desired to acquaint you, that in the case stated, you should adopt the process prescribed for enforcing a decree of court.

May 28, 1830.

See Circular Order, No. 219, 12th August, 1842.

To the Judge of Zillah Cawnpore, dated the 28th May, 1830.

No. 555.

1829.
Reg. X.
Sch. B, No. 7.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 14th instant, inquiring on what stamp paper security bonds for costs of suits, &c. entered into by order of a civil court should be written, under the provisions of Regulation X. of 1829; and to inform you in reply, that such bonds should be written on the stamp prescribed in No. 7, Schedule B, Regulation X. 1829, for petitions presented to the courts requiring the security.

May 28, 1830.

See Act III. 1845.

To the Judge of Zillah Dinagepore, dated the 28th May, 1830.

No. 556.

1814.
Reg. XXVI. Sec. 8, Clause 5.
1829.
Reg. X.
Sch. B, No. 9.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 6th instant, bringing to the notice of the Court two errors in the Bengalee translation of Regulation X. 1829, and requesting to be informed on what stamp paper the reasons for an appeal [wujoohat-i-appeal] should be presented.

2. In reply, I am directed to inform you, that the errors noticed by you will be brought to the notice of Government, with a view to

their correction : and to observe, on the subject of your last paragraph, that the fifth clause of Section 8, Regulation XXVI. 1814, which has not been rescinded by Regulation X. 1829, or any other enactment, provides that the specific objections of a judgment appealed from, if not stated in the petition of appeal, shall be filed as a separate pleading. The value of the stamp to be used for such pleadings is laid down in No. 9, Schedule B, Regulation X. 1829.

May 28, 1830.

See No. 767, No. 834, and Section 3, Regulation VII. 1832.

To the Secretary to the Government in the Judicial Department, dated the 28th May, 1830.

No. 557.

1829.
Reg. X.
Sch. A, No. 7.
Sch. B, No. 10.

I am directed by the Court of Sudder Dewanny Adawlut to request you will lay before the Right Honorable the Governor General in Council, the accompanying statement, furnished by Doctor Carey, Bengalee translator, of two errata which have been discovered in the Bengalee translation of Regulation X. 1829, with a view to their being printed for general information.

2. They are as follows : the omission of the negative particle না before the verb হইলে, in No. 7, Schedule A. ; and the substitution of the word অৰ্দ্ধ (half) in the No. 10, Schedule B, in the ninth line of the 2nd page containing that number, for the word সেই.

May 28, 1830.

To the Judge of Zillah Cawnpore, dated the 18th June, 1830.

No. 562.

1820.
Reg. I. Sec. 3.
1829.
Reg. XVIII. Sec. 2.
1823.
Reg. I.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 24th April last, acknowledging Mr. Macnaghten's letter of the 19th March last, and requesting further information on the subject of claims for land, under the provisions of Section 3, Regulation I. 1820, and Section 2, Regulation XVIII. 1829.

2. In reply I am directed by the Court to repeat the construction contained in the letter above-mentioned, that all suits which were cognizable by the special commissioners, under Regulation I. of 1821, and Regulation I. of 1823, are now cognizable by the com-

missioners of revenue. In regard to suits not called for by the commissioner, the Court desire you will exercise your judgment as to whether they should be transferred to that authority or not.

June 18, 1830.

See No. 542.

To the Judge and Magistrate of Zillah Etawah, dated the 18*th June*, 1830.

No. 563.

Petitions to the Nizamut Adawlut may be presented by the vakeels of the Sudder Dewanny Adawlut, or by mookhtars duly appointed.

In reply to your letter of the 1st instant, I am directed by the Courts of Sudder Dewanny and Nizamut Adawlut to inform you, that the vakeels of the Sudder Dewanny Adawlut may present petitions to the Court of Nizamut Adawlut, and that there are no mookhtars specially appointed to do so. Petitions in criminal matters are received through any mookhtars the petitioner may wish to employ.

June 18, 1830.

To the Judge of Zillah Jessore, dated the 9*th July*, 1830.

No. 565.

1805. Reg. II.
1823. Reg. VI.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 27th May last, on the subject of indigo engagements, and to communicate to you the following replies to the several questions therein submitted:

Question 1.—The rules prescribed in Regulation II. 1805, in regard to the institution of summary suits for rent, should be applied to suits for the recovery of advances for indigo, instituted under Regulation VI. 1823.

Question 2.—The owner of the factory for the time being should be considered as standing in the place of the former owner, by whom the advance was made, and equally entitled to adopt any of the processes for the recovery thereof which the Regulation referred to allows.

July 9, 1830.

To the Judge of the 24-Pergunnahs, dated the 23rd July, 1830.

No. 567.

Courts not to execute decrees of the Supreme Court, unless a writ of assistance be issued.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 15th instant, requesting their opinion as to whether an application by Mr. E. Macnaghten, acting as a receiver on the part of Kistonund Biswas, to carry into execution a decree of the Supreme Court, accompanied by copy of the decree, is sufficient to authorize your interference; or whether a formal order of the Supreme Court, calling on you to give possession of the lands situated within your jurisdiction, should not issue, in order to bring the matter under your cognizance.

2. In reply, I am directed to inform you, that you should not interfere with the execution of decrees of the Supreme Court, unless a writ directing execution be issued by that court.

July 23, 1830.

To the Judge of Zillah Jungle Mehals, dated the 23rd July, 1830.

No. 569.

1806.
Reg. II. Sec. 10.

1814.
Reg. XXIII. Sec. 45, Clause 7.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 19th instant, enclosing copy of a letter from the register of your court, and requesting the Court's opinion on the subject of the release of a debtor confined in a Dewanny jail, on his executing a kistbundee in favor of his creditor, under the provisions of Section 10, Regulation II. 1806.

2. In reply, I am directed by the Court to inform you, that according to the provisions above quoted, it is incumbent on the civil courts to release a debtor with the consent of his creditor, on the execution, by the former, of a kistbundee. The Court however observe, that the execution of a kistbundee for a larger sum than 64 rupees, including interest and costs of suit, cannot be considered as depriving the debtor of his claim to be released, under clause 7, Section 45, Regulation XXIII. 1814, after he has been confined for the space of six months, in execution of a decree for a sum not exceeding 64 rupees.

July 23, 1830.

To the Acting Judge of Zillah Allahabad, dated the 27th August, 1830.

No. 572.

Power of a judge to take cognizance of forgery, arising out of a case tried by a sudder ameen.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 23rd ultimo, requesting the Court's opinion, as to whether you are authorized to take cognizance of a case of forgery arising out of a civil suit tried by a sudder ameen.

2. In reply, I am directed to inform you, that if the civil suit, in which the document said to be a forgery was filed, is pending before you in appeal, you are competent to commit the party, whom you may deem guilty of having forged it, (or filed it knowing it to have been forged,) to be tried by the court of circuit; but that if the appeal has been decided, the alleged forgery can only be brought under your cognizance, by your obtaining the sanction of the Sudder Dewanny Adawlut to revise your judgment.

3. I am further directed to inform you, that, in the opinion of the Court, the sudder ameen, who tried the suit in the first instance, if he thought that the document in question was a forgery, and that the party who filed it knew it to be so, should have sent the case to the judge, who would have been competent to proceed against the person or persons whom he might have deemed guilty, in like manner as it would be in a suit instituted and pending before himself.

August 27, 1830.

See Act I. 1848.

To the Judge of Zillah Midnapore, dated the 17th September, 1830.

No. 574.

1812. Reg. V.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 3rd ultimo, requesting the Court's opinion on certain points relative to the recovery of private rents by distraint of the property of the defaulter, and by summary suits.

2. In reply, I am directed by the Court to observe, that under the law as it now stands, a zemindar, talookdar, farmer, or other landholder may distrain the property of his ryots and under-tenants; and the moonsiffs must proceed, in conformity to the rules prescribed, to the sale of the property distrained, although the distrainer do not produce a kubooleut executed by the alleged defaulter. The right to distrain is vested in the landholder with the view to facilitate the realization of his rents, and he cannot be deprived of it by a rule,

which a judge, or other functionary, may take upon himself to enact. If he distrain unjustly, he does so at his own risk, and the tenant or ryot may immediately apply for redress to the established courts of justice.

3. The Court further observe, that a zemindar, talookdar, farmer, or other landholder, who, in a summary suit, can show by his village accounts, (proved to be kept in a regular form and to be true accounts,) or by any other probably true evidence, that the arrear demanded by him is due by the defendant, he is entitled, under the existing law, to a decree for the amount of the arrear, although he may not have granted a potta to the defendant, or have received a kubooleut from him.

4. Under this view of the case, the Court desire that you will recall the notification mentioned in the third paragraph of your letter, and that part of the orders issued to the moonsiffs noticed in the fourth paragraph, which directs them not to sell distrained property unless a distrainer produce a kubooleut. The mode of proceeding to be adopted, when two parties claim an arrear from the same ryot, being clearly defined in the Circular Order of 3rd June 1813, (No. 36, page 25, part 1st, of volume I. Circular Orders, Sudder Dewanny Adawlut, Baptist Mission Press Edition,) the Court desire, that you will communicate them to your moonsiffs, for their information and guidance.

September 17, 1830.

See No. 380 and Act I. 1839.

To the Judge of Zillah Hooghly, dated the 24th September, 1830.

No. 575.

1793. Reg. IV. Sec. 8. 1799. Reg. VII. 1830. Reg. VI. Sec. 2.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 10th instant, requesting the Court's opinion as to whether the terms of Section 2, Regulation VI. 1830, preclude the issue of a dustuck for the arrest of a defaulter, under Regulation VII. 1799, until subsistence money for thirty days shall have been paid into the nazir's hands.

2. In reply, I am directed by the Court to observe, that the object of the Regulation in question being to modify the provisions of Section 8, Regulation IV. 1793, so as to prevent debtors confined in jails suffering additional hardships from the failure of their creditors to furnish them with subsistence, the terms of the section quoted by you cannot be considered as barring the issue of a dustuck against a defaulter, under Regulation VII. 1799 ; though no defaulter can be committed to jail, until the subsistence money for thirty days has been deposited*.

September 24, 1830.

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* The letter was circulated for general information. See Circular Order Sudder Dewanny Adawlut, 14th June, 1831, No. 6, page 25, vol. II. Baptist Mission Press Edition.

To the Judge of Zillah Beerbhoom, dated the 1st October, 1830.

No. 576.

1819.
Reg. II. Sec. 30, Clause 1.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 4th August last, requesting the Court's instructions on certain points connected with the provisions of clause 1, Section 30, Regulation II. 1819.

2. In reply, I am directed to inform you, that the Court, understanding your first question to have reference to cases in which Government would not be entitled to any revenue from the land, if resumed, are of opinion, that the petition of plaint should be written on stamp paper of the value prescribed for rent-free lands, whether the claim be by an individual against a zemindar to hold land on a rent-free tenure, or by a zemindar to resume land held on an illegal rent-free tenure.

3. In reply to your second query, in the case of a zemindar suing to resume lands held on a rent-free tenure, the only question for the Court to determine is the validity or otherwise of the alleged rent-free tenure, and not the amount assessable thereon. The decree, in the event of the suit being decided in favor of the plaintiff, should merely declare the land liable to assessment.

October 1, 1830.

To the Judge of Zillah Behar, dated the 5th November, 1830.

No. 577.

1829.
Reg. X, Sch. B, Art. 8.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 19th ultimo, requesting the Court's construction of that part of Schedule B, Regulation X. of 1829, which relates to the mode of estimating the value of stamp paper required in suing for malgoozaree estates.

2. In reply to your first query, I am directed to state, that if the cause of action be one and the same, a plaintiff may sue for two or more distinctly assessed mouzas or mehals, in one and the same action, laying his plaint at the aggregate value of the whole sued for.

3. The above reply renders it unnecessary to answer your second query ; and in reply to the third, I am directed to state, that the penalty of nonsuit, provided in the concluding part of Article 8, Schedule B, Regulation X. 1829, is applicable to all suits in which the conditions contained in the said provision have not been complied with.

November 5, 1830.

To the Judge of Zillah Burdwan, dated the 24th December, 1830.

No. 580.

1819.
Reg. VIII. Sec. 9.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 14th instant, requesting the Court's construction of certain points connected with the sale of putnee talooks by public auction, under Section 9, Regulation VIII. of 1819.

2. The Court are of opinion, that if the auction purchaser do not pay the balance of the purchase-money by noon of the eighth day from the day of sale, he forfeits by his failure the fifteen per cent. deposited by him on the day of sale, and all right to benefit by an increased price at a second sale, while he will be answerable for any deficiency ; *and that the forfeited percentage is to be considered as part of the proceeds available for the benefit of the defaulter.* Should this last be sufficient to cover the balance claimed by the zemindar, no further sale need take place ; otherwise (if the balance be not previously paid by the defaulter) the talook must be re-sold on the ninth day, and any surplus of the forfeited percentage and of the proceeds of the second sale, after liquidating the zemindar's demand, must be paid to the defaulting talookdar.

December 24, 1830.

See Act XXV. 1850.

To the Provincial Court of Appeal, Dacca, dated the 31st December, 1830.

No. 581.

Appeal from summary decision admissible, if the provisions of the Regulations have not been complied with.

In reply to your letter of the 11th instant, submitting, at the request of the judge of Tipperah, a reference as to the competency of a provincial court of appeal to revise an order passed by a zillah judge in a summary suit instituted under Regulation V. 1812, *I am directed by the Court of Sudder Dewanny Adawlut to inform you, that as the order of the zillah judge appears to have been contrary to the provisions of the Regulation quoted, it was clearly competent to you to direct him to conform thereto.*

December 31, 1830.

To the Commissioner of Appeal for the 16th Division, dated the 7th January, 1831.

No. 583.

1829. Reg. X. Sch. B, Art. 8.

The Court of Sudder Dewanny Adawlut having had before them your letter of the 30th November last, and its enclosures, relating to the construction of Article 8, Schedule B, Regulation X. 1829, direct me to state, that the article quoted relates merely to the stamp paper leviable, in lieu of the former institution fee, on petitions of plaint and appeal in regular original suits and appeals and special appeals; and that petitions in summary suits are to be taxed as petitions under Article 7, Schedule B. The Court therefore desire, that you will direct the judge of Chittagong to recall the proclamation, issued in conformity with his roobukaree of the 20th March last, and to give publicity to this construction of the point in question.

January 7, 1831.

See Section 7, Regulation VIII. 1831.

To the Provincial Zillah and City Courts, dated the 25th February, 1831.

No. 584.

1819. Reg. II. Sec. 30.

Several instances having occurred, in which it has been found necessary to quash the proceedings of the lower courts in suits involving the question of the validity of titles to hold land exempt from the payment of revenue, in consequence of their having been tried and determined without a previous reference to the collectors, as expressly required by Section 30, Regulation II. 1819, the Court desire, that you will immediately inspect the suits pending on your own file, and on the files of your registers and sudder ameens, and transfer for report to the collector all suits of the nature above stated, which have not already been referred and reported on.

February 25, 1831.

To the Provincial Court of Appeal, Dacca, dated the 28th April, 1831.

No. 586.

1821. Reg. II. Sec. 8.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 28th ultimo, requesting to be informed, whether in the opinion of the Court you are authorized, under the provision of Section 8, Regulation II. 1821, to attach houses in the city of Dacca, in execution of a decree

passed by you in an original suit for arrears of rent due from land in the zillah of Backergunge.

2. *The Court observe, that the wording of the section quoted by you is not quite clear, but adverting to the object of the provision, as stated in the preamble of the Regulation; viz. to afford relief to the judges of the zillah and city courts within the local limits of the jurisdiction of which the provincial courts may be situated, they are of opinion, that you are authorized under that section to attach, through your own officers, land or other amenable property, situated within the city of Dacca, in execution of the decree alluded to.*

April 8, 1831.

To the Provincial Court of Appeal, Dacca, dated the 8th April, 1831.

No. 587.
1814.
Reg. XXIII. Sec. 52.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 23rd ultimo and its enclosures, relating to a claim preferred by the nazir of the civil court of Backergunge to a commission on the proceeds of sales conducted by him; and to inform you, in reply, that the Court are of opinion, that nazirs are not entitled under the existing Regulations to the fee of one anna per rupee on the proceeds of sales conducted by them in execution of decrees, allowed to moonsiffs for performing such duties, by Section 52, Regulation XXIII. 1814.

April 8, 1831.

See Nos 509 and 824.

To the Commissioner of Appeal of the 16*th Division, dated the* 8*th April,* 1831.

No. 588.
1806.
Reg. II. Sec. 5.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 28th ultimo and its enclosures, requesting the Court's opinion as to how far the goods of an European are liable to be attached, on a plaintiff's making oath that the said European is about to alienate them.

2. In reply, I an directed to inform you, that the property of an European defendant is liable to attachment in a suit legally instituted, in like manner as the property of any other person subject to the jurisdiction of the court, upon the court's being satisfied, by sufficient proof, that there is reason to believe the defendant intends to abscond

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and withdraw himself, or remove his property, the detention of which is necessary to the satisfaction of eventual judgment.

3. I am farther directed to observe, that the attachment of the property of the defendant, in the case noticed in the letter from the judge of Chittagong, on the mere oath of the plaintiff, appears to have been premature, and the process of attachment, as exhibited in the judge's letter, at variance with the provisions of clause 2, Section 5, Regulation II. 1806.

4. With reference to the question contained in your second paragraph, I am directed to state, that until the proclamation of attachment has been issued in conformity with the above rule, the defendant may legally alienate his property.

April 8, 1831.

To the Provincial Court of Appeal, Calcutta, dated the 8th April, 1831.

No. 589.

1819. Reg. II. Sec. 30, Clause 1.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 3rd ultimo, submitting a reference from the judge of Hooghly, objecting to the reversal by your Court of an order passed by him, rejecting a prayer for a special appeal.

2. In reply, I am directed to observe, that clause 1, Section 30, Regulation II. of 1819, expressly directs, that " all suits preferred in a court of judicature by proprietors, farmers, or talookdars, to the revenue of any land held free of assessment, as well as all suits preferred by individuals claiming to hold lands exempt from revenue, shall, immediately on their institution, be referred for investigation to the collector." The judge of Hooghly therefore should not have referred the case in question to the sudder ameen. In Clause 6 of the same section, it is provided, that " the collector, on closing his proceedings, shall transmit them, with all the documents therein referred to, to the court by which the reference was made, and the court shall decide the case." As the sudder ameen could not, and did not, refer the case to the collector, he was not, under the provision quoted, authorized to try it after it was reported on by the collector.

3. Under this view of the subject, the Court approve of the order passed by you, directing the judge to admit the special appeal, and try the case himself, and request that you will communicate this opinion to him for his information and future guidance.

April 8, 1831.

See Act XXVI. 1852.

To the Provincial Court of Appeal, Dacca, dated the 15th April, 1831.

No. 591.

1814.
Reg. XXV. Sec. 8.

In reply to your letter of the 7th ultimo, I am directed by the Court of Sudder Dewanny Adawlut to inform you, that the Court are of opinion, that a single judge of a provincial court is competent to direct a zillah or city judge to suspend the execution of an order passed in such summary suits as are appealable, and generally in all miscellaneous cases, until a decision shall have been passed on the appeal.

April, 15 1831.

To the Judge of Zillah Tipperah, dated the 6th May, 1831.

No. 592.

1829.
Reg. X. Sec. 3, and Sch. A.

In reply to your letter of the 7th ultimo, requesting the opinion of the Court of Sudder Dewanny Adawlut whether, with reference to Section 3, Regulation X. 1829, and Schedule A. therein alluded to, account books kept by merchants and shop-keepers for money paid or received, or for goods delivered, &c. &c. and not written on stamp paper, are to be admitted or not as evidence in a court of justice ; I am directed to inform you, that there being no Regulation which requires account books to be written on stamp paper, the Court are of opinion, that they should be considered admissible as evidence, although written on unstamped paper.

May 6, 1831.

See No. 275, and page 134, Sudder Dewanny Reports, 1852.

To the Benares Provincial Court of Appeal, dated the 6th May, 1831.

No. 593.

1814.
Reg. XXVII. Sec. 16.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 7th ultimo, submitting your opinion on the subject of the competency of the judge of the City Court of Benares, to make a distribution of the vakeels employed in the courts of the sudder ameens.

2. In reply, I am directed to inform you, that the Court are of opinion that the judge is fully competent, under the provisions of Section 16, Regulation XXVII. 1814, to make such allotment and distribution of the pleaders attached to the courts of sudder ameens as may appear to him proper, and accordingly request that you recall the orders issued by you to this city judge on this subject.

May 6, 1831.

See Circular Order No. 33, 30th December, 1853.

To the Provincial Court of Appeal, Dacca, dated the 24th June, 1831.

No. 596.

1800.
Reg. I.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 16th ultimo and its enclosures, requesting the Court's construction of Regulation I. 1800, *as relates to the power of the provincial courts of appeal to receive appeals from orders passed under that Regulation by the zillah and city courts; and in reply to acquaint you, that the Court are of opinion, that the provincial courts of appeal have no jurisdiction in the cases provided for by the Regulation in question; but that the parties dissatisfied with the orders of the zillah and city judges must appeal to this Court. You will not of course consider this opinion as declaring that an appeal against a decision in a regular suit instituted against a guardian appointed under Regulation I.* 1800, *shall not be cognizable by a provincial court of appeal.*

June 24, 1831.

To the Judge of Zillah Burdwan, dated the 29th July, 1831.

No. 597.

1819.
Reg. VIII. Secs. 8 and 9.

In reply to the question contained in your letter of the 8th instant, *viz.*, in what district the sale of a putnee talook is to take place, under the provisions of Regulation VIII. 1819, when the revenue of the estate of which it forms a part is payable to the collector of one district, and the estate situate, as far as the jurisdiction of the civil court is concerned, in another; I am directed to state that the Court incline to the opinion that the sale should be conducted by the register of the civil court within the jurisdiction of which the land is situate: but that a special appeal having lately been admitted on this question (among others,) the Court decline giving a decided opinion on the question: it will be more fully considered when that case is brought to a hearing.

See Act VI. 1853.

To the Judge of Zillah Shahabad, dated the 12th August, 1831.

No. 599.

1799.
Reg. VII.
1812.
Reg. V.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 29th ultimo, requesting the opinion of the Court (in consequence of the collector of your district having objected to try such suits,) whether the rent of

lands held free of assessment can be realized by summary prosecutions.

2. In reply, I am directed to inform you, that the Regulations in force, which relate to arrears and exactions of rent, apply equally to claims arising from rent-free land and from land paying revenue to Government, and that summary suits instituted under the above provisions are referrable to collectors, whether the land be rent-free or otherwise.

August 12, 1831.

See Regulation VIII. 1831.

To the Commissioner of Revenue of the 11*th Division, dated the* 30*th September*, 1831.

No. 601.

1793.
Reg. XLV. Sec. 12.
1825.
Reg. VII. Sec. 3.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 5th instant, submitting a question proposed by the collector of Behar, relative to the course to be pursued in serving notices of sales of lands by collectors, in satisfaction of decrees of court.

2. The rules contained in Section 3, Regulation VII. 1825, are applicable, as stated by the collector, to sales conducted by the officers of the civil court; the collector however appears to have overlooked the provisions of Section 12, Regulation XLV. 1793, which the Court consider to be still in force, and applicable to sales by collectors in cases not coming within the third clause of Section 3, Regulation VII. 1825.

3. You are requested to make the necessary communication to the collector, and in the event of his having any further doubts on the subject, the Court, on their being specifically stated, will give them all due attention.

September 30, 1831.

See Act IV. 1846.

To the Commissioner of Appeal, Cuttack, dated the 14*th October*, 1831.

No. 602.

1818.
Reg. V. Sec. 5, Clause 2.
1814.
Reg. XXVII. Sec. 16.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 17*th ultimo, requesting the Court's opinion as to your competency to refuse to admit the vakeels of the zillah court of Cuttack to conduct suits in your*

court as mookhtars, under the provisions of clause 2, *Section* 5, *Regulation V.* 1818.

2. *In reply, I am directed to inform you, that the Court are of opinion, that the practice of allowing the pleaders of the zillah court to conduct suits as mookhtars in your court is objectionable, for the reasons stated by you,* as well as because it is at variance with Section* 16, *Regulation XXVII.* 1814, *which provides, that the vakeels of one court shall not be allowed to plead in any other court; and that you are therefore competent to decline receiving mookhtarnamas authorizing them to conduct suits in your court.*

October 14, 1831.

See Act I. 1846, *and Act XX.* 1853.

To the Judge of Zillah Shahabad, dated the 21*st October*, 1831.

No. 603.

1821. Reg. IV. Sec. 8. 1824. Reg. XIV. 1819. Reg. II. 1807. Reg. IX. 1821. Reg. III.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 26th ultimo, requesting the Court's opinion, as to the competency of a collector to refer to his assistants summary suits referred to him by the civil court.

2. In reply, I am directed to inform you, that the Court are of opinion, that the third clause of Section 8, Regulation IV. of 1821, authorizes a collector to delegate to his assistant only his fiscal duties; and that it has no reference to the judicial duties delegated to a collector by a judge, either under Regulation XIV. 1824, Regulation II. 1819, or any other Regulation; nor to the duties of magistrates vested in a collector, the delegation of which latter to an assistant would, in some cases, be contrary to the provisions of Regulation IX. 1807, Regulation III. 1821, and Regulation I. 1822.

October 21, 1831.

See Sec. 12, Reg. VIII. 1831.

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* The reasons assigned were, the interruption it occasioned in the business of the commissioner's court, from the necessary attendance of the vakeels in the zillah court; and the temptation it gave the vakeels of the judge's court to instigate appeals to the commissioner.

To the Judge of Zillah Behar, dated the 25th November, 1831.

No. 611.

1817.
Reg. XVII. Sec. 14.
1824.
Reg. IV. Secs. 3 and 4.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 17th instant, requesting to be informed, whether persons charged with perjury before a register of deeds should be committed by the zillah judges, or prosecuted before the magistrate by the register of deeds.

2. The Court, considering the registry of deeds to be a "civil proceeding," contemplated by clause 2, Section 14, Regulation XVII. 1817, are of opinion, that in cases of perjury before the register of deeds, the judge and register should proceed in conformity with the provisions of that clause.

3. With reference to the 5th paragraph of your letter, the Court direct me to inform you, that a civil surgeon comes within the class of covenanted servants of the Company; who, by Sections 3 and 4, Regulation IV. 1824, are authorized to officiate as register of deeds.

November 25, 1831.

See No. 288.

Resolution of the Court of Sudder Dewanny Adawlut, dated the 25th November, 1831.

No. 613.

1814.
Reg. XXVI. Sec. 3.
1817.
Reg. XIX. Secs. 7 and 8.

On a consideration of the provisions of Section 3, Regulation XXVI. 1814, and Sections 7 and 8, Regulation XIX. 1817, the Court are of opinion, that in cases in which a summary appeal is admissible, under the section first mentioned, such appeal may be admitted, although the appellant may erroneously, or from other cause, have applied for the admission of a special appeal on stamp paper of the prescribed value; and that, in such cases, the stamp duty paid by the appellant on his petition shall, with the exception of two rupees, the value of the proper stamp for a petition of summary appeal, be returned to him.

November 25, 1831.

To the Judge of Zillah Jungle Mehals, dated the 16th December, 1831.

No. 614.

1819. Reg. VIII. Sec. 9. 1831. Reg. VIII.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, without date, received on the 8th instant, requesting the Court's opinion on certain points relative to the sale of putnee talooks, under Regulation VIII. 1819.

2. *In reply, I am directed to inform you, that the duty of holding sales of putnee and durputnee talooks is vested, by Section 9, Regulation VIII.* 1819, *in the judge and magistrate, in the absence of the register; but that all summary investigations, relating to the rent demanded by the zemindar, must be conducted by the collector, under the provisions of Regulation VIII.* 1831.

December 16, 1831.

See Section 16, *Regulation VII.* 1832.

To the Acting Judge of Purnea, dated the 23rd December, 1831.

No. 615.

1831. Reg. VIII.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 5th instant, and its enclosure from the collector of your district, requesting the Court's opinion as to the competency of a collector to take cognizance of resistance to the attachment of property distrained for arrears of rent, under Sections 19 and 20, Regulation XVII. 1793, and Section 9, Regulation VII. 1799.

2. In reply, I am directed to observe, that the Court, on the 9th August, 1806, construed the sections above quoted as providing that investigations made under these rules should be tried as summary suits: and that, as the whole of the jurisdiction in cases of summary suits for arrears of rent, formerly vested in the civil courts, has been, by the provisions of Regulation VIII. 1831, transferred to the collectors of revenue, the Court are of opinion, particularly with reference to the provisions of Section 4 of that Regulation, that the collector is competent to try all cases of resistance of his process of attachment connected with such summary suits, except when actual breaches of the peace may occur, in which event the case must be tried by the magistrate.

December 23, 1831.

No. 621.
1814.
Reg. XXVIII. Sec. 11.

From the Judge of Zillah Etawah, dated 10th January, 1831.

I request you will solicit from the Court of Sudder Dewanny Adawlut an answer to the following question :

In the event of a suit instituted by a pauper being dismissed with costs, and the proceeds arising from the sale of his property not being sufficient to pay the fees due to his vakeel with costs and fees awarded in favor of the opposite party, and the law expenses due to Government, in what order should the several claims be satisfied ?

To the Judge of Zillah Etawah, in reply, dated 21st January, 1831.

In reply to your letter of the 10th instant, requesting the instructions of the Court of Sudder Dewanny Adawlut relative to the order in which the several claims against a pauper plaintiff, whose suit has been dismissed, should be satisfied, I am directed by the Court to inform you that, after payment of the vakeel's fees, you should exercise your discretion in satisfying any other claims in such manner as may appear to you equitable, leaving any persons deeming themselves aggrieved by your order to their ordinary course of appeal.

January 21, 1831.

See No. 1258.

Extract of a letter to the Moorshedabad Provincial Court of Appeal, dated the 11th March, 1831.

No. 630.
1806.
Reg. XVII. Sec. 8.

PARA. 3. With reference to the questions contained in the 2nd and 3rd paragraphs of the judge's letter, I am directed to observe that it is not required by the Regulations that a copy of the deed of mortgage should be served on the mortgagee, but only a copy of the application of the mortgagee to the judge of the civil court for the issue of the prescribed notice.

March 11, 1831.

See No. 644, Circular Order No. 46, 5th June, 1848.

To the Judge of Dinagepore, dated 20th May, 1831.

No. 635.

1829.
Reg. X. Sch. A, Art. 31.

In reply to your letter of the 12th instant, I am directed by the Court of Sudder Dewanny Adawlut to inform you, that all leases and counterparts (pottas and kubooleuts) granted to, or taken from the actual cultivators of the soil, should, under the exemptions noticed in Article 31 of Schedule A, Regulation X. of 1829, be written on unstamped paper, whether Government be or be not a party in the transaction.

May 20, 1831.

See Sudder Dewanny Reports, 19th July, 1854, page 345.

To the Judge of Backergunge, dated 20th May, 1831.

No. 636.

Writ of Assistance.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 22nd July last, requesting, with reference to mine of the 7th May, 1830, further instructions regarding the execution of the decree of the Supreme Court in the suit of Radha Madhub Banerjee versus Balmokund Thakoor.

2. In reply I am directed to forward to you the accompanying copies of a letter from the Deputy Secretary to Government in the Judicial Department, dated 19th ultimo, and of its enclosures, from which and the concluding paragraph of the Advocate General's letter of the 21st July, 1828, you will observe the course you are bound to pursue in giving effect to the writ of assistance of the Supreme Court, and which you are directed to adopt accordingly.

3. With reference to the 9th paragraph of the Advocate General's letter of the 3rd February last, I am directed to add that the investigation to be made into any claims of the nature therein mentioned by individuals, not parties to the suit before the Supreme Court, may be received and conducted in a summary form, as authorized by the general Regulations in force in executing decrees of the established Mofussil courts.

May 20, 1831.

See Circular Order, No. 31, 20th May, 1831, and No. 800.

From the Judge of Patna Provincial Court of Appeal to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated the 27th May, 1831.

No. 641.

1814.
Reg. XXVI. Sec. 2, Clause 6.

We beg leave to submit the enclosed papers as specified in the list of them for the consideration of the Sudder Dewanny Adawlut.

2. *Mr. Bird, the former judge, rejected a petition for a special appeal from Mutra Opudia and others, who, in consequence, presented a petition to this Court. It appeared that the judge had not held any proceedings on this occasion, and had merely written an order for the rejection of the special appeal on the corner of the petition; without even stating whether or not the petitioners or their vakeel were present. The Court therefore annulled the judge's order, and directed him to hear the petition of special appeal again, to hold regular proceedings, and to pass an order for its admission or rejection.*

3. *Mr. Bird having been removed, the present judge re-heard the petition of special appeal, and rejected it, on the ground that this Court was incompetent to annul the order of the former judge, which was final.*

4. *There can be no doubt that had the former judge rejected the petition of special appeal in a regular manner his order would have been final, under clause* 6, *Section* 2, *Regulation XXVI. of* 1814; *but the mode in which it was passed, being essentially irregular, brought the case within the meaning of clause* 3 *of the above Section and Regulation.*

5. *The order passed by the present judge appears to be irregular; for, if he doubted the competency of this Court, he ought to have suspended his proceedings, and made a reference to this Court, as directed by Section* 2, *Regulation XXII.* 1803. *(Section* 2, *Regulation X.* 1796.)

6. *The present judge observes that it was the custom of the Gorruckpore Court to write orders on petitions of special appeals, instead of holding proceedings; and we must add that this custom extends to almost every other miscellaneous matter, which makes the passing of an order on a miscellaneous case extremely difficult and tedious.*

To the Judges of Patna Provincial Court of Appeal, dated 10*th June,* 1831.

In reply to your letter of the 27*th ultimo requesting to be informed whether, under the circumstances stated, you were competent to direct the judge of Gorruckpore to re-hear a petition for a special appeal, which had in your opinion been irregularly dismissed; I am directed to inform you that the Court of Sudder Dewanny Adawlut are clearly of opinion that as the original*

order dismissing the petition was irregular, inasmuch as it was contrary to regular and established practice of the courts, you were competent to direct the judge to re-hear it; and they desire that the judge be instructed accordingly.

June 10, 1831.

Extract from a Letter to the Moorshedabad Provincial Court of Appeal, dated 24th June, 1831.

No. 644.

1806.
Reg. XVII. Sec. 8.

PARA. 2. In reply, I am directed to state that the Court deem it sufficient to observe that the provisions of Section 8, Regulation XVII. 1806, expressly require that a copy of the application of the mortgagee to foreclose should accompany the perwannah issued to the mortgager; and that, in their opinion, the mortgagee, on filing his application, should be directed immediately to deposit the tulubana of the peon through whom the perwannah is issued to the other party, that the order for issuing the same be passed without delay.

June 24, 1831.

See No. 630.

To the Calcutta Provincial Court of Appeal, dated 8th July, 1831.

No. 646.

1808.
Reg. XIII. Sec. 11, Clause 3.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 2nd instant and its enclosures; and in reply to inform you, that the Court are of opinion that the construction of clause 3, *Section* 11, *of Regulation XIII.* 1808, *suggested by the judge of Burdwan, is correct, and that it rests with the zillah judge, to whom the appeal from a sudder ameen's decision is preferred, to order or stay the execution of the decision appealed from; and not with the register, to whom the appeal is referred by the judge for trial.*

July 8, 1831.

Superseded by Circular Order No, 81, *30th October,* 1849.

To the Judge of Purnea, dated 15th July, 1831.

No. 647.
1830.
Reg. VI.

In reply to your letter of the 1st instant, I am directed by the Court to inform you that the provisions of Regulation VI. 1830, regarding the deposit of the subsistence money of persons confined in the civil jails, apply to the officers of Government as well as to private individuals.

July 15, 1831.

To the Judge of Purnea, dated 22d July, 1831.

No. 648.
1825.
Reg. VII. Sec. 4, Clauses 4 and 5.

The Court of Sudder Dewanny Adawlut having again had before them your letter of the 3rd May last, together with that of the 7th ultimo and its enclosures, direct me to communicate to you the following remarks :

2. The Court are of opinion, with you, that the circumstance of an estate being recorded in the collector's records in the name of another person than him against whom the execution of the decree was sued, is not sufficient to warrant the collector to decline to bring to sale, unless a claim were preferred or objection offered, in which case the collector should proceed in the manner laid down in clauses 4 and 5, Section 4, Regulation VII. 1825.

3. The reason assigned by the commissioner for not ordering the sale of talooka Rampoor Kooshalee ; *viz.* that the office of the collector of Purnea affords no accurate information, is, in the opinion of the Court, invalid, as it is incumbent on the collector to procure the information. The Court hold the same opinion regarding the reason assigned for not ordering the sale of the talookas of Boochgowh and Deogowh, (*viz.* that no division can be made of these talookas,) for the collector was bound to make the requisite division, or satisfy the Court that it cannot be done.

July 22, 1831.

See Act IV. of 1846 and Circular Order No. 14, dated 21st May, 1847.

To the Judge of City of Dacca, dated 5th August, 1831.

No. 651.
1799.
Reg. V. Sec. 4,
1803.
Reg. III. Sec. 16, Clause 4.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated 12th ultimo, accompanied by certain original Persian proceedings relating to the case of Usmutoonissa *versus* Gour Gopal, guardian of Moomtazoodeen, minor.

1800. Reg. I. 1805 Reg. VII. Sec. 29, Clauses 8 to 14.

2. The state of the case, as detailed in your letter, appears to be as follows. Bafutoonissa, widow of Muneeroodeen, held the estate. Having no children, she adopted Moomtazoodeen, a minor, in 1225 or 1226 B. S., making over to him her property, real and personal, by deed of gift, and continued in possession as manager for her adopted son through the instrumentality of Hamud Meean, her gomashta, until her death in 1225 B. S. ; after which the gomashta continued, as heretofore, to manage the estate until his death in 1236 B. S., when Nuzzuroodeen, brother of Bafutoonissa, (to whose daughter, Usmutoonissa, Bafutoonissa had married her adopted son Moomtazoodeen,) took possession, in right of his daughter, under a deed of settlement alleged to have been executed at the time of the marriage by Moomtazoodeen with the consent of Bafutoonissa. Moomtazoodeen being a minor, a guardian, Gour Gopal, was appointed at the instance of Aklakoollah, brother of the minor. This guardian now claims possession of the estate for his ward, under the deed of gift of Bafutoonissa. Under these circumstances, the Court, presuming Nuzzuroodeen to have taken possession of the estate on the death of the gomashta, are of opinion that, under Section 4 Regulation V. 1799, his possession cannot be disturbed unless, on the institution of a regular suit by the opposite party, he be unable or neglect to give the security which in that case might be required from him.

August 5, 1831.

See No. 666.

To the Deputy Secretary to Government in the Judicial Department, dated 12th August, 1831.

No. 653.

1819. Reg. X. Secs. 36 and 41.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 8th March last, transmitting an extract from the resolutions of Government in the separate Department, under date the 1st March last, and the original corespondence therein referred to with the Board of Salt and Opium, regarding a construction of certain provisions of Regulation X. of 1819 ; and requesting the Court to prepare an explanatory enactment, should they consider the provisions in question not sufficiently clear.

2. In reply I am directed to state that the Court are of opinion that Sections 36 and 41, of Regulation X. 1819, clearly recognize a chelan, granted for a portion of a lot of salt for which a rowannah may have been taken out, as an instrument equally valid as a rowannah to protect the salt covered by it from confiscation : and that an explanatory enactment on that point is unnecessary.

3. With regard to the construction of the said Regulation maintained by the Board of Salt and Opium, I am directed to observe that it would warrant the confiscation of a boat laden with salt, the owner of which, trusting to the validity of a chelan, might have hired it without any design to aid in a smuggling transaction, an injustice, which it cannot be supposed the framer of the Regulation intended to legalize.

4. I am further directed to observe that the equitable construction of the Regulation adopted by the Court is not, as it may at first appear to be, open to the objection of being calculated to defeat the object of the law, by enabling the holder of a rowannah to transport a greater quantity of salt under its cover than the quantity specified in it; as an endorsement on the rowannah, showing the quantity of every portion of the lot described in it, for which a chelan may be granted, is all that is required to prevent its serving to protect more than the portion remaining entitled to its protection.

August 12, 1831.

To the Judge of Purnea, dated 19th August, 1831.

No. 654.

1800.
Reg. I.
1805.
Reg. VIII. Sec. 29, Clauses 8. to 14.

In reply to the questions contained in your letter of the 8th instant, I am directed to inform you, that the guardian of a minor being his representative is entitled to receive the minor's share of the proceeds of an estate, if managed by a surburakar; and that the zillah judge has no authority to interfere with him in the disposition of the minor's property.

August 19, 1831.

To the Assignee of the Estate of Messrs. Palmer and Co., dated the 30th September, 1831.

No. 659.

1797.
Reg. XVI. Sec. 4.
1803.
Reg. V. Sec. 33.
1814.
Reg. XXVI. Sec. 13.

I am directed by the Court of Sudder Dewanny Adawlut to inform you that the factory of Serecole and its dependencies, situate in Zillah Jessore, was pledged by the late firm of Messrs. Palmer and Co. as security for the execution passed by the Court in favor of the respondent in the case of Baboo Ramchurn, mookhtar of Baboo Madhab Suhai and Baboo Benee Suhai, heirs of Baboo Dwarka Doss, deceased, appellant, versus Joye Kishen Doss, respondent, on its being appealed by Baboo Ramchurn to His Majesty in Council.

2. The said factory being situated within the jurisdiction of the Court, cannot, under the Reglations of Government, be sold or other-

wise disposed of but with the aforesaid lien on it. I am therefore directed to request that in the event of its being sold or otherwise disposed of by you, you will inform the intending purchaser or person to whom it may be intended to transfer it otherwise than by sale, that the Court have a lien on the factory until the appeal to the King in Council is determined in favor of the respondent, or, in the event of a decision being passed in favor of the appellant, until it shall have been fully satisfied by the respondent.

N. B. A copy of this letter was, on the same date, communicated to the judge of Jessore, with instructions, in the event of the factory being advertised for sale, to issue a proclamation declaratory of the lien thereon.

September 30, 1831.

See Circular Order No. 134, 17th July, 1846.

No. 660.

To the Judge of Zillah Shahabad, dated 21st October, 1831.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 15th ultimo, soliciting the Court's opinion as to whether proprietors of estates are entitled to jereemana or penalty equal to the interest on arrears of land rent.

2. In reply, I am directed to inform you that the Court are not aware of any Regulation which authorizes proprietors to demand more than the rent claimable by them, with the legal interest thereon from the date on which it may be payable. The suit, however, before you appearing to be a regular original suit, which may eventually be brought judicially before the Court, they desire that you will decide it according to your own judgment, leading the party dissatisfied with your decision to appeal therefrom.

October 21, 1831.

From the Judge of Jungle Mehals, dated 5th December, 1831.

No. 663.

1800. Reg. I. 1805 Reg. VIII. Sec. 29, Clauses 8 to 14.

Buwanee Sing, a jageerdar residing in the zemindaree of Pachete, died, leaving a widow and an infant son his sole heir; the widow after a short time applied to this court to appoint a person, named Damodhur Doss Ghosaeen, the guardian of her infant son, stating her inability to manage his estate.

2. The widow being the natural guardian of her infant son, it appears to me, that she is competent to appoint whomsoever she pleases to take care of him or manage his estate, without any refer-

ence to the civil court, and I beg to be informed if the Sudder Dewanny concur in this construction of the Regulations.

3. The result of my inquiries into the case under notice, is a firm conviction that it would be most for the benefit of the minor to farm the estate during his minority, and if the interference of this court is authorized or called for, it is the mode of management, subject of course to the approval of the Sudder Dewanny, that I should recommend.

4. The several Courts of Wards are empowered, by Regulation VI. 1822, to adopt farming or any other form of management, and I conclude therefore the civil courts when acting in that capacity must be considered to possess the same powers. Previously, however, to taking any steps in the business, I beg to be favored with the opinion of the Sudder Court.

To the Judge of Zillah Jungle Mehals, dated 16th December, 1831.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 5th instant, requesting the Court's opinion as to the propriety of your interference in the appointment of a guardian of the minor Buwanee Sing.

2. In reply, I am directed to inform you that if the estate of the the minor is a joint undivided estate, you should, on the application of the minor's mother, appoint a guardian, under the provisions of Regulation I. 1800, and report your nomination for the confirmation of the Court.

3. With reference to the 3rd paragraph of your letter the Court are of opinion that guardians or managers appointed under Regulation I. 1800, must be left to exercise their own judgment as to the best mode of managing the estates of the minors committed to their care.

December 16, 1831.

By a Resolution of the Court these reports for confirmation are now discontinued.

To the Judge of Zillah Mirzapore, dated 6th January, 1832.

No. 665.
1806.
Reg. II. Sec. 5.

In reply to your letter of the 13th ultimo, I am directed by the Court of Sudder Dewanny Adawlut to inform you that as the provisions of Section 5, Regulation II. 1806, do not restrict the power of attachment to property within the district, the Court are of opinion that the judge may cause the defendant's property to be attached on his inability to give the requisite security, wherever the same may be situated.

January 6, 1832.

See No. 888.

Extract from a Letter to the Judge of City Dacca, dated 6th January, 1832.

No. 666.

1800. Reg. I. 1805. Reg. VIII. Sec. 29, Clauses 8 to 14.

Para. 2. The Court observe that the appointment of the guardian having been confirmed by them, you should not have removed him, Moomtazoodeen being still in his non-age, without their sanction. They do not consider the reasons assigned by you sufficient to warrant his removal, for though the possession of the estate, for the protection of which he was appointed, is in the hands of the opposite party, the claim of the minor thereto remains to be decided, and the continuance of the guardian may be necessary to bring forward, and prosecute a suit to recover possession in the civil court in a regular manner. The Court therefore annul that part of your order, and direct that the guardian be restored to his office.

January 6, 1832.

See Nos. 651 and 663.

Extract from a Letter addressed to the Moorshedabad Provincial Court of Appeal, dated 13th January, 1832.

No. 667.

1814. Reg. XXIII. Sec. 9.

Para. 2. In reply, I am directed to state that the Court entirely concur in the view taken of the subject by you, and that the neglect of the moonsiff being one continued act, the judge was not competent to fine him in a larger sum than twenty rupees.

3. *With reference to the 6th paragraph of the judge's letter of the 19th November last, the Court are of opinion that in cases of repeated or continued neglect and disobedience, if the judge consider a fine of twenty rupees inadequate to the offence, he is at liberty, under the provisions of Section 9, Regulation XXIII.* 1814, *to suspend him from office, and report his conduct for the orders of the superior authorities.*

January 13, 1832.

See Act XII. 1847.

To the Judge of the City of Moorshedabad, dated 13th January, 1832.

No. 668.

1814. Reg. XXVI. Sec. 14, Clauses 4 to 7.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 31st ultimo, requesting instructions on certain points connected with the operation of

Regulation V. 1831, and to communicate to you the following replies : 1832. Reg. VII. Sec. 5.

2. *Question* 1*st*.—The sudder ameens are to be guided, in regard to tulubana by the rules in force for the guidance of the zillah and city judges previously to the enactment of Regulation V. 1831.

3. *Question* 2*nd*.—The periodical civil reports are to be forwarded to this Court by the zillah and city judges.

4. *Question* 3*rd*.*—On the subject of this question the Court direct me to inform you, that you should apply to the civil auditor, or direct to Government.

5. *Question* 4*th*.—In suits instituted before a zillah or city judge, whether decided by him before or after the promulgation of Regulation V. 1831, the appeal lies to the Sudder Dewanny Adawlut, supposing of course that it has not been preferred to the provincial court of appeal before the promulgation of the Regulation in question. 1831. Reg. V. Sec. 27.

January 13, 1832.

To the Acting Judge of Purnea, dated 13*th January*, 1832.

No. 669.

In reply to your letter of the 30th ultimo, I am directed by the Court of Sudder Dewanny Adawlut to inform you that suits in which lands held exempt from assessment form the subject of dispute, but in which the validity of the tenure is not contested, are not referrible to the collector under the provisions of Section 30, Regulation II. of 1819. 1819. Reg. II. Sec. 30.

January 13, 1832.

See Sudder Dewanny Reports, 21st January, 1851.

Extract from a Letter addressed to the Moorshedabad Provincial Court of Appeal, dated 27*th January*, 1832.

No. 673.

Para. 2. *The Court are of opinion that your construction of clause* 1, *Section* 27, *Regulation V.* 1831, *viz.* "*that all suits instituted in the zillah and city courts previous to the* 1*st January*, 1832, *will be appealable to the provincial courts at* 1831. Reg. V. Sec. 27, Clause 1.

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* 3rd Question.—In contingent extraordinary disbursements, what is the extent of the authority of a district judge without previous reference? At present the charges not included on the fixed establishment, are countersigned by the court of appeal.

whatever period they may be decided," is erroneous, and that all appeals from the decisions of a zillah or city judge, which shall not have been preferred to the provincial court prior to the date fixed by the Governor General in Council, for the commencement of the operation of the Regulation in question, lie to the Sudder Dewanny Adawlut, at whatever time the original suit may have been instituted.

January 27, 1832.

Extract from a Resolution of the Court of Sudder Dewanny Adawlut, under date the 17*th February*, 1832.

No. 675.

1831.
Reg. IX. Sec. 2, Clause 2.

1817.
Reg. XIX. Sec. 8.

Para. 1. With reference to the provisions of Section 2, Regulation IX. 1831, the following rules of practice are agreed to by the Court :

Para. 3. The Court are of opinion that if the decision of the lower court be confirmed without the attendance of the opposite party, the appellant is not entitled to receive back any proportion of the value of the stamp paper on which his petition of appeal is written ; *and that the appellant's vakeel is entitled to the whole of the fee deposited by the appellant.*

4. *If the attendance of the opposite party shall not be required, and the said party shall, nevertheless, file an answer to the petition of appeal through a vakeel of the Court, the fee of the said vakeel shall be payable by the oposite party himself.*

5. If an injunction be issued for a revision of the decision, the Court are of opinion, that in conformity to the rule prescribed in Section VIII., Regulation XIX. 1817, the stamp duty paid by the appellant on his petition of appeal should be returned to him, *and the fees of the vakeel of the appellant and respondent (if attending) limited to a sum not exceeding one-fourth of the established fee.*

February 17, 1832.

Para. 4 rescinded by Circular Order, No. 163, 12th January, 1852.

To the Judge of Zillah Mymensing, dated 24*th February*, 1832.

No. 676.

1831.
Reg. V. Sec. 16, Clause 2.

The Court of Sudder Dewanny Adawlut having had before them your monthly Reports for January, 1832, forwarded with your letter of the 11th instant, observe that appeals from the decisions of moonsiffs appear to have been referred to and disposed of in the month of January by Moulvee Jelalooddeen, your principal sudder

ameen, and by Sumboonath, sudder ameen, and that in your statement of suits recalled from the registers and sudder ameens whose offices have been abolished, you state that you have referred them to the above-mentioned officers as having been instituted previous to the 1st of January, 1832. By clause 2, Section 16, Regulation V. 1831, the judge cannot, after the period fixed for the operation of the Regulation, refer appeals to the sudder ameens, nor can he, without special authority from this Court, which has not been obtained by you, refer appeals to the principal sudder ameens. Under these circumstances, the decisions and orders passed by the above-mentioned officers on appeals referred to them subsequent to the 1st January, 1832, the date of the promulgation of the Regulation in your district, are not valid. The Court therefore desire that you will recall from their files all such appeals as are at present pending before them, and that, re-placing on the file those disposed of by them since the date of the promulgation of the Regulation, you will dispose of them yourself.

February 24, 1832.

To the Judge of Zillah Backergunge, dated 24th February, 1832.

No. 677.

1831.
Reg. VIII. Sec. 20.
1822.
Reg. VII. Sec. 23, Clause 3.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 11th instant, requesting the Court's opinion whether the decrees of a collector passed under Regulation VIII. 1831, are to be enforced by the judge or by the collector ; and in reply to refer you to Section 20 of that Regulation, by which the rules for the execution of awards prescribed in clause 3, Section 23, Regulation VII. of 1822, are declared applicable to awards made by collectors under the first mentioned Regulation.

February 24, 1832.

From the Judges of the Bareilly Provincial Court of Appeal to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 10th February, 1832.

No. 680.

1831.
Reg. V. Sec. 27, Clause 2.

We request you will submit the accompanying letter to the Court of Sudder Dewanny Adawlut.

2. *We are of opinion this letter will put the Court sufficiently in possession of the matter upon which we have to intreat the orders of the Court, whether it is for us, under the Regulations of* 1831, *to undertake the investigation of the charges tendered by*

Mr. Oldfield, and examine the papers and proceedings recently and formerly forwarded to us from Cawnpore; or, whether all letters, papers and proceedings belonging to the accusations against the pundit should not be forwarded to the superior court.

3. *The earliest letter received here from the Civil Court of Cawnpore upon this subject, and intimating the suspension of the pundit, is dated the* 18*th March last, and reached us on the* 23*rd of the same. Persian proceedings reached us on the* 2*nd April, and more were promised. On the* 26*th December, we received and sanctioned Mr. Oldfield's nomination of a person to officiate in the office of the pundit sudder ameen, and the letter now forwarded was not received with Persian missils till the* 9*th ultimo. No part of the case or cases involving the pundit sudder ameen of Cawnpore, has in fact ever been in consequence taken up by this Court, and we cannot but doubt whether the pundit's cases are to be considered pending before this Court in the manner contemplated by clause* 2, *Section* 27, *Regulation V.* 1831, *zillah Cawnpore being clearly comprehended within the first clause of that Section.*

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 7*th March,* 1832.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to transmit the enclosed copies of correspondence relative to the oppression and misconduct of the pundit sudder ameen of the court of zillah Cawnpore to be laid before the Sudder Court of the Presidency. It will be observed that the case in question has been entertained for a very considerable time by the Court of Appeal and various orders have been passed on it: this court is therefore of opinion that it is a case clearly falling within the intention of the rule contained in clause 2, *Section* 27, *Regulation V.* 1831, *and "should be disposed of by the provincial court in the same manner as would have been the case if the provisions of that Regulation had not been extended to zillah Cawnpore."*

As the case in question involves the construction to be put upon a Regulation, agreeably to the general orders of Government, it is forwarded to be laid before the Presidency Sudder Adawlut previous to the issue of the order.

The Presidency Court, on the 30*th March,* 1832, *concurred in this construction.*

March 7, 1832.

Merely of temporary use.

Extract, paragraph 3, *from a Letter addressed to the Judge of zillah Burdwan, dated the* 7*th March*, 1832, *in reply to his Letter of the* 20*th February*, 1832.

No. 681.
1831.
Reg. V. Sec. 27, Clause 1.

Para. 3. *With reference to the concluding paragraph of your letter I am directed to inform you that judges of the zillah and city courts to which Regulation V. of* 1831 *has been extended, should, after the period fixed for its operation, perform all the duties, with regard to the submission of appeals, &c. to this Court, heretofore performed by the provincial courts.*

March 9, 1832.

To the Judge of City Dacca, dated 16*th March*, 1832.

No. 682.
1800.
Reg. I.
1805.
Reg. VIII. Sec. 29, Clauses 8 to 14.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your return of the 18th February to the Court's precept of 19th January last, and its enclosures, on the subject of the appointment of certain officers to manage the accounts of the estate of the certain wards of your court.

2. The Court observing that the Regulations in force do not authorize the entertainment of the establishment in question, and being of opinion that it is unnecessary, deem it proper to annul your order of the 11th June last.

March 16, 1832.

See No. 720.

Resolution of the Court of Sudder Dewanny Adawlut at Calcutta, dated 16*th March*, 1832.

No. 683.
1825.
Reg. II. Sec. 3.

Two judges of the Sudder confirm the decree of a provincial court. The same two judges admit a review :—one of them leaves the Court ; the other confirms the decision previously passed by the two. Under those circumstances the Court resolved that the second decision of the remaining judge is final, and that a second concurring voice is not necessary to render it so.

March 16, 1832.

See No. 756 and page 316, Sudder Dewanny Reports, 26th June, 1854.

From the Judge of Zillah Backergunge to the Register to the Sudder Dewanny Adawlut, dated 27th March, 1832.

No. 687.

1814. Reg. XXVI. Sec. 6, Clause 3 and Sec. 7.

1829. Reg. X., Sch. B, Art. 8, Para. 4.

During the investigation of suits in the civil court of this district I have observed that in former years it was a practice for people (suitors) in suing for such property as talook or ousut talook, or hawala or ousut hawala, to lay the amount of the suit at three times the jumma that these mofussil estates paid to the zemindar, but I believe that the amount of suit for the above kind of property should be reckoned by the produce of one year's assets from them, and not according to the revenue paid by them to the zemindars in whose estates the minor ones may be comprehended.

2. If the party suing had gone agreeably to the Regulations, and laid the amount at the assets of one year, and had found, or it had been considered by me, that he had underrated them, in that case I suppose I have the power, agreeably to clause 3, Section 6, Regulation XXVI. 1814, to order a supplementary pleading to be filed to rectify what was wanting in the first; but in the instance I allude to in the former part of this letter, there is a total departure from the Regulation, and therefore I request to know whether in such cases supplementary pleadings are permitted. A man might be mistaken in regard to the annual assets of an estate; they may be more or less than he may have laid them at; but where the Regulation is plain, and he departs from it, is it left to my option to nonsuit, or not? The Court's opinion will oblige me; as I observe a number of appealed cases in this predicament, to nonsuit which in this late stage of the proceedings would prove of considerable detriment to the parties, as entailing on them increased law expenses; and therefore I wish the instruction of the Court as to the mode of proceeding to be adopted.

To the Judge of Zillah Backergunge, dated 27th April, 1832.

In reply to your letter of the 27th ultimo, I am directed by the Court to refer you to the provisions of Section 7, Regulation XXVI. of 1814, as applicable to such suits of the description noticed by you as may have been instituted prior to the promulgation of Regulation X. 1829; and to observe that the rules contained in the 4th paragraph of the note on Article 8, Schedule B. of the last quoted Regulation, are applicable to those instituted subsequently to its promulgation.

April 27, 1832.

At a Court of Sudder Dewanny Adawlut for the Western Provinces, held on the 27th April, 1832.

No. 688.

1831.
Reg. V. Sec. 28.
Reg. IX. Sec. 2, Clause 2.

Resolved, that the powers vested in the Court of Sudder Dewanny Adawlut by clause 2, Section 2, Regulation IX. 1831, on the receipt of a petition of appeal from the decision of an inferior court can be exercised in those cases only in which an appeal is within the cognizance of the Court under the general Regulations, and that consequently the Court cannot interfere on the receipt of petitions of appeal against the decision of a zillah or city judge passed by the latter in appeal from the decision of sudder ameens and moonsiffs; the decision of the zillah or city judge being in such cases declared final by Section 28, Regulation V. 1831.

The Court are further of opinion that the same construction applies to cases in which the decision of the zillah or city judge has been passed prior to the operation of Regulation V. 1831, in the district in which the cause of action originated as well as to those passed subsequently.

The Presidency Court, on the 18th May, 1832, concurred in this construction.

April 27, 1832.

See Act III. 1843, and Act XVI. 1853.

From the Judge of Zillah Rajshahye, dated 18th April, 1832.

No. 690.

Circular Order, 11th September, 1829.

On the 9th February, 1820, a decree was passed in this Court for the sum of rupees 7,444-10-6, awarding both principal and interest, besides costs of suit: but the amount of the decree was not realized until the month of March, 1832. The pleader of the plaintiff has now moved this Court to cause payment of interest to be made on the principal for the period intervening between the day of decision and the date of execution of the decree, and he founds his motion on the Circular Order of the Sudder Dawanny Adawlut, dated the 11th September, 1829, (No. 10 of volume 2, Circular Orders, Sudder Dewanny Adawlut,) but as a question has arisen in my mind whether the order of the superior tribunal was intended to have a retrospective effect with respect to any decree, like the present for instance, which remained unexecuted subsequently to the promulgation of that order, I do myself the honor of soliciting the opinion of the judges on the point in doubt.

To the Judge of Zillah Rajshahye, dated 4th May, 1832.

In reply to your letter of the 18th ultimo I am directed by the Court to inform you that in the case stated by you, if the delay in

the realization of the amount of the decree was not owing to the default of the decree-holder, he is entitled to interest on the amount adjudged to him from the date of the decree until the said amount was paid into court.

May 4, 1832.

See No. 359.

To the Judge of Zillah Tirhoot, dated 18th May, 1832.

No. 692.

1831.
Reg. V. Secs. 5, 15 and 18.

In reply to your letter of the 30th ultimo, I am directed by the Court to inform you that sudder ameens and moonsiffs are not prohibited from trying suits in which other sudder ameens and moonsiffs or their dependants may be concerned.

May 18, 1832.

To the Acting Secratary to the Sudder Board of Revenue, dated 18th May, 1832.

No. 693.

I am directed by the Court to acknowledge the receipt of your letter of the 1st instant and its enclosures, requesting that the Calcutta Provincial Court of Appeal may be instructed to forward to the Board certain original proceedings.

2. In reply, I am directed to inform you that the Court considering the reasons assigned by the provincial court for not sending their records out of their office satisfactory, do not think that any interference on their part can properly be afforded.

3. With reference however to the remark, that the Sudder Board have invariably directed their record keeper to attend at this Court, or the provincial court, with such papers as the Court might wish to inspect, the Court willingly acknowledge the assistance they have at all times received from the Board on such occasions. At the same time they cannot admit the analogy between the case of a court of justice calling for the records of a public office, with a view to a just decision between the parties in suits pending before them, and that of a Board requiring the original records of a court of justice to be sent to it for the purpose mentioned in your letter (of preparing pleadings of appeal on the part of Government.)

May 18, 1832.

See Circular Order No. 75, 28th December, 1832 and No. 1070.

To the Dacca Provincial Court of Appeal, dated 25th May, 1832.

No. 695.
1819.
Reg. VIII. Secs. 9 and 16 and Clause 4, Sec. 18.

I am directed by the Court to acknowledge the receipt of your letter of the 15th March last, and its enclosure, requesting to be informed whether a judge or register is competent to sell talooks under the provisions of clause 4, Section 18, Regulation VIII. 1819, in satisfaction of summary decrees for balance of rent.

2. In reply, I am directed by the Court to observe that all talooks, in which the interest of the occupant is saleable, may be sold for an arrear of rent accruing thereon, and that the sale should be made by the register, or in his absence by the judge or magistrate (now by the collector under Section 16, Regulation VII. 1832) in the same manner as putnee and durputnee talooks, under the provisions of Sections 9 and 16 of Regulation VIII. 1819.

The Western Court, on the 4th May, 1832, concurred in this construction.

May 25, 1832.

To the Judge of Zillah Burdwan, dated 25th May, 1832.

No. 696.
1831.
Reg. V. Sec. 5, Clause 3.

With reference to the 2nd paragraph of your letter of the 20th March last, and to your letter of the 2nd instant, I am directed to observe that the question for consideration appears to be, whether a ryot sued for rent in a moonsiff's court can remove the suit to the collector's court, merely by affirming that the land for which the rent is demanded is not liable to rent. The Court are of opinion that he cannot. The point at issue is, not the validity of the alleged rent-free tenure, but the fact of the ryot's having paid, or not paid, rent for the year previous to that for which the suit is instituted. The moonsiff is competent to try and determine this point; and if it be proved by the village accounts duly authenticated, or other legal evidence, that the ryot did pay rent for the preceding year, to pass a decree for such amount of rent as may appear to be due, leaving the ryot to establish his right to hold the land as lakhiraj by a suit instituted under Section 30, Regulation II. 1819.

The Western Court, on the 6th July, 1832, concurred in this construction.

May 25, 1832.

To the Dacca Provincial Court of Appeal.

No. 699.

1793.
Reg. V. Sec. 13.
1803.
Reg. IV. Sec. 13.

The Court having had before them your certificate of the 31st ultimo and its enclosures requesting to be informed, with reference to the orders passed by the Court in the case of Khutee Jan Bebee, appellant, versus Unwur Khan and others, respondents, whether the translations of Bengalee papers into Persian in certain other cases are to be made at the expense of the appellants, or of Government; direct me to inform you that the translations in the case in question were made at the cost of the appellant, at her special request; but that in the other cases alluded to they should be made by the mohurirs of the Court, or by hired mohurirs at the cost of Government if the regular establishment is insufficient to perform the duty with due despatch.

2. I am at the same time directed to refer you to the Circular Order of the 11th July, 1809, which directs that only those papers which are material to the issue of the case shall be translated.

June 29, 1832.

From the Register of the Sudder Dewanny and Nizamut Adawlut at Calcutta to the Register of the Court for the Western Provinces, dated 6th July, 1832.

No. 700.

1831.
Reg. VI.

I am directed by the Court to acknowlege the receipt of your letter of the 24th March last, and to inform you that the Court entirely concur with the judges of the Western Court, that they are authorized to receive and act upon periodical reports and other matters having reference to periods prior to the 1st January, 1832, *which, on that date, were not before this Court. It has indeed been the practice of this Court to take up all matters which were pending before them on the 1st January last, and to return those subsequently received for submission to the Western Court.*

July 6, 1832.

Temporary.

To the Judge of Zillah Burdwan, dated 6th July, 1832.

No. 701.

1831.
Reg. V.

I am directed by the Court to acknowledge the receipt of your letter of the 20th ultimo, requesting their opinion on certain points connected with Regulation V. 1831, and to communicate to you the following replies.

2. *As Regulation V.* 1831 *does not authorize any alteration in the rules in force before its enactment, in regard to the issue of the processes of moonsiffs, their processes should be issued according to those rules. (See subsequent rules in Section* 5. *Regulation VII.* 1831.*)*

3. When a defendant in a suit pending before one moonsiff resides in the division of another, the Court are of opinion that it would be sufficient to have the process backed by the moonsiff in whose division the defendant resides.

1814. Reg. XXIII. Secs. 23, 31 and 42.

4. *In cases of resistance of the process of a moonsiff, the Court are of opinion that he should report the case for the orders of the judge, as required in the instances provided for by Sections* 23, 31 *and* 42 *of Regulation XXIII.* 1814.

5. *In cases of execution of moonsiff's decrees, in which the defendant might reside, or the property to be attached in execution be situated, in the division of a different moonsiff from the one who passed the decree, the judge would, of course, refer the execution to the former.*

6. *The Court consider the rules contained in Section* 11 *of the Regulation in question to authorize the employment of moonsiffs in giving possession in execution of their own decrees, of all property not being land paying revenue to Government, but are of opinion that under Section* 51, *Regulation XXIII.* 1814, *they are still competent, with the authority of the judge, to give possession of lands paying revenue to Government in execution of any decrees which may not have been passed by the moonsiffs themselves. (See subsequent rules in Section* 7, *Regulation VII.* 1832.*)*

7. The rules contained in Section 29, Regulation XXIII. 1814, seem to provide sufficiently for the service of processes by pauper, as well as by other plaintiffs.

8. *In the event of a vacancy in the office of moonsiff, the recommendation of the successor should be made under paragraph* 8 *of the Resolutions of Goverment, dated* 1*st November,* 1831, *through the commissioner of revenue and circuit of the division.*

9. All applications for the erection and repair of moonsiffs' cutcherries and other similar contingencies should be made direct to Government.

The Western Court, on the 17*th August and* 26*th October,* 1832, *concurred in these constructions.*

July 6, 1832.

See Act XXVI. of 1852, Section 4, Act VI. of 1843 and Act XXXIII. of 1852, Circular Order No. 88, 19th April, 1850.

From the Judge of Zillah Burdwan, dated 20th June, 1832.

No. 702.

1829.

Reg. X. Sch. B, Art. 8.

In the note to Article 8 of Schedule B, in Regulation X. 1829, it is provided, that in suits for houses, and other things of value, real or personal, not being for land paying revenue to Government, forming an entire mehal or specific portion of it with a defined jumma, nor rent-free land, the amount is to be computed at the estimated selling price. Supposing, then, an ijaradar to sue for possession of a certain quantity of land, being neither rent-free, nor an entire mehal paying revenue to Government, nor a specific portion of one with a defined jumma ; ijaras not being saleable, how is the plaintiff to compute the value of the land for which he sues ?

2. In case also of a ryot taking a pottah of a few beegas of lakhiraj land, and suing the proprietor of the land for possession of the same, how is the amount of the suit to be fixed ; a tenure of this nature not being transferable, and therefore having no market price ?

3. In many districts, the right of a khoodkhast ryot of mal land is not considered transferable, and cannot be sold : under which circumstances, supposing the ryot to institute a regular suit for possession against the proprietor of the land, how is he to estimate the value of his right ?

4. In the case of putnee talooks the price in general may be fixed without much difficulty ; but it seems hard that a talookdar of this description should be obliged to sue at a greater expense than the proprietor of an estate paying revenue direct to Government.

To the Judge of Zillah Burdwan, dated 6th July, 1832.

I am directed by the Court to acknowlege the receipt of your letter of the 20th ultimo, regarding the construction of Section 8 of Schedule B, Regulation X. of 1829.

2. In reply I am directed to observe that though the land included in an ijara, or in the jote of a cultivating ryot, is not transferable by sale, the interest of the party claiming the ijara or jote is capable of being valued ; and that in the cases supposed by you, the plaintiff should be allowed to lay his suit at the amount which he may consider the value of his interest in the thing claimed ; to which if the defendant make objection, the Court would decide thereon after making the summary inquiry directed by Section 4, Regulation XIII. of 1808.

The Western Court, on the 27th July, 1832, *concurred in this construction.*

July 6, 1832.

See Nos. 1205 and 862.

To the Judge of Zillah Mymensing, dated the 20th July, 1832.

No. 705.

1793.
Reg. III. Secs. 7 and 19.
1803.
Reg. II. Secs. 9 and 20.

I am directed by the Court to acknowledge the receipt of your letter of the 4th instant, and of the Persian proceedings that accompanied it, which are herewith returned.

2. *In reply to your first question the Court are of opinion that there can be no objection to a judge pointing out officially to a party in a suit the proper mode to be followed by him when he sees occasion to do so. This answer renders a reply to your second question unnecessary,*

3. *Presuming from the third question that you ask whether the judge, on the application of A, a plaintiff, can summarily direct the collector to proceed in the sale of the estate of B, the defendant, against whom C had in the interim collusively obtained a decree for the same estate; the Court are of opinion that he cannot; but that should the decree in favor of C be proved in a regular suit instituted by A against B and C to be collusive, the estate of B will be liable to sale in satisfaction of A's decree.*

July 20, 1832.

Superseded by Circular Order No. 33, dated 23rd September, 1843.

From the Judge of Zillah Etawah to the Register of the Western Provinces, dated 26th May, 1832.

No. 706.

1831.
Reg. V. Sec. 6, Clause 4.
1829.
Reg. X. Sch. B, Art. 8.
1793.
Reg. III. Sec. 13.
1803.
Reg. II. Sec. 19.

I request you will ascertain from the Court of Sudder Dewanny Adawlut at Allahabad whether persons preferring claims to property sued for under the provisions of clause 4, *Section* 6, *Regulation V.* 1831, *are to present their petitions on plain or stamped paper? and if the latter, is the amount to be agreeable to the rates specified in the Schedule B, referred to in Section* 17, *Regulation X.* 1829?

2. *Also whether the rules for the guidance of moonsiffs in the above clause relative to cases of succession to real property, are applicable to causes in the courts of zillah judges and sudder ameens? Section* 19, *Regulation II.* 1803, *(corresponding with Section* 13, *Regulation III.* 1793,*) does not make it incumbent on the courts to issue a notification for the attendance of claimants, although I observe, from the select causes decided by the Sudder Dewanny Adawlut at Fort William, that this mode of proceeding in several instances has been adopted by that authority.*

Proposed Letter from the Register of Western Provinces to the Judge of Zillah Mynpooree, dated 8th June, 1832.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 26th ultimo, containing two queries relative to the construction to be put on clause 4, *Section* 6, *Regulation V.* 1831.

2. *In reply to your* 1*st paragraph, I am directed to inform you that the claimants of property under the provisions of the clause above cited, should present their petitions on stamped paper, the amount of which will be regulated by the rules containd in Schedule B, Regulation X.* 1829 ; *no other rules relative to amount of stamps being now in existence.*

3. *In reply to your* 2*nd paragraph the Court remark that the rules contained in the same Clause, regarding cases of succession to real property, are intended exclusively for the guidance of moonsiffs, such being the express tenor of the enactment ; the course to be pursued in such cases by zillah and city courts remaining precisely as it stood previous to the enactment of Regulation V.* 1831.

To the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 20th July, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 8*th ultimo, and its enclosures, relating to two questions on the construction of clause* 4, *Section* 6, *Regulation V.* 1831.

2. *In reply I am directed to inform you that the Court concur in the reply proposed to be given to the second question. On the subject of the first, they are of opinion that a petition, putting in a claim to a share of the property sued for in consequence of a notice issued under clause* 4, *Section* 6, *Regulation V.* 1831, *should be considered as an application "in relation to matters pending" before the Court, and that, with reference to the omission of the moonsiffs in Article* 7, *Schedule B, Regulation X.* 1829, *and to the provisions of clause* 2, *Section* 9, *Regulation V.* 1831, *such application in the courts of the moonsiffs should not be written on stamp paper.*

The Western Court, on reconsideration of the subject, concurred, on the 17*th August,* 1832, *in this construction.*

July 20, 1832.

Clause 4, Section 6, Regulation V. 1831, is repealed by Act XXVI. of 1852.

To the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 27th July, 1832.

No. 707.
1793.
Reg. XXXIX.
1803.
Reg. XLVI.

I am directed by the Court to acknowledge the receipt of your letter of the 8th ultimo, requesting to be furnished with copies of any orders regarding the legality of the appointment of deputies to assist the city and pergunnah kazees, or determining the extent to which the assistance of deputies, if legally appointed, is available.

2. In reply I am directed to transmit to you the accompanying copies of a letter from the acting judge of zillah Shahabad, dated 10th December, 1817, requesting to be informed if the duty of kazee can be performed by proxy ; of the Court's reply, under date 2nd April, 1818, forwarding copy and translation of a futwa of the law officers of the Court, in which it is stated that a kazee cannot, without the express permission of the hakim or ruling power, legally appoint a deputy ; and of a letter addressed to the judge of Shahabad on the 6th April, 1824, in the 3rd paragraph of which a "deputy kazee" is stated to be "an officer not acknowledged or mentioned throughout the Regulation quoted," Regulation XXXIX. 1793.

July 27, 1832.

To the Judge of Zillah Shahabad, dated 27th July, 1832.

No. 709.
1798.
Reg II. Sec. 18.
1803.
Reg. V. Sec. 10, Clause 7.
Circular Order Sudder Dewanny Adawlut, 18th May, 1832.

In reply to your letter of the 9th instant, requesting to be informed whether, with reference to the Court's circular of the 18th May, 1832, *(No.* 47, *volume* 2, *Sudder Dewanny Adawlut Circulars), the security required in cases of appeal under Section* 10, *Regulation II.* 1798, *is to be taken and its validity ascertained without orders from the Court, I am directed to inform you that the Court are of opinion that the security need not be demanded until the appellate court have determined to call upon the respondent to file an answer to the petition of appeal.*

July 27, 1832.

Act III. 1845.

From the Judge of Zillah Goruckpore, dated 15th August, 1832.

No. 711.
1831.
Reg. IX. Sec. 7.

I request you will have the goodness to ascertain for me the opinion of the Court of Sudder Dewanny Adawlut Western Provinces, whether the provisions of Section 7, *Regulation IX.* 1831, *extend to the zillah courts ; or whether the Regulation, as stated in the title, (the preamble leaves it doubtful), has re-*

ference to the Courts of Sudder Dewanny and Nizamut Adawlut only.

To the Judge of Zillah Goruckpore, dated 24th August, 1832.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 15th instant, regarding the construction of Section 7, Regulation IX. 1831.

2. *In reply I am desired to inform you that the provisions of that Section are general, and have reference to the zillah and city courts as well as to the Court of Sudder Dewanny Adawlut.*

The Calcutta Court, on the 21st September, 1832, *concurred in this construction.*

August 24, 1832.

Act I. 1846.

To the Judge of Zillah Beerbhoom, dated 31st August, 1832.

No. 714.

1831.
Reg. V.
Reg. VIII. Secs. 8 and 11.

I am directed by the Court to acknowledge the receipt of your letter of the 13th instant, submitting certain queries connected with the demand and exaction of rent, &c. as affected by Regulations V. and VIII. 1831.

2. In reply to your first and second questions I am directed to inform you, that the cases therein alluded to, if connected with arrears or exaction of rent, are cognizable as summary suits by the collector, under the provisions of Regulation VIII. 1831, and (except where summarily tried by the collector,) as regular suits by the moonsiffs on stamp paper of a quarter the full value, if within the amount cognizable by those officers, under Sections 8 and 11 of that Regulation.

3. In reply to your third question the Court direct me to state that they consider the above rules applicable both to ryots and under-tenants resisting undue demands, and to zemindars and others claiming their just dues.

1814.
Reg. XXIII. Secs. 52 and 54.

4. *On the fourth question the Court observe that the moonsiff or other competent officer, called upon to sell property attached for rent, is entitled to be reimbursed the expenses actually and necessarily incurred by him, though no sale should take place; and that in the event of such expenses not being paid, he is authorized to realize them by the sale of such part of the attached property as may be necessary for the purpose.*

The Western Court, on the 5th October, 1832, *concurred in this construction.*

August 31, 1832.

See Nos. 1001 *and* 867, *also Act I,* 1839.

Extract of a Letter from the Judge of Zillah Mynpooree, under date the 15*th ultimo.*

No. 715.

1796.
Reg. XIII. Sec. 3.
1803.
Reg. IV. Sec. 35.

Para. 2. I also request you will ascertain whether the Court see any objection to my awarding to plaintiffs interest on costs, when they are not discharged by the defendants within a reasonable time.

Extract of a Letter from the Register of the Western Provinces to the Register of the Presidency Court, dated the 7th September, 1832.

Para. 2. The Court are of opinion that when the costs of suit are included in the decree, they become part of the matter awarded by the Court passing the decree, and as such are liable, with other property so adjudged, to interest from the date of the Court's decision.

The Calcutta Court, on the 5th October, 1832, *concurred in this construction.*

September 7, 1832.

See Circular Order No. 220, 12th August, 1842, and No. 1095.

To the Judge of Zillah Tirhoot, dated 21*st September,* 1832.

No. 716.

1793.
Reg. III. Sec. 21.
1803.
Reg. II. Sec. 17.

I am directed by the Court to acknowledge the receipt of your letter of the 8th instant, requesting their opinion as to the power of civil courts in regard to bankruptcy, and to inform you in reply that as the Regulations do not contain any specific provisions on the subject, you should exercise the discretion vested in you by Section 21, Regulation III. 1793, in any case that may come before you, leaving the party dissatisfied with your orders to appeal therefrom to this Court.

September 21, 1832.

To the Judge of Zillah Midnapore, dated 21st September, 1832.

No. 717.

1812.
Reg. V. Sec. 26.

I am directed by the Court to acknowledge the receipt of your letter of the 8th instant, and in reply to inform you that you are competent, under the provisions of Section 26, Regulation V. 1812, to attach the whole (but not a portion of a joint undivided estate) on sufficient cause being shown; but that your decision as to the sufficiency of the cause is open to appeal.

September 21, 1832.

To the Deputy Secretary to Government in the Judicial Department, dated 21st September, 1832.

No. 718.

An application having been made to the Court by Mr. R. Smith, reporter on the part of the *Hurkaru* newspaper, for copies of the minutes of the judges on the question of trial by jury in the Mofussil Courts (submitted to Government on the 20th of November, 1829,) I am directed to ascertain whether there be any objection to a compliance with the request, and to beg the favor of your obtaining and communicating to the Court the pleasure of the Honorable the Vice-President in Council on the subject.

2. I am desired to add that minutes of the judges furnished on requisition from Government, similar to that now adverted to, are not considered by the Court as public documents; and that consequently they do not deem themselves authorized to grant copies of them without such reference as they now take the liberty of making.

From the Officiating Secretary to Government to the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut, dated 23rd October, 1832.

I am directed to acknowledge the receipt of your letter dated the 21st ultimo, and in reply to request you will inform the Courts that the Honorable the Vice-President in Council entirely concurs in their opinion that documents of the nature of those referred to in your letter should not be considered as public. Copies of them should not therefore be granted to private individuals on their application.

September 21, 1832.

To the Judge of Zillah Midnapore, dated 21*st September*, 1832.

No. 719.

1831.
Reg. V. Sec. 5, Clause 3.

I am directed by the Court to acknowledge the receipt of your letter of the 10*th instant, and in reply to inform you, that the Court are of opinion that the word "property" in clause* 3, *Section* 5, *Regulation V.* 1831, *means the "proprietory right" in, and not the "rent" of land exempt from the payment of revenue; and that suits for the rent of such lands are cognizable by moonsiffs, where that point alone is in question.*

The Western Court, on the 26*th October*, 1832, *concurred in this construction.*

September 21, 1832.

See Section 8, *Act VI.* 1843.

To the Judge of Mynpooree, dated 21*st September*, 1832.

No. 720.

1800.
Reg. I.
1805.
Reg. VIII. Sec. 29, Clauses 8 to 14.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 27th ultimo, correcting an error noticed in your former letter of the 26th July.

2. In reply to your reference I am directed to state that the civil courts are not expected to call on guardians appointed by them under Regulation VIII. 1805, to deliver up their accounts for their inspection; nor are those courts competent to exercise any active interference in the management of the property belonging to the ward. On the receipt however of credible information against the character of the guardian, showing him to the court's satisfaction to to be unfit for the situation, the court is competent to make inquiry into the matter and to take measures for his removal.

3. For the recovery of any monies or property, which on investigation the guardian may appear to have embezzled, the civil court is not empowered to interfere, excepting on the institution of a regular suit.

The Calcutta Court, on the 28*th December*, 1832, *concurred in this construction.*

September 21, 1832.

See No. 682.

From the Judge of City Moorshedabad, dated 18th September, 1832.

No. 721.

1793. Reg. III. Sec. 17. 1803. Reg. II. Sec. 12. 1806. Reg. II. Sec. 2, 53 Geo. III. Cap. 155, Sec. 113.

I request the instructions of the Sudder Dewanny Adawlut on the following questions.

Case.—A person sues A, B and C, natives of Bengal, in the court of the zillah judge within whose jurisdiction in Bengal the cause of action arose. A and B are resident within the limits of the jurisdiction of the district court in which the action is brought. C is resident within the town of Calcutta, having no agent of any kind.

Question 1st.—Is such suit against A, B and C cognizable by the zillah court.

Question 2nd.—If it is cognizable by the zillah court, through what channel, and in what mode is the notice prescribed by Section 2, Clause 3, Regulation II. 1806, to be served on C, to call on him to defend the cause ? and, in the event of inability to serve the notice, how is the proclamation to be made which is prescribed for such cases ?

2. I am induced to put the first of these two questions on a consideration of a reply from the register of the Sudder Dewanny Adawlut, dated 18th July, 1828, to a question put by Mr. D. Dale, judge of this Court, in a letter to the register of the Sudder Dewanny Adawlut, dated 7th July, 1828, as to the method of putting the provisions of Section 7, Regulation IX. 1819, in practice ; and because a petition of plaint has been presented to me in court in which a defendant is in the situation of C in the supposed case.

3. If a suit be cognizable in the zillah, I presume that the court having cognizance of the suit must have some known legal method of executing the process, which by the laws it is required to issue in pursuing the inquiry, though for such cases I can find no rule in the Regulations. I never met with a cause before involving the questions now put, but the frequent occurrence of such a case is by no means improbable, and if it is cognizable by the zillah courts, as included in these noticed in clause 3, Section 2, Regulation II. of 1806, some well-defined rules of practice seem so necessary to prevent unpleasant collision with other authorities, that I imagine some rules must exist, though I am unfortunately ignorant of them. Section 113 of 53 of Geo. III. Cap. 155 would, I suppose be sufficient to meet any case where arrest in Calcutta may be necessary, but does not apply either to the execution of notices, summons, proclamation or subpœna.

To the Judge of City Moorshedabad, dated 5th October, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 18th ultimo, submitting two questions for the orders of the Sudder Dewanny Adawlut.

2. In reply to the first I am directed to state that the suit therein referred to is cognizable by the zillah court.

3. *In reply to the second, that the notice or proclamation should be forwarded through a peon to the register of this Court, who will cause it to be served by the nazir of the Court, in conjunction with the peon by whom it is delivered. The inability of the Court to issue process in the town of Calcutta, noticed in the Court's letter of the 18th July, 1828, to a former judge of your court, extends only to compulsory process, (as arrest of the person, realization of money decreed, &c.) and not to process issued for the information of the party, which it is the practice of the Court to issue. The zillah judge should decide the case ex parte, if the defendant do not appear, and in the event of a decree being passed against him, should execute it on any property belonging to him which may be found beyond the limits of the town of Calcutta, and if ignorance of the institution of the suit should then be pleaded by the defendant, a review of the judgment might, on proof of the plea, be granted.*

The Western Court, on the 9th November, 1832, concurred in this construction.

October 5, 1832.

See Act XXIII. 1840.

From the Judge of Zillah Dacca, dated 14th September, 1832.

No. 723.

1814.
Reg. XXVI. Sec. 3, Clauses 9 and 10.

I have the honor to submit for the consideration and final orders of the superior court the accompanyiug proceedings, and request their opinion as to whether a final order rejecting the petition on a summary appeal under clauses 9 and 10, Section 3 of Regulation XXVI. 1814, a regular appeal can be afterwards instituted.

To the Dacca Provincial Court of Appeal, dated 19th October, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 14th ultimo and its enclosure, and in reply to inform you, that the rejection of a summary appeal is not a bar to the admission of a regular appeal, provided the latter be otherwise admissible under the Regulations in force.

October 19, 1832.

Extract of a Letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut, dated 21st September, 1832.

No. 726.

Evidence of Lepers as witnesses in Courts of Justice.

Para. 2. Previous to passing order on the same the Court are desirous of learning whether any rule has already been issued by the presidency court with regard to the matter referred; *viz.*, the propriety of taking the deposition of lepers on oath, the Court request that, with the sanction of the presidency court, you will state for their information whether the records of your office contain any such order.

To the Judge and Magistrate of Zillah Etawah, dated 24th September, 1830.

In reply to your letter of the 27th ultimo, I am directed by the Courts of Sudder Dewanny and Nizamut Adawlut to inform you that the fact of a witness being afflicted with leprosy does not bar the admission of his evidence in our courts of justice.

From the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut to the Register of the Western Court, under date the 26th October, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo and its enclosures, from the commissioner of circuit of the 7th division, and in reply to forward to you the accompanying copy of a letter addressed to the judge of Etawah on the 24th September, 1830, informing him that the fact of a witness being affected with leprosy does not bar the admission of his evidence in our courts of juctice.

October 26, 1832.

To the Session Judge of Zillah Sarun, dated 9th November, 1832.

No. 732.

1812.
Reg. XX. Secs. 7 and 10.

I am directed by the Court to acknowledge the receipt of your letter of the 17th ultimo and its enclosures, and in reply to inform you that the Court are of opinion that under Section 10, Regulation XX. 1812, powers of attorney produced by persons attending on behalf of others to procure the registry of deeds should be entered in a separate book, as directed by Section 7 of the same Regulation.

The Western Court, on the 7th December, 1832, concurred in this construction.

November 9, 1832.

See No. 812.

From the Judge of Zillah Moradabad, dated 31st October, 1832.

No. 735.

Assistants to Judges cannot be employed in investigating and deciding miscellaneous cases relating to execution of decree.

With reference to the letter of the Deputy Secretary to Government to the address of the commissioner, under date the 28th August last, regarding the employment of assistants, I request you will do me the favor to ascertain from the judges of the Sudder Dewanny Adawlut whether in the opinion of the Court an assistant may with propriety be employed by a civil judge in investigating and deciding miscellaneous cases relating to the execution of decrees.

To the Judge of Zillah Moradabad, dated 9th November, 1832.

I am directed by the Court to inform you, in reply to your letter of the 31st October last, that assistants to judges cannot be employed in the investigation and decision of miscellaneous cases connected with the execution of decrees, the enactments cited in the orders of Government, under date 28th August last, containing no authority for entrusting such duties to those officers.

The Calcutta Court, on the 7th December, 1832, concurred in this construction.

November 9, 1832.

From one of the Judges of the Calcutta Court of Appeal to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 30th October, 1832.

No. 737.

1793. Reg. XIII. Sec. 9.

1803. Reg. XII. Sec. 12.

Not concurring in opinion with Mr. C. R. Martin, that the case of Raj Kishore Puharee versus Hurochunder Lahoree, should be referred immediately to the magistrate of the suburbs of Calcutta, I have to request that you will ascertain the sentiments of the superior court on the subject.

2. I am not satisfied that we are debarred from the cognizance of any charge whatever of delinquency brought against the officers of our court in their official ministration ; but the accusation before us being one which imputes to the individual arraigned what I consider we are empowered to inquire into, under the provisions of Section 9, Regulation XIII. 1793, and under which we are required to entertain the complaint, and if, on completing the investigation, we deem him guilty of such corruption as may appear to call for more exemplary punishment than the court could subject him to, under clause 8, Section 9, Regulation XIII. 1793, then I apprehend it will be necessary, in furtherance of Regulation XVIII. 1817, to refer the case to the commissioner of circuit.

3. As three of the prosecutor's witnesses have not been examined nor any return received from the judge of 24-Pergunnahs, regarding

the appearance or non-appearance of one of the above witnesses, it would be premature in me now to record my opinion as to the defendant's innocence or guilt. Nevertheless in fairness I may observe that in my opinion the prosecutor has heretofore failed to establish the charge of an interpolatory order regarding the institution of a suit *de novo* on a certain document filed in the case.

4. In conclusion I have to request that you will ascertain from the Court whether we are authorized and required to complete the investigation, or are we directly to refer the whole question to another and to what other authority.

To the Calcutta Provincial Court of Appeal, dated 16th November, 1832.

I am directed by the Court to acknowledge the receipt of a letter from Mr. Curtis of the 30th ultimo, and its enclosures.

2. In reply I am directed to inform you that the Court are of opinion that, in the case alluded to, your court should complete the summary inquiry which has been commenced. If the majority of the judges should be of opinion that the case is one which calls for exemplary punishment, you should direct the vakeel of Government to institute a criminal prosecution against the defendant to the court of the magistrate of the suburbs of Calcutta. But that, in the event of your not thinking it necessary to adopt this measure, it will be of course optional with the prosecutor either to do so himself, or to seek redress by instituting a suit against the defendant in the civil court.

November 16, 1832.

From the Judges of the Benares Court of Appeal to the Register of the Western Provinces, dated 9th November, 1832.

We beg to transmit for the consideration and orders of the superior court copies of a correspondence relative to the execution of decrees passed in summary suits.

From the Judge of Zillah Mirzapore to the Judges of the Benares Court of Appeal, dated 25th September, 1832.

No. 738.
1831.
Reg. VIII. Sec. 4.

I have the honor to forward for your consideration a copy of a letter addressed to me by the collector of this district, with copies of Persian proceedings holden by me in the civil court ; and I request to be favored with your opinions, as to the discretion vested in the judge, to stay the execution of a summary decree which has been passed by the collector.

2. Though I admit the full force of Mr. Lindsay's arguments, as far as it concerns the general construction to be put upon the provisions of Regulations relating to summary suits, still I cannot help thinking that the Government intended to leave to the judge a discretionary power of stopping the execution of a summary decree, under particular circumstances.

3. Mr. Lindsay remarks that in "Section 4, Regulation VIII. 1831, it is stated that the decision of the collector of land revenue shall be final, subject to a regular suit: but it is nowhere stated or implied that the execution of decrees passed by collectors shall be stayed in consequence of regular suits being filed." To this I will add, that it is nowhere prohibited to stay the execution of a summary decree on a regular suit being filed.

4. Some definitive rule appears to be requisite, in order to prevent collusion, and I would respectfully suggest the expediency of your court procuring the sentiments of the judges of the Sudder Dewanny Adawlut on the subject.

From the Collector of Mirzapore to the Judge of that District, dated 28th August, 1832.

Having lately received three roobukarees from your Court directing that the execution of decrees passed in summary suits under Regulations V. of 1800, V. of 1812, and VIII. of 1831, should be stayed in consequence of regular suits having been filed in the Dewanny Court, I do not consider that I should be acting legally in meeting the requisition made by you. In Section 4, Regulation VIII. 1831, it is stated that the decision of the collector of land revenue shall be final, subject to a regular suit; but it is nowhere stated or implied that the execution of decrees passed by collectors shall be stayed in consequence of regular suits being filed. On the contrary clause 20 of the same Regulation refers to clause 23, Regulation VII. 1822, and points out the distinct manner in which awards made by collectors shall be executed.

2. Our opinion differing so widely as to the constructions to be given to the provisions of Regulation VIII. 1831, it occurs to me that much inconvenience may arise from the view you have taken of it, and perhaps you will agree with me that it will be desirable to refer the point to the Court of Sudder Dewanny.

From the Register of the Sudder Dewanny Adawlut Western Provinces to the Judges of the Provincial Court of Appeal at Benares, dated 16th November, 1832.

In reply to your letter of the 9th instant, I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to inform you that in the opinion of the Court a judge is not competent to stay the execution of a summary award passed by a collector,

pending the trial of a regular suit instituted in the civil court, to set aside that award. No provision in the Regulations in force appears to the Court to invest the judge with this power, and the whole object of the summary process would be evidently defeated, as observed by Mr. Lindsay, if the execution of the award were liable to be stayed until the final adjustment of a regular suit.

The Calcutta Court, on the 7th December, 1832, *concurred in this construction.*

November 16, 1832.

See also No. 1165.

From the Judge of the Calcutta Court of Appeal, dated 6th November, 1832.

No. 739.

1793. Reg. III. Sec. 8. 1803. Reg. II. Sec 5.

I shall be obliged by your laying the following case before the superior court, and to obtain for me their opinion as to the propriety or otherwise of my proceeding in it, or transferring it to the Dacca Provincial Court.

Case No. 50 of 1826, 2nd June. Maha Raja Sheokissen Bahadoor and seven others, plaintiffs, versus Soobulchunder Dutt Moonshee and his securities, Kissenpershad Dutt, Bulram Dutt, and Radhanath Dutt, defendants.

Claim.—Arrears on account of the jumma of 1231 and 1232 B. S., of the estate of pergunnah Gunga Mundul, zillah Tipperah, Rupees 46,607-8.

Plaint.—The petition of plaint states that the above pergunnah was leased by the plaintiffs to Soobulchunder Dutt Moonshee, on the security of Kissenpershad Dutt, Bulram Dutt, and Radhanath Dutt, for a term of four years, *viz.* from 1231 to 1234 B. S., for an annual jumma of rupees 1,14,969-6-17, of which 51,969-6-17 was to be paid by the lessee into the Government treasury, on account of the surkaree jumma and the remainder sum, or rupees 63,000, to the zemindars, the plaintiffs. That in the first year of his lease the former fell in balance rupees 2,086, including interest; and in the following year, rupees 44,521-8. Meanwhile the farmer died, and no one appeared either on his behalf, or that of his securities, to manage the estate. For both the sums, or rupees 46,607-8, the plaintiffs seek for redress against the defendants, his heirs and securities.

Defence.—Ramdhun Dutt, one of the defendants, appeared, and in his answer to the plaint not only denies the claim as unfounded, but disputes the jurisdiction of the Calcutta Provincial Court, alleging that the pergunnah lies in the district of Tipperah belonging to the jurisdiction of the Dacca Provincial Court, where, agreeably to

Section 8, Regulation III., 1793, the action ought to have been brought on.

2. It would appear that the estate, for the balance of the produce of which the present action is instituted, is actually situated in the district of Tipperah. The defendants however have no property in that district. All their property lies within the district of Hooghly, appendant to the Calcutta Provincial Court, where they likewise reside. The kubooleut also, upon which the claim is founded, was executed within the town of Calcutta in the jurisdiction of the Supreme Court. The plaintiffs' petition of plaint, with reference to the amount of claim is drawn upon a stamp of a value of 750 rupees, and was filed in this Court on the 1st of August, 1826. The petition of defence is written on stamp of the value of four rupees.

Extract from a Letter addressed to the Calcutta Provincial Court, dated 23rd November, 1832.

PAPA. 2. In reply I am directed to communicate to you the opinion of the Court that the suit being for a sum of money, and the defendants all residing in zillah Hooghly, your Court is competent to take cognizance of it.

November 23, 1832.

See case of Gopee Kaunt Misr, 19th February, 1848, Summary Reports, and No. 73.

To the Acting Judge of Zillah Behar, dated 7th December, 1832.

No. 740.

1814.
Reg. XXVIII.
Sec. 10, Clause 2.

I am directed by the Court to acknowledge the receipt of your letter of the 19th ultimo, and in reply to inform you that the vakeel of the pauper plaintiff, whose claim was dismissed, is not entitled to receive any portion of the fee deposited by the defendant on account of her vakeel.

December 7, 1832.

See Act I. 1846.

To the Judge of Zillah Midnapore, dated 14th December, 1832.

No. 742.

1831.
Reg. IX. Sec. 8.

I am directed by the Court to acknowledge the receipt of your letter of the 26th ultimo, and in reply to inform you, that in order to provide against the possible loss of the original proceedings in cases appealed to this Court in their transmission, the Court deem it necessary that copies be retained of all original papers so sent; but with

regard to the papers which should be sent, I am directed to refer you to Section 8, Regulation IX. 1831, and to observe that the Court's Circular Order of the 18th May last, directs that the original papers shall not be copied or sent with petitions of appeal filed in the lower court under the rule contained in Section 8, Regulation XXVI. 1814, until called for a precept.

1831. Reg. V. Sec. 16, Clause 3. Reg. IX. Sec. 2, Clause 2.

2. With reference to your last paragraph, I am directed to refer you to the Circular Order of the 24th August last, which explains that all first appeals must be admitted as a matter of right, provided they be preferred within the period prescribed by the Regulations: so that the confirmation of the decision of the lower court, prior to a perusal of the original proceedings, is to be considered, not as a rejection, but a final dismissal of the appeal on consideration of its merits.

December 14, 1832.

See Circular Order, No. 65, 6th January, 1840, and No. 878.

To the Judge of Zillah Rajshahye, dated 14*th December,* 1832.

No. 743.

1824. Reg. IV.

I am directed by the Court to acknowledge the receipt of your letter of the 1st instant and its enclosures, and in reply to communicate to you their opinion that a register of deeds not being the register of the zillah or city court, is entitled, while officiating for the judge during the absence of the latter, to fees on the registry of all deeds executed by him.

The Western Court, on the 5th February, 1833, *concurred in the above construction.*

December 14, 1832.

From the Judge of Zillah Purneah, dated the 5th December, 1832.

No. 744.

No decree can be enforced against a third person, not a party thereto.

I have the honor to request that you will obtain for me the opinion, of the Court of Sudder Dewanny Adawlut on the following case.

A person, A, possesses a certain portion of land, say 200 beegas of which he sells 50 to B, and subsequently executes a mortgage deed to C, by which, on borrowing a certain sum of money, he mortgages the whole 200 beegas to him; but possession is not given. On the expiration of the period fixed for the repayment of the loan, C applies to the Court for a foreclosure of the mortgage, and, after going through the necessary forms, brings an action for making the sale absolute, and obtains a decree in his favor for the

whole 200 beegas. On proceeding to execute this decree, it appears that 50 beegas have been already sold to B. What I wish to be informed is, whether the decree, which was given in the absence of B, whose purchase was not made known to the Court till after it had been passed, must be fully enforced, or whether the prior purchaser, B, (whose purchase at the time he made it was good and valid), can be allowed to retain his 50 beegas? In other words, must a decree given by a Court be enforced according to its letter, however it may interfere with the rights of absent parties?

To the Judge of Zillah Purneah, dated 21st December, 1832.

I am directed to acknowledge the receipt of your letter of the 5th instant, and in reply to inform you that no execution of a decree will hold beyond the right of the party against whom it may have been passed: consequently, in the case put by you, B, not having been a party to the suit instituted by C against A, cannot be ousted from his land in execution of the decree passed in favor of C.

December 21, 1832.

From the Judge of Zillah 24-Pergunnahs, dated 13th December, 1832.

No. 745.
1806.
Reg. II. Secs. 4 and 5.

I request you will have the goodness to obtain the opinion of the Court on the following points.

Query 1st.—If a defendant absconds or shuts himself up in his house to avoid a process taken out against him agreeably to Section 4, Regulation II. 1806, how am I to proceed? Is the property of the defendant to be attached or not, in the event of the plaintiff applying for that purpose?

Query 2nd.—In the event of the nazir or the person on his part deputed to serve process agreeably to Section 4, Regulation II. 1806, entering freely and without any obstruction being offered into the *compound* of the house of the defendant, may he proceed to force an entrance into the house, in the event of the defendant shutting the doors of the house against him?

To the Officiating Judge of Zillah 24-Pergunnahs, dated 21st December, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 13th instant, and in reply to the first question put by you, to refer you to Section 5, Regulation II. 1806, which expressly authorizes the attachment of the property of the defendant to secure the execution of the ultimate judgment, where sufficient security is

not given: and with reference to the 2nd question, to state that a mere entry into the compound does not authorize the officer in charge of a process to break open an outer door, in order to serve it.

December 21, 1832.

Extract of a Letter from the Judges of the Provincial Court of Appeal for the Division of Bareilly, under date the 21st December, 1832.

No. 748.

1831.
Reg. V. Sec. 27.

Para. 2. *We at the same time beg to submit whether the Court of Appeal be not distinctly prohibited by existing Regulations from entertaining appeals from the zillahs in which Regulation V.* 1831, *has taken effect, from decrees or other orders made previous to the introduction of Regulation V.* 1831, *such appeals not having been presented in the zillahs or to this court till after the introduction of that Regulation. An order of the superior court, however, we consider called for to satisfy the public mind of the correctness of our construction, as above, of existing Regulations or to alter our construction.*

To the Judges of the Provincial Court of Appeal, for the Division of Bareilly, dated 4th January, 1833.

On the point referred in the 2nd paragraph of your letter of the 21st December last, I am directed to state the Court's opinion that no appeals can be admitted in your court in cases originating in zillahs in which Regulation V. 1831, *has been introduced; unless the application for the admission of appeal is preferred previously to the date fixed on for the commencement of the operation of that Regulation.*

The Presidency Court, on the 25th January, 1833, *concurred in this construction.*

January 4, 1833.

From the Acting Judge of Zillah Bundelcund to the Register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated 3rd December, 1832.

No. 752.

1806.
Reg. II. Sec. 10.
1827.
Reg. V.

I have the honor to submit copies of Persian correspondence between the collector and deputy collector of the southern division of Bundelcund and this court relative to realizing the amount of a decree of court from the attachment of the defendant's

landed property, and to request the instructions of the Court with a view to my future guidance.

2. Precepts were addressed by me to the deputy collector and collector to attach the lands of Romtapershaud and Gunput Roy Pundit, defendants, and the replies received from those officers being nearly word for word, and the cases nearly similar, copies of one and the same Persian proceeding dated 13th November, 1832, were sent to each of them, again directing them to execute the orders of the court, agreeably to the provisions of Section 39, Regulation XXVII. 1803 and Section 3, Regulation V. 1827.

3. In the 1st case, namely, that of Gunput Roy, the Court will observe that the defendant, who was cast in the suit, petitioned that his jageer might be attached and the proceeds appropriated to the liquidation of the monies decreed, and the opposite party, the decree-holder, assented to this arrangement; the deputy collector, however, demurred to the court's orders, on the grounds that "no Regulation ordered the collector to attach lands for this purpose," and proceeded to quote Section 9, Regulation III. 1803, Section 5, Regulation II. 1806, Section 2, Regulation V. 1827; meaning of course that the lands of the defendant ought to be sold, and not attached.

4. I beg, however, to submit that the only legitimate grounds upon which the deputy collector could have demurred to the Court's orders directing attachment of lands were these, *viz.* that the lands were in khas management, or that they were liable to resumption, and that process to that effect had commenced, or that the Government had some claim or other upon them. No such reasons, however, are urged in his proceedings. He reasons as to the legality of the court's realizing monies decreed by this process of attachment, and notwithstanding that I directed attachment either through a tehsildar or an ameen specially appointed for the purpose, (in which latter case no increase of business could accrue, and all expenses would be defrayed by the defendant,) he states in conclusion that attaching lands gives trouble to the revenue authorities.

5. It appears, therefore, to me that Government having no claim to the land, and the order for attachment through an ameen (to be specially appointed for the purpose) having been issued by the court, the deputy collector exceeded his powers in demurring on the grounds he did; and that his duty was purely ministerial, namely, to obey the court's orders, agreeably to Section 39, Regulation XXVII. 1803, and Regulation V. 1827.

6. I beg, however, to state that I think the deputy collector's legal view of this case (supposing him authorized to advance his opinion,) is wrong; he states no Regulation orders the collector to attach lands with a view to realize monies decreed; by which I presume he means no Regulation authorizes the court to order such attachment. To this I beg to reply that no Regulation prohibits it, the ordinary process for realizing monies decreed is, as is well known to all, laid down in Section 2, Regulation III. 1803; but this Regulation of

course pre-supposes that the plaintiff has no other remedy than compulsion, that selling the lands or attaching the person of the defendant is necessary, that in short doing so is his last though legal resource. I cannot suppose that in the event of both plaintiff and defendant agreeing to realization by attachment (they being the only interested parties,) the civil court must of necessity proceed to sell the defendant's hereditary property or imprison him, contrary to the wish of him to whom the monies are due. I do not think such a procedure would be warranted by the spirit of the Regulations or by justice.

7. I beg further to submit that, agreeably to the letter of Section 10, Regulation II. 1806, the orders of this court must be considered legal. The above enacts that the civil courts are in general restricted from granting indulgence of time in the satisfaction of a final judgment, "unless the party in whose favor the decree is passed, shall consent to waive his right of immediate enforcement under an engagement for gradual payments or otherwise." Now it appears to me quite clear that realizing sums decreed by attachment of land, or in other words from the collections, from harvest to harvest, or at the periodical collections, is to all intents and purposes "a gradual payment" by instalments, at the same time the land being under attachment by the court, through the collector, supersedes the necessity of security (either malzamin or hazirzamin,) required by the Regulation above quoted.

8. The reply of the deputy collector was first received, and the only difference between the original orders of this court addressed to him and to the collector, was that the collector was ordered to attach through the tehsildar; but subsequently, as the Court will see from a perusal of my Persian roobukaree of the 13th November, 1832, I again directed attachment, but stated that it should be by an ameen. The collector however still insists (in answer to my detailed statement,) that my orders are illegal and contrary to the Regulations, which Regulations he does not say.

9. Both the above officers having obeyed the court's instructions under a protest of reference to higher authority, I consequently have deemed it necessary to trespass thus at length the reasons which induced me to urge the execution of the court's orders and to obtain a rule for my future guidance.

Proposed Letter from the Register of the Sudder Dewanny Adawlut, Western Provinces, to the Acting Judge of Bundelcund, dated the 21st December, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 3rd instant.

2. In reply I am directed to inform you that the arrangement for preventing of the sale of the estates in question by retaining them under attachment until the amount due has been realized from

the proceeds, appears to the Court in the light of an adjustment between the parties themselves ; the judge being incompetent to originate such an order himself. In attaching the estate therefore the judge acts under the applications of the parties, and not under the provisions of the Regulations quoted in the 2nd Section of Regulation V. 1827, and alluded to in the 3rd Section. Under this view of the subject the Court are of opinion that you were not competent to issue directions to the collector under Section 3, Regulation V. 1827, to attach, in the instances detailed in your letter ; but should have proceeded to make the attachment yourself, deputing an ameen for the purpose, and in fact merely carrying directly into effect the arrangement for payment of the amount of the decrees, to which the parties to the suits had agreed.

From the Register of the Sudder Dewanny Adawlut at Calcutta, to the Officiating Secretary to Government in the Judicial Department, dated 1st February, 1833.

I am directed by the Court to request you will lay before the Honorable the Vice President in Council the accompanying copies of a letter, and its English enclosures, from the register of the Court of Sudder Dewanny Adawlut for the Western Provinces, dated the 21st December last.

2. The Presidency Court concur in the opinion expressed by the Western Court that the zillah judge was competent, under the circumstances stated, to attach the lands in question: but with reference to the intent and spirit of Regulation V. 1827, as expressed in the preamble, that "it is expedient in all cases of attachment of landed property under orders of the courts of justice, that the management of the estate attached should be placed under the superintendence of the collectors of land revenue," they do not concur with them in thinking that the judge ought himself to have made the attachment through an ameen, but that it was incumbent upon him to issue the orders he did to the collector; the attachment having been induced by a private adjustment between the parties, not making any difference in the course he was legally bound to pursue towards effecting it.

3. Differing, therefore, from the Western Court on a construction of the law, the Court direct me, under paragraph 2, of the Resolutions of Government under date the 6th December, 1831, to request that you will submit the point at issue for the decision of Government.

The Government. on the 8th March, 1833, *concurred in opinion with the Calcutta Court.*

February 1, 1833.

From the Judge of the Dacca Court of Appeal to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 18th January, 1833.

No. 753.

1831.
Reg. V. Sec. 27.

I request you will lay this letter before the judges of the Court of Sudder Dewanny Adawlut for their opinion and orders.

2. *Petitions for the execution of decrees in cases appealed from zillah courts continue to be presented subsequently to the jurisdiction of the provincial court having been suspended under Section* 27, *Regulation V.* 1831. *I therefore request to be informed whether it be the opinion of the Sudder Dewanny Adawlut that clause* 2 *of the above Section leaves the provincial court the power of receiving and acting upon such petitions as heretofore, as well as of receiving in the course of execution of such decrees petitions appealing against any irregularity, or errors or deviation from the decree on the part of the zillah judge.*

3. *The Regulation is silent on the subject of the execution of decrees, and a strict adherence to the letter would prevent any interference or the receiving of any sort of appeal "in any matter which may arise after the date aforesaid."*

4. *A petition for execution of a decree, may perhaps not be considered a matter so arising, but the disobedience of any order or the departing from the decree in executing it, would clearly be a "new matter arising after the date aforesaid;" and it is obvious that it would be an absurdity for a provincial court to order the execution of a decree, without having the power to enforce that order. I am therefore compelled to solicit the superior court's opinion and orders.*

To the Provincial Court of Appeal, Dacca, dated 1*st February,* 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 18*th ultimo; and in reply to inform you that they are of opinion that you are competent, under the* 2*nd clause of Section* 27, *Regulation V.* 1831, *to receive and act upon petitions for the execution of decrees appealed from the zillah courts as heretofore, as well as to receive, in the course of the execution of such decrees, petitions appealing against any irregularity, or errors or deviation from the decree on the part of the zillah judge.*

The Western Court, on the 1*st March,* 1833, *concurred in this construction.*

February 1, 1833.

Resolution of the Court of Sudder Dewanny Adawlut held at the Presidency, under date the 8th February, 1833.

No. 756.

1825.
Reg. II. Sec. 3.

A question having arisen in a case decided by two judges, both of whom continue attached to the Court, whether on an application for a review of judgment such application should be submitted for the opinion of both of the judges, or whether the opinion of one for the admission or rejection of the review is final, the Court are of opinion, on due consideration and with reference to the rule laid down in the case of Musst. Ujgnasee regarding the admission of a review of judgment in the Provincial Court of Patna, that in such cases the petition of review should be laid before the judges who passed the decrees ; and that in the event of a difference of opinion between them, as to the admission or rejection of the review, the matter should be referred to one or more judges of the Court, until the question be determined by a majority of voices.

The Western Court, on the 15th March, 1833, *concurred in this construction.*

February 8, 1833.

See No. 683.

To the Judge of Zillah Jungle Mehals, dated 15th February, 1833.

No. 758.

Circular Order, 5th November, 1812.

The Court, having had before them your monthly civil statements for December last, observe that the moonsiff of Bhelaideha states that in certain suits on his file he cannot proceed until the expiration of six weeks. They presume this to arise from his having issued notices in these cases to the plaintiffs requiring them to appear, within the period of six weeks, to show cause why their suits should not be thrown out on account of default. Should this be the case, the Court request that you inform the moonsiff that it is not incumbent on him to give so long a period for the appearance of the defaulting plaintiff, and that they consider eight days or a fortnight in ordinary cases a sufficient time to allow for this purpose.

February 15, 1833.

Cancelled by No. 1339.

To the Officiating Judge of Zillah Ghazeepore, dated 22nd February, 1833.

No. 761.

1814. Reg. XXIII. Sec. 76.

In continuation of my letter of the 22nd February last, I am directed to inform you that under the provisions of Section 76, Regulation XXIII. 1814, the judge is competent to employ the principal sudder ameens in the same manner as other sudder ameens in the adjustment of accounts, or in the investigation of disputes, or special matters of account, fact or usage, connected with the execution of decrees passed in the judge's court ; but that under the Regulations in force no authority exists for referring to such officers applications for the execution of any other decrees than those passed in the courts of the sudder ameens and moonsiffs.

The Presidency Court, on the 15th March, 1833, *concurred in this construction.*

February 22, 1833.

See No. 815 and Act V. 1836.

From the Judge of Zillah Futtehpore to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 16th February, 1833.

No. 762.

1832. Reg. VII. Sec. 5, Clause 2.

With reference to clause 2nd, Section 5, Regulation VII. 1832, I request the favour of your obtaining for me the opinion of the Court as to whether the principal sudder ameens, sudder ameens and moonsiffs should select the peons they may propose to employ for the execution of civil processes from the registered peons, who, previous to the new arrangements, belonged to the courts of the judge, sudder ameens and moonsiffs ; or whether they are at liberty to nominate for the appointment of strangers. I beg leave to submit that if they are allowed to appoint new peons, a considerable number of old servants must necessarily be thrown out of employ.

To the Judge of Zillah Futtehpore, dated 22nd February, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 16th instant.

2. In reply I am directed to inform you that, under the terms of the Regulation cited by you, the nomination of the muskooree peons rests with the subordinate judicial officers, and that the judge is required to select from among the persons nominated such number of those whom he may consider the fittest for the duty as may appear requisite. The Court observe that as the native judicial officers possess the power of appointing and removing the ministerial officers

of their courts, there can be no objections to entrusting them with the authority to nominate the persons who will be employed in executing their processes.

The Presidency Court, on the 15*th March,* 1833, *concurred in this construction.*

February 22, 1833.

See Circular Order, No. 98, 28th August, 1840.

From the Judge of Zillah Juanpoor to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 16*th February,* 1833.

No. 764.

1831.
Reg. V. Sec. 9, Clause 3.

I have the honor to request that you will be pleased to obtain for me the opinion of the Court regarding the rate of fees to be levied on exhibits and summonses which may now be filed in cases that were instituted before the introduction of Regulation V. of 1831. *Clause* 3, *Section* 9, *Regulation V. of* 1831, *declares that the exemptions contained in clause* 2, *shall not be held applicable to suits "instituted after" the date fixed for the operation of Regulation V. of* 1831, *but is silent regarding the rate of fees for suits now pending before the judge.*

To the Judge of Zillah Juanpoor, dated 1*st March,* 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 16*th ultimo.*

2. *In reply I am directed to inform you that the rate of fees to be levied on exhibits and summonses, which may be filed in cases instituted previous to the introduction of Regulation V.* 1831, *should be adjusted by the Regulations applicable to such matters previous to the enactment of that Regulation.*

The Presidency Court, on the 29*th March,* 1833, *concurred in this construction.*

March 1, 1833.

Of temporary use.

To the Judge of Zillah Bhaugulpoor, dated 8*th March,* 1833.

No. 765.

1793.
Reg. IV. Sec. 25.
1803.
Reg. III. Sec. 26.

The Court, having had before them your letter of the 25th ultimo, requesting to be informed whether, in the event of a legal arrest, by a warrant issued from the Civil Court, and a forcible rescue from the custody of its officers, the magistrate, on proof of such rescue, is

empowered to order the police forcibly to enter the house wherein the person rescued may be, and to apprehend him and forward him to the civil court ; direct me to answer your question in the negative, and to observe that in the case supposed, the civil court should proceed against the offender agreeably to Section 25, Regulation IV. 1793.

The Western Court, on the 12th April, 1833, concurred in this construction.

March 8, 1833.

No. 767.

1817. Reg. III.
1829. Reg. X. Sch. B, Art. 9.
1831. Reg. V. Sec. 9, Clause 3.
1832. Reg. VII. Sec. 7.

To the Judge of Zillah Mynpooree, dated 8th March, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo.

2. In reply I am directed to inform you that the exemption from stamp duty under Regulation III. 1817, included all cases, in whatever courts tried, below 64 rupees. This was extended by Section 9, Schedule B, Regulation X. 1829, to cases not exceeding 150 rupees ; by Section 9, Regulation V. 1831, cases tried before moonsiffs to whatever amount are exempt from stamp. There is no subsequent enactment affecting this last rule. Clause 3, Section 9, Regulation V. 1831, however, enacts that no suits, however small the amount, which are instituted in the zillah court, shall be held exempt, whether eventually referred to the subordinate authorities or retained on the judge's file. Section 3, Regulation VII. 1832, prescribes the amount of stamp in cases instituted in zillah courts, *viz.*, 4 rupees in cases above 1,000 rupees, and 1 rupee in original cases not above 1,000 rupees, as well as in appeals from sudder ameens and moonsiffs.

The Presidency Court, on the 29th March, 1833, concurred in this construction.

March 8 1833.

See Nos. 556, 834, and 1118.

Extract of a Letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 15th March, 1833.

No. 768.

1819. Reg. II. Secs. 22 and 27.

Para. 3. By Section 2, Regulation X. 1829, all such Regulations then existing as relate to the imposition, levying and collecting of stamp duties, are rescinded ; and by Section 17 of the same enactment the rules laid down in Schedules A and B are to be observed in future. In Schedule B no exemption is to be found in

favor of suits, either original or appeal, instituted in the established courts of justice. The present is an appeal preferred under Section 27, Regulation II. 1819, to set aside a decision of the revenue authorities; and it follows therefore that the pleadings and other papers are liable, as in all other cases, to the full amount of stamp duty laid down in Article 8, Schedule B, Regulation X. 1829, subject to the modifications of subsequent enactments.

4. Should the presidency court concur in this opinion, the construction will be adopted as a rule of practice.

The Presidency Court, on the 29th March, 1833, concurred in this construction.

March 15, 1833.

See Nos. 338 and 987.

From the Judge of Zillah Mynpooree to the Register of the Western Provinces, dated 18th March, 1833.

No. 772.

1814.

Reg XXIII. Sec. 23.

Moonsiffs appointed under Regulation V. of 1831, *being now allowed to execute their own decrees, I request to be informed whether it is still necessary for them to make a reference to the judge under the provisions of Section* 23, *Regulation XXIII.* 1814. *prior to requiring security or proceeding to attach the property of defendants in causes under investigation.*

To the Judge of Zillah Mynpooree, dated 29th March, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 18*th instant.*

2. *In reply I am directed to inform you that as clause* 3, *Section* 8, *Regulation V.* 1831, *declares that "the provisions contained in the existing Regulations relative to the trial and decision of suits already cognizable by moonsiffs, are equally applicable to suits instituted before those officers under this Regulation;" and as no special enactment exists rescinding the provisions of Section* 23, *Regulation XXIII.* 1824, *the Court are of opinion that moonsiffs are required to proceed as heretofore, making a reference to the judge previous to requiring security from defendants or proceeding to attach property in default of such security in cases still pending.*

The Presidency Court, on the 26th April, 1833, *concurred in this construction.*

March 29, 1833.

See Act VI. 1843.

To the Officiating Commissioner of Circuit for the 3rd Division, dated 29th March, 1833.

No. 773.

1829. Reg. X. Sch. B, Art. 3.

I am directed by the Court to acknowledge the receipt on the 25th instant of your letter of the 5th instant, together with its enclosures.

2. The Court are of opinion that from the rules laid down in Schedule B, Regulation X. 1829, it appears to have been the intention of Government that both the application for the copy (of proceeding or order) and the copy itself should be on stamped paper: the stamp assigned for the application being of a different value from that on which the copy is to be written. Sections 3 and 7 of the Schedule seem to point out this construction as that which was intended by the Government; and this view of the subject is confirmed by Section 5 of the same Schedule, which requires that even exhibits shall be accompanied by a petition when filed on the proceedings of a regular suit: it is also declared in Section 3, that the copy shall be written on one side thereof only.

The Presidency Court, on the 26th April, 1833, *concurred in this construction.*

March 29, 1833.

From the Judge of Zillah Mynpooree, dated 23rd March, 1833.

No. 775.

1814. Reg. XXIII. Sec. 21, Clause 2, and Sec. 22, Clause 3. 1832. Reg. VII. Sec. 5.

Considerable inconvenience being experienced by the moonsiffs in the investigation of suits, from the necessity of examining the persons who witnessed the service of notices on defendants, prior to proceeding to try the causes ex parte, I request to be informed whether the Court of Sudder Dewanny Adawlut for the Western Provinces see any objection to the strict observance of the rules laid down in clause 2, *Section* 21, *and clause* 3, *Section* 22 *of Regulation XXIII.* 1814, *being dispensed with in cases where the processes are served by registered peons under the provisions of Section* 5 *Regulation VII.* 1832, *provided the moonsiff issuing the process is satisfied from the chupprasee's report that the notice was duly served.*

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 4th April, 1833.

I am directed by the Court to transmit, for the purpose of being laid before the judges of the presidency court, the annexed copy of a letter received from the judge of zillah Mynpooree, under date the 23*rd ultimo.*

2. *The provisions of clause* 2, *Section* 21, *Regulation XXIII.* 1814, *which require the evidence of witnesses besides the person who served the process, have reference to the circumstance that the process of moonsiffs' courts, was then served either by the plaintiff himself or any other person whom he choose to employ for that purpose; under the present system of issuing process through registered peons the same necessity does not however exist, and the evidence of the peon may be considered sufficient, unless there are grounds to suspect his statement. Mr. Turnbull is of opinion that under the existing law the moonsiff is competent to exercise his discretion; but Mr. Colvin considers the provisions of clause* 2 *above cited to be imperative, and that the evidence of witnesses to the service of process of others than the peon serving it must be taken in every instance. The point is therefore referred for the decision of the Presidency Court.*

The Calcutta Court, on the 3*rd May*, 1833, *concurred in the opinion expressed by Mr. Colvin.*

April 4 1833.

Repealed by Act XXVI. 1852.

From the Judge of Zillah Moradabad, dated 23*rd March*, 1833.

No. 776.
1814:
Reg. XXVII. Sec. 29.

I solicit the favor of instructions from the Court respecting the payment of fees to the pleaders of pauper plaintiffs.

2. *In all cases generally, it is provided, that on the decision of a suit the pleader shall receive the fees which may have been already deposited for him in the Court by his client; the client, if successful, recovering the same from the opposite party.*

3. *It is also enacted by Section* 29, *Regulation XXVII.* 1814, *that the payment of the fees of pleaders deposited in the court shall not be stayed or postponed in consequence of the admission of an appeal.*

4. *In the event of a suit being brought to a successful issue by a pauper plaintiff, the payment of the fees of the pleader falls with the costs on the defendant, but no fees are deposited in the court, and the pleaders of this court imagine that they are entitled to enforce payment immediately by confining the person of the defendant in jail.*

5. *This course appears to me to be open to objection, as a pauper plaintiff may (and it is not very uncommon) sue an individual possessed of little property for a heavy sum of money; if he obtain a decree, the pleader may, should he not have it in his power to pay his fees, at once lodge him in the jail and*

thereby throw a considerable obstacle in the way of an appeal: indeed I think the immediate payment of the pleader of a pauper, by a wealthy person, when an appeal has been preferred, objectionable, for it must be obvious that in the event of the decision being reversed, the respondent, who is a pauper, can never restore to the appellant money received by the pleader.

6. *It was my wish in such cases that the payment of the fees of the pleader should be postponed until the final decision of the case in appeal; it is urged that this mode is contrary to the provisions of Section* 29, *Regulation XXVII.* 1814, *above noticed, and precedents in the time of former judges, in favor of imprisoning the defendant on the immediate passing of the decree, have been quoted; I therefore solicit, not being aware of any Circular Orders on the subject, that I may receive the directions of the Court.*

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 4th April, 1833.

I am directed by the Court to transmit, for the purpose of being laid before the judges of the Presidency Court, the annexed copy of a letter received from the judge of zillah Moradabad under date the 23rd ultimo.

2. *The Court are of opinion that the law is rightly stated in the 2nd and 3rd paragraphs of the judge's letter, viz. that the payment of fees in pauper as well as other cases cannot be stayed on the ground that an appeal has been instituted from the first decision: and although there may be a liability to inconvenience in particular cases, the general rule appears to the Court sound and just; they see no reason therefore to advocate the proposed change in the existing practice of the courts.*

The Presidency Court, on the 3rd May, 1833, *concurred in this construction.*

April 4 1833.

See Act I. 1846.

To the Judge of Zillah Purnea, dated 6th April, 1833.

No. 777.

1814.

Reg. XXVIII. Sec. 6, Clause 1.

Sec. 11, Clause 1.

I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo, and in reply to inform you that under the existing laws the judge is not authorized to demand sureties for the appearance of the agent of a pauper female plaintiff, and that such

agent cannot be committed to the jail on the suit, preferred through his agency, appearing unfounded, vexatious, or wilfully exaggerated.

The Western Court, on the 3rd May, 1833, concurred in this construction.

April 6th, 1833.

From the Judge of Zillah Purnea to the Register of the Presidency Court of Sudder Dewanny Adwalut, dated 25th March, 1833.

No. 779.

1810.
Reg. XIII. Sec. 2, Clause 4.

With reference to paragraph 2 of my letter to your address dated the 30th November last, I have the honor to request the favor of being furnished with the orders of the Court regarding my competency to dispose of cases under Section 30, Regulation II. 1819, on which I have myself reported in my former capacity of collector. The cases of this nature are of the longest standing of any in Court, and I therefore feel desirous of having them disposed of.

To the Judge of Zillah Purnea, dated 12th April, 1833.

I am directed to acknowledge the receipt of your letter of the 25th ultimo, and in reply to inform you that the Court are of opinion you are competent to dispose of the cases therein referred to.

The Western Court, on the 10th May, 1833, concurred in this construction.

April 12, 1833.

From the Officiating Judge of Zillah Shahabad, dated 19th March, 1833.

No. 780.

1793.
Reg. IV. Secs. 22, 24 and 25.
Reg. V. Secs. 23, 25 and 26
1803.
Reg. III. Secs. 23 25 and, Clause 1, and Sec. 26.
Reg. IV. Secs. 23, 25 and 26.

I do myself the honor to request the favor of the Court's opinion on the following points :

First.—Agreeably to Sections 22, 24, 25, Regulation IV. 1793, the zillah judges were not empowered to forward to Government decrees adjudging forfeiture of lands, and to realize fines, in cases of resistance to or evasion of process, provided the defendant preferred an appeal to the provincial court within the time prescribed for lodging appeals. These Sections also declare the decision of the provincial court of appeal to be final, in all cases where the annual produce of the lands adjudged to be forfeited, or the jumma payable to Government, supposing the offender to be a Government farmer, or the amount of the fine to be levied, may not exceed one thousand sicca rupees.

1831.
Reg. V. Sec. 28, Clause 1, and Sec. 16, Clause 3,

Sections 23, 25, 26, Regulation V. 1793, enact that all decrees adjudging forfeiture of lands, or farms, or orders for fines, passed by the provincial court in the first instance, in cases of resistance of process, and where the amount of annual produce, or jumma, or fine may not exceed one thousand sicca rupees, shall not be appealable to the Court of Sudder Dewanny Adawlut.

I request therefore to know whether the powers vested as above in the provincial court, are to be considered as vested in the judges of those zillahs into which the provisions of Regulation V. 1831, have been introduced, and where the jurisdiction of the provincial court has ceased ; or whether the judges must now await the period of appeal to the Sudder Dewanny Adawlut, in the same manner as, agreeably to Sections 22, 24, 25, Regulation IV. 1793, they were directed to await an appeal to the provincial court ? I of course allude to cases where the value of the forfeiture calculated as above, or the amount of fine may not exceed one thousand sicca rupees. In all other cases the law appears clear enough.

Second.—Is the decree of a judge, passed in appeal from the decision of a principal sudder ameen, and after a full hearing in the presence of the parties, to be executed through the principal sudder ameen or by the judge ? Clause 3, Section 16, Regulation V. 1831, enacts that "if, after perusal of the record of the original suit and the petition of appeal in the presence of the appellant or his vakeel, the judge shall see no reason to alter the decision appealed from, it shall be competent to him to confirm the same, and to communicate the order for confirmation through the Court from whose "judgment the appeal was made, to the respondent, with a view to enable such respondent to take immediate measures for the execution of the decree." In this latter case, however, there are no costs of appeal to be realized, whereas in the former costs must be decreed and realized.

To the Officiating Judge of Zillah Shahabad, dated 12th April, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 19th ultimo, and in reply to the first question to inform you that as by clause 3, Section 28, Regulation V. 1831, all suits originally decided by the judge of a zillah, into which the provisions of Regulation V. 1831, have been introduced, are appealable to the Sudder Dewanny Adawlut, an appeal would lie from his decree adjudging forfeiture of lands, or fines, in cases of resistance or evasion of process, without reference to the amount of the annual jumma, or produce, or fine ; and that in such cases the judge should await the period of appeal to this Court in the same manner as by the enactments quoted by you, they were directed to await an appeal to the provincial court.

2. *In reply to the second question the Court direct me to state that the decree of a judge passed in appeal from the decision of a principal sudder ameen must be executed under the general rules prescribed for the execution of decrees passed by the judge.*

The Western Court, on the 10*th May*, 1833, *concurred in this construction.*

April 12, 1833.

See Act VI. 1843.

To the Officiating Judge of Zillah Tipperah, dated 19*th April*, 1833.

No. 784.

1831.
Reg. VIII.

1806.
Reg. II. Sec. 11.

I am directed to acknowledge the receipt of your letter of the 2nd instant, and in reply to inform you that the Court are of opinion that if the prisoner be in confinement in execution of a summary decree, passed by a collector under Regulation VIII. 1831, that officer is competent to release him on his presenting a petition, under Section 11, Regulation II. 1806, and proving his insolvency; the powers heretofore vested in the judge in such cases having been virtually transferred to the collector by the provisions of the Regulation first quoted.

The Western Court, on the 17*th May*, 1833, *concurred in this construction.*

April 19, 1833.

From the Judge of Zillah Furruckabad, dated 16*th April*, 1833.

No. 785.

1803.
Reg. II. Sec. 8.

Adverting to Section 8, Regulation II. 1803, I request the favor of instructions from the Court in the following case.

2. A suit has heen filed, Nawab Hussen Alee Khan versus Chote Beghum, (plaint 2,557-5-4, rent of jagheer) in which the defendant pleaded on the filing of the suit that she was one of the nawab's dependants, (mootuwussil being the term in use here,) and the case was ordered as usual to be sent to the Nawab for decision. The plaintiff however gave in a suwal stating that the Nawab being a minor, all business was transacted by his guardian, Nawab Ahmed Yar Khan, to whom the defendant in this case is related, and praying that the case may be retained in the zillah court.

Three other cases are pending, in which the same petition has been made, for the same reason.

To the Judge of Zillah Furruckabad, dated 26th April, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 16th instant.

2. In reply, I am directed to inform you that the circumstance of the Nawab being a minor will not prevent the reference of the case in the usual manner: the decision will of course be given by the guardian of the Nawab, instead of the Nawab himself.

The Calcutta Court, on the 31st May, 1833, concurred in this construction.

April 26, 1833.

See Nos. 162 and 843.

To the Commissioner of Revenue for the 13th Division, dated 3rd May, 1833.

No. 786.

Execution of a decree against an European British subject.

1793. Reg. XXVIII. Sec. 2.

1803. Reg. XVIII. Sec. 2.

I am directed by the Court to acknowledge the receipt of your letter of the 16th ultimo, and its enclosures, and in reply to inform you that a decree passed against an European British subject is to be enforced in the same manner as one given against a native, and, with reference to the fact noticed by the deputy collector, that the bond prescribed by Section 2, Regulation XXVIII. of 1793, was not executed in the present instance, to observe that Section 107, Cap. 155, 53 Geo. III. renders the execution of such bond unnecessary.

May 3, 1833.

See Act. XI. 1836.

From the Judge of Zillah Purnea, dated 20th April, 1833.

No. 787.

Personal property sold in execution of decrees of Court must be paid for on delivery.

There being no express rule laid down in the Regulations for the mode of recovery of sums of money from persons purchasing property at sales made by order of court, I have the honor to request the superior court's opinion regarding the course of proceeding to be adopted in the event of a person purchasing chattels or personal property and being allowed to remove it, and subsequently refusing

to pay for the same, or restore the property. In such case can the recusant be proceeded against in either or all of the following modes ;

First.—Can he be proceeded against as for a contempt?

Secondly.—Can he be committed to jail in default of payment, or restoration of property, as for a debt?

Thirdly.—Can his property be attached, and sold for recovery of the amount of purchase-money due by him ?

2. I am aware that the proper mode of conducting sales of moveable property would be to require payment before the articles were allowed to be removed ; but not unfrequently, purchasers, especially when they are well known, are permitted, as a matter of favor, to take away goods before payment ; and it is with respect to such instances, in which the indulgence is abused, that I am desirous of obtaining the Court's opinion.

To the Judge of Zillah Purnea, dated 3rd May, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 20th ultimo, requesting to be informed as to the course to be pursued in the event of a person who has purchased chattels or personal property at a sale, and been allowed to remove them, subsequently refusing to pay for or restore the same.

2. The Court do not understand from your letter that any case of such refusal has actually occurred. They therefore deem it sufficient to state that in no instance should personal property be delivered up to the purchaser, until he has paid for it ; and that if the nazir or other person entrusted with the sale, deliver the property to the purchaser, and the latter refuse to make payment, it will be at his own personal risk. He will be compelled to make good the price, and will have to recover the same from the purchaser by the regular course of law.

May 3, 1833.

From the Judge of the Dacca Court of Appeal, dated 18th March, 1833.

No. 788.
1814.
Reg. XII.

I request you will submit to the judges of the Sudder Dewanny Adawlut the enclosed papers, and I solicit the opinion of that Court as to the liability of the pension therein alluded to in execution of decree.

2. It is in my opinion equally liable with any other property the party might possess, and it is obviously contrary to equity that he should live on his pension in ease and idleness, setting his creditors at defiance. Moreover such application of pensions has hitherto been

the practice and unobjected to by the revenue authority, and there can be no doubt that the receipt of the treasurer of this Court, countersigned by a judge, will be a "legitimate acquittance in justification of the disbursement."

3. As courts of justice are by the Circular Order of the 14th December, 1832, deprived of the power of enforcing any of their orders issued to a revenue officer which the Board of Revenue may direct him to disobey, and so far bound to submit to fiscal authority, I request the Sudder Dewanny Adawlut will, in the event of their thinking the pension available property, as above stated, give this court full instructions how to proceed to insure obedience to any precept issued on the subject to the collector.

From the Secretary of the Sudder Board of Revenue to the Commissioner of Revenue for the Division of Dacca, dated 13*th April*, 1832.

I am directed by the Sudder Board of Revenue to acknowledge the receipt of your letter bearing date the 19th ultimo, and to inform you in reply, without intending to express any opinion of the validity of Mahomed Hossein's claim to the pension therein referred to, which is now under consideration, that they cannot sanction the payment of any allowances of the nature in question by the revenue authorities to any party whatever except the individual to whom the Government have specifically assigned them. The courts of law have other and perfectly effective means of enforcing their decrees against the party liable; but the officers to whom the payment of pensions is entrusted have no discretionary powers, and their only legitimate acquittance in justification of the disbursement of the public money, is the receipt of the pensioners.

Register's Report, dated 24*th April*, 1833, *on a Letter received from the Judge of the Dacca Court of Appeal, dated* 18*th March*, 1833.

The register having been directed to report what precedents are to be found in the Court on the subject of the attachment of a pension in satisfaction of a decree of court, begs leave to lay before the Court the following abstract of the only two cases which he has found:

Jyenarain Mookerjea, appellant,

versus

Bulram Rae, respondent.

Jyenarain Mookerjea, the appellant in this case, was desirous of having a pension, payable to respondent from the collectorship of

Benares, attached, to satisfy the decree of this Court awarding to him the sum of rupees 950-12-6.

On the 31st October, 1827, the Benares Provincial Court refused to attach the pension, on the ground that it was contrary to the provisions of Regulation XII. 1814.

The matter coming before this Court with a return, Mr. C. Smith ordered, on the 14th November, 1827, that two-thirds of the pension then in deposit in the Benares collectorship, and two-thirds of what might afterwards fall due, should be paid over to appellant, until the sum awarded to him should be paid.

On the 28th May, 1829, Mr. M. H. Turnbull—observing that the order of Mr. C. Smith, involving a reversal of the order of the provincial court, could not be legally passed by a single judge—ordered that it should be stayed, and being of opinion that the order for giving up the pension to the appellant was contrary to the provisions of Regulation XII. 1814, proposed the following order, and Mr. C. T. Sealy concurring with him, on the 1st August, 1829, it was issued to the Benares Provincial Court.

"Ordered, that the Provincial Court do not pay to the appellant any part of the pension of the respondent, in satisfaction of the decree, without the respondent's consent."

Kadir Ali Khan and others, heirs of Akbur Ali Khan, petitioner,

versus

Moossummat Chowrassee, decree-holder.

The sum of 3,205 rupees 8 annas being due to Moossummat Chowrassee, from the estate of Akbur Ali Khan, under a decree of Court, the judge of the city of Patna, on the 19th January, 1829, ordered that it should be realized from a moiety of the pension paid by Government to the heirs of Akbur Ali Khan. The Patna Provincial Court having confirmed the above order on the 25th April, 1829, the petitioner appealed to this Court.

Mr. Rattray, on the 16th September, 1829, on the principle which governed the decision in the case of Jyenarain Mookerjea, versus Bulram Rae, proposed the following order, which was passed with the concurrence of Mr. M. H. Turnbull, on the 6th February, 1830—"Ordered, that the orders of the lower courts be reversed; that no part of the pension be paid to the decree-holder; and tha if any part have been paid to her, it be paid back to the pensioners."

To the Provincial Court of Appeal for the Division of Dacca, dated 3rd May, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 18th March last and its enclosures, and in reply to for-

ward to you the accompanying copies of five roobukarees as per margin, (those alluded to in the preceding report,) from which you will perceive that the Court have ruled that pensions granted by Government are not liable to attachment in satisfaction of decrees of court.

May 3, 1853.

See No. 827, and Sudder Dewanny Adawlut, N. W. P., page 332, 25th August, 1851.

From the Commissioner N. Division Doab, dated 24th April, 1833.

No. 789.

1833.
Reg. II.

With reference to the provisions of Regulation II. of the present year, and the order of Government, dated 29th ultimo, abolishing the Provincial Courts of Appeal of Benares and Bareilly from the 1st proximo, I have the honor to solicit the Court's opinion whether the original and appellate jurisdiction which vests in my office by the provisions of clause 2, Section 9, Regulation I. 1829, *ceases and determines by the provisions of the above quoted Regulation and order, or whether I shall proceed to dispose of the cases pending before me?*

To the Civil Commissioner N. Division Doab, dated 10th May, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 24th April last, requesting to be informed whether, under the provisions of Regulation II. 1833, *the original and appellate jurisdiction of your court has ceased or otherwise.*

2. *In reply, I am directed to inform you that under Section 3 of the above-mentioned Regulation, all provincial courts are deprived of original jurisdiction; they will continue however to exercise appellate jurisdiction until such time as the Governor General in Council shall, under the powers vested in him by Section 4, abolish the courts in question. No order under the signature of the secretary in the judicial department having been yet issued to this effect with regard to your court, you will continue to exercise your authority, as a court of appeal, referring to the zillah courts all matters of primary jurisdiction under the rule laid down in Section 3.*

The Presidency Court, on the 7th June, 1833, *concurred in the construction.*

May 10, 1833.

Of temporary use.

From the Judge of Zillah Furruckabad to the Register of the Sudder Dewanny Adawlut, dated 30th April, 1833.

No. 790.

1831.
Reg. V. Sec. 16, Clause 3.

I have the honor to submit, for the consideration of the Court, the following question:

2. I should first advert to clause 3, Section 16, Regulation V. 1831, and to your circular letter of the 24th August, 1832, paragraph 3rd, as follows:

"On this point I am directed to observe that the rule contained in clause 3, Section 16, Regulation V. 1831, alters the rule before in force no further than to allow the judge to confirm the decision of the lower court without calling on the respondent to attend; consequently the same mode of practice is to be followed as heretofore, except that, as no costs can be incurred by the respondent until he be summoned to answer to the petition of appeal, security for costs need not be demanded from the appellant before the respondent is called upon to answer. A previous perusal of the petition of appeal and decree is not necessary to the admission of the appeal: nothing further being required than to see that the prescribed period of appeal has not expired, and that the petition of appeal is written on paper bearing the prescribed stamp."

3. I am getting through the business as fast as I can, nevertheless it will be about three months before the appeals filed during the past month will be decided. In certain instances the appellants have petitioned to be allowed, without waiting for the appeal to be looked over by the judge, to bring forward witnesses to prove their case.

4. It seems to me that it would be hardly fair to allow this, without giving notice to the respondent, who, on hearing that the case was to be proceeded in, would come to court, perhaps appoint a vakeel, which would subject him to some expense; in which case the old rule of demanding security from the appellant, would probably come into force.

5. The question therefore is—

First.—Should an appellant be allowed if he wish it, without waiting for the petition of appeal and decree to be read over, to bring forward any additional proof to support his case?

Second.—If allowed, should the respondent be called upon to attend, or not, until the judge was able to take up the case?

6. May I request the favor of your procuring me the decision of the Court on this question? At the same time I may observe that I hope in a few months to have matters in such train that the appeals will be weekly cleared off.

To the Judge of Zillah Furruckabad, dated 10th May, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 30th April last.

2. In reply I am directed to inform you that an appellant should not be allowed to bring forward additional proof in support of his claim, before the petition of appeal and decree have been read over by the judge.

3. Under this construction a reply to your second query is rendered unnecessary.

The Presidency Court, on the 7th June, 1833, *concurred in this construction.*

May 10, 1833.

To the Patna Provincial Court of Appeal, dated 10th May, 1833.

No. 791.

1833.
Reg. II. Sec. 3,

I am directed by the Court to acknowledge the receipt of your letter of the 24th ultimo, and in reply to inform you that the provisions of Section 3, *Regulation II.* 1833, *should have effect from the date of its promulgation, i. e. its receipt by the Court; that the transfer of original suits should not be delayed for any further communication from the judicial department; and that decisions of such suits, passed by you after the date of the promulgation of the Regulation, are illegal.*

The Western Court, on the 14th June, 1833, *concurred in this construction.*

May 10, 1833.

Temporary.

To the Judge of the Dacca Court of Appeal, dated 31st May, 1833.

No. 793.

1833.
Reg. II. Sec. 3.

I am directed by the Court to acknowledge the receipt of your letter of the 6th instant, requesting to be informed whether you should retain or transfer to zillah Tipperah the case of Joydoorgah Chowdrayn and others, plaintiffs, versus Mussamut Sonamunnee and others, defendants, in which you have obtained the Court's permission to review the judgment passed by you.

2. *In reply I am directed to inform you that the Court, viewing the case in the light of an original suit, which, by the provisions of Regulation II.* 1833, *you are precluded from trying, are of opinion that it should be transferred to the Zillah Court of Tipperah.*

The Western Court, on the 28th June, 1833, *concurred in this construction.*

May 31, 1833.

Temporary.

From the Officiating Judge of Zillah Meerut, dated 7th May, 1833.

No. 794.

1825.
Reg. VII. Sec. 3, Clause 6.
Sec. 4, Clauses 4 and 5.

Much inconvenience having been experienced, from the collectors of this division having in several instances refused to carry into effect orders which had been issued from this court for the sale of landed property, situated in their respective jurisdictions, in satisfaction of decrees, I am induced to make the matter a subject of reference, and to request the favor of your furnishing me with the sentiments of the superior court as to whether the power of making inquiries into, and deciding upon, the rights of claimants to property for the sale of which orders have been issued, is vested in the collector; or whether he ought, whenever such claims may be preferred to him, to forward them with any evidence which may have been adduced in support of it, or which the records of his office may enable him to supply, for the information and orders of the Court.

2. *My object in making this reference is more with the view of setting at rest a question which has been, previous to my taking charge of the office, a subject of long and unprofitable discussion, without subjecting myself to prolonged correspondence with those collectors who entertain different views as regards the construction of the various enactments on the subject, and which, more specially clause* 6, *Section* 3, *Regulation VII.* 1825, *and clauses* 4 *and* 5, *Section* 4 *of the same Regulation, clearly vest all inquiries on the subject in the judge; the revenue officer being a ministerial officer, and having no right either to call in question the court's orders or to postpone the sale of any lands which have been ordered by the judge, without receiving specific orders from him on the subject.*

To the Officiating Judge of Zillah Meerut, dated 12th June, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 7th ultimo, representing the inconvenience arising from the refusal of the collector of your division to carry into effect the orders of your court for the sale of landed property, and requesting the decision of the Court as to whether the claims advanced for property advertised for sale under orders of a

court are to be decided by the collector, or by the court directing the sale.

2. *In reply I am directed to inform you that, under the provision cited by you, such claims come exclusively within the cognizance of the court ordering the sale, and that in the event of such claims being preferred to the collector, it is incumbent on that officer to forward them to the court for decision, staying his proceedings until the further orders of the court are received.*

The Presidency Court, on the 5th July, 1833, *concurred in this construction.*

June 12, 1833.

See Act IV. 1846.

To the Judge of Zillah Burdwan, dated 14*th June,* 1833.

No. 795.

1819. Reg. VIII. Sec. 17, Clause 7.

1832. Reg. VII. Sec. 16, Clause 1.

I am directed by the Court to acknowledge the receipt of your letter of the 21*st ultimo, and in reply to inform you that petitions on the part of the defaulting putnee talookdars, whose tenures have been sold for arrears under Regulation VIII.* 1819, *previous to the enactment of Regulation VII. of* 1832, *to receive the excess of the purchase-money above the amount of the balance for which the tenure was sold, should be presented to the judge who holds the surplus in deposit.*

The Western Court, on the 19*th July,* 1833, *concurred in this construction.*

June 14, 1833.

To the Judge of Zillah Moradabad, dated 14*th June,* 1833.

No. 796.

1831. Reg. V. Sec. 16, Clause 3.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 6*th instant.*

2. *In reply I am directed to inform you that the rule laid down in clause* 3, *Section* 16, *Regulation V.* 1831, *is not applicable to principal sudder ameens to whom appeals are referred by the judge.*

The Presidency Court, on the 5th July, 1833, *concurred in this construction.*

June 14, 1833.

See Act VIII. 1850.

From the Officiating Judge of Cawnpore, dated 8th June, 1833.

No. 797.

1793. Reg. III. Sec. 8. 1803. Reg. II. Sec. 5.

I request you will obtain instructions for me from the Court whether suits can be entertained in the zillah courts for debts contracted in Calcutta, the obligations by which the debts are represented, such as shop bills, bonds, notes of hand, or receipts, being dated and executed in Calcutta; a great number of persons, Europeans and natives, who hold such obligations, being residents of Cawnpore, and the other parties who, were suits to be instituted, would appear as defendants, being also residents or occasional visitors of Cawnpore or have available property here. Costs of suit and vakeels' fees are so high that I consider it my duty to the public to make the present inquiry, lest, after incurring great expense, parties may ultimately find themselves in the situation of being nonsuited.

2. I do myself the honor to forward two documents which an intending suitor has brought to me, and who made the inquiry orally which I have submitted above. I request they may be returned. P. Carapit is a servant of the king of Oude, and occasionally visits Cawnpore, and is a man of wealth.

Calcutta, 3rd February, 1833.

Sicca Rupees 2,900.

Three months after date I promise to pay to Messrs. Middleton and Co. or order the sum of Sicca Rupees two thousand and nine hundred for value received.

(Signed) P. CARAPIT.

P. CARAPIT, ESQ. .... Dr.

TO MIDDLETON AND CO.

1823, Feby. 3rd.—To	a handsome large pearl necklace with diamond clasp, ...	2,200
,,	A pair of handsome diamond and drop ear-rings, ...	700
	Sa. Rs.	2,900

To the Officiating Judge of Zillah Cawnpore, dated 14th June, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 8th instant.

2. In reply, I am directed to inform you that under the provisions of Section 5, Regulation II. 1803, suits of the nature described

in your letter, can only be instituted in your court, where either the cause of action has arisen or the defendant resided as a fixed inhabitant at the commencement of suit in the zillah under your charge. The circumstance of the defendant being only an occasional visitor, or his merely having available property in Cawnpore, will not therefore subject him to your jurisdiction.

The Presidency Court on the 5th July, 1833, *concurred in this construction.*

June 14, 1833.

See Nos. 73 and 956.

To the Judge of Zillah Burdwan, dated 14th June, 1833.

No. 798.

1831.
Reg. V. Sec. 9, Clause 2.
1832.
Reg. VII. Sec. 7.

I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo.

2. In reply to the question contained in the 1st and 2nd paragraphs, I am directed to inform you that as by clause 2, Section 9, Regulation V. 1831, pleadings, applications for filing exhibits and for the attendance of witnesses, and copies of decrees in suits tried by moonsiffs, need not be written on stamp paper, the Court are of opinion that petitions presented to moonsiffs under Section 7, Regulation VII. 1832, for the execution of their decrees, as well as vakalutnamas filed in cases before them, should be received on plain paper.

3. In reply to the 3rd paragraph, I am directed to refer you to the accompanying extracts from a letter addressed to the Court by the judge of Beerbhoom, under date the 13th August last, and the Court's reply dated the 31st of the same month. (See Construction No. 714, page 55 of this volume.)

4. On the subject of the 4th and 5th paragraphs the Court are of opinion that moonsiffs, in common with the other judicial officers, are competent to try the fact of possession of lakhiraj land attached by them in execution of their decrees.

The Western Court, on the 19th July, 1833, *concurred in this construction.*

June 14, 1833.

See Nos. 950, 1054 and 1373.

To the Judge of Zillah Juanpore, dated 5th July, 1833.

No. 801.

1831.
Reg. V. Secs. 5, 15 and 18.

I am directed by the Court to acknowledge the receipt of your letter of the 20th ultimo.

2. *In reply, I am directed to inform you that under the existing Regulations, cases in which a collector is a party, cannot be referred for decision to the native judicial officers.*

The Presidency Court, on the 2nd August, 1833, *concurred in this construction.*

July 5, 1833.

See Acts XI. 1836, *and VI.* 1843.

To the Judge of Zillah Bareilly, dated 5th July, 1833.

No. 802.

1814.
Reg. XXIII. Sec. 72.
Reg. XXVII. Sec. 20.
1831.
Reg. V. Sec. 18, Clause 3.

In reply I am directed to inform you that as the vakeels of the principal sudder ameen's and sudder ameen's courts are in fact vakeels of the judge's court, permitted by the judge, under the provisions of Section 72, *Regulation XXIII.* 1814, *and clause* 3, *Section* 18, *Regulation V.* 1831, *to practise in cases before the subordinate tribunals, and as by the Section and Regulation first cited, the whole of the Regulations in force regarding the authorized vakeels of the zillah courts are applicable to the authorized vakeels employed in the courts of the sudder ameens, the vakeels of the sudder ameen's and principal sudder ameen's courts, are equally competent with other vakeels of the zillah and city courts to claim fees for furnishing legal opinions on points of law, or in particular cases which may be referred to them by the parties interested.*

The Presidency Court, on the 2nd August, 1833, *concurred in this construction.*

July 5, 1833.

See Act I. 1846.

From the Judge of Zillah Goruckpore to the Register of the Western Provinces, dated 6th July, 1833.

No. 804.

1831.
Reg. IX. Sec. 2, Clauses 2 and 4.
1832.
Reg. VII. Sec. 15.

Tirbenee Dutt, petitioner, in the case,
Rambuksh Rae, plaintiff,
versus
Omrao Puttuk, defendant.

I have the honor to acknowledge the receipt of a precept from the Court of Sudder Dewanny Adawlut for the Western Provinces, dated 11th May, in the case noted in the margin, with a copy of the Court's order in the said case.

2. *To the orders of the Court in the case above noted, I beg respectfully to make the following objections.*

3. *The order in question was passed by a single judge of the Court, merely upon the petition of the appellant, without a revision of the proceedings of the case. The purport of the order is to reverse the decision of the zillah judge; to direct that an auction sale which had been held in accordance therewith should be upset, and that evidence be taken as to the truth of a statement, made by the appealing petitioner, styling himself the son of the defendant in the case.*

4. *The case is briefly this,—Ram Buksh Rae, plaintiff, brought a suit against Omrao Puttuk, defendant, to recover the sum of* 1,058 *rupees and* 3 *annas, principal and interest, being money advanced by the plaintiff to the defendant in a certain transaction. On the* 25*th April,* 1831, *a decree was passed in favor of the plaintiff upon a full investigation of the merits of the case, for the full amount claimed in the plaint. From this decision no appeal was instituted.*

5. *On the* 24*th August,* 1831, *execution was sued out by the plaintiff. The defendant absconded. On the* 22*nd December,* 1831, *the plaintiff petitioned for a sale of the defendant's property, which being complied with and the regular forms observed, three villages were advertised for sale on the* 21*st February,* 1833. *On the* 29*th December,* 1832, *a man named Tirbenee Dutt, stating himself to be a son of the absent defendant, without any power of attorney or authority to act on defendant's behalf, presented a petition, stating that subsequently to the afore-mentioned decree the plaintiff had made an arrangement with defendant; that he had received a certain portion of his claim, for which he had given a receipt; that a further portion he had received in presence of witnesses, promising to make over to him the decree, and that the remaining portion he, plaintiff, had voluntarily excused the defendant. When this petition was read on the* 3*rd January,* 1833, *by the acting judge, the receipt was examined and an order was issued to the nazir to produce the plaintiff that he might reply aye or no to its correctness. An order was at the same time sent to the collector to stay the auction pending the plaintiff's arrival. On the* 12*th February,* 1833, *the nazir made his return, and*

the plaintiff appeared before me. The plaintiff denied entirely the correctness of this, Tirbenee Dutt's statement, and the authenticity of the document purporting to be a receipt for 1,000 *rupees granted by one Muhesh Rae, said to be plaintiff's son, to the aforesaid Tirbenee Dutt; the defendant in the case Omrao Puttuk never appearing. In consideration of the plaintiff's denial and of all the circumstances of the case I recorded my opinion that the validity of Muhesh Rae's receipt and other objections advanced by Tirbenee Dutt, could not be investigated in a mere process of execution of a decree obtained by Rambuksh Rae against Omrao Puttuk; and I therefore directed that the execution should proceed and the sale should take place, which it accordingly did.*

6. *Now my objections to the order described in the 3rd paragraph of this letter are three-fold:*

First.—Clause 2, *Section* 2, *Regulation IX.* 1831, *is, I believe, the only enactment which can be at all considered as giving legality to the order. In the said clause there are two divisions; the former pointing out the authority of a single judge of the Sudder Dewanny Adawlut summarily to confirm the orders of the lower court: the latter stating the authority of that officer, in the event of his disapproving of the lower court's decision or order. I respectfully maintain that in the latter case no authority is given to the single judge to pass any order at all with regard to the decision without a revision of the whole of the proceedings of the case.*

Secondly.—Supposing the single judge to have authority to pursue the course mentioned in the aforesaid division and clause without calling for the papers and revising the case, I would respectfully ask what is the course mentioned? What is the single judge competent to do? The enactment says, "It shall be competent to a single judge to issue an injunction pointing out the irregularity, illegality or other defect apparent in the proceedings, decision or order appealed against, and requiring that the court by which the same may have been held or passed shall revise the case, and proceed thereon in such manner as may appear comformable to justice and the Regulations." Certainly to my mind no authority is here given to the single judge summarily to reverse the decision of the zillah judge, and to upset an auction sale under which a valuable estate has changed hands, and in the validity of which decision the interests of many are concerned.

But, thirdly, I submit that this case does not come under clause 2 *of the Section at all. The order against which the petitioner complained was recorded in execution of a decree passed in a regular suit, after a full investigation of its merits. After having ascertained the exact nature of the statement made by the petitioner, after having examined his documents and taken the statement of the decree-holder in the matter, I recorded my opinion*

that, as a point of law and practice, the petitioner's claim could not be investigated in a mere process of executing a decree to which he did not on the record appear to be a party. The case I submit comes strictly under clause 4 *of the Section and Regulation quoted above, with regard to which the enactment expressly states that "it shall not be competent to a single judge to alter or reverse such decree or order."*

7. *I respectfully beg the opinion of the Court in full sitting on the points at issue.*

8. *The Court will perceive that I have referred the matter merely on the question of jurisdiction, without entering into any arguments in support of my view of its merits. If the Court shall decide that my opinion, as recorded in the order appealed against, is wrong; that a third party may, in the execution of a decree in a case finally settled, come in, and, on a miscellaneous petition, on a paper bearing a rupee stamp, claim to have his demand against the son of the decree-holder investigated—which investigation is to involve the examination of evidence to a number of different points (as in this case to the three distinct points described in the petition,* 1*st, the validity of a receipt for* 1,000 *rupees;* 2*nd, the fact of a further sum having been given in the presence of other witnesses; and* 3*rd, that the decree-holder had, before yet other witnesses, waived all claim to a sum due from defendant to him); and that such petitioner shall be entitled to have his case investigated summarily pending the execution of the other party's decree, it will be a decision of some importance as a precedent for future practice.*

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 19*th July,* 1833.

I am directed by the Court to transmit, for the purpose of being laid before the judges of the Presidency Court, the annexed copy of a letter received from the judge of zillah Goruckpore under date the 6*th instant.*

2. *It is the intention of the judge of the Court, with whom the order alluded to by Mr. Currie originated, to revise his proceedings in the case; but the general question, as to the authority of a single judge of the Sudder Dewanny Adawlut to alter or reverse the proceedings of the zillah court in cases of this nature, still remains to be decided.*

3. *The Court view the order of the zillah judge which was reversed in this case as a proceeding in execution of a decree of his own court in an original suit; and they are therefore of opinion that the order in question does not come within the exception laid down in clause* 4, *Section* 2, *Regulation IX.* 1831,

as supposed by the zillah judge (see paragraph 6 of his letter,) and that a single judge of the Sudder Dewanny Adawlut was competent, under the provisions of Section 15, *Regulation VII.* 1832, *to modify or reverse that order as might appear to him advisable.**

The Presidency Court, on the 16*th August*, 1833, *concurred in this construction.*

July 19, 1833.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, under date the 19*th July*, 1833.

No. 805.

1814.

Reg. XXVI. Sec. 3, Clause 9.

The following question having been put to the Court—

Adverting to Clauses 2 and 9, Section 3, Regulation XXVI 1814, with reference to Section 18 of Regulation V. 1793, Section 8, Regulation XIII. 1808, (and to Section 8, Regulation II. 1801, and Section 11, Regulation II. 1805, rescinded by clause 1, Section 3, Regulation XXVI. 1814,) and also to the provisions of Regulation IX. 1831,—is the ground for receiving and acting upon a summary appeal simply the dismissal of the suit, or refusal to admit the suit, *without investigation of the merits, on the default of the parties*, or will the dismissal of the suit, or the refusal to admit it, without an investigation of the merits, *without default of the parties*, be considered sufficient to justify the Sudder Dewanny Adawlut in receiving and acting on a summary appeal? In other words, if no default has been shown, and if there has been any investigation in the lower court, however insufficient or imperfect, will such investigation bar the interference of the superior court in a summary form?

The Court are of opinion that a summary appeal can be admitted only when the suit has been dismissed or rejected on the ground of delay, informality or other default, without an investigation of its merits—and that the words *or in opposition to the Regulations*, used in clause 9, Section 3, Regulation XXVI. 1814, apply to cases which may have been so dismissed or rejected on grounds not warranted by the Regulations, or to the omission, prior to the dismission or rejection of the suit, of any of the forms prescribed by the Regulations for calling on the party to attend and show cause why his suit should not be dismissed, &c.

The Western Court, on the 6*th September*, 1833, *concurred in this construction.*

July 19, 1833.

See Circular Order, No. 65, 2nd July, 1849.

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* See a further letter on this subject, No. 839 of this volume.

To the Judge of Zillah Furruckabad, dated 26th July, 1833.

No. 806.

Illegitimate children are considered as of the same country as their mothers.

I am directed by the Court to acknowledge the receipt of your letter of the 19th instant.

2. In reply to your 3rd paragraph, I am directed to inform you that illegitimate children should he classed with their mothers, and must be considered British subjects, European Foreigners, or American, according as their mothers may respectively be British, Foreign European, or American.

The Presidency Court, on the 6th September, 1833, *concurred in this construction.*

July 26, 1833.

To the Judge of Zillah Midnapore, dated 2nd August, 1833.

No. 807.

1793.
Reg. III. Sec. 7.
1803.
Reg. II. Sec. 4.

I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, requesting to be informed what mode of procedure you should adopt in receiving and trying two suits instituted for the recovery of sums said to have been taken as bribes by the serishtadar of the collector's office.

2. In reply, I am directed to inform you that you should proceed in the same manner as in common actions for debt. Section 7, Regulation III. 1793, declares all natives amenable to the civil courts, and as no Regulation exempts the officers of collectors from their jurisdiction, they come within the intent of the rule.

The Western Court, on the 6th September, 1833, *concurred in this construction.*

August 2, 1833.

From the Judge of Zillah Mynpooree, dated 15th July, 1833.

No. 808.

1793.
Reg. XIV. Secs. 15, 19 and 21.
1803.
Reg. XXVII. Secs. 23, 26 and 28.

Concluding that the construction on Section 23, Regulation XXVII. 1803, communicated by the register of the Presidency Court in a letter dated 27th May, 1825, addressed to the judge of Bundlecund S. division, (No. 386,) is equally applicable to suits instituted against farmers and securities under Sections 26 and 28 of that enactment, I request to be informed whether in cases under the last

Section, the amount of fine claimed by the collector on the part of Government ought not to be specified in the plaint; otherwise I see no way of estimating the value of the suit until a final decision is passed, and the judge has no opportunity of hearing evidence on the part of Government as to the circumstances of the defendant, and the defendant, not knowing the amount claimed from him, has no opportunity given him either of acquiescing in his ability to pay it, or of adducing evidence in disproof thereof.

To the Judge of Zillah Mynpooree, dated 2nd August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, regarding suits instituted against farmers and securities under Sections 26 and 28, Regulation XXVII. 1803.

2. In reply, I am directed to inform you that the former construction of the presidency court is applicable to suits instituted against farmers and their securities, under Sections 26 and 28 of the Regulation above-mentioned, that is, the proceedings must be written on stamped paper, the amount of which will be determined by the jumma of the estate from which the arrear of revenue is due.

3. It is of course beyond the power of the collector to specify any amount of fine claimed by the Government from a security, as in fact no such claim is advanced: the collector merely represents the circumstances of the resistance of process to the zillah court, and the amount of the fine is left to the discretion of that court on the fact being established to its satisfaction.

The Presidency Court, on the 30th August, 1833, *concurred in this construction.*

August 2, 1833.

To the Judge of Zillah Mymensing, dated 2nd August, 1833.

No. 810.

1814.
Reg. XXVI. Sec. 4, Clauses 2 and 4.

The Court, having had before them the case of Bhyrub Chunder Doss, petitioner, versus Kishen Madho, decided by you in appeal on the 12th December, 1832, *direct me to communicate to you the following observations and orders.*

2. *It appears that the petitioner obtained a decision in his favor from the pundit, sudder ameen on the 26th July*, 1810, *which was confirmed in appeal by the register on the 17th June*, 1816; *and that the judge, on the 16th July following, rejected a petition filed by Kishen Madho for a special appeal from the register's decree.*

3. *As under the Regulations the rejection of an application for a special appeal is final, the whole of the orders subsequently passed in the case are illegal. If you are of opinion that there are grounds for admitting a special appeal from the decision of the register, you should apply to this Court for permission to review the order of the former judge of the* 16*th July*, 1816.

4. *The Court accordingly annul the order passed by you on the* 12*th December last, with all other orders passed by any other authority subsequently to the* 16*th July*, 1816, *and request that you will proceed in the manner above prescribed.*

5. *The Court further direct me to observe that the Court's proposition contained in their roobukaree in this case dated the* 11*th July*, 1828, *and in the register's letter of the same date, that Kishen Madho should solicit the register of the zillah court to apply for a review, appears to have been erroneous, as under the construction of clause* 2, *Section* 4, *Regulation XXVI.* 1814, *(No.* 216, *page* 69, *Vol. I.) the Court are not authorized by the Regulations to empower a register to review his decisions.*

The Western Court, on the 20*th September*, 1833, *concurred in this construction.*

August 2, 1833.

No. 811.

1829.
Reg. X. Sec. 17, and Sch. B, Art. 8.

1831.
Reg. VI. Sec. 5, Clause 3.

From the Judge of Zillah Jessore to the Register of the Presidency Court of Nizamut Adawlut, dated 15*th July*, 1832.

For the consideration and orders of your Court I submit copy of a petition presented by Ramtonoo Pal, and beg to be informed whether with reference to the Regulations noted in the margin, a moonsiff is empowered to try so important a case as that alluded to by the petitioner. Ramtonoo states that hitherto he has never paid more than 32 rupees per annum, whereas, you will observe, the zemindar, Roy Gungadhur, claims 206 rupees 12 annas, in other words he demands (supposing the petitioner's account to be true) an increased yearly income of rupees 175 in perpetuity, equivalent to a principal sum of rupees 1,500 or 2,000, calculating at the rates of interest current in Bengal. My own opinion is that suits of this value should be referred for trial to the principal sudder ameens; but without instructions I do not like to act on the impression, because by long custom such claims have been invariably calculated at one year's rental only, in this court, and I believe in all. As respects the stamp duties, the practice is not perhaps objectionable, since the exact amount of the jumma can only be ascertained by a measurement and

Regulation V. of 1831, Section 5, clause 3.
Regulation X. of 1829, Section 17, Schedule B, No. 8.

assessment of the lands in dispute, *i. e.* should it appear on investigation that the zemindar is entitled to a fresh settlement. It is different, however, with regard to the interests of the ryots or other subordinate tenants, and it seems to me that they should have the advantage of a principal sudder ameen's superior intelligence and experience in trying such questions, whenever the increased rental claimed may exceed 36 rupees per annum.

To the Judge of Zillah Jessore, dated 2nd August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, and in reply to inform you that the suit alluded to by you, being for a sum of money not exceeding 300 rupees, is cognizable by the moonsiff under clause 2, Section 5, Regulation V. 1831.

2. The Court do not approve of the suggestion contained in the concluding part of your letter as a general rule, but observe that you are competent in the particular case in question, to refer the suit to the principal sudder ameen under Section 7 of the Regulation above quoted.

August 2, 1833.

See No. 1272.

From the Officiating Commissioner of Circuit 10th Division, dated 24th July, 1833.

No. 812.

1812.
Reg. XX. Sec. 7,

I have the honor to report, for the information of the Court of Sudder Dewanny Adawlut, that on the occasion of my late circuit in this division, I inspected the register books of deeds in the zillahs of Sarun, Shahabad and Tirhoot. In the two former, they appeared to be kept up in conformity with the Regulations.

2. At Tirhoot the practice of registering mookhtarnamas still prevailed, an irregularity noticed in my letter to your address under date the 24th of September, 1831. I requested the judge to call for, from the register, and furnish an explanation of the continuance of this practice after the illegality had been pointed out, as stated in my letter above alluded to, and I have now the honor to submit a copy of the reply of the register of deeds, which perhaps will be deemed satisfactory by the Sudder Court.

3. I deem it incumbent on me at the same time to notice a practice that prevails in Tirhoot, which I conceive to be infinitely more objectionable, and of the legality of which I am doubtful, *viz.*, that of registering deeds called, or rather miscalled, ijaranamas,

(اجارہ نامہ) in a separate book kept for the purpose. The nature of the deeds I cannot better explain than by the following quotation of the purport of the last deed registered. " Meer Muttooah, aged about 26, binds himself over for the period of 85 years, and his descendants for ever (نسلاً بعد نسل بطناً بعد بطن) for the sum of 18 rupees, to Omrao Sing, vakeel of the Civil Court at Tirhoot."

4. In another, a person disposes of the services of his slave girl, and of her children for a term of 81 years, for the sum of 200 rupees ; and the rest were generally of a similar purport.

5. My object in now noticing these deeds, is to obtain the opinion of the Court of Sudder Dewanny Adawlut as to the legality of such transactions being registered under Regulation XX. of 1812, or any other law enacted for the guidance of the register of deeds.

6. In my general report to Government I purpose commenting on the policy of any longer openly supporting, by the records and decisions of our courts, a monstrous system of slavery, perhaps the only relic of the barbaric operation of Mahomedan law, which has not been either modified or superseded by our more mild and civilized code.

To the Officiating Commissioner of Circuit for the 10*th Division, dated* 16*th August*, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 24th ultimo, reporting that you had examined the books of the offices of register of deeds in the districts of Sarun, Shahabad and Tirhoot, on the occasion of your late circuit of the division.

2. In reply I am directed to observe that as deeds of the description alluded to in your letter are not specified in Regulation XXXVI. of 1793, or Regulation XX. of 1812, the registry of them is illegal under the prohibition contained in Section 7 of the Regulation last quoted ; and to request that you will communicate this opinion to the judge of Tirhoot for the information and guidance of the register of deeds.

August 16, 1833.

See No. 732.

From the Judge of Zillah Purnea, dated 24th July, 1833.

No. 813.

1793.
Reg. III. Sec. 14.
1803.
Reg. II. Sec. 18, Clause 3.

I have the honor to request the favor of your obtaining for me the opinion of the Court of Sudder Dewanny Adawlut on the points noticed below, regarding the rule of limitation laid down in Section 14, Regulation III. 1793.

2. A person lent another a sum of money. Before re-payment of the debt the debtor dies, leaving as his heirs a widow, daughter, mother, and paternal uncle's son, who inherit his property. The landed property however, in consequence of disputes in the family, is attached by the court under Section 16, Regulation V. 1812. The creditor, before the expiration of twelve years from the period of the cause of action, applies by a miscellaneous petition to the court, requesting that the person in charge of the property of the deceased debtor may be directed to discharge the debt from the proceeds of the estate. The court call upon the heirs of the deceased to know if they admit the debt, or have any objections to payment being made as requested. The cousin admits it, but the mother, widow and daughter make no reply. The creditor then, some time after the expiration of twelve years, brings his action for recovery. I beg to be informed, first, whether under the express provisions of the enactment above quoted, the admission of the claim by the cousin can be considered as an admission of the truth of the demand by the defendant, so as to bind the whole of the heirs of the deceased debtor; and secondly, whether a miscellaneous application to a court of justice can be considered as a preferring of the claim within the meaning of the Section quoted.

To the Judge of Zillah Purnea, dated 16th August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 24th ultimo.

2. As the case, out of which your first question arises, may come judicially before the Court, they decline giving any opinion on it, and desire that you will decide the point on your own judgment.

3. In reply to the second question, I am desired to communicate to you the opinion of the Court, that a miscellaneous application to a court of justice cannot be considered as a "preferring of the claim" within the meaning of Section 14, Regulation III. 1793.

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The Western Court, on the 6th September, 1833, *concurred in this construction.*

August 16, 1833.

See Sudder Dewanny Reports, Calcutta, page 440, 16th August, 1847, and Sudder Dewanny Reports, N. W. P., page 158, 20th May, and page 337, 25th August, 1851.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 23rd August, 1833.

No. 814.

1833.

Reg. II. Sec. 5.

The point of law below laid down, having arisen in a case now pending before this Court, I am directed to request that you will submit the same for the opinion of the judges of the Presidency Court.

2. *In this Court's Resolution of the 27th April,* 1832, *in which the Presidency Court have since expressed their concurrence, it has been already determined that "the Courts of Sudder Dewanny Adawlut cannot interfere on the receipt of petitions of appeal against the decision of a zillah or city judge passed by the latter in appeal from the decisions of sudder ameens and moonsiffs, and that this construction applies to cases in which the decision of the zillah or city judge has been passed prior to the operation of Regulation V.* 1831, *in the district in which the cause of action originated, as well as to those passed subsequently."—(See Construction No.* 688, *page* 237 *of this volume.)*

3. *The question has now arisen whether by a parity of reasoning the Courts of Sudder Dewanny Adawlut are also precluded from taking up and acting on petitions of special appeal from the decisions of zillah and city judges, which had been presented and were lying undisposed of before the provincial courts at the time of their abolition, and have been transferred to the Sudder Dewanny Adawlut under the provisions of Regulation II.* 1833.

4. *The Court are of opinion that such petitions are cognizable by the Courts of Sudder Dewanny Adawlut under Section* 5, *Regulation II.* 1833 ; *and that those Courts are competent to admit or reject such special appeal, according as it may appear to them advisable in each case under the general Regulations.*

5. *Should the Presidency Court concur in this interpretation of the law, it shall be adopted in the Western Provinces as a future rule of practice.*

The Presidency Court, on the 27th September, 1833, *concurred in this construction.*

August 23, 1833.

Of temporary use.

To the Judge of Zillah Goruckpore, dated 23rd August, 1833.

No. 815.

1814.
Reg. XXIII. Sec. 76, Clauses 1, 2, 3, 4 and 6.
1831.
Reg. V.

I am directed by the Court to acknowledge the receipt of your letter of the 15th instant, requesting the opinion of the Court regarding the applicability of Clauses 1, 2, 3, 4 and 6, Section 76, Regulation XXIII. 1814, to principal sudder ameens.

2. In reply, I am directed to inform you that although the clauses in question are not expressly declared applicable to principal sudder ameens, the Court are of opinion that, under the general spirit of Regulation V. 1831, they should be considered applicable to those officers in common with other sudder ameens.

The Presidency Court, on the 1st November, 1833, *concurred in this construction.*

August 23, 1833.

See No. 761.

From the Judge of Zillah Purneu, dated 12th August, 1833.

No. 821.

1814.
Reg. XXVIII. Sec. 5.

I have the honor to request the opinion of the Court of Sudder Dewanny Adawlut whether it is competent for a judge, under the provisions of Regulation XXVIII. 1814, *to reject an application to be allowed to sue in formâ pauperis when on the face of the petition it shall appear that the action cannot by any possibility be legally sustained; or whether the judge must of necessity confine himself to the mere investigation of the ability or otherwise of the applicant to pay the costs of suit.*

2. *I make this application to the Court with reference to two petitions that have been presented to me: one is an application to be allowed to sue in formâ pauperis for recovery of a debt on bond, the cause of action having arisen more than twelve years ago, and therefore the suit is barred by the rule of limitations. In the second case a Mussulman woman applies to sue as a pauper for right and possession of certain lands which she asserts in her petition are endowed. Now, I believe, by the Mahomedan law a woman cannot be vested with the towleeut or management of such lands, and as for proprietary right she can have none; the only thing she can be entitled to being a share of the produce.*

3. *Should it be necessary for the judge to confine himself to the investigation of the ability or otherwise of the applicant to pay costs, I beg to be favored with the Court's opinion whether, on the petition of plaint being filed, the defendants might not be permitted to demur summarily on the ground of the illegality of the claim, or*

exaggerated valuation of the property claimed, before being called upon to deposit the whole amount of pleader's fees or incur the expenses of a regular suit. Should the points adverted to be decided in the plaintiff's favor, the investigation into the merits of the case might then be proceeded with. On the other hand the plaintiff might be nonsuited, and if requisite directed to frame his plaint correctly, and sue again.

To the Judge of Zillah Purnea, dated 30th August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 12th instant, and in reply to inform you that in applications for permission to sue in formâ pauperis the judge should confine himself to the investigation of the ability or otherwise of the applicant to pay the fees required; and that, with reference to Section 5, Regulation IV. 1793, *which prohibits the admission of any pleadings whatever, but those therein specified, the objections of the defendant to the plaintiff's statement of the cause of action cannot be heard summarily; but should, by analogy to the cases contemplated in Section 5, Regulation XIII.* 1808, *be offered in answer to the plaint in the first instance.*

The Western Court, on the 20th September, 1833, *concurred in this construction.*

August 30, 1833.

See Act IX. 1839.

From the Judge of Zillah Rajshahye, dated 10th August, 1833.

No. 824.

Circular Order Sudder Dewanny Adawlut, 25th February 1820.

1814.
Reg. XXIII. Sec. 52.

1817.
Reg. XVIII. Sec. 7, Clause 3.

From the Court's circular letter of the 25th February, 1820, enclosing copies of a letter addressed by the Court to Government, dated 7th January, 1820, and of a letter addressed to the Court in reply, dated 14th February, 1820, regarding the disposal of the unclaimed property of persons dying intestate, and authorizing the levy of a commission of one anna per rupee on the proceeds of such property when sold, as a remuneration to the nazir, it appears that the commission above-mentioned is sanctioned on the sale of "lawarisee" property alone; and I request to know if a judge has any authority to allow the above commission to the nazir on the following items, *viz.* sale of the property by the nazir of deceased persons, (not intestate,) as for instance in the case of the late Mr. G. Coombe, an indigo planter, whose property was sold here by the nazir, and the money remitted to the administrator of his will in Calautta; 2ndly, on

property sold the nazir in liquidation of decree of court; 3rdly, on property sold by the nazir in satisfaction of sums embezzled by any public officer.

2. I cannot find any Regulation authorizing the commission to be paid to the nazir in the above cases, and the sanction for receiving it on the sale of "lawarisee" property is only contained in a letter from Government; but I think as the moonsiffs are entitled to receive the commission of one anna per rupee on the proceeds of sale, that the nazir might also with propriety be allowed the same on every sale he should conduct.

To the Judge of Zillah Rajshahye, dated 30th August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 10th instant, requesting their opinion as to the right of the nazir of the civil court to a commission on sales in certain cases.

2. I am directed to observe that the sale by the nazir of the property of a deceased person, not intestate, is not analogous to that of the sale of lawarisee property. In the latter case, the property being at the disposal of Government, they are competent to grant the nazir a commission on the proceeds of the sale. In the former, the sale may be said to be extra-official, for conducting which the nazir can claim no remuneration but what may have been agreed on by an arrangement with the administrator.

3. In reply to your second question, I am directed to refer you to the Constructions Nos. 509 and 587 of the Construction Book; and to observe, with reference to your third, which the Court presume relates to cases coming within the provisions of Regulation XVIII. 1817, that the same rule is applicable to sales of property in satisfaction of sums embezzled by public officers; such sales being, in fact, in execution of decrees or orders of the court.

The Western Court, on the 1*st November*, 1833, *concurred in this construction.*

August 30, 1833.

To the Judge of Zillah Hooghly, dated 6th September, 1833.

No. 825.

1831.
Reg. V. Sec. 5, Clause 3.

I am directed by the Court to acknowledge the receipt of your letter of the 23rd ultimo, and in reply to inform you that suits for the property or possession of land held exempt from the payment of revenue, are not, under the provisions of clause 3, *Section* 5, *Regulation V.* 1831, *cognizable by moonsiffs, although the circumstance of the land being rent-free or exempt from the payment of revenue may not be disputed by the parties.*

The Western Court, on the 4th October, 1833, *concurred in this construction.*

September 6, 1833.

See No. 1389 *and Act XXVI.* 1852.

From the Judge of Zillah Mynpooree, dated 15th July, 1833.

No. 827.

Salaries of public officers may be attached in execution of decrees of Court, but not pensions granted by Government.

1814.
Reg. XII.

I request you will ascertain from the Court of Sudder Dewanny Adawlut, Allahabad, whether the salaries of public servants when due can be considered as property belonging to them, and as such liable to attachment in satisfaction of decrees, and whether the courts of justice can compel the disbursing officers to remit the amount to them.

2. It has been the practice of this court for many years, on the application of plaintiffs for the realization of sums decreed in their favor against individuals receiving either pay or pensions from Government, to send requisitions either to the collector, magistrate, or commanding officer, as the case might be, directing that the salary or pension in whole or part be remitted to the court for the liquidation of the demand against the individual. Requisitions of this nature have also been made by me through the judges of other zillahs to the magistrates of those districts, and the authority of the court in this respect hitherto has never been questioned.

3. Mr. Fraser, the officiating magistrate and collector of this district, now objects to carry such orders into execution, on the ground that the salaries are not the property of the individuals until the money is actually received by them. Accompanying are two roobukarees, one from the collectorate, the other from the foujdary court; in both the objection above stated is set forth, but in the former Mr. Fraser complies with the orders of the court, considering himself obliged to do so by Section 39, Regulation XXVII. of 1803 ;

in the latter he refuses, there being no enactment requiring magistrates to obey the orders of the civil court.

To the Judge of Zillah Mynpooree, dated 9th August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, regarding the attachment of the salaries of public servants in execution of a decree.

2. In reply, I am directed to state that any sum of money actually due to a public servant, on account of salary, is liable to attachment, in the same manner as other property ; you are therefore at liberty to attach such money, and to call on the disbursing officer to assist you in effecting the attachment, and such disbursing officer is required to give his assistance. Should the amount of salary actually due be insufficient to satisfy the decree, process can be immediately issued against the person of the defendant.

To the Register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated 6th September, 1833.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 9th ultimo, and its enclosures, relating to the attachment of the salaries of public officers in execution of decrees.

2. In reply, I am directed to inform you that the Presidency Court concur in the letter which the Western Sudder propose to address to the judge of Mynpooree in reply to his of the 15th July last, and, with reference to the attachment of pensions, alluded to by the zillah judge in the 2nd paragraph of his letter, to forward the accompanying copies of correspondence with the Provincial Court of Dacca on the subject.

Copy of a letter from the judge of the Provincial Court of Dacca dated the 18th March last, and of its enclosures.

Copy of a letter addressed to him in reply on the 3rd May last, and of the Persian roobukarees therein mentioned.

September 6, 1833.

See No. 788 and Circular Order, No. 2, 20th January, 1843.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 20th September, 1833

No. 829.

1825.
Reg. VII.

I am directed by the Court to transmit, for the purpose of being laid before the Presidency Court, the annexed extract, paragraph 4, from a letter received from the judge of zillah Furruckabad, under date the 13th instant.

2. The Court are of opinion that the practice alluded to in this extract, of ordering a re-sale of property, on the ground that the sum realized has, for special reasons, been extremely small, is illegal: the judge is competent to take every precaution to prevent the sale of property for less than its marketable value, but after the sale has been once closed and the bidder being given to understand that he is the purchaser for the sum offered, the property cannot, on this ground, be again offered for sale, having become the right of the purchaser. Should the Court concur in this construction of Regulation VII. 1825, it will be communicated to the judge of Furruckabad for his future guidance.

The Calcutta Court, on the 18th October, 1833, *concurred in this construction.*

September 20, 1833.

See No. 928.

From the Register of the Court of Sudder Dewanny Adawlut for the Western Provinces, to the Register of the Presidency Court, dated 8th February, 1833.

No. 830.

1793.
Reg. XV. Secs. 10. and 11.
1798.
Reg. I. Sec. 2.
1830.
Reg. XXXVI. Secs. 9, 10 and 12.

I am directed by the Court to transmit, for the purpose of being submitted for the perusal of the judges of your Court, the annexed copy of a letter under date the 21st ultimo, received from the judge of zillah Futtehpore.

2. The question referred by the judge of zillah Futtehpore is, whether in a case of simple mortgage, the mortgager, after the expiration of the term of mortgage, may, in paying or depositing the sum borrowed, claim to obtain possession of the property mortgaged, by summary process of the civil court.

3. On referring to the reports of the Presidency Court, (page 3, volume III.) the Court observe that in the case of Kurta Ram and another, versus Afzul Ali, the summary decision of the additional register, for giving possession to the assignee of the mortgager under similar circumstances, was upheld; but from the note appended to that case, and the reference made to Regulation I. 1798, and the Circular

Order, 22nd July, 1813, it may be inferred that the mortgage was of the nature of a bye-bil-wufa, or conditional sale, regarding which under that Circular Order no doubt can be entertained. The Court request to be informed whether the mortgage was actually of that description ; and also, whether any general rule has hitherto been adopted by the Presidency Court with regard to the admission of summary claims to obtain possession in cases of simple mortgage.

To the Register of the Western Provinces, dated 29th March, 1833.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 8th ultimo, requesting to be informed whether the mortgage bond, alluded to in the case of Kurta Ram Rai and another, versus Afzul Ali, (in page 3, volume III. of the Select Reports of the Sudder Dewanny Adawlut,) was a deed of mortgage and conditional sale, or of simple mortgage, and further whether any general rule has hitherto been adopted by the Presidency Court with regard to the admission of summary claims to obtain possession in cases of simple mortgage.

2. In reply to the first question I am directed to state, that it is not distinctly stated in the proceedings, whether the mortgage was conditional or simple, and that the fact cannot be ascertained, as the bond is not with the proceedings, having apparently, if filed, been returned to the party, as is usual in summary cases. The case however having arisen in the Zillah Court of Ghazeepore, the Western Court may be able to ascertain the fact from the zillah judge.

3. With regard to the practice of this Court, I am directed to state that having inspected the proceedings in several summary cases of mortgage, I have been unable to find any case in which the mortgage appeared to be decidedly simple; the return of the bonds precluding the possibility of ascertaining the fact. The Presidency Court will be glad to learn the opinion which the Western Court may form in regard to the case alluded to in the 2nd paragraph of this letter.

Extract of a Letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 20th September, 1833.

PARA 5. The Court direct me to take this opportunity of replying to your letter of the 29th March last, regarding simple mortgages. As suggested in that letter, application was made to the judge of zillah Ghazeepore for the original bond in the case of Kurta Ram and another, versus Afzul Ali; but it had been returned to the party and no copy was forthcoming. On reference, however, to the printed Book of Constructions (No. 277, page 98 of this volume,) the Court

find that on the 9th July, 1817, the Presidency Court held that "there was no provision in the Regulations for a summary suit, in cases brought before the civil courts under Sections 9 and 10, Regulation XXXIV. 1803, which relate only to simple mortgage." The Court are disposed to concur in the interpretation of the law, and will cause it to be adopted as a rule of practice in the Western Provinces, should the Presidency Court view the construction in the same light.

The Presidency Court, on the 18*th October*, 1833, *concurred in this construction.*

September 20, 1833.

To the Judge of Zillah Tirhoot, dated 27*th September*, 1833.

No. 832.

1831. Reg. V. Sec. 3.

I am directed by the Court to acknowledge the receipt of your letter of the 10th instant, and in reply to inform you that the Court do not consider you competent to remove a moonsiff from one jurisdiction to another without a reference, through the commissioner, to them.

The Western Court, on the 18*th October*, 1833, *concurred in this construction.*

September 27, 1833.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 27*th September*, 1833.

No. 833.

1814. Reg. XXIII. Sec. 47. 1831. Reg. V. Sec. 7.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to transmit, for the perusal of the Presidency Court, the annexed copy of a letter received from the judge of zillah Bareilly, under date the 14th instant.

2. In reply to the 2nd paragraph of the judge's letter, the Court propose to inform him that as the object of Government in the late arrangement was, that cases not exceeding 300 rupees in amount should be decided by officers receiving a salary of 150 rupees a month, and near to the homes of the parties, the general practice of referring such suits to sudder ameens must be considered objectionable, especially as the establishment of moonsiffs was framed so as to admit of all such cases being tried by them, and no such assistance from the sudder ameens ought to be required.

3. Section 47, Regulation XXIII. 1814, however, being still in force, such cases may, on special reasons to be assigned by the judge in each case, be referred to sudder ameens or principal sudder ameens.

The Presidency Court, on the 18th October, 1833, concurred in this construction.

September 27, 1833.

To the Officiating Judge of Zillah Jungle Mehals, dated 4th October, 1833.

No. 834.

1832.
Reg. VII. Sec. 3.

I am directed by the Court to acknowledge the receipt of your letter of the 19th ultimo, No. 111 of 1833.

2. In reply I am directed to inform you that the Court are of opinion that appeals to the judge from the decisions of registers and principal sudder ameens not being among the exceptions contained in Section 3, Regulation VII. 1832, the pleadings in all such cases should be written on stamped paper of the value of four rupees.

The Western Court, on the 8th November, 1833, concurred in this construction.

October 4, 1833.

See Nos. 556, 767 and 1118.

To the Judge of Zillah Mynporee, dated 11th October, 1833.

No. 836.

1829.
Reg. X. Sch. A, Arts. 3 and 46.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 3rd instant.

2. In reply I am directed to inform you that deeds of hibba-bil ewuz should, as directed in Article 46 of Schedule A, Regulation X. 1829, be charged as "agreements" (Article 3, Schedule A,) with such stamp as the parties may determine.

The Presidency Court, on the 8th November, 1833, concurred in this construction.

October 11, 1833.

To the Judge of Zillah Bareilly, dated 11th October, 1833.

No. 837.

1831.
Reg. VIII. Sec. 5.

I am directed by the Court to acknowledge the receipt of your letter of the 28th ultimo.

2. In reply, I am directed to inform you that summary suits for rent instituted by holders of rent-free land against their tenants, should be tried by the collectors under the provisions of Regulation VIII. 1831, the civil courts being incompetent to receive them.

The Presidency Court, on the 8th November, 1833, *concurred in this construction.*

October 11, 1833.

See Nos. 33, 61, &c.

To the Judge of Zillah Cuttack, dated 11th October, 1833.

No. 838.

1817.
Reg. XVII. Sec. 14, Clause 2.

I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo, requesting to be informed whether, in a miscellaneous case, you can proceed against a person whom there may appear sufficient grounds to bring to trial for forgery.

In reply I am directed to refer you to the words " to any civil proceedings whatever" in clause 2, Section 14, Regulation XVII. 1817, and to observe that they would include the miscellaneous case alluded to. *I am directed to add that in the event of your making the commitment, it should be tried by the commissioner, and not by you in your capacity of session judge.*

The Western Court, on the 15th November, 1833, *concurred in this construction.*

October 11, 1833.

See Act I. 1848.

From the Judge of Zillah Goruckpore to the Register of the Western Provinces, dated 26th September, 1833.

No. 839.

1831.
Reg. IX. Sec. 2. Clauses 2, 3, 4 and 7.
1832.
Reg. VII. Sec. 15.

I have the honor to acknowledge the receipt of your letter of the 6th instant, in continuation of your communication of the 19th July, relative to the point of construction referred in my letter of the 6th of that month. (See Construction No. 805, *page* 291 *of this volume.)*

2. *I would beg respectfully to submit that your letter under acknowledgment has relation merely to the third point referred by me described in the 3rd clause of paragragh 6 of my letter; leaving the two preceding points, detailed in the 1st and 2nd clauses of my letter unnoticed.*

3. *The second clause I will not press, but must, I conclude, consider that the two courts, Western and Presidency, have decided that the five and half lines which concluding clause 2, Section 2, Regulation IX. of 1831, are explained to have reference to all suits, regular as well as summary, by Section 15, Regulation VII. 1832, are simply synonimous with the terms "modify or reverse."*

4. *But I should feel greatly obliged by your communicating to me the result of the Court's decision on the first point, contained in the first clause of the above quoted paragraph of my letter. It is quite clear that the letter of the Regulation does not give the judge authority to reverse the order of the lower court without examining the papers of the case; and in my opinion, which I wish to advance most respectfully, such a proceeding is contrary to the spirit of the whole judicial code and every principle of justice.*

5. *It is easy to see the expediency and propriety of investing a single judge of the Sudder Dewanny Adawlut with the authority to confirm the lower court's order without reviewing the record, if the appellant shall be unable to make out a tangible objection thereto; and if, even on his own showing, the order of which the appellant complains shall appear just and legal. But that the deliberate decision of a court of justice should be liable to be reversed merely upon the unproved, and very probably garbled and misstated, representation of an interested party,—without any examination as to the facts of the case, any report called for, or investigation held,—is so totally contrary to every principle of jurisprudence that I have ever learned, that I cannot consider the non-insertion of the authority for such a proceeding in the latter division of the clause as an omission, or that such a construction of the Regulation was ever contemplated by the legislature.*

6. *I am most anxious to have this point clearly settled, as the order out of which this correspondence arose is not the only one* I have received from the court lately, in which a single judge has, simply upon the petition of a dissatisfied party, directed the re-admission on the file and further investigation of cases, which, I am inclined to think, had they been examined, would have been found to have been fully investigated even in the points which the petition has stated to have been passed over unnoticed; and as, pending a re-investigation or the preparation of a detailed statement of the facts*

* Vide note at the foot of this letter, which note I request may be recorded with the letter as an illustration of the inexpediency of the practice objected to.

relative to such cases, the execution of the original order is stayed, much inconvenience must arise from the circumstance to the parties; to say nothing of unnecessary waste of the judge's time, which will not admit in this zillah of each case having one decision passed on it within a reasonable period.

Note.—My allusion here is more particularly to an order of the officiating judge, dated 19th August last, in the case "Unoophnath Dooly, petitioner," my reply to which was delayed for the answer to my reference of the 6th July. In that case the parties in 1823 adjusted their differences by private arbitration. One party sued out execution of the award, under the provisions of Regulation VI. 1813. The arbitrators were summoned, and the award authenticated, and execution was granted on 12th July, 1823. This order was annulled by the court of appeal on the 6th December, 1826, and 7th April, 1827, on a supposition that the period stipulated in the Regulation had been exceeded ere execution was petitioned for. At the Sudder Dewanny Adawlut this objection was overruled on the 21st November, 1827, and 5th December, 1827, and the original order of the zillah court was confirmed. In the mean time one party had brought a regular suit to set aside the award, and on the 12th March, 1825, the pundit sudder ameen, after a long investigation, gave a decree annulling the award. In appeal before the judge on 11th February, 1829, the sudder ameen's decision was reversed, for reasons stated at length in the decree. A special appeal was applied for, and on 31st August, 1832, and 25th March, 1833, two judges of the Patna Court of Appeal decided that the zillah judge's decree was in all respects just and unobjectionable.

2. *The officiating judge of the Sudder Dewanny Adawlut has by a proceeding, dated 17th ultimo, merely upon the petition of the worsted party, without any reference to the record, ordered that this thrice-decided case shall be re-admitted to its original number of the judge's file, and that inquiry be made on a particular point, which particular was fully and carefully investigated on the 19th and 20th April, 1824, previous to the first decision of the case in the sudder ameen's court.*

To the Judge of Zillah Goruckpore, dated 11th October, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 26th ultimo.

2. *On the first point referred in your letter of the 6th July, I am directed to acquaint you that the court consider themselves fully competent to exercise powers vested in them by the 2nd clause of Section 2, Regulation IX. 1831, and Section 15, Regulation VII. 1832, without calling for the proceedings, when-*

ever the order or decision appealed against, whether in a regular or summary suit, may appear to them manifestly unjust or illegal, or on any other of the grounds defined in the clause first cited. In such cases a revision of the proceedings is obviously unnecessary to the determination of a fact which is clear and manifest in the face of the order or decision itself, or can be shown to be so by documents accompanying it. And you will observe that the following clause of the same Section provides for cases wherein the court may see cause of doubt by giving them a discretion to call for the proceedings of the lower court or such parts of them as may appear necessary, and by the 7th clause of the same Section, with the view of enabling the Court duly to exercise the powers vested in them by the said Section, the several courts of subordinate jurisdiction are strictly enjoined to conform to those parts of the Regulations in force, which require them to record the point or points at issue between the parties, and the grounds on which their judgments or orders may be issued.

3. *As regards the particular case which appears to have given rise to your present reference, I am directed to inform you that the judge by whom the order was passed proposes to revise his proceedings.*

4. *The Court observe that you do not now appear to entertain any doubt regarding the second point on which you requested their opinion.*

The Presidency Court, on the 8th November, 1833, *concurred in this construction.*

October 11, 1833.

See Act XV. 1853.

From the Judge of Zillah Purnea, dated 25th September, 1833.

No. 840.

Pleaders' fees in cases sent back for re-trial.

I have the honor to forward herewith, for the orders of the superior court, a copy of a petition presented to me by one of the plaintiffs in the case of Baboo Doolar Singh and others, versus Ranee Padmawuttu and others, complaining of a hardship in being obliged to pay the pleaders' fees twice over in a case of very considerable amount,—the amount receivable by the pleaders on either side being 1,000 *rupees.*

2. *The case (No.* 3322, *on the superior court's file) was originally decided in the Provincial Court of Moorshedabad; an appeal having been preferred to the Sudder Dewanny Adawlut,*

the decision of the Provincial Court was set aside by Mr. Walpole on the 9th May last, as being incomplete, and the case ordered back for further investigation. The Moorshedabad Court having been abolished, the case has come to this court under the provisions of clause 1, *Section* 3, *Regulation II.* 1833; *this makes it necessary for the parties to employ other pleaders than those originally retained, the pleaders of the Moorshedabad Court having already received the whole of the sum deposited to their credit.*

3. *The pleaders at Moorshedabad having received the money under an order of that court, it clearly is out of my power to interfere in making them refund any portion of it, and I have therefore forwarded the petition for the disposal of the Court. In the meantime I have addressed the judge of Moorshedabad, requesting him to levy half the sum drawn by the pleaders there, and to keep it in deposit till the instructions of the Court shall have been received, the amount to be remitted here for the pleaders of this court employed by the parties, should that be allowed; or otherwise to be returned to the pleaders formerly retained.*

To the Judge of Zillah Purnea, dated 11*th October,* 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 25*th ultimo, forwarding a petition from one of the plaintiffs in the case therein mentioned, objecting to the deposit of a second fee; and requesting the Court's orders thereon.*

2. *In reply, I am directed to inform you that under the circumstances stated a full fee should be deposited, and that on the ultimate decision of the suit, you should exercise your discretion in awarding to the vakeels of your court such portion thereof as you may deem just and proper, and in determining to which party the fees already paid by the parties in the provincial court shall be charged.*

October 11, 1833.

Superseded by No. 1105.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, dated 1st November, 1833.

No. 842.

1825.
Reg. II. Sec. 2, Clause 1.

Whereas it has been customary for parties petitioning for review of orders rejecting applications for a review of judgment to write their petition on stamped paper prescribed for miscellaneous petitions, *viz.* two rupees' value, on the plea that three months have not elapsed since the date of the order to be reviewed ; and whereas such petition, being in fact a second petition on the same subject, ought to be governed by the rules applicable to the petitions for a review in the first instance :

It is Resolved, that every and each such petition, provided it be presented within three calendar months from the delivery or tender of the decree excepted against, may be written on stamped paper of the value of two rupees : but, if preferred after the expiration of that period, all such petitions must be written on stamped paper prescribed in Art. 8, Schedule B, Regulation X. 1829, with reference to the amount or order of the property adjudged against the party desiring the review ; in like manner as if a regular appeal were preferred from such judgment, as required by clause 1, Section 2, Regulation II. 1825.

The Western Court, on the 29th November, 1833, *concurred in this construction.*

November 1, 1833.

From the Judge of Zillah Furruckabad to the Register of the Western Provinces, dated 7th October, 1833.

No. 843.

1803.
Reg. II. Sec. 8.

I think it my duty to bring to the notice of the Court the existing state of the transactions between the civil court of this district and the nabob of Furruckabad. I am inclined to think it expedient that some definitive arrangements should be made.

2. Section 8, Regulation II. 1803, is as follows : " The following article, being the sixth article of a treaty concluded with the nabob of Furruckabad on the 4th of June, 1802, is hereby enacted into a rule, for the guidance of the Zillah Court of Furruckabad. Article sixth :—The authority of the Court of Adawlut shall not extend to the person of the nabob, but as his connections and dependants are undefined, and as it is the object of the British Government to introduce a fair and impartial administration of justice throughout the province of Furruckabad, it is agreed that whatever complaint may be preferred against any of the nabob's dependants shall, in the first instance, be referred to the nabob, and in the event of the complainant not receiving speedy

justice, or being dissatisfied with the nabob's decision, the complaint shall be decided in the Adawlut." On this several questions arise.

1*st.*—What length of time is to be sufficient to warrant the enforcement of the clause of "not receiving speedy justice?" On the whole the nabob certainly has been more tardy in deciding cases than the court, even before the introduction of the new system. I would also remark that in the Persian treaty, the copy of which is in the office the meaning is the same, but in the Persian copy of the Regulations it is different, no mention being made of the word "speedy," the words being "*moodaee buhuk khood me rusud.*"

2*ndly.*—In what way is the decision of the nabob to be made or intimated? The custom universally was for the nabob to return the case with a statement of his opinion to the court, which statement generally concluded with words to this effect—"the matter is left in the hands of the court." This statement was generally taken and decision given to that effect, the different judges seeming to think that they had no option, (unless the plaintiff was dissatisfied,) to do otherwise. But in 1830 a case, Choneeloll, versus Permanund, was reversed by Mr. Taylor on his own authority, without a petition from the plaintiff, who had obtained a decree from the nabob. Mr. Taylor dismissed the case. It was appealed to the provincial court, and Mr. Taylor's decision reversed, not on the merits of the case, but on the grounds that he was not justified in interfering with the nabob's decision. Another case showed still stronger the necessity of some arrangement, *viz.* Dal Chund and Thakoorpurshod, versus Radakishen, referred to the nabob, and by him returned with a statement, according to which a decree was given by Mr. Taylor on the 30th March, 1830. The defendant appealed to the Provincial Court at Bareilly, by whom the judge's order was reversed. I believe on the same grounds, but am not quite certain, as no copy of the order was ever sent from that court to this. The plaintiff* then prayed for execution in the Bareilly Court, on which the order passed was that "the order cannot be given from this court." He then petitioned in November, 1832, in this court, and the case was called for to inspect, before issuing orders. As the pressure of Foujdary was then so great, this could not be readily done, and plaintiff went to the Sudder Dewanny, by whom an order was issued on 5th January, 1833, to enforce the nabob's decision. This was in progress, when on the 21st May last fresh orders were received to postpone it. The case therefore lies unfinished.

3*rdly.*—Has the nabob the power to receive causes originally himself? The Regulation (both Persian and English) does not seem to sanction this; the phrase being, "shall in the first instance be

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* Sic. Orig. But query, defendant?

referred to the nabob." By whom referred, unless by the court in which the suit was first instituted! The custom has hitherto been invariably as follows:—after the suit has been filed in court, if the defendant wishes, he represents that he is one of the nabob's relations and dependants. The nazir is ordered to ascertain the correctness, (except in those cases where the defendant is a well-known person,) and then the case is transferred to the nabob. The claim was never advanced by any nabob or guardian until lately by Nabob Amud Yar Khan, the present guardian. I had heard he was in the habit of hearing cases originally, but as it was not brought before me officially, I did not take notice of it, until a petition was on the 22nd August last, presented by Kuramut Ally Khan, stating that the nabob had received a suit originally, against him, that he had applied to several of the vakeels to defend his suit, but they all refused, as it was quite a novel proceeding, without the express permission of the court. On questioning the vakeels, I found Kurum Ally Khan's statement correct, and was also informed that the nabob (or rather the guardian) was in the habit of hearing suits originally himself; and that all proceedings connected with them were on plain paper. I wrote to the nabob to know if this was the case, and how many suits had been entertained in this way: he would not return a positive answer to either question, but in his letter asserted generally, that, according to the Regulations, he had the right to an original jurisdiction in entertaining suits.

4*thly*.—Where is the defendant, (being of course a relation or dependant,) who is dissatisfied, to bring his appeal? or is he to be allowed one? The Regulation is silent on this head. It is true the Bareilly Court has been in the habit of receiving appeals of this nature, but the measure is open either to the sanction or disapprobation of the Sudder.

5*thly*.—Has the nabob the power to enforce a decree? Nothing of the sort ever occurred, nor even was the question ever raised until August last, when the nabob wrote to the court, demanding the right. I answered that, without orders from superior authority, I would not sanction any departure from established usage, but that I intended to bring the whole case before the Sudder Dewanny, for the consideration and orders of that Court.

3. Formerly the number of cases sent to the nabob were very few, two or three per year: latterly they have increased in a tenfold degree. The reason seems to be this; at the time of the treaty, the nabob gave in a list of his relations, near and distant, and some particular dependants and servants, for whom he wished to secure fixed salaries in entail. This was agreed to by the British Government, and the salaries were confirmed to these people, but as each man died his salary or pension (*zeehukkee*) was divided among his sons or other heirs, and again sub-divided at the death of the latter, and so on. The numbers have increased so as to be a nuisance to the city. The subsistence of some of them is dwindled down to not

above one rupee per month, (this sort of proceeding must sooner or later come to an end.) With few exceptions they are too proud to do any thing, are almost universally in debt, borrowing from any one they can, mortgaging their pensions, or any lands they may possess, over and over again, and living dissolute, vicious lives ; often engaged in street brawls to the great annoyance of the whole community; yet most of these people on any complaint being filed either in the judge's or magistrate's court, affect to style themselves nabob, to answer by letter, and indeed to set the authority of the court at defiance. When magistrate, I brought this to the notice of the commissioner of the division.

4. This sort of *imperium in imperio* would hardly seem a desirable state of things, and I think it might be found expedient to make some arrangements regarding the points at issue. The nabob might be placed on the footing of a principal sudder ameen; if this were not deemed proper, on account of his rank and station, he might be required to appoint a dewan at a fixed salary to be paid by him to decide these causes, as a principal sudder ameen, and subject, like those officers, to the supervision of the court of the district, or the nabob might be allowed, as far as regards civil suits against his relations and dependants, to exercise the powers of judge, subject only to the Sudder Dewanny; (one objection to this would be the small amount of the majority of the suits, most of them being cognizable by the moonsiffs;) or lastly to abolish the jurisdiction of the nabob altogether, and extend that of the civil courts of the district, both judge's and moonsiff's, over the persons and suits under consideration, with the exception of the nabob himself ; and this I should be inclined to think the most expedient of the whole.

5. I am, however, bound to state, that, as as far as I am able to ascertain, both from inquiries, and from having looked over several of the cases, the decisions of the nabob have been founded on justice, and generally have given as much satisfaction as those of the regular civil court. Nevertheless the double jurisdiction is an inconvenience.

From the Judge of Zillah Furruckabad to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 16th October, 1833.

In looking over my letter of the 7th instant, relative to the jurisdiction of the nabob of Furruckabad, I find I have forgotten to mention one point. In the event of the nabob's retaining the jurisdiction on any thing like the present footing, I would beg to suggest that a limited time only should be given to the defendant, after receipt of the notification, to plead that he is a "relation or dependant," and demand that the suit be sent to the nabob. At present the practice is for them to advance the claim at any time, and often they make use of the privilege to delay the suit. They wait till

all the stages have been gone through, and the cases ready for hearing in the civil court, and then demand the transfer of the cause to the nabob, where it lies usually for a year or two. Indeed I am inclined to think that the chief reason in transferring the cases has been merely a wish on the part of the defendants to put off the evil day ; the nabob being much more dilatory than the court, even before the new system was established.

To the Judge of Zillah Furruckabad, dated 8th November, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 7th ultimo, regarding the jurisdiction of the nabob of Furruckabad.

2. The Court direct me to communicate to you the following answers to the questions referred in your letter.

Question 1.—It must remain with the judge, on the showing of the plaintiff, to determine whether the delay in the decision of the case has been such as to authorize his receiving the suit, on the ground that the plaintiff has not received speedy justice.

Questions 2 *and* 5.—The decisions passed by the nabob should be enforced by himself, by means of the influence which he is supposed to possess over his own dependants. The courts are neither called on, nor authorized to aid in their execution, nor is the nabob himself vested with any special authority with this view by the Regulations.

Question 3.—The nabob has no authority to receive or act on petitions of plaint except on reference from the judge of the zillah court. This is plainly required by the terms of the Regulation ; all decisions which may have been passed by the nabob without reference from the court, are consequently null and void.

Question 4.—A defendant being dissatisfied with the decision of the nabob, has no right of appeal ; as he is necessarily a dependant of the nabob, the Regulation appears to consider that, in becoming his dependant, he has voluntarily subjected himself to his authority in civil matters.

3. With regard to the inconvenience arising from the great number of persons styling themselves relatives and dependants of the nabob, I am directed to observe that, as their possessing this title confers on them no advantages or privileges whatever, but merely subjects claims against them in the first instance to the investigation of the nabob, and even deprives them of the right of appeal to the regular courts, which is possessed by others, the Court cannot imagine that any modification of the law is required, but rather incline to think that the inconvenience stated to exist, must have arisen from a mistaken construction of the Regulations giving these powers to the nabob ; and as his decisions are stated to be generally equitable, there is still less necessity of change.

4. I am directed to take this opportunity of acknowledging the receipt of your letter of the 16th ultimo. The Court are of opinion that unless the defendant in his first pleading (the juwub-i-dawa) pleads his privilege as a dependant of the nabob, he cannot afterwards assert it. This rule will, the Court observe, effectually check the practice mentioned by you of delaying the administration of justice, by requesting a reference of the case when it has nearly been brought to a conclusion.

The Presidency Court, on the 29th November, 1833, *concurred in this construction.*

November 8, 1833.

See Nos. 162 and 785.
See Sudder Dewanny Reports, N. W. Provinces, 11th June, 1849, page 152.

To the Judge of Zillah Mynpooree, dated 22nd December, 1833.

No. 844.

1825.
Reg. VII. Sec. 3, Clause 6.
Sec. 4, Clauses 4 and 5.
Circular Order Sudder Dewanny Adawlut, 19th July, 1833.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces, to acknowledge the receipt of a letter from you under date the 15th instant, requesting to know whether the following expression in the circular letter of the 19th July, 1833, (No. 90 of vol. II. Circular Orders Sudder Dewanny Adawlut) "or objections made to the sale of property within the period of the proclamation," is to be understood as including objections made by defendants, against whom the process has been taken out, to the sale of their own property, or those only which may be urged against such sale by claimants of the property or other individuals.

2. In reply, I am directed to acquaint you that the expression in question must be considered equally applicable to defendants as to other individuals, who may have objections to advance to the disposal of property advertised for sale by public auction in satisfaction of a decree of court.

The Presidency Court, on the 6th December, 1833, *concurred in this construction.*

November 22, 1833.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 29th November, 1833.

No. 845.

1833.
Reg. II. Sec. 5.

I am directed by the Court to request that you will obtain the opinion of the judges of the Presidency Court on a question which has arisen, as to the competency of a single judge of the Sudder Dewanny Adawlut to reject a petition for a special appeal, transferred under the provisions of Section 5, *Regulation II.* 1833, *from a provincial court on its abolition to the file of the Sudder Dewanny Adawlut, on which a judge of the former court has recorded his opinion in favor of the admission of the appeal. On a consideration of the Section of the Regulation above quoted, particularly of that part of it which provides "that the judges of the Court of Sudder Dewanny Adawlut are hereby empowered and required to dispose of cases of this nature under the general powers with which they are vested, in the same manner as though they had been regularly cognizable by, and referred to, or instituted before them,"—it appears to the Court that a single judge of the Sudder Dewanny Adawlut is competent to exercise such power, whenever it may appear to him that no sufficient grounds exist for the admission of a special appeal, and that the opinion recorded by the judge of the provincial court is manifestly erroneous and at variance with the rules prescribed for the admission of a special appeal.*

The Presidency Court, on the 20*th December*, 1833, *concurred in this construction.*

November 29, 1833.

Temporary.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, dated 6*th December*, 1833.

No. 846.

1814.
Reg. XXIII. Sec. 15, Clause 3.

A doubt having arisen as to whether an appeal does or does not lie to the Court of Sudder Dewanny Adawlut from the order of a zillah or city judge, dismissing a vakeel of a moonsiff's court; the Court are of opinion that such appeal does not lie: for the judges were declared competent by clause 3, *Section* 15, *Regulation XXIII.* 1814, *to remove such vakeels (without a reference to any other authority being specifically required) while they were required by clause* 2, *Section* 10, *Regulation XXVII.* 1814, *to submit a report for the orders of the provincial court, whenever they might consider a vakeel attached to their own courts, or to those of the registers or sudder ameens, worthy of dismissal from office.*

The Western Court, on the 27th December, 1833, *concurred in this construction.*

December 6, 1833.

See Circular Order No. 37, 21*st March*, 1848, *and Act XVIII.* 1852.

From the Judge of City Moorshedabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 2nd September, 1833.

No. 848.

Suits by or against the European manager of a native minor's estate, are to be tried in the courts to which such suit would be referrible if natives were parties to them.

I have the honor to acknowledge the receipt of your letter dated the 23rd ultimo, informing me that the prohibition has been suspended in case of Mr. Sutherland, which prevents European British subjects from becoming managers of land under the Court of Wards; I beg therefore to be favored with the instructions of the Sudder Dewanny Adawlut, on the points noticed in my letter, dated 14th May, 1833; *viz.*

1*st.*—Are suits in which Mr. Sutherland is a party as manager, to be retained on the file of the judge whatever be the amount, as those of a European?

2*nd.*—Does an appeal lie to the Supreme Court from the decisions passed here, as in cases where Europeans are parties?

To the Judge of City Moorshedabad, dated 13*th December,* 1833.

I am directed by the Court to acknowledge the receipt of you letter of the 2nd September last, submitting two questions, relating to suits in which Mr. Sutherland, in his capacity of manager of the estates of the late Raja Hurinauth is a party, and in conformity to the decision of Government, communicated to the Court under date the 2nd instant, to transmit to you the following replies.

2. *To the first question.*—The appointment of Mr. Sutherland to the management of a native minor's state, cannot be considered to confer on such native the rights and privileges of a European British subject, which only attach to the manager personally. Suits brought forward, either by or against Mr. Sutherland in his capacity of manager, not being personal suits, should be regarded as suits instituted on the part of or against a native, and ought to be tried, like every other suit in which natives are parties, in the court by which, from its amount, it may be cognizable. The necessity of adhering to the usual routine in such cases is the more apparent from the inconvenience which would result from an opposite course; the appeals in numerous small suits of an extremely small value would,

if the cases were decided in the first instance by the judge be thrown in the Courts of Sudder Dewanny Adawlut, which are already sufficiently burdened with arrears.

3. *To the second question.*—It would rest with the Supreme Court either to admit or reject appeals of the nature alluded to, as may appear to them just and proper under the Acts of Parliament bearing on the point.

This construction was given in conformity to the opinions contained in the letter of the Western Court, dated 18th October, 1833, and the Secretary to the Supreme Government, dated 2nd December, 1833.

December 13, 1833.

See Act XI. 1836, and Act VI. 1843.

To the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 20th December, 1833.

No. 849.

Showing the practice of the Court when one of several parties against whom a decree has been given appeals against it.

I am directed to acknowledge the receipt of your letter of the 14th September, 1832, and its enclosures, requesting to be informed whether any and what rule has been adopted in the Presidency Court, with regard to the following point :—" A decision is passed against two or more defendants in a suit ; can any one of these defendants prefer an appeal from that decision in so far only as it includes his own share of the property litigated ? or is it incumbent on him to appeal from the whole decree, including the whole of the property in dispute ?"

2. In reply, I am directed to observe that it appears from the records of the Court to have been the practice, when there have been several defendants, and the decree has been passed against all, without specification of what is due from each, for the person among them who first appeals, to file his petition of appeal on the full amount of the decree ; and the appeal would not be admitted, were he to write it on a stamp of a value proportioned to his own alleged share.

3. If it be stated in the decree, or can be ascertained from the proceedings, what is the share of each defendant, each may appeal separately on his own share only.

4. This practice has lately been modified by Mr. Shakespear, with the concurrence of his colleagues. On the 9th May last, he directed the lower court, in a case in which the separate liabilities of several defendants holding under distinct titles, were not mentioned in the decree, to amend the same, by inserting the amount due by each defendant, in order that the parties concerned might not be debarred from their individual right of appeal.

5. Copies of roobukarees and other papers in the cases above alluded to, are forwarded for the perusal of the Western Court.

December 20, 1833.

To the Judge of Zillah Futtehpore, dated 27th December, 1833.

No. 852.

1814.

Reg. XXVII. Sec. 34.

I am directed to acknowledge the receipt of a letter from you under date the 18th instant, requesting to be informed whether a vakalutnama executed by a decree-holder for the conduct of an original suit when pending in your court, is sufficient authority for the vakeel therein appointed to superintend the execution of the decree on its being confirmed in appeal.

2. In reply, I am directed to communicate to you the opinion of the Court that the Section of the Regulation quoted by you, (Section 34, Regulation XXVII. 1814,) is conclusive on the point in question, *viz.* that a vakalutnama executed on the original institution of a suit, unless cancelled by the party or otherwise set aside, must be considered operative and in full force "until the final judgment shall have been enforced."

The Presidency Court, on the 17th January, 1834, *concurred in this construction.*

December 27, 1833.

From the Judge of Zillah Bareilly, dated 7th December, 1833.

No. 853.

1803.

Reg. XXVII. Sec. 16.

A difference of opinion existing as to the competency of the civil court to stay the collector's proceedings against a malgoozar, pending investigation of a suit instituted to dispute the demand, I have the honor to submit the following question to the Court for their instructions.

2. Is the civil court competent to issue an injunction to the collector to discharge an individual from personal restraint, and to prohibit the sale of real property on a petition being filed previous to the advertisement of the defaulter's lands for sale, and on good security having been furnished to fulfil the award of the court?

3. It appears to me that clause 2, Section 16, Regulation XXVII. 1803, (which, as far as I can discover, has no where been rescinded,) warrants the court to act in the affirmative; and that Section 10 of Regulation XI. of 1822, prescribing a deposit of cash, is only applicable where an estate has been duly advertised for sale by the revenue authorities prior to the institution of the suit in Court.

To the Judge of Zillah Bareilly, dated 27th December, 1833.

I am directed to acknowledge the receipt of a letter from you under date the 7th instant, submitting a question as to whether the civil court is competent to issue an injunction to the collector to stay the sale of the real property of a defaulting malgoozar, pending the investigation of a suit instituted to dispute the demand, on a petition being filed previously to the advertisement of the defaulter's lands for sale, and on good security having been furnished to fulfil the award of the court.

2. In reply, I am directed to communicate to you the opinion of the Court, that the civil court is not competent to exercise such power.

The Presidency Court, on the 17th January, 1834, *concurred in this construction.*

December 27, 1833.

See No. 333.

From the Judge of Zillah Mynpooree to the Officiating Register to the Sudder Dewanny Adawlut for the Western Provinces, dated 30th December, 1833.

No. 854.

1806. Reg. II. Secs. 2 and 3.

I herewith transmit copies of a plaint filed by Lalmun in the cutcherry of the moonsiff of Mynpooree for thirty rupees, fourteen annas, and six pie, due from Chetram, and of two urzees, one from the moonsiff of Mynpooree, dated the 3rd September, 1833, and the other from the kotwal of this town, dated 9th October, 1853, and request you will lay them before the Court of Sudder Dewanny Adawlut.

2. The circumstances of the case appear to be, that Chetram Marwaree, formerly resided at Moukumgunj, a town adjoining Mynpooree, where he had two houses; one he mortgaged to Ushgur Ullee, a vakeel of this court, and the other he sold to a person named Lulloo; he then went to his own country, leaving some property locked up in a room in the latter house, the key of which he entrusted to Gunesh Muhajun. Some time after his departure, Lulloo, concluding that he was either dead or would never return, took the key from Gunesh and gave it to the kotwal, and asked him to open the room and see what things were in it. The kotwal accordingly took an inventory of the property and sent it to the magistrate, and Lalmun instituted a regular suit to recover the amount of his debt from the property. The moonsiff caused ishtehars to be stuck up in his own cutcherry, and on the door of

both the houses which formerly belonged to Chetram, and applied to me to obtain an inventory of the property from the foujdaree court. On my application the magistrate ordered the kotwal to deliver over the property to the nazir of my court, who has now charge of it; and I have directed the moonsiff not to proceed with the cause until further orders. The object of this reference is—1st, to ascertain whether a regular suit can be instituted, against property where there is no defendant to be sued? and 2nd, whether, with reference to the seventh clause of Section 16, Regulation III. of 1803, a judge on a summary investigation may at once satisfy the just demands of creditors against unclaimed property under charge of the court, or whether he must abstain from making any disbursement until the expiration of a twelvemonths' proclamation, and the subsequent receipt of the orders of the Governor General in Council?

To the Judge of Zillah Mynpooree, dated 10th January, 1834.

I am directed by the Court to acknowledge the receipt of a letter from you under date the 30th ultimo, with its Persian enclosures in the case of Lalmun versus Chetram Marwaree; and to acquaint you in reply that as the cause of action would seem to have originated in your jurisdiction, and property belonging to the defendant is stated to be forthcoming, the case in question appears to be cognizable, and should be proceeded on in the manner laid down in Sections 2 and 3, Regulation II. 1806.

2. With regard to your second question, I am directed to observe that the Section of the Regulation cited by you does not appear applicable, as you do not state that any information has been received of the death of the individual referred to, or, if deceased, that he died intestate.

The Presidency Court, on the 31st January, 1834, *concurred in this construction.*

January 10, 1834.

To the Judge of Zillah Dacca, dated 24th January, 1834.

No. 856.

Mortgaged property can be sold in execution of a decree ob-

I am directed by the Court to acknowledge the receipt of your letter of the 5th ultimo, requesting permission to review the orders passed in the following cases:

Elizabeth Bullard, plaintiff,

versus

Aka Mahomed, defendant ;

The Revd. M. Shepherd, petitioner,

versus

Kishen Chunder Doss ;

and

Ram Rutton Chowdry,

versus

Kishen Chunder Doss.

tained by other than the mortgagee, with a reservation of the rights and interests of the mortgagee.

2. The Court have in several instances ruled that mortgaged property can be sold in execution of decrees obtained by other than the mortgagee, with a reservation of the rights and interests of the mortgagee, as you will perceive by the accompanying copies of roobukarees as per margin, and accordingly authorize you to review the orders in question with a view to your passing such as may be in conformity with that principle.

Roob. of 31st March and 5th May, 1830, in the case of Muthoor Mohun Ghose, petitioner.

Do. of 16th March and 17th June, 1830, in the case of Mr. C. Reed and Behari Lal.

Do. of 21st January, 1833, in the case of Moorari Dhur Lushku.

Do. of 14th Jany., 1833, in the case of Pud Lochun Soor.

January 24, 1834.

From the Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 21*st January,* 1834.

No. 859.

1814.

Reg. XXIII. Sec. 27.

I request you will submit to the judges of the Sudder Dewanny Adawlut my inquiry, whether, in their opinion, the new moonsiffs are competent to fine plaintiffs for not proceeding in their suits ?

2. *The Court's letter of the* 21*st September,* 1833, *paragraph* 3, *refers indeed to Section* 12, *Regulation XXVI.* 1814, *but it subsequently specifies, as the consequence of neglect, the dismissal of their suits, or trial in their absence ; and clause* 3*rd, Section* 8, *Regulation V.* 1831, *grants the new moonsiffs only the same powers as the old, in regard to the practice of their courts. I therefore wish a definite opinion on the above question.*

To the Judge of Zillah Dacca, dated 7th February, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo, No. 37, *and in reply to point out that the rules for the guidance of moonsiffs in cases of default are contained in Section* 27, *Regulation XXIII. of* 1814, *and do not vest them with the power of fining parties in suits for neglect, and that Section* 12, *Regulation XXVI.* 1814, *alluded to in the Circular Order of the 21st September,* 1832, *(which you have quoted as dated 21st September,* 1833,*) was intended to refer to principal and other sudder ameens, to whom its provisions must, under Section* 73, *Regulation XXIII.* 1814, *be considered applicable.*

February 7, 1834.

Rescinded by Circular Order No. 163, *20th August,* 1841. *See also Act XV.* 1850.

From the Judge of Zillah Mynpooree to the Officiating Register to the Sudder Dewanny Adawlut, Western Provinces, dated 15th January, 1834.

No. 860.

1799. Reg. VII. Sec. 15. 1831. Reg. VIII.

I request the favor of your laying before the Court of Sudder Dewanny Adawlut Western Provinces, the papers noted in the margin,* and soliciting their opinion whether a landholder or other person empowered to sue for arrears of land rent is at liberty to sue, either by a regular or summary suit, all the defaulters of a village collectively.

2. Prior to the transfer of the summary suits to the revenue officers, I only allowed such defaulters to be included in one summary suit as conjointly cultivated any parcel of land, and were conjointly answerable for the rent, and although the Sudder Board of Revenue in their instructions of the 22nd February, 1833, to the subordinate revenue authorities state the practice of the courts generally in the Western Provinces to be otherwise, I think there can be no doubt that the practice, if it does exist, is illegal. If the principal is admitted that a suitor may proceed against the defaulters of a village collectively, of course the number of the defendants can only be limited by the number of inhabitants of a village, who in some instances may amount to hundreds, and why the option is to be left

* A letter from Mr Edgeworth, assistant to the commissioner of Furruckabad to the address of Mr. Frazer, collector of this district, dated 5th March, 1833.
A letter from Mr Deedes, officiating secretary to the Sudder Board of Revenue, Western Provinces, to the commissioner of Furruckabad, dated 22nd February, 1833.

to the suitors, and the convenience of the defendants is in no way to be consulted, I am at a loss to conceive. The suitor in such cases being generally in good circumstances and the defendants the reverse, I think facilities ought rather to be given them to disprove demands if unjust than obstacles thrown in their way. In cases where the suitor proceeds collectively, and the defendants reply separately, the defence of each varying, there become as many branches as there have been different causes of action united, and the witnesses of the plaintiff, who will generally be the same to prove all the claims, cannot possibly be questioned minutely by each defendant with regard to the demand made against him; the defendants also, probably, will not all reply at the same time; some will have recourse to all the delay which the forms of the court admit of, others again may be desirous to have the matter in dispute settled as speedily as possible, especially if they are obliged to remain in attendance themselves from inability to appoint a vakeel. The instructions to my moonsiffs have always been not to admit of a cause of action being split into two, nor of two or three causes of action distinct in themselves being united in one suit.

3. This reference has originated from the following circumstances:—Petumber Singh instituted a suit against Bharamul and others for arrears of rent in the cutcherry of the collector; the suit was dismissed; he then instituted a regular suit in this court to obtain, in reversal of the collector's summary award, the amount of rent with costs of the summary suit. This cause, on the promulgation of Regulation VII. 1832, was transferred to the moonsiff of Shekoabad. The defendants there objected to a suit being instituted against them collectively, as contrary to the practice of this court; afterwards on the plaintiff representing that instructions had been issued to the collectors from the Sudder Board of Revenue sanctioning the practice, he made a reference to me on the subject:—the plaintiff further urged as a reason for instituting the suit against the defendants collectively that he was obliged to do so, as the summary suit to reverse the decision of which the regular suit was instituted, had been admitted in that form. The last plea of the plaintiff is not in my opinion valid, although I think that it is desirable that the same rules of practice on this point should obtain in both the judicial and revenue courts, as it is optional with claimants to proceed against defaulters in either, and suits are transferrible from one jurisdiction to the other.

To the Judge of Zillah Mynpooree, dated 7th February, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, with its enclosures.

2. In reply, I am directed to inform you that the practice described in the latter part of your 2nd paragraph, of allowing a single

suit to be instituted against a large portion of the inhabitants of a village for arrears of rent, when such inhabitants are not otherwise connected than as dwelling in the same village, and do not jointly cultivate any piece of land, is irregular and objectionable ; nor does it appear to the Court as sufficient reason that the original summary suit was admitted in that shape. The limit laid down in the first part of the same paragraph, with regard to including several ryots in one suit, is in the Court's opinion judicious, and should be invariably observed.

The Presidency Court, on the 28th February, 1834, *concurred in this construction.*

February 7, 1834.

To the Judge of Zillah Mynpooree, dated 7th February, 1834.

No. 861.

1814. Reg. XXIII. Secs. 52 and 59.

1832. Reg. VII. Secs. 5 and 7.

I am directed by the Court to acknowledge the receipt of your letter of the 10th January, containing several queries on points connected with Regulation V. 1831, and to send you the following answers.

2. *Question 1st.—Decrees passed in the lower courts, and confirmed in appeal by the judge after summoning the respondent, must be considered as decrees of the judge's court, and be executed under the rules in force for the execution of such decrees.*

3. *Question 2nd.—Moonsiffs are not entitled to receive commission on sales conducted in execution of their own decrees, but only on those which they hold in execution of the decrees of other courts.*

4. *Question 3rd.—The peons attached to the courts of the moonsiffs under the provisions of Section 5, Regulation VII.* 1832, *are intended exclusively for the execution of judicial processes, and should not be employed in the distraint and sale of property for arrears of rent.*

5. *Question 4th.*—Petitions filed in consequence of proclamations under clause 3, Section 59, Regulation XXIII. 1831, (and the corresponding enactments for the courts of sudder ameens, principal sudder ameens and moonsiffs,) must be considered as miscellaneous petitions, and bear the stamp fixed by Schedule B, for such petitions in the courts in which they are preferred.

The Presidency Court, on the 28*th February,* 1834, *concurred in this construction.*

February 7, 1834.

See Act VI. 1843, *and Act I.* 1839.

From the Judge of Zillah Mynpooree to the Officiating Register to the Sudder Dewanny Adawlut, Western Provinces, dated 23rd January, 1834.

No. 862.
1831.
Reg. VIII.

With reference to your circular letter of the 15th November, relative to the description of suits cognizable by revenue officers under the provisions of Regulation VIII. 1831, I request you will solicit for me information from the Court of Sudder Dewanny Adawlut, Western Provinces, on the following point.

2. In the event of a suit being instituted in the zillah court or that of a moonsiff by a resident cultivator, to obtain a reversal of a summary decision passed by a collector adjudging a balance against him, and ejecting him from his jote as a defaulter, is the value of the suit to be estimated by the amount of rent in dispute, or by the selling value of the land, or both ? The claim is to disprove the balance and regain possession ; but as the point originally at issue in the summary suit was the justness or otherwise of the demand of rent, and the ejectment or non-ejectment of the cultivator rested solely on the defendant being deemed a defaulter or otherwise, I conceive that the amount of the suit should be estimated by the amount of balance in litigation.

To the Judge of Zillah Mynpooree, dated 7th February, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 23rd ultimo.

2. In reply, I am directed to inform you that in suits of the nature described in the 2nd paragraph of your communication, *viz.* suits instituted in a zillah court or that of a moonsiff by a resident cultivator, to obtain a reversal of a summary decision passed by a collector adjudging a balance against him and ejecting him as a defaulter, the value of the suit should be estimated at the amount of rent in dispute, or, in other terms, at the sum sued for in the first instance.

The Presidency Court, on the 28th February, 1834, *concurred in this construction.*

February 7, 1834.

See Nos. 702 and 1205.

To the Judge of Zillah Tirhoot, dated 14*th February,* 1834.

No. 863.

1814.
Reg. XXVI. Sec. 8.
1831.
Reg. V. Sec. 16, Clause 3.
Para. 10, Circular Orders, 1st November, 1833, No. 91.

I am directed by the Court to acknowledge the receipt of your letter of the 20th ultimo, and, in reply to the question contained in the first paragraph, to refer you to the 5th paragraph of their Circular Order of the 28th June last, and to convey to you their opinion that a practice similar to that prescribed in the case of appeals to their Court, in regard to the demand of security for the costs of appeal, may be followed by the zillah judges.

2. The Court direct me to observe that it requires a positive enactment to alter the rules prescribed for the admission of appeals, which allow the petitions to be filed without the *moujibat* or reasons for appealing ; so that they are not competent to authorize you to proceed in the manner suggested in your second paragraph.*

3. With reference to the third paragraph, I am directed to observe that though, under the construction contained in the tenth paragraph of the letter circulated on the 1st November last, the moonsiffs may depute ameens to make local investigations in regular suits pending before them, they cannot depute a mohurir or other person to make such as they themselves may be required to make by the different courts. If the moonsiff cannot leave his station for the purpose of making such investigations, without materially interfering with his more special duties, he should represent the circumstance to the judge, who can depute any other person to perform the duty.

February 14, 1834.

See Act III. of 1845, and Circular Order No. 173, 5th May, 1852.

From the Acting Superintendent of Tributary Mehals at Cuttack to the Register of the Sudder Dewanny Adawlut, dated 28*th January,* 1834.

No. 864.

1816.
Reg. XI.

A suit, for the recovery of certain lands situated on the borders or within the tributary estate of Neelghurry, but decreed after a summary investigation by the magistrate at Balasore to be within that estate, has been preferred to me as superintendent of tributary mehals by a zemindar subject to the Regulations. As Regulation XI. of 1816, does not provide for such cases, and having my doubts whether this is the proper tribunal to which the plaintiff should apply, I have

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* That is, by compelling appellants to file copies of decrees and reasons of appeal with their petitions of appeal.

to request that you will obtain the opinion of the Court of Sudder Dewanny Adawlut whether I should admit the suit on my file or refer the petitioner to the zillah court.

To the Acting Superintendent of Tributary Mehals of Cuttack, dated 14th February, 1834.

In reply to your letter of the 28th ultimo, No. 88, I am directed by the Court to inform you that as the summary inquiry by the magistrate of Balasore appears to have ascertained that the contested lands lie within the Neelghurry estate, they are of opinion that the assumption should be maintained until the contrary be shewn by a more formal inquiry, which inquiry should be conducted by you on the admission of the suit referred to in your letter.

February 14, 1834.

From the Judge of Zillah Furruckabad to the Officiating Register of the Sudder Dewanny Adawlut, Western Provinces, dated 27th January, 1834.

No. 866.

1793. Reg. III. Sec. 8.

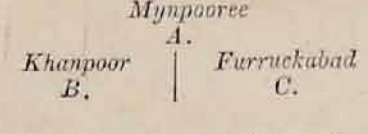
1803. Reg. II. Sec. 5.

I would beg to solicit the construction of the Court on the following point.

2. *In Regulation II. of* 1803, *Section 5, it is prescribed as follows. The zillah courts are empowered, &c. &c.* " *or in all other cases, the cause of action shall have arisen, or the defendant at the time when the suit may be commenced shall reside as a fixed inhabitant within the limits of the zillah over which their jurisdiction may extend.*"

Now cases of the annexed nature are not uncommon :

A, an indigo planter resident in the Mynpooree district, makes an advance of cash to B, a zemindar, resident of Khanpoor district, taking a bond and agreement to deliver a certain portion of produce at C, another factory belonging to A, situated in the Furruckabad district, the bond being written and the advance made at A's permanent residence. B fails in his contract, either by not delivering any plant or by delivering less than the stipulated quantity or of an inferior quality, at factory C. In this case plaintiff A may sue B, either in Mynpooree or Khanpoor ; but the question is, can he do so in



Furruckabad, can the cause of action be construed to have arisen in that district?

3. *I have no case of this nature before the court, but an indigo planter has brought it to my notice, as desirable to have the point settled; assuring me that he has had decrees given him in such cases; and that at other times his suit has been dismissed, on the grounds that the matter did not lie in the jurisdiction of the third court in which the delivered factory was situated. An analogous case is, when two houses of business situated in two different districts have transactions of any mercantile nature with each other, which lead to a suit in court. It has been customary to allow either party to sue the other in either district, the transactions being held to have taken place in both.*

4. *I would beg to suggest the expediency of an order from the Court on the subject.*

To the Judge of Zillah Furruckabad, dated 14*th February*, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 27*th ultimo, requesting the opinion of the Court regarding the application of the provisions of Section* 5, *Regulation II. of* 1803.

2. *In reply, I am directed to inform you that the Court concur with you with regard to the case in question; in which the plaintiff A may sue B, either in Mynpooree where the cause of action arose, or Khanpoor in which the defendant B resided at the time of instituting the suit. The failure of delivery at Furruckabad is not a circumstance which, under the Regulation, would give jurisdiction to the court in that district.*

The Presidency Court, on the 28*th February*, 1834, *concurred in this construction.*

February 14, 1834.

Rescinded by Circular Order No. 142, *dated* 6*th November*, 1846.

From the Judge of Zillah Cuttack to the Register of the Sudder Dewanny Adawlut, dated 3rd February, 1834.

No. 867.

1831.

Reg. VIII. Sec. 8.

I beg to be informed if, in the opinion of the Court of Sudder Dewanny Adawlut, the civil courts are competent, under Section 8, Regulation VIII of 1831, to receive regular suits for arrears of rent, on paper bearing a stamp of one-fourth the prescribed value—if under the existing Regulations they would have been cognizable as summary suits, or if the suits should in the first instance be preferred to the collector under Section 7, and be by him referred to the judicial authorities under clause first, Section 9 of the same enactment before the courts can admit them.

To the Judge of Zillah Cuttack, dated 14*th February,* 1834.

I am directed to acknowledge the receipt of your letter of the 3rd instant, and in reply to inform you that the Court perceive nothing in the provisions of Section 8, Regulation VIII. 1831, to prevent the civil courts from receiving regular suits for rent under the circumstances stated by you, on stamped paper of one-fourth the first prescribed value.

The Western Court, on the 26*th March,* 1834, *concurred in this construction.*

February 14, 1834.

See No. 714.

From the Judge of Zillah Beerbhoom to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 29th July, 1833.

No. 868.

A decree being given for half the amount sued for, and the appellate court, on the appeal of the defendant, being of opinion that the whole should have been decreed, held that the decree of the lower court cannot be amended in favor of the plaintiff, unless he has urged objections to it.

I beg to be favored with the instructions of the Court on the following points of practice :

A sues B for 1,000 rupees, and obtains a decree for 500 only : B, dissatisfied with the decision, appeals with a view to its entire reversal. A, now the respondent, does not appear on the usual notice and proclamation, and the appeal proceeds *ex parte.* On a consideration of the pleadings and proofs filed in the original suit, the court trying the appeal is of opinion that the whole 1,000 rupees should have been decreed to A ; under these circumstances, should the appeal court content itself with simply dismissing the appeal, thus confirming the original decision, or should it reverse the decision and pass a decree in favor of A for the whole sum ?

Again, supposing the same circumstances with this difference only, that the respondent does not appear, what course is then to be pursued ?

Or generally in regular appeals should a suit be decided simply on its own merits, as they are to be gathered from the pleadings and proof filed in the original suit and from any further evidence adduced in appeal, without any regard as to which party appeals and whether the opposite party attends or not, or should the latter circumstances also be taken into account in the adjudication of it ?

To the Judge of Zillah Beerbhoom, dated 14*th February*, 1834

I am directed by the Court to acknowledge the receipt of your letter of the 29th July last, and in reply to inform you that in the case stated by you, if A do not appeal, nor appear as respondent on the appeal of B, the decision cannot be amended in his favor. If however, A do appear, and in his reply to the pleas of B, object to that part of the decision which dismisses a part of his claim, it is competent to the court to go into the whole merits of the case as it affects both parties, and to decide it in the same manner as if A had preferred a separate appeal.

The Western Court, on the 16*th May*, 1834, *concurred in this construction.*

February 14, 1834.

See Sudder Dewanny Reports, 21st June, 1848, page 563, and Act XV. 1853.

4 Ind. 514.

Radha Govind Singh, plaintiff,

versus

Debeepershad Sirkar and Mr. Musselbrooke, } defendants.

From the Officiating Additional Judge of Burdwan to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 20*th January*, 1834.

No. 869.

The original exhibits filed in a suit being missing, the parties are at liberty to file copies.

I beg leave to forward to you, for the information and orders of the Court of Sudder Dewanny Adawlut, a copy of my proceedings under this day's date in the above case, in which the original exhibits, and other papers and documents and deeds are missing, but of which copies, I am led to understand, are possessed by and procurable by the parties concerned. The depositions of the plaintiff's witnesses are in the record office and forthcoming.

To the Additional Judge of Zillah Burdwan, dated 14th February, 1834.

I am directed by the Court to acknowledge the receipt of a letter and its enclosure from the late officiating additional judge, reporting for orders the loss of certain proceedings in the case of Radha Govind Singh, plaintiff, versus Debeepershad Sirkar and Mr. Musselbrooke.

2. As it appears from Mr. Robertson's roobukaree that he has referred the matter to the judge, the Court do not deem it necessary to pass any orders on it. They however desire me to say that they are aware of no objection to calling upon the parties to supply copies of such of the missing papers as they may have by them, or be able to furnish.

February 14, 1834.

From the Judge of Zillah Futtehpore to the Register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated 10th February, 1834.

No. 870.

1803.
Reg. II. Sec. 10.
Reg. III. Sec. 12.
1814.
Reg. XXIII. Sec. 27, Clause 1.
Reg. XXVI. Sec. 12, Clause 3.

As the decisions of zillah judges in appeals from the decisions of moonsiffs are final under the provisions of Section 28, Regulation V. of 1831, and the Court appear desirous that the Regulations should be strictly attended to in cases of default of plaintiff or absence of defendants; and in several respects the powers of the native judges are not very distinctly laid down; and as I also entertain doubts regarding the stamp duties in certain cases, I request you will obtain for me instructions on the following points.

1*st.*—Whether, a suit having been dismissed under the provisions either of Section 12, Regulation III. of 1803, of clause 1st, Section 27, Regulation XXIII. of 1814, or of clause 3rd, Section 12, Regulation XXVI. of 1814, the plaintiff is at liberty to institute a new suit for the same claim, or is precluded from so doing under Section 10, Regulation II. of 1803?

2*ndly.*—In what cases the term nonsuit should be used in decisions? I am desirous of issuing orders to the native judges on the subject, and as uniformity of practice is desirable, I hope the Court will not consider the question needless. The natives entertain different ideas on the subject: some think that a summary appeal cannot be heard from a decision dismissing a cause without an investigation of its merits, unless the word nonsuit is used, and unnecessarily prefer a regular appeal when a summary one would have been sufficient; and others are of opinion that the insertion of it is necessary to enable a plaintiff to institute his suit *de novo.*

1814.
Reg. XXIII. Sec. 27, Clause 1.

3*rdly.*—As rules are prescribed in clause 1st, Section 27, Regulation XXIII. of 1814, for the guidance of moonsiffs only in cases

of default of plaintiff or absence of defendants after the answer has been filed, whether in case the plaintiff, prior to the serving of the notice on the defendant, or the filing of the reply, absents himself, the moonsiff is to be guided by that enactment or by Section 12 of Regulation III. 1803 ?

1814. Reg. XXIII. Sec. 27, Clause 2.

4*thly.*—The meaning of clause 2nd, Section 27, Regulation XXIII. 1814, does not appear to me clear. From the words "if the suit be dismissed without an investigation of its merits," it might be inferred, that a cause tried *ex parte* and decided in favor of the plaintiff, could not on an appeal on the part of the defendant be remanded back to the moonsiff or transferred to any other competent authority for further investigation, while on the other hand the words "if either of the parties shall appeal," &c. lead to an opposite conclusion. I should also wish to know whether regular or summary appeals are intended in this enactment, and if the former, can a summary appeal be received on the part of a defendant from the decision of a moonsiff, sudder ameen or principal sudder ameen, on the ground that the suit was tried *ex parte* in opposition to the Regulations; and if so, has the judge in such a case the power of remanding the suit back to the lower court for re-trial and decision?

1814. Reg. XXVI. Sec. 3, Clause 4.

5*thly.*—If regular appeals only were intended in the enactment cited in the preceding question, are the rules in clause 4, Section 3, Regulation XXVI. of 1814 now to be considered applicable to orders and decrees of the new moonsiffs, in cases similar to those therein provided for with regard to registers and sudder ameens?

1814. Reg. XXIII. Sec. 27, Clause 2.

6*thly.*—With reference to the wording of clause 2, Section 27, Regulation XXIII. of 1814, I request to be informed whether I am right, in considering a judge vested with discretionary power to confirm the moonsiff's dismissal on default, or otherwise, as he may think fit on consideration of the reasons assigned for the neglect in the original trial. If the rule is to be understood literally, it renders it imperative on a judge in every case of appeal either to determine the case on its merits or remand it back to the moonsiff by whom it was dismissed, whether the appellant can furnish a satisfactory excuse for his negligence or not.

7*thly.*—In the event of a regular appeal being preferred by a plaintiff from the decision of a moonsiff, sudder ameen, or principal sudder ameen, dismissing his claim without investigation of its merits, not on the ground that the dismissal was contrary to the Regulations (as in that case a summary appeal would be sufficient), but on the ground that the default on his part in the original suit was owing to circumstances entirely beyond his control, must the further investigation of the suit be conducted by the judge himself, or may it be remanded to the inferior court for re-investigation and decision?

8*thly.*—In the event of a regular appeal being preferred under circumstances similar to those in the preceding question by a defendant, *viz*, that owing to unavoidable circumstances he was unable to defend his cause, and praying that his evidence might be heard in

appeal, whether the cause may be sent for re-trial to the lower court or must it be proceeded with by the judge?

9thly.—Whether the rules laid down in Section 18 of Regulation IV. 1803 for the guidance of provincial courts of appeal are applicable to civil judges appointed under Regulation V. of 1831, for their guidance in cases of regular appeal, in which it appears to them that the original suit has not been sufficiently investigated in the lower court? 1803. Reg. IV. Sec. 18. 1793. Reg. V. Sec. 18. 1831. Reg. V.

10thly.—Is clause 3, Section 5, Regulation XXVI. 1814 to be considered as rescinded by Section 2, Regulation X. 1829; and, if so, are additional sheets when requisite for the purposes therein stated to be of plain or stamped paper; and are *dukhlnamas* taken from individuals on being put into possession of lands, houses, &c. decreed in their favor, required to be on plain or stamped paper? 1814. Reg. XXVI. Sec. 5, Clause 3.

To the Judge of Zillah Futtehpore, dated 21st February, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 10th instant, submitting for the decision of the Court, several points connected with the duties of native judicial officers.

2. *Query 1st.*—On the dismissal of a suit under Section 12, Regulation III. 1803, clause 1, Section 27, Regulation XXIII. 1814, clause 3, Section 12, Regulation XXVI. 1814, the plaintiff is at liberty to institute a new suit for the same claim, as if the case had not been heard.

3. *Query 2nd.*—If there has been no decision on the merits of a case, but merely a dismissal pronounced on default, the omission of the word nonsuit, in the proceedings of the officer who disposed of the case, cannot be considered to bar the claim of the plaintiff to the admission of a summary appeal.

4. *Query 3rd.*—If the plaintiff absent himself previous to service of notice on the defendant or before the reply be filed, the suits cannot be proceeded in and must be dismissed.

5. *Query 4th.*—The defendant cannot of course be expected to file his reply before receiving notice of the claim preferred against him.

The Regulations nowhere provide for a summary appeal from the decisions of moonsiffs; nor can such an appeal be had from such decision on the grounds that the suits have been *ex parte*, contrary to the Regulations in force: in such cases the appeal must be regular.

6. *Query 5th.*—The provisions of clause 4, Section 3, Regulation XXVI. 1814, cannot be considered applicable to moonsiffs, as they have reference only to summary appeals.

7. *Queries 6th, 7th and 8th.*—On the admission of an appeal preferred for a dismissal on default by a moonsiff, the judge cannot confirm the dismissal with reference to reasons assigned for neglect in

the original trial, but must either decide the case on its merits or direct the moonsiff to do so, reversing the dismissal on default. The same rule applies to appeals by defendants on the ground that an *ex parte* decision was given against them, when they were prevented by circumstances from attending the court.

8. *Query 9th.*—The rules contained in Section 18, Regulation IV. 1803 for the guidance of provincial courts, must be considered applicable to judges of districts under Regulation V. 1831, and they may consequently return a case for further investigation.

9. *Query 10th.*—Clause 3, Section 5, Regulation XXVI. 1814 is rescinded by Section 2, Regulation X. 1829. There is no Regulation requiring that additional sheets required for the purpose therein mentioned or for *duhhlnamas* taken from individuals put in possession under a decree should be on stamped paper.

The Presidency Court, on the 27th March, 1834, *concurred in this construction.*

February 21, 1834.

See No. 1228, Act XXIX. 1841, and Act XXII. 1838.

From the Judge of Moorshedabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 5th February, 1834.

No. 871.

1793. Reg. III. Sec. 8.
1795. Reg. VII. Sec. 7.
1803. Reg. II. Sec. 5.
1831. Reg. V. Sec. 5, Clause 1.

The accompanying document is copy of a petition of plaint preferred in the Moorshedabad Court of Appeal for balance of rent claimed on a farm in the Rungpore district. Before the abolition of that court, it was sent over to the city court for trial, on the ground, that the plaintiff and the defendant were both resident within the jurisdiction of the City Court of Moorshedabad.

2. Circumstances connected with the management of the affairs of the plaintiff's heirs, after his death, delayed the hearing of the cause till yesterday, when it came under consideration in this court, and it appeared that the farm for which rent is claimed, is in the Rungpore zillah. Though from its being of greater amount than 10,000 rupees it was only cognizable in the provincial court of the division, yet, if a summary suit for the rent had been preferred under Regulation VII. of 1799, it must, I presume, have been preferred in the Rungpore Zillah Court; if, after a decision, a regular suit had been preferred to reverse the summary award, the plaintiff, whether landlord or tenant, would, if the sum had been below 10,000 rupees, have filed his plaint in the Rungpore and not in the Moorshedabad City Court; and as the ground of action is the same whether the regular suit follows a summary award or is preferred without a pre-

vious summary suit, I infer that, under Section 8, Regulation III. of 1793, this suit should now be tried by the Zillah Court of Rungpore under the provisions of Regulation V. of 1831, and that before the abolition of the court of appeal, the jurisdiction did not depend on the residence of the parties but on the local situation of the farm. Under this impression, as the suit is for a large sum (upwards of three lacs of rupees) and may involve much unnecessary expense to parties, if after my decision an objection was successfully made to the jurisdiction, I have thought it advisable to suspend further proceedings until I have the orders of the Sudder Dewanny Adawlut as to its disposal, as I do not think myself competent to alter an order of the court of appeal even if I happen to be right in my opinion, that the suit is within the jurisdiction of Rungpore, and without that of the Moorshedabad City Court.

3. As connected with the question of jurisdiction which forms the subject of this reference, and as involving matter of some consequence with regard to clause 1st, Section 5, Regulation V. of 1831, I beg to submit the following general question, on which I request to be favored with the construction of the Sudder Dewanny Adawlut. Seeing that a farm, or other fixed property, may be in one jurisdiction or zillah, the landlord resident in another, and the tenant in a third : Quest.—Which of the three is the zillah or jurisdiction competent to try a suit preferred under clause 1, Section 63, Regulation VIII. 1793, where the demand is neither for land, nor for land rent, but for a receipt on account of money paid, or damages for refusing a receipt for money paid as land rent ?

To the Judge of City Moorshedabad, dated 21st February, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 5th instant, requesting their opinion as to the zillah in which the case of Koonwur Hurinath Rai, plaintiff, versus Tarneeshunker and others, for the rent of a farm in zillah Rungpore, should be tried, and in reply to refer you to the Construction No. 73, dated 4th January, 1811, (page 21, *supra,*) and to request that you will transfer the case to the judge of zillah Rungpore for trial.

2. In reply to the question contained in your third paragraph, I am directed to inform you, that the Court are of opinion that the suit instituted under the circumstances supposed by you, would be triable either in the district or jurisdiction in which the money was paid, or in that in which the defendant resided when the suit was instituted.

The Western Court, on the 21st March, 1834, *concurred in this construction.*

February 21, 1834.

See No. 73, and Reported Summary Cases, 19th February, 1848, page 132.

From the Judge of Zillah Mynpooree to the Officiating Register of the Sudder Dewanny Adawlut, for the Western Provinces, dated 31*st January*, 1834.

No. 872.

1829.
Reg. X. Sch. B, Art. 8.
1814.
Reg. XXVI. Sec. 3.
Reg. XXIII. Sec. 27, Clause 2.

I request the favor of your soliciting instructions from the Court of Sudder Dewanny Adawlut on the following points :

1*st.*—In the event of a plaintiff being nonsuited under the provisions of Article 8, Schedule B, Regulation X. 1829, on the grounds that the value of the thing claimed had been understated in the proportion of ten per cent., can a summary appeal be received under Section 3, Regulation XXVI. of 1814, on the ground that the thing claimed was not undervalued, or must the plaintiff prefer a regular appeal ?

2*ndly.*—Are the rules in Section 3, Regulation XXVI. 1814, for summary appeals, applicable to dismissals on default by moonsiffs? Regulation XXIII. makes no provision for summary appeals from decisions passed by moonsiffs; the meaning of clause 2, Section 27 of that Regulation appears doubtful. It enacts if either of the parties shall appeal, &c. &c. In case of a dismissal on default, the plaintiff alone can have grounds of dissatisfaction, and if the clause is applicable to appeals by defendants in consequence of the original cause having been tried *ex parte*, regular appeals must be meant and not summary ones.

To the Judge of Zillah Mynpooree, dated 21*st February*, 1834.

I am directed to acknowledge the receipt of a letter from you under date the 31st ultimo, submitting certain questions for the Court's opinion.

2. Although the case stated in this question does not fall within the provisions of Section 23, Regulation XXVI. 1814, the Court are of opinion that the principle of the rule contained in Section 4, Regulation XIII. 1808, may be considered to apply, and that consequently a summary appeal may be had from a nonsuit passed under Article 8, Schedule B, Regulation X. 1829, if it can be shown by the plaintiff that the value of the property claimed has not been understated by him, and that consequently the order passed by the sudder ameen or principal sudder ameen was erroneous.

3. There is no Regulation authorizing a summary appeal from the decision of moonsiffs, the appeal open to a defendant in suits tried *ex parte* is a regular appeal, and to such an appeal clause 2, Section 27, Regulation XXIII. 1814, appears to refer.

The Presidency Court, on the 24*th October*, 1834, *concurred in this construction.*

February 21, 1834.

See Act XXII. 1838.

To the Officiating Joint Magistrate of Pubna, dated 28th February, 1834.

No. 873.

1830.
Reg. V. Sec. 3.
1823.
Reg. VI. Sec. 7.

I am directed by the Court to acknowledge the receipt of your letter of the 15th instant, requesting to be informed whether a contract entered into by a ryot to cultivate indigo for a period of five or ten years, and by which he is required to settle his accounts annually, and receive fresh advances, is valid, if executed on stamped paper required for the amount of the first year's advances; and whether the ryot can be obliged by it, under Regulation V. 1830, *to settle his accounts at the end of the year, or on failing to do so, be compelled, under Section* 3, *to give the number of beegas mentioned for the entire period named in the contract.*

2. *In reply, I am directed to inform you that, provided it be proved that the engagement to cultivate indigo was voluntarily executed by the ryot, the criminal court must enforce the provisions of Section* 3, *Regulation V.* 1830; *and that, under Section* 7, *Regulation VI.* 1823, *no objection can be made to the engagement on account of the stamp, provided the value of it be such as is required for a bond of a similar amount.*

3. *I am further directed to observe that Regulation V.* 1830, *is silent as to compelling a ryot to settle his accounts at the end of the year.*

February 28, 1834.

See No. 934, *and Act XVI.* 1835.

To the Judge of Zillah Bareilly, dated 14*th March,* 1834.

No. 874.

1829.
Reg. X. Sch. B,
Art. 8.

I am directed by the Court to acknowledge the receipt of your letter of the 5th instant, regarding the calculation of stamp on petitions of plaint, &c.

2. In reply, I am directed to inform you that the practice of your court of excluding the fractional parts of a rupee from such calculations is irregular; any sum, however small, constituting an excess requiring an increase of stamp.

The Presidency Court, on the 4th April, 1834, *concurred in this construction.*

March 14, 1834.

From the Judge of Zillah Furruckabad to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 11*th March*, 1834.

No. 876.

1825.

Reg. XX. Sec. 3, Clause 1.

I beg permission to bring the following points to the notice of the Court:

1*st.*—With reference to clause 1st, Section 3, Regulation XX. 1825, are civilians, merchants and others, being European British subjects, who reside within the limits of a cantonment, but totally unconnected with the army, to be subject, in actions of the nature specified, to a military court of requests, or to the civil courts, or to either, at the option of the plaintiff?

2*nd.*—If they are at all to be subject to the several military courts of requests, it would seem expedient to determine what is to constitute residence. Many of the indigo planters in this part of the country have two or even more residences, one in a station or cantonments, the other at their factories, residing occasionally at each, and neither can be called their permanent residence more than the other. Of which are they to be considered residents? or of both places?

3*rd.*—In the one of these cases there would be clashing of authority, and in the other, supposing an indigo planter to reside within the limits of cantonments at a sudder station, and to have a factory in a joint magistrate's division, situated fifty miles distant, at which he often resides—in the event of his being accused of ill-treating the people (for this I conclude to be the meaning of the term "personal actions," provided the damages or fine imposed would not exceed 400 rupees,) or non-payment of wages, which would ordinarily be cognizable by the joint magistrate, the plaintiffs must go all the way to the sudder station to the military court of requests, which sits but once a month.

4*th.*—The whole tenor of Regulation XX. 1810, is plain enough in restricting the jurisdiction of a court-martial or military court of requests, to persons not being European British subjects, to the following classes, *viz.* 1, officers and soldiers, and retainers of all sorts in the receipt of public pay; 2, servants of officers; 3, persons registered as belonging to the bazars. It would seem to have been the intention of Regulation XX. 1825 to make the same discrimination in regard to European British subjects; but there is much diversity not only of opinion but of practice on this head.

To the Judge of Zillah Furruckabad, dated 26*th March*, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 11th instant, requesting the opinion of the Court on certain points connected with clause 1, Section 3, Regulation XX. 1825.

2. The military court of requests, being a King's court, constituted by an Act of Parliament, the Court are not competent to determine the extent of its jurisdiction, which must be decided by the military court itself under the laws enacted for its guidance.

3. The Court are, however, of opinion that the civil servants of the Company, merchants, and others mentioned in paragraph 2 of your letter, (who reside within the limits of a cantonment, although totally unconnected with the army,) are, under the terms of the Regulation, subject, during their actual residence, to the jurisdiction of a military court of requests, and to that of no other court, in all cases of personal action of debt ; they are consequently exempted from the authority of the Company's courts while so resident.

4. The residence or non-residence of a person within the jurisdiction of the court of requests or of the Company's courts must be determined by the circumstances of each case as it occurs ; the Court consider it unadvisable to lay down a general rule on a point the decision of which may be affected by such a variety of considerations.

The Presidency Court, on the 18*th April*, 1834, *concurred in this construction.*

March 26, 1834.

From the Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 11*th March*, 1834.

No. 877.

1825.
Reg. VII. Sec. 3, Clause 6.
Circular Order, 19th July, 1833.

Since the Court's order, to delay sales of real property in satisfaction of decrees for three months from the date of any order disallowing a claim to the same, it has become a practice to cause petitions of claims to be presented the day previous to that fixed for the sale, not with a view of eventually establishing any claim, but for the sole purpose of getting the prayer disallowed, and obtaining a delay of three months, at the end of which, a new petition of claim is ready to be thrown in by another hand, so that the execution of decrees becomes delayed *ad infinitum.*

2. The Court, in their order which fixes three months as a period for appeal, instead of one month, do not appear to me to have superseded clause 6, Section 3, Regulation VII. 1825, the provisions of which are equally applicable to a longer as a shorter period for appeal : indeed, the functions of the Court being executive, not legislative, they could not have intended to rescind that enactment : but I request specific instructions on this point, *i. e.* whether petitions thus dropped in the day before that fixed for sale, without documents or any sort of support, are to be permitted to postpone the sale

for three months. I request you will lay this letter before the judges for their orders; in the meantime it is my intention to act under the Regulation above quoted.

To the Judge of Zillah Dacca, dated 27th March, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 11th instant, No. 117, and in reply to observe that you have mistaken the intent of their Circular Order of the 19th July last, which was not to allow a new postponement of the sale on the rejection of every petition objecting thereto, but merely to prohibit the order for sale being carried into execution for three months, that is, until the expiration of the period prescribed for appealing, with a view of enabling the parties dissatisfied with it, to prefer their appeal within that period.

2. The Court do not understand by what rule you consider one month to be the period prescribed for summary appeals to this Court: the fifth clause of Section 3, Regulation XXVI. 1814. declares the period to be the same in summary as in regular appeals.

March 27, 1834.

From the Officiating Judge of Zillah Bundlecund to the Register of the Sudder Dewanny Adawlut for the Western Provinces, dated 2nd April, 1834.

No. 878.

1831. Reg. V. Sec. 16, Clause 3.

I have the honor to submit for the sentiments and orders of the Court of Sudder Dewanny Adawlut the following particulars:

My predecessor, Mr. Ainslie, heard five cases of appeals under the provisions of Regulation V. 1831, Section 16, clause 3, and, seeing no reason to alter the decisions appealed from, he confirmed them; no orders however were passed regarding the amount of the remuneration the vakeels were entitled to, nor was any order passed regarding the re-payment of any portion of the stamp duty of the paper upon which the appeals were written; Mr. Ainslie did not, it appears, clearly perceive under what head the appeals of Regulation V. 1831, Section 16, clause 3, were to be included, and he intended to have submitted an application to the Court for instructions on the subject, but was prevented from doing so by illness.

2. On examining myself the various Regulations regarding the payment of portions of stamp duty and the fees of vakeels, I feel, as Mr. Ainslie did, some uncertainty as to the rules which should be observed in cases coming under Regulation V. of 1831 now referred to; I would solicit therefore the instructions of the Court on the following three points:

1*st.*—What class of appeals are those decided under Section 16, Clause 3, Regulation V. 1831 to be considered as belonging to ?

2*nd.*—What amount of remuneration are vakeels entitled to ? and

3*rd.*—Whether any portion of the stamp duty is to be re-paid, and, if so, the rule for regulating the amount ?

To the Officiating Judge of Zillah Bundlecund, dated 11*th April*, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 2nd instant, requesting the opinion of the Court regarding cases of appeal decided under the provisions of clause 3, Section 16, Regulation V. 1831.

2. *Question* 1*st.*—In reply to your first question I am directed to inform you that appeal cases so disposed of should be viewed as regular appeals, decided on their merits after a perusal of the record, as required by the Regulation, and should be entered as such in the monthly statements.

3. *Question* 2*nd.*—The vakeels are entitled to the full remuneration awarded them by the Regulations in cases regularly decided on their merits.

4. *Question* 3*rd.*—No portion of the stamp duty should be returned.

The Presidency Court, on the 2*nd May*, 1834, *concurred in this construction.*

April 11, 1834.

See No. 742, and Act I. 1846.

To the Judge of Zillah Shahabad, dated 11*th April*, 1834.

No. 879.

1831.

Reg. VIII. Sec. 9.

I am directed by the Court to acknowledge the receipt of your letter of the 1st instant, and in reply to inform you, that they entirely concur with you in opinion that the collector exceeded his competency under Section 9, Regulation VIII. 1831, in referring summary suits to moonsiffs to be tried as regular.

The Western Court, on the 2*nd May*, 1834, *concurred in this construction.*

April 11, 1834.

Resolution of the Court of Sudder Dewanny Adawlut for the Western Provinces, held at Allahabad, on the 14*th February,* 1834.

No. 880.

1833.
Reg. II. Sec. 5.
1829.
Reg. X. Schedule B.

Resolved.—That with reference to the provisions of Section 5, *Regulation II.* 1833, *under which the Courts of Sudder Dewanny Adawlut are authorized to dispose of all appeal cases received from the late provincial courts, "in the same manner as though they had been regularly cognizable by and referred to or instituted before them," it is evidently the intention of the Government that the transfer of these cases should not occasion any additional hardship on the suitors, further than was unavoidable from their removal from one court to the other; that the Courts of Sudder Dewanny Adawlut are thus placed in the situation of the late provincial courts with regard to these cases and may receive petitions and vakalutnamas, and give copies of decrees and other documents on paper bearing the stamp which was required by the provisions of Schedule B, Regulation X.* 1829, *for such papers in the late provincial courts.*

To the Register of Sudder Dewanny Adawlut, Western Provinces, dated 14*th March,* 1834.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 14*th ultimo, No.* 46, *forwarding a draft of a resolution, declaring that in appealed cases received from the abolished provincial courts, the same stamps are to be used for petitions and vakalutnamas, as were required for such papers in the late provincial courts.*

2. *The Presidency Court are of opinion that the words quoted in the Resolution cannot be held to authorize the use of a stamp of a different value, in cases received from the provincial courts under Regulation II. of* 1833, *from that required in cases before the Court under the rules in force before that Regulation was enacted, and that as the parties have the benefit of a final decision, they ought to pay the rates of a higher tribunal. They direct me to add further that they think that it would be objectionable to have two rates of stamps in use in the same court.*

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 14*th April,* 1834.

I am directed by the Court to acknowledge the receipt of your letter of 14*th ultimo, in reply to the Court's letter of the* 14*th February, regarding the amount of stamp leviable in cases of*

appeal transferred from the provincial courts to the Sudder Dewanny Adawlat.

2. *On further consideration of the subject the Court have determined to adopt the interpretation of the law proposed by the Presidency Court, and will be guided by it in their future proceedings.*

3. *As connected with this subject the Court are desirous of learning the opinion of the Presidency Court with regard to the stamp leviable on similar papers, (viz. petitions, vakalutnamas, copies of decrees, &c.) in original suits transferred under the same Regulation II.* 1833, *from the late provincial courts to the zillah judges. By a parity of reasoning the stamp should apparently be that which has hitherto been required in the judges' court in cases instituted before it.*

The Calcutta Court concurred in the construction contained in the third paragraph on the 2nd May, 1837.

April 11, 1834.

Temporary.

To the Officiating Judge of Zillah Mynpooree, dated 16th May, 1834.

No. 884.

1833.
Reg. IX. Secs. 14 and 15.

Held that on the institution of a suit for rent before a judicial officer, proof must be required that the plaintiff has conformed to the rules laid down in Sections 14 and 15, Regulation IX. 1833 : the nature of the proof will of course be such as the plaintiff is able to adduce.

The Presidency Court, on the 13th June, 1834, *concurred in this construction.*

May 16, 1834.

From the Judge of Zillah Rajshahye to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 22nd March, 1834.

No. 885.

A party being in attendance on a criminal court on bail, to

I beg to submit, for the consideration of the superior court, the following question, as a case occurred in which a decision on the point is required.

answer to a criminal charge is not liable to arrest under civil process.

2. Is an individual, charged with forgery before the magistrate, and who gives security through the agency of another to appear when called for, and is in attendance till his case come on, secure from arrest by an officer of the civil court in satisfaction of a decree ?

3. I am aware that by the English law parties in actual attendance on a court of justice, are not liable to arrest on a civil action while so attending ; but I apprehend a person cannot be construed to be in actual attendance, who has given security through another to appear when called for : admitting, however, this to be the case, our Regulations, so far as I am acquainted with them, do not prohibit the service of civil process under such circumstances. The case of course supposes the individual is not seized in court, in the presence of the magistrate, or when his case has come on for a hearing.

From the Judge of Zillah Rajshahye to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 30th April, 1834.

I have to request your obtaining a reply to my letter of the 22nd March last to your address, on the subject of serving civil process on persons attending the cutcherry of a magistrate. A case of a similar nature to that already referred has now come on, in which a defendant is before the collector ; and others of a like import will in all probability frequently occur. I have deferred issuing process of arrest against him, and have to request you will ascertain as soon as practicable the opinion of the superior court on the point submitted by me in my letter above alluded to.

Opinion of the Advocate General.

I certainly think that " according to the law of England" a person " attending in a criminal court on bail to answer to a criminal charge" is not liable to be arrested under civil process. I have thus answered the general question that has been put to me—of course I do not know whether any case of the kind exists at present ; nor (if it does) what are the particulars of it ; nor what might be my opinion of them. But it is a general rule that a person attending on a court of justice is entitled to protection from arrest.

To the Judge of Zillah Rajshahye, dated 23rd May, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 22nd March and 30th ultimo, and, in reply to the

question proposed in the first, to forward to you the accompanying copy of one from the solicitor to the Honorable Company, dated the 13th instant, forwarding an opinion of the Advocate General ; and to inform you that the Court concur in the opinion that a party being in attendance on a criminal court on bail to answer to a criminal charge is not liable to arrest under civil process.

2. The Court will answer the question put in your second letter after they shall have consulted with the judges of the Western Court of Sudder Dewanny Adawlut.

May 23, 1834.

See Nos. 893 and 1089.

From the Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 24th June, 1834

No. 888.

1806.
Reg. II. Sec. 4.

Regulation II. 1806, Section 4, invests judges with the power to commit to close custody defendants intending to abscond, or withdraw themselves from the jurisdiction of the court in default of furnishing security ; but does not specify what course is to be pursued if the defendant shall have actually withdrawn himself from the jurisdiction of one zillah judge to that of another.

2. A case of this kind has arisen accompanied by difficulties. The judge of Moorshedabad has issued a perwannah to his nazir to require security from, or apprehend a foreigner, named Moollah Syud, now in this city for twenty-four days past, and backed it with a request to the judge of Dacca to cause its enforcement. The perwannah has been brought hither by a single chupprassee, who has neither diet money for the prisoner, who is a man of respectable manner and appearance, nor boat hire for the purpose of conveying him to Moorshedabad. He (the Moollah Syud) at first made some objection to the enforcement, but on the matter being explained to him by the nazir, he declared himself ready to accompany the chupprassee ; who is not prepared to remove him. The question now is what should be done with him ?

From the Judge of Zillah Dacca, dated 4th July, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 24th ultimo, No. 248, requesting the Court's opinion

as to the course to be pursued under the circumstances therein stated.

2. In reply I am directed to observe, that as the defendant was not within the limits of the district in which the suit against him was instituted, at the time the process issued under Section 4, Regulation II. 1806, was served upon him, the rule contained in that Section does not apply ; and consequently that you should immediately release him, leaving the Moorshedabad Court to decide the case pending *ex parte*, if he fail to appear or defend the suit.

The Western Court, on the 25th July, 1834, *concurred in this construction.*

July 4, 1834.

See No. 665.

To the Judge of Zillah Jessore, dated 11th July, 1834.

No. 890.

The rights and interests of a jotedar may be sold in satisfaction of a decree given against him.

I am directed by the Court to acknowledge the receipt of your letter of the 24th ultimo, and its enclosure, requesting the Court's opinion as to the liability of the jote jumma of a ryot to be sold in execution of a money decree, provided the zemindar do not object to the measure.

2. In reply, I am directed to inform you that the Court are of opinion that the right and interest of the jotedar may be sold in satisfaction of a decree.

The Western Court, on the 5th September, 1834, *concurred in this construction*

July 11, 1834.

Rescinded by the Western Court. Circular Order, No. 119, 1st January, 1846.

To the Judge of Zillah Cuttack, dated 25th July, 1834.

No. 892.

1818.
Reg. X. Sec. 5, Clause 1.
Circular Order, 4th January, 1833. No. 131.

I am directed by the Court to acknowledge the receipt of your letter of the 11th instant, and in reply to communicate to you their opinion that the provisions of clause 1, Section 5, Regulation X. 1818, which specially require the judge to pass orders for the confinement of defaulters in the cases therein alluded to, are not affected by the Circular Order of the 4th January, 1833, which intended to provide for the cases of prisoners confined under decrees of collectors under Regulation VIII. 1831, which are not provided for by that Regulation.

The Western Court, on the 22nd August, 1834, *concurred in this construction.*

July 25, 1834.

To the Judge of Zillah Rajshahye, dated 1st August, 1834.

No. 893.

A person in attendance on a collector to defend a suit or claim, or on a magistrate to answer a criminal charge, is protected from arrest under civil process.

In continuation of my letter of the 23rd May last, No. 1024, I am directed by the Court to inform you that they are of opinion that a person being in attendance on a collector to defend a suit or claim pending before that officer is protected from arrest under civil process, in like manner as persons in attendance on a magistrate to answer a criminal charge ; and that in either case the protection will last only as long as the party is in actual attendance or coming to or returning from the court.

The Western Court, on the 4th July, 1834, *concurred in this construction.*

August 1, 1834.

See Nos. 885 and 1089.

From the Judge of Zillah Tirhoot to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th May, 1834.

No. 894.

1793.
Reg. XLIX.
Circular Order Sudder Dewanny Adawlut, 15th November, 1833, No. 100.

A difference of opinion having arisen as to what suits are now cognizable by the courts under Regulation XLIX. 1793, *since the receipt of the Circular of the 15th November last, regarding suits referrible to the revenue authorities, I shall feel obliged by your obtaining for me the opinion of the Court on that point.*

2. *The third paragrah of that Circular refers cases of dispossession of ryots by landlords to the collector, and I wish to be informed whether that includes all disputes for possession between landlord and tenant, and whether Regulation XLIX.* 1793 *is hereafter to include only disputes between proprietors of different estates and between proprietors and holders of rent-free and other fixed tenures within the estate.*

3. *As a case in point—a jagheerdar dies, by which all tenures held from him lapse, and the Government make a settlement with the proprietors of the village, who not being able to get the terms they require from the ryot, or from some private reasons perhaps, oust the ryot from the lands he held by potta from the jagheerdar. The question as to the right to hold the lands at all, or on what terms, may be referred to a regular suit in the civil court; but in the interim, if the ryot wishes summarily to regain possession and hold the lands on the former terms until that point be decided, is his suit cognizable by the court under Regulation XLIX., or referrible to the collector under that Circular? Rent is in this and must in every case between landlord and tenant be the cause of dispute, and therefore, in my opinion, it comes within the intention of the Circular in question, and is referrible to the collector.*

4. *If it were not so, a ryot might be placed in an awkward predicament, by the court upholding his possession on the former terms by Regulation XLIX. and the revenue authorities decreeing a higher rate of rent, and ousting him for non-payment of it, or giving power at the time of resumption to the proprietor, to make his own arrangements with other ryots.*

5. *In this district resumptions by Government are constantly taking place, and cases similar to the above may frequently occur, it is therefore desirable that the parties, who are often indigo planters, may know to what authority they must apply for redress if they are ousted; in addition to which, it will prevent any clashing of authorities, a thing always to be avoided if possible.*

To the Judge of Zillah Tirhoot, dated 22*nd August,* 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 8*th May last, requesting to be informed what suits, since the issue of the Circular Order of the* 15*th November last, are cognizable by the judge under Regulation XLIX.* 1793, *and in reply to inform you that as the Regulation in question has not been rescinded, parties forcibly dispossessed have still the option of resorting under its provisions to the civil court, any thing in the Circular Order notwithstanding. I am at the same time directed to add that as the particular case mentioned by you does not include violence, it is cognizable by the collector under*

the Circular Order of the 6th December last; Regulation XLIX. 1793, *under the Construction No.* 39 *of the printed Construction Book, being applicable only "to cases of dispossession by force amounting to a breach of the peace."*

The Western Court, on the 25th July, 1834, *concurred in this construction.*

August 22, 1834.

See Act IV. 1840.

To the Judge of Zillah Furruckabad, dated 5th September, 1834.

No. 895.
1833.
Reg. IX.

I am directed by the Court to acknowledge the receipt of your letter of the 26th ultimo.

2. In reply I am directed to inform you that the decisions of punchayets appointed under Regulation IX. 1833, should be enforced by the revenue authorities, the judicial functionaries having no power to carry them into effect.

The Presidency Court, on the 26th September, 1834, *concurred in this construction.*

September 5, 1834.

See Sudder Dewanny Reports, North-Western Provinces, page 315, 29th July, 1851.

From the Judge of Zillah Moradabad to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 29th April, 1833.

No. 896.

Mode of proceeding on the records of a moonsiff's court having been destroyed by fire.

I do myself the honor to acknowledge the receipt of your letter of the 15th ultimo, together with a copy of a letter from the Secretary to Government, dated the 23rd February, authorizing me to procure from the collector's office and furnish the parties, in the nineteen cases destroyed by fire, in the moonsiff's office at Rajpoorah, with stamped paper, to enable them to institute their suits anew free of expense.

2. The orders of Government will be attended to in this respect; but I beg to state that the whole of the papers in the eleven undecided cases, noticed in the 8th paragraph of your letter, were reported by me to have been also burnt with the recorded decisions of the moonsiff—in all thirty cases.

3. As I conceive the object of Government is to enable the parties to sue again without a repetition of expense, I conclude that

the persons interested in the thirty cases were all intended to have been included in the indulgence ; but I take the precaution, as nineteen cases were only specified in the letter of the secretary, to solicit the orders of the Court.

From the Register of the Western Provinces to the Judge of Zillah Moradabad, dated 10th May, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 29th ultimo, in reply to the Court's orders of the 15th.

2. With regard to the eleven suits in which a decision has been already passed, the Court deem it desirable that every means should be tried of ascertaining the nature of the judgment already passed, previous to the adoption of any further measures which would be attended with much inconvenience ; you will be pleased therefore to make strict inquiry among the parties and their vakeels, the moonsiff himself and the books of his office, for a copy or notes containing the substance of the decree. If such should be obtainable the moonsiff would be enabled from them to draw up another decree. It would also be advisable, where such documents are not to be found, that the parties and vakeels be questioned as to the nature of the decree passed, and if they agree on this point, the moonsiff may draw up his decree from their statement. If after every method has been tried some cases should still remain, regarding the judgment in which no information can be obtained or any doubt may remain, you will be pleased to report specially to this Court regarding them ; stating fully the measures which you have adopted ineffectually with the view to discover the contents of the decree.

Fram the Judge of Zillah Moradabad to the Register of the Western Provinces, dated 23rd July, 1834.

With reference to my letter of the 12th January, your letter of the 13th March, my letter of the 29th April, and your reply of the 10th May, 1833, I do myself the honor to state, that of the eleven plaintiffs in the eleven cases decided, the records of which were burnt in the cutcherry of the moonsiff of Rajpoorah, one plaintiff only, a bunyah named Heeraloll, who had obtained a decree for 129 rupees, half anna, has come forward to solicit that he may be permitted to institute a suit anew, or enforce the decree already obtained.

2. On his presenting a petition to that effect, I directed the defendant to attend, with a view to making the sort of inquiry pointed out in your letter of the 10th May, 1833. One defendant is dead ; the other, his son, states that the case was at issue between his father, who is dead, and the plaintiff rather than with himself, that the demand was an unjust one, and that it was his intention to have

appealed against the decision, when the papers being burnt, and he having no copy of the decree, he was unable to do so.

3. This defendant was supposed with his father to have made the attack on the cutcherry of the moonsiff, and to have burnt the records ; they were tried on the charge by the magistrate of Suheswan, but acquitted.

4. Of the eleven cases alluded to in my letter as decided, decrees had been passed in six, in two cases the amount decreed has been realized by the parties ; in one the plaintiff holds the decree, a copy of which he has obtained ; in two cases the parties have not appeared though notice was served on them : in the case of Heeraloll, versus Kureemoolla and Shumsooddeen, I beg to be favored with the orders of the Court. A copy of my proceeding of the 14th ultimo is herewith forwarded.

From the Register of the Western Provinces to the Judge of Zillah Moradadad, dated 8th August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 23rd ultimo, regarding the records of the moonsiff's office destroyed by fire in August, 1832.

2. With regard to the case of Heeraloll versus Kureemoolla and another, the Court conclude that no note or memorandum of the moonsiff's decision has been found, and that your present reference is made in pursuance of the Court's orders of the 10th May, 1833 : previous however to passing further orders, the Court request that you will ascertain, and state for their information, the date of the decree in question, for the purpose of determining whether the period of appeal had elapsed previous to the occurrence.

From the Judge of Zillah Moradabad to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 25th August, 1834.

I do myself the honor to acknowledge the receipt of your letter of the 8th instant, relative to the case of Heeraloll, versus Kureemoolla and others, the records of which were destroyed by fire in the office of the moonsiff of Rajpoorah in August, 1832.

2. In reply I beg to state that I had ascertained that there were no notes of the case in question,or memorandum of the moonsiff ; that a decree was passed in favor of the plaintiff appears only by a list furnished after the occurence from a memorandum which was in the hands of a vakeel of the moonsiff's court : the decree was passed on the 25th August, and the attack on the cutcherry of the moonsiff was made on the 29th of the same month, four days therefore had only elapsed from the date of the decree when the papers were destroyed.

To the Judge of Zillah Moradabad, dated 5th September, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo, in reply to the Court's order of the 8th of the same month.

2. As it appears that a decision was actually passed by the moonsiff in the case in question in favor of the plaintiff, you will be pleased to cause the moonsiff to draw up a decree to that effect, and having duly attested it to deliver copies to the parties agreeably to the regular practice of the court. It will be unnecessary and probably impracticable to mention the grounds of the decision, but if the moonsiff is able to do so, there is no objection to this recording them.

Any party considering himself aggrieved by the decision will be left to seek redress by appeal.

The Presidency Court, on the 3rd October, 1834, *concurred in this construction.*

September 5, 1834.

To the Officer in charge of the office of Judge of Rungpore, dated 5th September, 1834.

No. 897.

1793. Reg. XLV. Sec. 2. 1832. Reg. VII. Sec. 16.

I am directed by the Court to forward to you the accompanying copy of a letter from the judge of Zillah Dacca, dated the 21st ultimo, No. 313, *requesting to be informed, in consequence of a difference of opinion with you, whether "lands paying revenue can be sold in satisfaction of decrees, being putnee talooks and other saleable tenures as contemplated in Section* 16, *Regulation VII.* 1832, *without a report under Regulation XLV.* 1793, *Section* 2, *to the commissioner of revenue."*

2. *The Court direct me to refer you to construction No.* 349 *of the printed constructions, and to observe that as the public sale of putnee and dur-putnee tenures in execution of decrees must be conducted by the collector, the report required by Section* 2, *Regulation XLV.* 1793, *must be made to the commissioner of revenue.*

September 5, 1834.

See Act IV. 1846.

Extract from a Letter from the Judge of Zillah Dacca, to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 23rd June 1834.

No. 898.

1806.
Reg. XVII. Sec. 8.
Construction No. 80, March 14th, 1811, and No. 105, June 25th, 1812.

Para. 5. I also beg as a rule of practice to be informed if a mortgagee can, in the opinion of the Court, be admitted to sue for recovery of the amount mortgage money, without showing good cause why he does not sue for the property mortgaged ; also generally whether he has his election between them, to sue for whichever he may think most to his advantage.

To the Judge of Zillah Dacca, dated 5th September, 1834.

In continuation of my letter of the 11th July last, No. 1303, I am directed by the Court to communicate to you, in reply to the question contained in the 5th paragraph of yours of the 23rd June last, their opinion and that of the Western Court of Sudder Dewanny Adawlut, that if the mortgage in question be of the nature of a conditional sale, and the money be not repaid, the lender, unless good and sufficient cause be shown, can only sue for possession of the property pledged, and has not the election of suing to recover the money or to be put in possession of the property, as he may deem most advantageous to his own interest.

September 5, 1834.

Select Reports, Vol. VII., page 92, 12th April, 1842.

To the Judge of Zillah Furruckabad, dated 26th September, 1834.

No. 901.

Deputation of vakeels to make local inquiries.

I am directed by the Court to acknowledge the receipt of your letter of the 15th instant, requesting to be informed whether you are at liberty to depute vakeels of your court to make local inquiries as ameens.

2. In reply I am directed to inform you that the Court are aware of no Regulation which prohibits the practice, but they consider the measure as of doubtful expediency in general.

The Presidency Court, on the 24th October, 1834, *concurred in this construction.*

September 26, 1834.

See Circular Order, No. 173, 5th May, 1852.

To the Judge of Saharunpore, dated 26th September, 1834.

No. 902.

It is not competent to a court to attach the salary of a military officer in execution of a decree of court.

I am directed by the Court to acknowledge the receipt of your letter of the 12th instant.

2. In reply I am directed to inform you that you are not competent to attach the salary of Arthur Hall, Esquire, of the 5th Cavalry, in satisfaction of a decree of your court.

The Presidency Court, on the 24th October, 1834, *concurred in this construction.*

September 26, 1834.

See No. 1175.

To the Judge of Zillah Dacca, dated 3rd October, 1834.

No. 904.

1814.
Reg. XXVIII. Sec. 5.

I am directed by the Court to acknowledge the receipt of your letter of the 18th ultimo, No. 351, and in reply to inform you, that a plaintiff originally admitted to sue as a pauper under Section 5, Regulation XXVIII. of 1814, who may subsequently, while the suit is pending, become possessed of property of sufficient amount to nullify his plea of poverty, may, in the opinion of the Court, be called upon to pay up the original stamp duty in lieu of the institution fees, &c. under the penalty, in the event of his neglecting to do so, of being nonsuited.

The Western Court, on the 7th November, 1834, *concurred in this construction.*

October 3, 1834.

Extract of a Letter from the Officiating Commissioner of Circuit for the 19th Division to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 16th September, 1834.

No. 905.

1793.
Reg. XXXVI.
1812.
Reg. XX.

I beg strongly to urge the propriety of empowering one of the assistants stationed at Balasore to receive and register deeds presented to him by the inhabitants of that neighbourhood.

To the Officiating Commissioner of Revenue and Circuit 19th Division, dated 3rd October, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 16th ultimo, No. 984, and its enclosure, and in re-

ply ● inform you that as Balasore is not the sudder station of a district, a registry office cannot, under the existing Regulations, be established there.

October 3, 1834.

See Act XXX. 1838.

From the Register of the Western Provinces to the Register of the Presidency Court, dated 10*th October*, 1834.

No. 908.

1831.
Reg. V. Sec. 26, Clauses 3 and 4.

I am directed by the Court to transmit, for the purpose of being laid before the judges of the Presidency Court, the annexed copy of a letter from the judge of Meerut of the 2nd instant, and its English enclosure.

2. With reference to the concluding paragraph of the judge's letter, the Court propose to inform him that the respective powers of judges and commissioners, regarding the suspension of moonsiffs, are distinctly laid down in clauses 3 and 4, Section 26, Regulation V. 1831 : clause 3 expressly vests the judge with the authority to suspend on urgent necessity ; clause 4 of the same Section also defines the power of a commissioner to extend to recommending the removal of a moonsiff, with the proviso that the recommendation shall be submitted to the Sudder Dewanny Adawlut through the judge : as the Regulations do not therefore vest the commissioner with the power to suspend, the Court are of opinion that the commissioner in the case in question exceeded his powers, and should the Presidency Court concur, this opinion will be communicated to that officer and to the session judge.

The Presidency Court, on the 7*th November*, 1834, *concurred in this construction.*

October 10, 1834.

To the Officiating Judge of Zillah Sylhet, dated 17*th October*, 1834.

No. 910.

Course adopted in regard to signing a decision left unsigned by the late judge of the court in which it was passed.

I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, requesting to be informed whether, under the circumstances stated, you could sign a decision left unsigned by the late judge, Mr. Campbell.

2. In reply I am directed to inform you that you should examine the vakeels of the parties in whose presence the decision was given, and the person who wrote it out, and compare it with any note book in the handwriting of Mr. Campbell which may be forth-

coming ; and that, unless the result of these inquiries should lead you to doubt the genuineness of the decision, you should sign it—making a short memorandum explaining why it was signed by you.

October 17, 1834.

See Act XII. 1843.

From the Judge of Zillah Backergunge to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 25th August, 1834.

No. 912.
1800.
Reg. I.

I have the honor to nominate, for the approval of the Court of Sudder Dewanny Adawlut, Rajchunder Chuckerbutty to act as the guardian of Mohesh Chunder Nag, a minor and heir to Gopee Kishen Nag, and Bhawanee Pershad Banerjee to act as guardian to Mussummaut Hur Mohunee, minor and heiress to Ram Kishen Chuckerbutty.

2. Copies of two proceedings, dated 26th July, 1834, and two statements prescribed by the Court's Circular Orders of the 14th December, 1832, are herewith transmitted.

3. In forwarding the above documents to the Court, I beg leave to bring to its notice that the estates which are stated to belong to these minors, are tenures paying revenue to zemindars and others, and not immediately to Government.

4. Under these circumstances, I should have declined nominating guardians to the minors under the provisions of Regulation I. 1800, (which I had understood to provide for the appointment of guardians only to heirs of joint undivided estates, paying revenue immediately to Government,) had not the practice of the former judges of this court been in opposition to my opinion on this subject.

5. I shall feel obliged therefore by your obtaining the Court's orders on this point for my future guidance.

To the Judge of Zillah Backergunge, dated 24th October, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 25th August last, and its enclosures, and in reply to inform you that the Court, being of opinion that there is nothing in the provisions of Regulation I. 1800, which restrict its application to the case of minor heirs of joint undivided estates paying revenue immediately to Government, sanction the appointment of the following guardians :

1. Rajchunder Chuckerbutty to be guardian of Mohesh Chunder Nag, minor heir of Gopee Kishen Nag.

2.* Bhawanee Pershad Banerjee to be guardian of Mussummaut Hur Mohunee, minor heir of Ram Kishen Chuckerbutty.

October 24, 1834.

By a resolution, dated 14th December, 1849, nominations of guardians are to be submitted for the information of the Court, and not for their sanction.

From the Judge of Zillah Furruckabad to the Register of the Western Provinces, dated 11th November, 1834.

No. 915.

1831.
Reg. V. Sec. 5, Clause 1.

I have the honor to request the instructions of the Court on the following points :

1*st.*—Deokenundun and Lawaram, plaintiffs, and Nundram, defendant, all reside in the village of Dhukraee, of which the revenue jurisdiction belongs to Furruckabad and the police and civil to Mynpooree.

2*nd.*—Plaintiffs have sued defendant summarily for rupees forty-seven for rent, and obtained a decree from the collector at Furruckabad.

3*rd.*—Nundram has petitioned that he intends to prosecute a suit in the civil court to reverse the decision, but that the moonsiff of Chibramowe, in this district, declines to receive the suit, on the grounds that neither of the parties reside, nor has the cause of action arisen, within his jurisdiction.

4*th.*—I conceive the suit to be cognizable in this district, because the summary decision, which is the cause of action, arose within its limits, and that the judge might at once receive the suit.

5*th.*—But by Section 10, Regulation VII. 1832, these suits are declared cognizable by moonsiffs, and Nundram of course prefers the moonsiff's court, from the smaller expense which will be incurred.

6*th.*—As neither party reside within this district, the question is by what moonsiff is the suit cognizable ? Is it to be considered in that moonsiff's jurisdiction in which the collector's office is situated, or, as the collector has authority over the whole district, is the suit receivable by any moonsiff within its limits—the residence of defendant furnishing no guide ?

7*th.*—The present plaintiff, Nundram, prefers the moonsiff of Chibramowe, which is only three cos from his village, Dhukraee, whereas that village is thirteen cos from the city of Furruckabad and sixteen cos from Mynpooree.

To the Judge of Zillah Furruckabad, dated 21*st November,* 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 11th instant, requesting the opinion of the Court regarding a point of jurisdiction in certain cases.

2. In reply I am directed to inform you that the case mentioned in your communication should be heard by the moonsiff of the Mynpooree zillah, in which jurisdiction the cause of action arose ; the civil authorities of zillah Furruckabad, having no jurisdiction in the village of Dhukraee, cannot take cognizance of the plaintiffs' claim.

The Presidency Court, on the 5th December, 1834, *concurred in this construction.*

November 21, 1834.

See No. 969 and Act VI. 1853.

From the Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewannny Adawlut, dated 8th September, 1834.

No. 916.

1806.
Reg. II. Sec. 5.

The Circular Order of the 17th February, 1816, (No. 50,) which contains directions as to the method of preserving lands attached for sale in satisfaction of decree from the sheriff of Calcutta, makes no reference to lands or property attached under Section 5, Regulation II. 1806, though for obvious reasons the precaution in such cases is equally necessary. This Court has been moved to attach certain indigo factories and indigo, the property of Mr. E. K. Hume ; but unless some precaution of this nature be observed, there can be no difficulty in his obtaining, by some fiction of law, a counter-attachment from the Supreme Court ; and then the prosecutors may look in vain to the attached property for the execution of the decree. I request you will bring this letter to the notice of the Court without delay, and I solicit instructions to depute an officer to remain on the spot and hold the property in attachment till countermanded. Under the provisions of the Regulation I do not feel authorized to take this step without authority of the superior court.

To the Judge of Zillah Dacca, dated 21st November, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 8th September last, No. 333, and in reply to the question therein proposed, to inform you that the same course should be pursued in cases of attachment under Section 5, Regulation II. 1806, as when the attachment is made in execution of a decree, the ulterior object in both cases being the same.

The Western Court, on the 19*th December*, 1834, *concurred in this construction.*

November 21, 1834.

See Circular Order No. 114, dated 5th September, 1834.

From the Judge of Allahabad to the Register of the Western Provinces, dated 28*th November*, 1834.

No. 917.

Power of courts to return original powers of attorney after attesting them.

I beg to submit the following points for the orders of the superior Court.

2. A general power of attorney written on stamped paper of four Rupees, as required in Schedule A, Regulation X. of 1829, has been presented for the purpose of being attested, with a request that it may be given back to the party after acknowledgment. The practice of this court hitherto has been to retain such mookhtarnamahs, allowing individuals to take copies of them on the same stamped paper as prescribed for the original deed.

3. It appears to me that this practice subjects individuals to very unnecessary expense, and I beg to submit whether such powers of attorney may be given back to the parties after being duly attested or acknowledged !

To the Judge of Allahabad, dated 28*th November*, 1834.

I am directed by the Court to acknowledge the receipt of your letter of this date.

2. In reply I am directed to inform you that you are at liberty to return the original powers of attorney described in your letter to the parties filing them, at your own discretion.

The Presidency Court, on the 2*nd January*, 1835, *concurred in this construction.*

November 28, 1834.

To the Judge of Zillah Dacca, dated 28*th November*, 1834.

No. 918.

Collector not competent to issue a perwaneh to a moonsiff, to tell proporty attached for arrears of revenue.

I am directed to acknowledge the receipt of your letter of the 6th instant, No. 380.

2. The Court, understanding your question to be whether a collector can, without application to the judge, issue a perwaneh to a moonsiff to sell personal property and houses attached by his nazir,

for arrears of public revenue, direct me to communicate their opinion that he is not competent to do so.

The Western Court, on the 26th December, 1834, *concurred in this construction.*

November 28, 1834.

See No. 989.

No. 919.

1831.
Reg. V. Sec. 5.
1814.
Reg. XXVIII. Sec. 4.

From the Judge of Zillah Juanpore to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 25th November, 1834.

I request you will be pleased to obtain for me the opinion of the Sudder Dewanny Adawlut, regarding the power of a moonsiff to try suits, instituted for the purpose of recovering damages, said to have been sustained from the lands of the plaintiff having been kept out of cultivation by the opposition of the defendant having prevented the plaintiff from receiving his customary share of water to irrigate his fields. Section 5, Regulation V. of 1831, declares that the cause of action shall be for money, or for real or personal property, or for the value of such real or personal property, and would imply that the thing sued for would not comprehend damages of the nature above-mentioned ; but the Regulation also defines what damages the moonsiff should *not* try, and these are damages for alleged personal injuries, or for personal damages of any nature whatever, and under this definition cannot be included the loss which a person might sustain from not being allowed to cultivate his land as a "khoodkast" ryot, or from the loss he would sustain from the crops being scanty, occasioned by being deprived of the loss of his usual supply of water. The possessors of "seer" lands might also institute suits of this description. I have further to request the Court's construction of Section 4, Regulation XXVIII. of 1814, with respect to claims for damages of the nature above stated when instituted by paupers.

To the Judge of Zillah Juanpore, dated 5th December, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo.

2. In reply I am directed to inform you, that suits brought by khoodkast ryots for damages sustained in consequence of ejectment, and claims for damages arising from being deprived of water for the purpose of irrigation, cannot be considered as coming within the prohibition contained in clause 2, Section 5, Regulation V. 1831, which

applies only to suits for damages of a personal nature, and not to those for damage done to property ; such suits are therefore cognizable by moonsiffs. With regard, however, to the first description of suits, I am directed to refer you to the Circular Order of the 15th November, 1833, which declares such claims cognizable by the collector, under Regulation VIII. 1831.

3. In like manner the provisions of Section 4, Regulation XXVIII. 1814, do not apply to suits of the nature described by you, the prohibition contained in them extending only to suits for personal damages.

The Presidency Court, on the 26th December, 1834, concurred in this construction.

December 5, 1834.

See Section 8, Act VI. 1843.

To the Officiating Judge of Zillah Chittagong, dated 12th December, 1834.

No. 921.

1793.
Reg. XLV.
1832.
Reg. VII. Sec. 16.

I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo, No. 34, and in reply to refer you to construction No. 349,* of the printed Construction Book, and to inform you that the Court are of opinion that the shikmee and other talooks alluded to by you should be sold in execution of decrees in the same manner as putnee talooks.

The Western Court, on the 23rd January, 1835, concurred in this construction.

December 12, 1834.

See Act IV. 1846.

No. 922.

1814.
Reg. XXVIII. Sec. 11, Clause 3.

The Judge of Zillah Etawah, referring to clause 3, Section 11 Regulation XXVIII. 1814, requested to be informed whether, in the event of a pauper and his sureties both absconding, the property of the latter can be sold in satisfaction of the costs and expenses awarded against the former in the decree.

The Court of Sudder Dewanny Adawlut for the Western Provinces held, that in the present state of the law the sureties for paupers are liable only to the penalty of imprisonment for six months prescribed by clause 3, Section 11, Regulation XXVIII. 1814, in

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* See also Construction No. 897.

the event of the principals not appearing, and that the amount of costs due from the principal cannot be levied on the goods of the surety.

The Presidency Court, on the 26th January, 1835, concurred in this construction.

December 19, 1834.

Abstract of a Letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut, dated 9th January, 1835.

No. 925.

In case of fraudulently filing a petition in the civil court, the judge cannot commit for trial, but should refer to the magistrate.

The Court ruled that in the case of a defendant charged with presenting or filing a petition in the civil court with the fraudulent intent of obtaining money already paid to him, the judge is not competent to commit the accused for trial, but that after completing the investigation as far as may be in his power, he should transmit the papers to the magistrate, stating his opinion on the case, and leaving the magistrate to commit or not as may appear to him advisable.

The Presidency Court, on the 27th March, 1835, concurred in this construction.

January 9, 1835.

See No. 1225.

To the Judge of Zillah Mynpooree, dated 16th January, 1835.

No. 927.

1803. Reg. III. Sec. 16, Clause 7.

1799. Reg. V. Sec. 7.

I am directed by the Court to acknowledge the receipt of your letter of the 22nd ultimo, regarding the manner in which unclaimed property sent in to the magistrate by the police officers should be disposed of.

2. In reply, I am directed to state that the Court concur with you in the opinion that the provisions of clause 7, Section 16, Regulation III. 1803,* apply only to the property of persons dying intestate when no heirs are forthcoming; it appears to the Court more advisable that property sent in by the police should, agreeably to the general practice, be disposed of by the magistrate than that the time of the judge should be unnecessarily taken up in performing such duty.

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* Corresponding with Section 7, Regulation V. 1799.

The Presidency Court, on the 6th February, 1835, concurred in this construction.

January 16, 1835.

See Circular Order, No. 219, 15th December, 1837.

To the Additional Judge of Zillah Dacca, dated 16th January, 1835.

No. 928.

1825.
Reg. VII. Sec. 5, Clause 1.

I am directed to acknowledge the receipt of your letter of the 29th ultimo, No. 467, and in reply to inform you that it has been ruled that inadequacy of price alone is not a legal ground for annulling an auction sale, and to communicate to you the Court's sanction to review the order passed by you in the case of Ram Ruttun Chowdry, plaintiff, versus Kishen Chunder Doss, defendant. Revd. H. Shepperd, claimant.

January 16, 1835.

See No. 829.

To the Judge of Zillah Midnapore, dated 23rd January, 1835.

No. 930.

1831.
Reg. VIII. Sec. 8.

I am directed by the Court to acknowledge the receipt of your letter of the 3rd instant, and in reply to inform you that in suits instituted under Section 8, *Regulation VIII.* 1831, *the full fees of the pleaders must be deposited, the pleadings must be filed, and all the forms enjoined for the conduct of regular suits must be observed. The only exemption contemplated by the Section in question is the relinquishment, on the part of Government, of three-fourths of the stamp duty levied in lieu of the institution fee, with a view of inducing parties to institute regular instead of summary suits.*

The Western Court, on the 27th February, 1835, concurred in this construction.

January 23, 1835.

Obsolete as to pleaders' fees, see Act I. 1846.

Extract of a Letter from the Officiating Judge of 24-Pergunnahs to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 21st January, 1835.

No. 932.

1812.
Reg. XVI.

Para. 1. In the execution of *ex parte* decrees of the Court of Requests under Regulation XVI. 1812, I beg the construction of the Sudder Dewanny Adawlut whether it is incumbent on me or not to issue the notice prescribed by clause 8, Section 15, Regulation XXVI. 1814? In the foregoing Regulation it is laid down that the judge of 24-Pergunnahs proceed to execute the judgment in the mode prescribed by the existing Regulations for executing his own decrees.

2. Another point is whether, both parties being Europeans, I can do more than back any process that may issue from the Court of Requests; that is, if the plaintiff, a European British subject, applies in the usual form for execution against another individual, also a European British subject, can I proceed in the case?

To the Officiating Judge of 24-Pergunnahs dated 6th February, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo, and in reply to inform you that in executing decrees of the Court of Requests under Regulation XVI. of 1812, you should proceed in all respects in the same manner as you would in executing a decree of your own court, and to refer you to the Circular Order of the 25th January, 1833, (No. 79, of volume II. new edition,) from which you will perceive that the fact of both parties being Europeans, does not in any way affect your cognizance of the matter.

February 6, 1835.

See Act XXXIII. 1852.

From the Officiating Judge of Zillah 24-Pergunnahs to the Register of the Court of Sudder Dewanny Adawlut, dated 21st January, 1835.

No. 933.

1825.
Reg. VII. Sec. 2, Clause 2.

A practice has prevailed in this zillah, of executing sales of mal-goozaree houses, gardens, and orchards through the collector: in other zillahs I disposed of that kind of property through the moonsiffs. The wording of the Regulation itself is doubtful. In clause 2, Section 2, Regulation VII. 1825, the connecting conjunction is used; and in clause 3 of the same Section the disjunctive; in the 3rd

Section "or" is again used, but the preamble has "and." I think from the whole tenor of the Regulation that it was intended to sell houses with the parcels of grounds on which they are situated, although such ground paid rent, as well as gardens and orchards so circumstanced, by means of the nazir or moonsiff; and for the facility of execution of decrees such a mode is highly desirable, to prevent litigation. I beg the orders of the Sudder Dewanny Adawlut on the subject. Ryots' houses, which are included in their tenure and jumma, do come within Section 4 of this Regulation; a muhlool is disposed of in this district through the collector.

To the Officiating Judge of Zillah 24-*Pergunnahs, dated* 20*th February*, 1835.

I am directed to acknowledge the receipt of your letter of the 21st ultimo, and in reply to inform you that the Court, having considered the wording of the preamble, and of the second clause of Section 2, Regulation VII. 1825, in connection with that of the third clause of Section 2, and of the first clause of Section 3, are of opinion that houses, gardens, orchards, and small portions of land exempt from public assessment, are to be sold in the same manner as personal property by the civil courts; but that larger portions of land exempt from payment of revenue, and all land paying revenue to Government, however small, not being orchards or gardens, must be sold through the revenue authorities.

The Western Court, on the 20*th March*, 1835, *concurred in this construction.*

February 20, 1835.

See Act IV. 1846.

To the Judge of Zillah Jessore, dated 20*th February*, 1835.

No. 934.

1830.
Reg. V. Sec. 5.

In reply to your letter of the 7th instant, I am directed by the Court to communicate to you their opinion that a ryot cannot claim a settlement of his account under Section 5, Regulation V. 1830, till "the expiration of the period of his contract," and that if the ryot asserts that the planter is indebted to him for indigo plant, and refuses to pay him what he demands, the ryot must seek redress by a regular suit.

The Western Court, on the 13*th March*, 1835, *concurred in this construction.*

February 20, 1835.

See Nos. 873 and 1130.

To the Judge of Zillah Tirhoot, dated 20th February, 1835.

No. 935.

On the subject of the distribution of sums of money in deposit in Court, when the amounts may be insufficient to meet the entire demands.

I am directed by the Court to acknowledge the receipt of your letter of the 17th ultimo, requesting to be informed whether priority of application for attachment of property in execution of a decree, gives a decree-holder a right to have his decree satisfied in preference to other claimants.

2. In reply, I am directed to forward for your information the accompanying copy of a letter from the Register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated the 31st July last, and of this Court's reply of the 22nd August.

From the Register of the Western Povinces to the Register of the Pesidency Court of Sudder Dewanny Adawlut, dated 31st July, 1834.

As it appears that much diversity of opinion and practice prevails with regard to the rules for distributing, in liquidation of claims under various decrees of court, sums of money which may be in deposit and are inadequate to meet the whole demand, the Court direct me to request that you will bring the subject to the notice of the judges of the Presidency Court.

2. The Court understand the present practice, under the sanction of the Presidency Court, to be as follows ; the mere priority of date gives no preference to a decree, but that all decrees under which process of attachment has been issued, provided they are dated previous to the distribution of the deposit, entitle the holders to share in proportion to the amount of their claim ; with the exception of cases in which a *bonâ fide* mortgage of the deposit in favor of a particular claim may exist. The Court do not think it necessary to enter into a discussion as to the propriety of the practice, but they are of opinion that some rule on this head should find a place in the civil Regulations now under preparation by Mr. Millett, to ensure uniformity of practice, especially among the native judicial officers, who will look to that enactment, when prepared, as their sole guide and manual. The Court have been led to mention this subject in consequence of a reference which has been made to them ; from this communication it would appear that the above rule of practice is by no means generally known even among the European functionaries.

To the Register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated 22nd August, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 31st ultimo, on the subject of the diversity of opinion and practice which prevails with regard to the rules for distributing, in liquidation of claims under various decrees of court, sums of money

which may be in deposit, and are inadequate to meet the whole demand.

2. In reply, I am directed to observe that the practice, as generally followed, appears to be as stated by you, and that your letter will, as suggested by the Western Court, be laid before Mr. Millett, with a view to the insertion of some provisions to meet the difficulty, in the Regulation he is now preparing.

February 22, 1835.

Modified by Circular Order No. 64, 2nd February, 1849; see also Construction No. 1056.

From the Register of the Western Provinces to the Register of the Presidency Court, dated 6th March, 1835.

No. 936.
1793.
Reg. XVI. Sec. 3.

I am directed to request that you will submit, for the opinion of the judges of the Calcutta Court, the following point of law which has arisen in this court.

2. Under the provisions of Section 3, Regulation XVI. 1793, a judge is empowered to refer to a single arbitrator any suit for money or personal property, the amount or value of which may not exceed 200 rupees ; suits exceeding that amount cannot be referred by a judge to a single arbitrator. A doubt has arisen whether this restriction applies to summary suits for arrears of rent or merely to regular suits. The Court are of opinion that under the terms of the Regulation, which are general, the restriction must be construed to apply to suits of all descriptions. Before acting upon this construction, however, they are desirous of learning the opinion of the judges of the Calcutta Court.

3. The Court observe that the above restriction is not intended to apply to suits referred to private arbitration by individuals under Section 3, Regulation VI. 1813.

The Presidency Court, on the 27th March, 1835, *concurred in this construction.*

March 6, 1835.

Extract from a Letter addressed to the Officiating Judge of Zillah Chittagong, dated 20th March, 1835, *in reply to his letter of the 4th March,* 1835.

No. 938.
1793.
Reg. V. Sec. 21.
Reg. IV. Sec. 10.

Para. 2. *In reply to your 2nd paragraph I am directed to inform you, that in the event of an appellant neglecting for a period of six weeks to do any act required, you are at liberty, if*

Circular Order, 5th November, 1812.

he has appointed a vakeel, to call upon him to show cause for the neglect, and strike off the appeal in the event of satisfactory reason not being given; but that if the appellant is not in attendance, either in person or by vakeel, the notice prescribed by the Circular Order of the 5th November, 1812, *must be served upon him requiring him to show cause why his appeal should not be struck off.*

March 20, 1835.

See Act XXIX. 1841.

Proceedings of the Western Court under dates 7th November, 1834, *2nd January and 3rd April,* 1835, *and of the Calcutta Court under dates 28th November,* 1834, *20th February and 1st May,* 1835.

No. 942.

1805. Reg. II. Secs. 2 and 3. 1795. Reg. XXII. Sec. 35, Clause 10.

The following questions were put by the judge of zillah Goruckpore, on the 27th October, 1834:

First.—Does the limitation prescribed in Regulation II. 1805, apply to a claim for a share of an ancestral undivided estate, still held by a descendant of the family, in which estate the plaintiff had no manner of possession, either as a sharer of a specific portion, or as receiving a maintenance therefrom, during a period exceeding twelve years antecedent to the institution of the suit, no good cause (minority and the like) of course being shown to excuse the delay?

Second.—Can a person who still holds, or within twelve years has held, possession of a portion of land in an ancestral undivided estate as maintenance, claim to have the estate divided, and his specific share thereof allotted to him? or can the circumstance of his having been content with a maintenance, and not having received a specific portion for a period exceeding twelve years, bar his claim to a separate possession of his own share whenever he thinks fit to demand it?

The Court of Sudder Dewanny Adawlut for the Western Provinces, in concurrence with the opinion of the judges of the Court in Calcutta, ruled, in reply to the first question, that the limitation prescribed in Regulation II. 1805, was applicable to claims of the nature therein specified.

With reference to the second question, the judges of the Western Court and the majority of those of the Calcutta Court, were of opinion that, according to the spirit of clause 10, Section 35, Regulation XXII. 1795, the person who had agreed to receive a maintenance, or, as the Regulation expresses it, an allowance, either in money or in land, from the principal putteedar, in consideration of

his right, has no claim to personal possession or management of any part of the estate.

April 3, 1835.

See Sudder Dewanny Reports, 21st September, 1845, page 91, vol. IV. and Sudder Dewanny Reports, North-Western Provinces, 28th March, 1849, page 70.

Extract of a Letter from the Secretary to the Government of Bengal to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 7th April, 1835.

No. 943.
1822.
Reg. VI. Sec. 3, Clause 2.

I am directed by the Honorable the Governor of Bengal to acknowledge the receipt of your letter dated the 6th ultimo, with its enclosures, relative to the construction of clause 2nd, Section 3, Regulation VI. 1822, and to inform you, in reply, that His Honor concurs in opinion with Mr. Braddon and the judges of the Sudder Court at Allahabad.

2. The whole tenor of Regulation VI. 1822, as far as it relates to the farming of wards' estates, is, the Governor observes, declaratory ; and it was avowedly enacted to remove doubts on that score, which the Legislature in no wise admits to have been well founded. Clause 2nd, Section 3, when taken in its natural connection with the second period of the preceding clause, must be held to include all the parties whose farms were retrospectively declared to be to " all intents and purposes legal and valid."

Mr. Braddon's Minute.

Regulation VI. 1822 was enacted to remove all doubts of the legality of a system, which has prevailed for a period of many years. Clause 1 of Section 3 declares all antecedent farms, made under the authority of the Court of Wards, legal and valid. Clause 2 of that Section renders individuals holding such tenures subject to the same rules and regulations as are applicable to other persons holding farms under the collectors of the land revenue, and although this clause is not so clearly worded as it might have been, I am of opinion that it was intended to have a retrospective as well as prospective operation ; in fact, had it been otherwise it would have been tantamount to declaring any sale that had already taken place liable to be annulled, upon the complaint of the defaulter, whose property might have been sold by the collector for the recovery of the balance due from him.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 6th February, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 23rd ultimo, enclosing minutes of the judges of the Calcutta Court, regarding a construction of Regulation VI. 1822.

2. In reply, I am directed to state that the Court concur in the view of the enactment taken by Mr. Braddon. Although the farm was taken previous to the passing of the Regulation, it was rendered legal and valid by clause 1, Section 3; and by clause 2 of the same Section, the farmer became liable to the rules applicable to other persons holding farms from the collectors, and among the rest to have his estates sold for arrears of rent. The sale, it is observed, took place after the Regulation had been passed.

Extract of a Letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 10th April, 1835.

No. 944.

1831. Reg. IX. Sec. 2, Clauses 2 and 4.

I am directed by the Court to transmit, for the perusal of the judges of the Calcutta Court, the annexed copy of a minute* of Mr. Ewer, one of the judges of this Court, containing his opinion regarding a point arising out of the provisions of Regulation IX. 1831.

2. The other judges of the Court are of opinion that no final decision of the Court can be passed against a respondent until he has been summoned in the usual course.

The Presidency Court, on the 1st May, 1835, *concurred in this construction.*

April 10, 1835.

To the Judge of Zillah Mynpooree, dated 24th April, 1835.

No. 945.

Circular Order, 24th January, 1834, No. 106.

I am directed by the Court to acknowledge the receipt of your letter of the 6th February last, regarding the Circular Order of the 24th January, 1834.

2. In reply I am directed to inform you that you appear to have rightly understood the Circular Order; no stamp duty would be

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* The view taken in the minute having been over-ruled, it has not been considered necessary to print that document.

leviable in pauper cases instituted in the judge's court and afterwards referred to moonsiffs for decision.

The Presidency Court, on the 29th May, 1835, concurred in this construction.

April 24, 1835.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 24th April, 1835.

No. 946.
1831.
Reg. VIII.

I am directed by the Court to send, for the perusal of the judges of the Calcutta Court, the annexed copies of a letter from the Board of Revenue under date 3rd instant, and its enclosure.

2. With reference to the spirit of the provisions of Regulation VIII. 1831, the Court are of opinion that it was the intention of the Legislature to render suits of the nature described by the collector of Banda cognizable by the revenue authorities ; and this course appears the more advisable mode of proceeding from the nature of the points which would come under investigation before the officer entrusted with the duty of deciding them. Previously to replying to the Board of Revenue, the Court are desirous of learning the opinion of the Calcutta Court on the point in question.

From the Secretary of the Sudder Board of Revenue to the Register of the Western Provinces, dated 3rd April, 1835.

I am directed by the Board of Revenue to request that you will lay before the Court the accompanying letter from the collector of Banda, submitting a question regarding jurisdiction in summary suits, on which the Board beg to be favored with the Court's opinion.

From the Collector of Zillah Banda to the Secretary to the Sudder Board of Revenue, Allahabad, dated 25th March, 1835.

I request you will obtain for me the opinion of the Sudder Board of Revenue on the following question.

2. Are summary suits instituted by malgoozars, against putwaries and other native agents employed by them in the management of their estates, under Section 37, Regulation XXVIII. 1803, cognizable by the civil courts ; or is the jurisdiction in such cases transferred by Regulation VIII. 1831, to the revenue authorities ?

The Presidency Court, on the 22nd May, 1835, concurred in this construction.

See Sudder Dewanny Reports, 20th April, 1852, page 288.

From the Judge of Zillah Juanpore to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 18th April, 1835.

No. 947.

1831.
Reg. V. Sec. 22.
1832.
Reg. VII. Sec. 7.

By Section 22, Regulation V. 1831, principal sudder ameens are authorized to execute their own decrees "under the general rules prescribed for the execution of decrees passed by the zillah and city judges." Under this authority the principal sudder ameen always issued orders for the confinement of defendants in the execution of decrees, without requiring any sanction from the judge. Moonsiffs by the above Regulation, Section 11, were prohibited from executing their decrees without first receiving the sanction of the judge. This mode appears to have been considered objectionable, and, by Section 7, Regulation VII. 1832, the Section above quoted was repealed, and permission was granted to the moonsiffs to execute their own decrees without reference to the judge, provided that no defendant be confined without the sanction of the judge.

2. It is quite clear to me that the intention in framing this Regulation was to give an increased authority to the moonsiffs and sudder ameens, by Section 22, Regulation V. 1831. Yet the proviso in Section 7, Regulation VII. 1832, is so inaccurately worded as to have occasioned an alteration in the power granted to the principal sudder ameen, contrary, I think, to the intention of the Legislature. The proviso declares that "the rule in question regards all the officers above named," by which I understand all sudder ameens and moonsiffs; and had it not been for the Persian translation, I should have acted on this interpretation. The translator, instead of adhering strictly to the words used in the proviso "all the officers," has introduced the word principal sudder ameen, which does not appear in the English copy; and on this account the present rule of requiring the principal sudder ameen to transmit the defendants has been adopted.

3. Regarding the rule to be contrary to the intent of the Regulation, I have to request the Court's opinion on the subject.

To the Judge of Zillah Juanpore, dated 1st May, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 18th ultimo.

2. In reply I am directed to inform you that in the opinion of the Court the proviso contained in Section 7, Regulation VII. 1832,

was intended to apply to principal sudder ameens and moonsiffs, and that consequently the former are not competent to confine a defendant without the sanction of the judge.

The Presidency Court, on the 22nd May, 1835, concurred in this construction.

May 1, 1835.

See No. 1284 and Circular Order No. 108, dated 18th September, 1840, as to suits above 5,000 Rupees.

No. 948.
1800.
Reg. I. Sec. 4.

From the Officiating Judge of Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 22nd April, 1835.

I beg to be informed whether, in the opinion of the Court, a security bond taken under Section 4, Regulation I. of 1800, on the appointment of a person as guardian, can be given up to the surety, on the resignation of the guardian at a period prior to the minor's coming of age?

2. The Regulation only requires hazirzamin: I should therefore think the bond ought to be given up; but in a case now before me the deed has been drawn out and signed for hazir and malzamin. However, if that is contrary to the Regulation it should nevertheless be given up.

To the Officiating Judge of Dacca, dated 1st May, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 22nd ultimo, No. 133, and in reply to inform you that the bond in the case therein alluded to, should be retained in the custody of the court until the lapse of twelve years from the resignation of the trust, or from the date of the minor's attaining his majority, unless the minor on coming of age should consent to its being restored to the parties concerned.

May 1, 1835.

No. 949.
1814.
Reg. XXVIII.
Sec. 16, Clause 1.

Held by the Calcutta Court, in concurrence with the Western Court, on a reference from the officiating Judge of 24-Pergunnahs, under date the 16th April last, that a principal sudder ameen is not authorized to receive an answer to a plaint from a defendant *in formâ pauperis*, without the sanction of the judge, it being a principle that the judge only can determine the question of pauperism.

The Western Court, on the 5th June, 1835, *concurred in this construction.—Letter to the Officiating Judge of* 24-*Pergunnahs, issued* 19*th idem.*

May 1, 1835.

See Circular Order, No. 27, 11th August, 1843.

From the Judge of Zillah Cuttack to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 20*th April,* 1835.

No. 950.

1831.

Reg. V. Sec. 5.

I request you will be pleased to obtain for me the orders of the Court of Sudder Dewanny Adawlut on the following points connected with Regulation V. of 1831 :

1*st.—If a person lays claim to a piece of land, which both parties allow to be exempt from the payment of Government revenue, and on which a house is situated, and the purchase-money in the deed of sale includes the price of the land and building; can such a suit, being for the possession of rent-free land, be tried by a moonsiff under the provisions of Section* 5 *of the Regulation?*

2*nd.—If suits brought by lakhirajdars against occupants, for the rent due to them for their lakhiraj lands, are cognizable by moonsiffs.*

3*rd.*—If vakalutnamas in regular suits pending before moonsiffs, and applications presented to them for the execution of decrees, are to be written on stamped or may they be received on unstamped paper ?

Held by the Calcutta Court, in concurrence with the Western Court, that suits of the nature described in the first question are not cognizable by moonsiffs.

The word "property" in clause 3, *Section* 5, *Regulation V.* 1831, *means the proprietary right in, not the rent of land exempt from the payment of revenue. Suits therefore for the rent of lakhiraj land are cognizable by moonsiffs, where that point alone is in question.*

Vakalutnamas in moonsiffs' courts, and applications to them for the execution of decrees, may be received on unstamped paper.

The Western Court, on the 10*th July,* 1835, *concurred in this construction.—Letter to the Judge of Cuttack, issued* 24*th idem.*

May 1, 1835.

See Act VI., 1843, *and Section* 4, *Act XXVI.* 1852.
See No, 798, *and Circular Order, No.* 67, 8*th October,* 1844.

From the Judge of Zillah Juanpore to the Register of the Western Provinces, dated 25th April, 1835.

No. 951.

1831.
Reg. VIII. Sec. 15.

I request that you will be pleased to ascertain for me the opinion of the Court, regarding suits which may be referred for investigation under Section 15, Regulation VIII. of 1831. In the event of their being transferred to the subordinate tribunals, are they to be entered and tried as regular suits in the same manner as suits rejected by the collectors under Section 9, or should they be regarded as summary suits and entered under the miscellaneous head? In the suits referred, it will of course be necessary, when the principal point in litigation on which the plaintiffs objected to pay revenue has been disposed of by the regular suits, to inquire into the amount actually due, which, in cases before the moonsiffs, should be regarded as the decision of a regular suit by that officer.

To the Judge of Zillah Juanpore, dated 8th May, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo.

2. In reply I am directed to inform you that suits transferred to the subordinate judicial tribunals, under the provisions of Section 15, Regulation VIII. 1831, must be entered and tried as regular civil suits.

The Presidency Court, on the 22nd May, 1835, concurred in this construction.

May 8, 1835.

See No. 1001.

To the Judge of Zillah Cuttack, dated 22nd May, 1835.

No. 953.

Moonsiffs not liable to deduction from salary when absent with permission, on any established holiday.

In continuation of my letter of the 3rd April, No. 1018, I am directed by the Court to inform you that moonsiffs are not liable to a deduction from their salaries when absent from their stations with the permission of the judge on any of the established native holidays.

To the Western Court, on the 8th May, 1835, concurred in this construction.

May 22, 1835.

From the Judge of Tirhoot to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 20th March, 1835.

No. 955.

1832.
Reg. III.

As a difference of opinion regarding the construction of Regulation III. 1832, has arisen, I shall feel obliged by your obtaining for me, in order finally to settle the point, the opinion of the Court, whether that Regulation prohibits the transfer for money of slaves altogether, or only the mercantile traffic of them, and carrying them about the country for sale.

2. In Behar domestic slavery has always existed, and still does exist to a great degree, and slaves are constantly transferred from one portion of a family to another on a division, and also sold for money, and decrees have always been passed on such sales ; but one of the principal sudder ameens considers that Regulation III. 1832, annuls all sales since 1811, and that the present sale of them is illegal every where.

3. It appears to me, that the Regulation was only meant to prevent the importation and open traffic in slaves, and therefore will not bear the above construction, although I shall be very glad to hear that it does. There is no Regulation prohibiting slavery, and it exists I believe in most parts of our provinces. They are generally bought in years of famine by the wealthy, and their progeny for every generation thenceforward are also slaves. There is no severity in fact in it, for they are generally the favored servants in the family, but still they are slaves, and have not the power of freeing themselves even if they wish it.

4. If the construction given be correct, numbers in this district might release themselves, if so inclined, as many transfers must have occurred since 1811, and I think the point should be decided for the guidance of the courts.

5. As slavery is abolished elsewhere, some Regulation might safely be passed on the subject in this country for the prevention of it hereafter. A man may be allowed to let himself out as a slave for his life, (which is sometimes done here,) but he has no right to entail slavery on his posterity ; and I do not foresee any danger or difficulty in forbidding hereafter every kind of transfer (except voluntary) among those now slaves, and declaring all children free-born after a fixed date.

To the Judge of Zillah Tirhoot, dated 29th May, 1835.

In continuation of my letter of the 3rd April, No. 1022, I am directed by the Court to inform you that Regulation III. 1832, does not prohibit the transfer of slaves for money ; it merely prohibits the removal of them for the purpose of traffic from one territory, British and foreign, to any other territory dependant on this pre-

sidency: consequently those slaves only are entitled, under its provisions, to their liberty, who have been so removed subsequently to the enactment of Regulation X. 1811.

The Western Court, on the 15th June, 1835, concurred in this construction.

May 29, 1835.

See Act V. 1843.

From the Officiating Judge of Meerut to the Register of the Sudder Dewanny Adawlut for the Western Provinces, dated 4th June, 1835.

No. 956.

I have the honor to submit, for the consideration and orders of the Sudder Dewanny Adawlut, the following papers in the case noted in the margin*:

1793. Reg. III. Sec. 8. 1803. Reg. II. Sec. 5.

Persian proceeding of this court, dated 26th May, 1835.

Decree of the moonsiff of Kuthere, dated 30th April, 1834.

Decree of the judge of Alligurh, dated 28th November, 1834.

Decision of her Highness the Begum Sumroe, dated 29th April, 1835.

Petition of Munguth Rae, plaintiff, praying for review of judgment.

2. In this case the moonsiff's order was reversed by the judge of Alligurh on the ground of the defendant being an inhabitant of the *illaca* of her Highness the Begum Sumroe, out of the jurisdiction of Rubboopoora; but it appears that the defendant, having real property in the jurisdiction of the moonsiff's court of Rubboopoora, is amenable to it: the sanction of the Court is therefore requested to the reversal of the order passed by the judge of Alligurh, in order that the case may be re-heard in the civil court of Meerut, to which the pergunnahs of Rubboopoora have been transferred.

To the Officiating Judge of Zillah Meerut, dated 12th June, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 4th instant, with its enclosures.

2. In reply, I am directed to inform you that the circumstances mentioned by you do not form a sufficient ground for review of the former judge's order. It appears from your letter, that the defendant had real property in the jurisdiction of the moonsiff; this would

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* Munguth Rae, plaintiff, versus Peerbuksh, defendant.

no doubt render him amenable to it in cases connected with that property ; such however is not stated to be the case in the suit to which your communication refers, in which it appears that the parties are both inhabitants of a foreign territory, and that the cause of action also arose in a foreign territory : the case therefore does not come within the limits of jurisdiction laid down in Section 5, Regulation II. 1803.

The Presidency Court, on the 10*th July,* 1835, *concurred in this construction.*

June 12, 1835.

See Nos. 797 and 991.

From the Officiating Judge of Zillah Meerut to the Register of the Sudder Dewanny Adawlut, for the Western Provinces, dated 30*th May,* 1835.

No. 957.

1829.

Reg. X. Sch. B, Art. 8.

Bhugwunt Rae and Thakoordas, plaintiffs.

versus

Rugunath Sing, defendant.

Claim for redemption of mortgaged dwelling-house at 1,050 rupees.

The case noted in the margin is a suit which was instituted before the principal sudder ameen for the redemption of a dwelling-house mortgaged to the defendant for 498 rupees, and valued by the plaintiffs at 1,050 rupees, but which, subsequently to the completion of the pleadings, on proof of the stated value or selling price of the aforesaid dwelling-house being upwards of 5,000 rupees, was returned by the principal sudder ameen as beyond his competency to adjudge. I request the opinion of the Court as to whether in a suit for redemption of mortgage, the institution fee should be computed upon the amount advanced by the mortgagor, or the full value of the property mortgaged, there being in the present instance, a difference of 4,500 rupees between the two, and this description of suit not coming exactly under any of the heads of directions for the valuation of claims, specified in Schedule B, clause 3, Regulation X. of 1829.

To the Officiating Judge of Zillah Meerut, dated 17*th June,* 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 30th ultimo.

2. In reply, I am directed to inform you that in suits brought by a mortgagor to regain possession of property mortgaged, the amount of stamp should be calculated on the value of the property, due regard being had to the rules laid down in the Regulation for

estimating that value, and not on the sum for which the property was mortgaged. This appears distinctly to be the intent of Article 8, Schedule B, Regulation X. 1829, under which the stamp is regulated by the value of the thing claimed.

The Presidency Court, on the 7th August, 1835, *concurred in this construction.*

June 17, 1835.

From the Officiating Judge of Zillah Bundelcund to the Register of the Sudder Dewanny Adawlut for the Western Provinces, dated 6th June, 1835.

No. 958.

Responsibility of persons taking charge of property under attachment.

I am desirous of obtaining the opinion of the Court as to the legality of a practice which I understand prevailed for many years in this court, but which is unauthorized by any enactment or Circular Order that I am at present aware of.

2. In attaching property in execution of a decree, it is the constant usage to make over the articles to the charge of some individual resident in the village where the property is situated—the chaprassee, by whom the attachment is made, taking an acknowledgment to that effect from the person in whose charge the property is thus left.

3. In the event of the property not being forthcoming at the time fixed for its sale, it seems to be understood that the amanutdar (as he is termed,) is liable to be imprisoned until he produces the property or makes good its value. An application of this nature was made to me a few days since by the principal sudder ameen ; but as the practice was new to me, I requested that officer to quote his authority for the proceeding. In reply, he referred to Sections 10 and 18, Regulation XXVIII. of 1803, and to the constant practice of the court as authorized by my predecessors.

4. It does not appear to me that either of the Sections referred to by the principal sudder ameen can bear the interpretation put upon them by him. It is apparently intended by Section 10, that the distrainer is at liberty to leave the goods on the premises in charge of any person whom he may employ for that purpose. In the event of any person removing the property thus left under attachment, he would, I admit, be amenable to the penalties prescribed by Section 18, but it was, I imagine, never contemplated by the Legislature that a distrainer should be at liberty to leave the property in charge of any person whom he or the chaprassee might choose to indicate, who might be, and usually is, unconnected with the distrainer and the case in court, who is to receive no remuneration for the duty thus imposed on him, and who is moreover subjected to a weighty responsibility whether he will or no.

5. Guided by these considerations I declined to pass the order for the incarceration of the amanutdars. But it is represented to me by the sudder ameen that, as there is a great quantity of attached property, in cases which have been pending for years past, in a similar predicament, he apprehends that the persons in whose charge it is may, in consequence of the order passed in this particular case, consider themselves relieved from all responsibility, and either cause all the property to be conveyed away by the owners, or embezzle it themselves.

6. It appears to me, from Section 13, Regulation XXVIII. of 1803, that the distrainer is the person who should take charge of the property, and if such a practice were to obtain, I think it likely that distrainers would be more cautious in availing themselves of the powers vested in them by the Regulations. So long as they are enabled to shift the responsibility and expense of guarding the property from themselves to others, it is obvious that they will be disposed to attach property without discrimination, and be less interested in bringing it to a speedy sale.

To the Officiating Judge of Zillah Banda, dated 19*th June*, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 6th instant.

2. In reply, I am directed to inform you that no person can be compelled against his will to take charge of property distrained or attached in the manner described in your communication ; if however any one should take charge of the property voluntarily, he will of course become responsible for the faithful discharge of his engagement, and liable to prosecution before the civil court by a regular suit for damages which may have arisen from his failing to do so ; no summary proceedings, however, can be instituted against him.

3. Generally the person at whose instance the property is distrained or attached must be considered answerable for the safe custody of the property, during the period of distraint or attachment.

The Presidency Court, on the 17*th July*, 1835, *concurred in this construction.*

June 19, 1835.

Extract of a Letter from the Judge of the City of Moorshedabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 4th June, 1835.

No. 960.

A civil judge is not required to authenticate an English power of attorney.

Para. 1. I wish you to do me the favour of ascertaining from the judges, whether a civil judge is at liberty to authenticate an English power of attorney sent by a lawyer of the Supreme Court, to be executed by a native resident of the judge's district, and with a view to constituting a native of Calcutta his attorney, in some matter pending or to be so before the Supreme Court.

To the Judge of City Moorshedabad, dated 19th June, 1835.

I am directed to acknowledge the receipt of your letter of the 4th instant, requesting to be informed whether a civil judge is at liberty to authenticate an English power of attorney, and in reply to inform you that no Regulation positively requires a judge to attest such documents; and that if it is likely that the attestation of it will entail the necessity of attendance on the Supreme Court to verify your signature, and thus cause interruption to the discharge of your regular duty, they are of opinion that you should decline doing so.

June 19, 1835.

From the Register of the Western Provinces to the Register of Sudder Dewanny Adawlut, Calcutta, dated 26th June, 1835.

No. 961.

Rule regarding the filing of exhibits with petitions of appeal presented to the Sudder Dewanny Adawlut.

It appears to have been the practice of the vakeels of this Court lately, in filing their petitions of appeal, to file with them not only the copy of the decree appealed against and their vakalutnama, but also copies of exhibits and other evidence, amounting often to a considerable number of papers.

2. The Court are of opinion that no papers should accompany the petition of appeal except the copy of the decree (and the vakalutnama,) and that if the appellant be desirous of filing others, they should be given in with a separate petition on the usual stamp. Before adopting this rule, however, they are desirous of learning the practice of the Calcutta Court on this point.

To the Register of the Sudder Dewanny Adawlut for the Agra Presidency, dated 7th August, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 26th June last, No. 83.

2. In reply I am directed to observe that it has been the practice of this Court to allow the appellant to file, with his petition of appeal,

the mookhtarnama under which the vakalutnama may be executed, and the security bonds for costs or staying or enforcing execution, as well as the vakalutnama and copy of the decree appealed against; and that all other documents are given in with a separate petition on the usual stamp.

3. In applications for special appeals no exhibit fee is required with the documents filed (according to a general roobukaree dated the 13th January, 1830, copy of which is annexed,) until the special appeal be admitted, when the fee is levied on such documents as are put on record in the proceedings.

See No. 537.

NOTE.—Under Act XVI. 1853, it is not the practice of the Calcutta Court to levy exhibit fees on documents which form part of the record of the case in the lower court.

To the Officiating Judge of Furruckabad, dated 26th June, 1835.

No. 962.

1812.
Reg. V. Sec. 14.

I am directed by the Court to acknowledge the receipt of your letter of the 13th instant.

2. In reply I am directed to state that the prohibition contained in the Regulation against the sale of implements of agriculture relates merely to sales for arrears of rent or revenue; the moonsiff therefore was competent to sell such property in execution of a decree against which no such prohibition exists.

The Presidency Court, on the 31*st July,* 1835, *concurred in this construction.*

June 26, 1835.

From the Officiating Judge of Zillah 24-*Pergunnahs to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the* 13*th June,* 1835.

No. 963.

1806.
Reg. II. Sec. 4.

Mr. Joseph Donovan, versus Revd. Fre Paul Gradoly.

With reference to an order of the late officiating judge of this district relative to staying proceedings, until the receipt of further orders from the Court of Sudder Dewanny, expected upon an intended appeal of the defendant in the case noted in the margin, and to the non-receipt of instructions from the superior court; I have the honor to submit the accompanying Persian proceedings, requesting directions for my guidance, and submitting my opinion on the construction of Section 4, Regu-

lation II. of 1806, which has not been hitherto adverted to in the case.

The section already quoted appears, from the wording of it (" if satisfied," " he may," &c.) to leave the demand of security entirely to the discretion of the judge presiding in the court in which the cause is pending, and to preclude the right of appeal from his order ; and, from the circumstance of that right being specially provided for in cases falling under Section 11, of the same Regulation, it may be inferred that it was the intention of the framers of the Regulation to restrict it to the latter section.

Held by the Calcutta Court, under date the 13th June, 1835, that the order of the late judge, Mr. Moore, refusing to take security from the defendant in the case of Mr. Donovan, versus the Reverend Fre Paul Gradoly, was open to appeal in this Court.

The Western Court, on the 31*st July*, 1835, *concurred in this construction.—Letter to the Officiating Judge of* 24-*Pergunnahs, issued* 18*th September*, 1835.

June 26, 1835.

Extract of a Letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, in reply to the Judge of Furruckabad's letter of 20*th June, dated* 10*th July*, 1835.

No. 964.

1814.
Reg. XXIII. Sec. 45, Clause 7.

Para. 2. The Court propose to inform the judge that the limit of imprisonment, laid down in clause 7, Section 45, Regulation XXIII. 1814, is applicable only to debtors confined under a decree of court. As however it cannot be intended that persons confined by order of the civil court in default of payment of fines should remain in prison for life, the Court are of opinion that in such cases the judge is competent to use his discretion in releasing the prisoner, due regard being had to the circumstances under which the fine was imposed.

The Presidency Court, on the 31*st July*, 1835, *concurred in this construction.*

July 10, 1835.

From the Officiating Judge of Zillah Bundelcund to the Register of the Western Provinces, dated 7*th July*, 1835.

No. 965.

1805.
Reg. II. Sec. 3, Clause 4.

I have the honor to refer the following question for the consideration of the Court :

" Do the provisions of clause 4, Section 3, Regulation II. 1805 apply equally to real and personal property or only to the former ?—in other words, can a suit on a deposit of money or other

personal property be entertained after the lapse of twelve years from the cause of action ?"

To the Officiating Judge of Zillah Bundlecund, dated 17th July, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 7th instant.

2. In reply, I am directed to inform you that as the terms of clause 4, Section 3, Regulation II. 1805 quoted by you are general, including "land and other property," its provisions must be considered applicable as well as to suits on deposits of money or other personal property as to land.

The Presidency Court, on the 7th August, 1835, *concurred in this construction.*

July 17, 1835.

To the Judge of Zillah Cuttack.

No. 966.

1814.

Reg. XXIII. Secs. 40 and 42.

I am directed by the Court to forward to you the accompanying replies to the queries contained in your letter.

Question 1.—One of the subordinate courts having in a decree imposed a fine on a plaintiff, for having instituted a litigious and vexatious suit, instead of damages, as enacted by Section 40, Regulation XXIII. 1814, is the amount of fine or damages in such cases to be paid to the defendant, or carried to the credit of Government ?

Answer 1.—Section 40, Regulation XXIII. 1814, does not authorize the imposition of a fine for a litigious or vexatious suit, the decree should therefore be reversed, and the case sent back to the subordinate officer, with instructions to proceed in the manner laid down in the Section cited. Fines are leviable only on account of Government. If damages are awarded, they belong to the party declared by the decree to be entitled to them.

Question 2.—In case a subordinate court in a decree should adjudge damages against a plaintiff under the provisions of the Section above alluded to, must the circumstances of the case be reported to the judge, as prescribed in Section 42 of the same enactment ? or may the court ad-

Answer 2.—In such case the damages form part of the decree, and unless the party dissatisfied with it appeal, the decree will be executed, without reference to the judge, in the same manner as other decrees of court.

judging the damages proceed to realize the same in execution of the decree, leaving the person dissatisfied with the decision to appeal from it in the regular mode ?

The Western Court, on the 28th August, 1835, concurred in this construction.—Letter to Judge of Cuttack, issued 11th September, 1835.

July 17, 1835.

See Act VI. 1843, Sudder Dewanny Reports, North-Western Provinces, 31st May, 1851, page 190.

To the Judge of Zillah Jessore, dated 17th July, 1835.

No. 967.

Suits got forward either by or against a European British subject in his capacity of manager of an estate, not being personal, to be tried in the Company's courts the same as suits on the part of or against a native.*

I am directed by the Court to acknowledge the receipt of your letter of the 1st instant, requesting to be informed whether suits connected with the realization of rent instituted by the tehseeldars and ryots of estates under charge of Mr. E. Macnaghten, receiver of the Supreme Court, are cognizable by the moonsiffs.

2. *In reply, I am directed to inform you that it has been ruled by Government, (on a reference in consequence of a difference of opinion between this Court and the Sudder Dewanny Adawlut for the Agra Presidency,) that the appointment of a European British subject to the management of a native minor's estate cannot be considered to confer on such native the rights and privileges of a European British subject, which only attach to the manager personally; and that suits brought forward either by or against such European British subject in his capacity of manager, not being personal, should be regarded as suits instituted on the part of or against a native, and ought to be tried, like every other suit in which natives are parties, in the court by which from its amount it may be cognizable.*

July 17, 1835.

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* By Act No. XI. 1836, European British subjects are made generally amenable to the native courts, the same as natives.

From the Judge of Zillah Juanpore to the Register of the Western Provinces, dated 23rd July, 1835.

No. 968.

The civil courts competent to issue precepts to collectors directing them to carry their orders into effect within a fixed period.

I Request that you will be pleased to obtain for me the opinion of the Court whether there would be any objection to the zillah court issuing precepts to the collectors, directing them to carry their orders into effect within a period fixed by the court, or to assign reasons for the order not being completed at the period prescribed by the court. By having a register of the precepts and period when the return should be made, the court would always be made acquainted with any inattention that might occur, and prevent in many cases the delay in execution of decrees, which otherwise cannot be avoided.

To the Judge of Zillah Juanpore, dated 31st July, 1835.

I am directed by the Court to acknowlege the receipt of your letter No. 158, under date the 23rd instant, and in reply to acquaint you that they are not aware of any objection to the measure which you have suggested, of requiring the collector to carry into effect the orders of your court, and to return the precept, issued therewith, duly executed within a certain period, or to show good and sufficient cause for the delay.

The Presidency Court, on the 21st August, 1835, concurred in this construction.

July 31, 1835.

Form the Judge of City Moorshedabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 8th July, 1835.

No. 969.

1793. Reg. III. Sec. 8. 1803. Reg. II. Sec. 5.

I have the honor to request the favor of your obtaining for me the opinion of the judges on the following point.

2. A suit has been instituted in this court, having reference to the farm of sixty-three villages, sixty-one of which are situated in the Beerbhoom zillah, and only two belong to Moorshedabad. It happens, however, that although, as regards the foujdarry, the sixty-one villages in question are under the magistrate of Beerbhoom, yet the revenue of the whole of them is paid (under, I presume, a special authority) into the collectorate of Moorshedabad, and it is owing to the latter circumstance that the suit has been admitted into the court of this city.

3. As the propriety of hearing the suit in question here, merely because the revenue of all the villages (which are within the limits of another district) happens to be paid into this treasury, seems

questionable, considering the tenor of Regulation III. 1793, especially of Section 8, I wish to ascertain how, in the judgment of the superior court, I ought to proceed.

To the Judge of City Moorshedabad, dated 31st July, 1835.

In reply to your letter of the 8th instant, I am directed by the Court to inform you that, under the presumption that the greater part of the villages which form the cause of action of the suit therein alluded to are situated within the jurisdiction of the civil court of Beerbhoom, they deem it proper that the suit should be tried in that court; and request you will transfer it for that purpose with a copy of this letter to the judge of Beerbhoom.

July 31, 1835.

No. 970.

1829.

Reg. X. Sec. 3 and Schedule A.

I am directed by the Court to forward their reply to the question contained in your's of the 29th of the preceding month.

Question.—An account of a party is made up, and the balance struck and stated, according to established usage, at the foot of the sheet in the byekhata or banker's book of account: a third party renders himself responsible for the eventual adjustment of such balance, by affixing his name, in the capacity (to all intents and purposes) of security for the debtor's discharge of the creditor's claim. Will the guarantee as above described, of the third party, be vitiated by the fact of the said security, &c. being on unstamped paper?

Answer.—To make the security available to the claimant, the leaf in the account book on which it is written must be stamped (as it still may be under Section 14, Regulation X. 1829.) At the same time, in the event of that course not being adopted, it rests with the claimant, in order to derive benefit from the security, to adduce other sufficient evidence of its having been given, independantly of the paper exhibiting it, which in its present state cannot be legally received in proof of the fact.

The Western Court, on the 4th September, 1835, *concurred in this construction.—Letter to the Judge of Moorshedabad, issued 18th September*, 1835.

August 7, 1835.

See No. 325, and Sudder Dewanny Reports, 1852, page 31.

No. 974.

1806.
Reg. XVII. Sec. 7.

The Calcutta Court held on a reference from the judge of Cuttack that if a mortgagor or his representative, desirous of redeeming the mortgaged property in the possession of the mortgagee, deposits the sum due to the mortgagee, either with or without interest (as the case may be) in court, under the provisions of Section 2, Regulation I. 1798, and Section 7, Regulation XVII. 1806, the period of the notice to be served on the mortgagee, requiring him to render up possession of the property, need not be a year, but any reasonable period, according to the distance of his residence from the sudder station.

August 7, 1835.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court, dated 7th August, 1835.

No. 976.

A zillah judge confirming the decree of a lower court is not competent to adjudge interest on the sum decreed at a less rate than 1 per cent.

A question having arising whether a zillah judge, confirming the decree of a lower court, is competent to adjudge interest on the sum decreed at a less rate than 1 per cent. per mensem, I am directed to request you will submit the point for the consideration and opinion of the Calcutta Court.

By Section 35, Regulation IV. 1803, the provincial courts were required to adjudge the full rate of interest in such cases ; and referring to the object of the rule, *viz.* the prevention of litigious appeals, and to the situation in which the zillah courts are placed by the abolition of the provincial courts, it appears to the Court that the principle of the rule, the terms of which are imperative, must be considered equally applicable to the zillah judges, and, should the Calcutta Court concur in this opinion, they propose to adopt it as a rule of future practice.

August 7, 1835.

To the Register of the Western Provinces, dated 18*th September,* 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 7th ultimo, No. 56, and in reply, to inform you that they concur in the construction contained in the 2nd paragraph, the principle of which they also extend to principal sudder ameens.

From the Officiating Judge of Zillah Nuddea to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 7th August, 1835.

No. 977.

1810.
Reg. XIII. Sec. 11.
1829.
Reg. X. Schedule B, Article 10.

I have the honor to request that you will obtain for me the opinion of the Court of Sudder Dewanny Adawlut on the following point, *viz.* whether the provisions of Section 11, Regulation XIII. 1810, relative to the refund of the institution fee in cases adjusted by razeenama, are to be considered as applicable to cases of dustburdaree, in which a plaintiff voluntarily relinquishes the prosecution of his claim.

To the Judge of Nuddea, dated 28th August, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 7th instant, and in reply to inform you, that the refund of the stamp duty in lieu of the institution fee can only be sanctioned in cases in which a razeenama has been regularly filed.

August 28, 1835.

See Circular Order, No. 122, 23rd January, 1826, para. 5.

To the Judge of Zillah Rajeshahye.

No. 979.

1814.
Reg. XXIII. Sec. 45, Clause 6.
1831.
Reg. V. Sec. 22.
1832.
Reg. VII. Sec. 7,

The question put by you to the Court appears, on consideration of your letters of the 2nd June, and that under acknowledgment, to be as follows :

2. As clause 6, Section 45, Regulation XXIII. of 1814, (which empowers a judge to admit an appeal from the decision of a moonsiff, notwithstanding the prescribed period of appeal have elapsed, should it appear that such decree was obtained in an irregular manner, or some sufficient grounds be shown for staying its execution,) has not been especially repealed by Regulations V. 1831 and VII. 1832, can the judge now admit the appeal, though the prescribed period have elapsed ?

3. The Court observe that the provisions of clause 6, Section 45, Regulation XXIII. 1814, were considered necessary to check irregularities in the decisions of the moonsiffs of the old system, but are inapplicable to those appointed under Regulation V. 1831, who are considered to be persons of superior respectability and qualifications, and have on that ground been vested with higher powers. Their decisions have been placed by the general rules contained in Section 22 of that Regulation and Section 7, Regulation VII. 1832, on the same footing as those of other courts, consequently, in the opinion of the Court, no appeal is admissible from them,

notwithstanding any irregularity or error, after the lapse of the prescribed period, unless good and sufficient cause be shown for the delay which may have occurred in excess of that period.

The Western Court, on the 2nd October, 1835, *concurred in this construction.—The letter to the judge issued 23rd October*, 1835.

September 11, 1835.

See No. 1048.

From the Additional Judge of Zillah Ghazeepore to the Register of the Court of Sudder Dewanny Adawlut for the Western Provinces, dated 10th September, 1835.

No. 980.

1795.
Reg. XXII. Sec. 35, Clauses 2, 3 and 5.

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Several cases regarding the claims of putteedars to obtain separate possession of their shares being now before me, I find it necessary to refer the following question for the opinion of the Court. There seems to be a difference of opinion on the subject among former judges, and the Regulation does not appear to me very distinct.

2. Under the provisions of clauses 2 and 3, Section 35, Regulation XXII. 1795, the possession of any one putteedar within twelve years entitles the whole of the sharers to restoration, and by clause 5 of the same Section it is further enacted that such putteedars shall be entitled to restoration on any one putteedar regaining possession, although they have not held possession within twelve years. The doubt which has arisen is whether, after one putteedar has regained possession, there is any limit whatever in point of time with regard to the other sharers bringing forward their claim? The point may be more plainly stated thus; A obtained a decree of court in 1820 for possession as zemindar, his putteedars B and C are, in consequence, entitled to possession of their shares; but must these claims be brought forward immediately, or at any time before 1832, or is there no limitation whatever?

To the Additional Judge of Zillah Ghazeepore, dated 18th September, 1835.

I am directed to acknowledge the receipt of your letter under date the 10th instant, requesting the opinion of the Court as to whether, with reference to the provisions of clauses 2, 3 and 5, Section 35, Regulation XXII. 1795, after one putteedar has regained possession of his puttee, there is any limit whatever in point of time with regard to the other sharers bringing forward their claim.

2. In reply, I am directed to communicate to you the opinion of the Court that in cases of the nature of those described in the enactment above cited, the putteedars or "other sharers" alluded to therein must prefer their claims within the period of twelve years from the date on which the proprietory right was adjudged by a decree of court to the zemindar or one or more of their co-parceners, and that in default of so doing, their claims would fall under the operation of the general rule of limitations.

September 18, 1835.

To the Register of the Western Provinces, dated 23rd October, 1835.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 18th ultimo, No. 31, enclosing copies of a letter from the additional judge of Ghazeepore, under date the 10th ultimo, and of a reply to the same which the Western Court propose to transmit with the concurrence of this Court.

2. In reply, I am directed to state that Mr. Rattray and Mr. Shakespear concur without reservation in the construction which the Western Court propose to adopt in their answer to the additional judge. The other judges of the Court also concur, provided that for upwards of twelve years after the proprietory right was adjudged to one of the putteedars, the other sharers did not hold any lands pertaining to the estate in lieu of receiving a specific share of the profits.

See Sudder Dewanny Reports, North-Western Provinces, 4th May, 1848, page 141, and Act I. 1841.

To the Officiating Judge of Zillah Chittagong, dated 16th September, 1835.

No. 981.
1819.
Reg. II. Sec. 30,

I am directed by the Court to observe that in the cases alluded to by you, there are generally two points at issue—1st, the proprietory right, or right of ownership, and 2ndly, the nature of the tenure under which the lands are held. In all cases, in which the right of ownership is alone the point at issue, (as for instance, when the heirs of a holder of rent-free lands sue their co-parceners for their respective shares,) the case appertains solely to the civil court; on the other hand, if the nature of the tenure as well as the proprietory right is disputed, *viz.* if a zemindar claims possession of any land as attached to his estate, and the defendant pleads that he holds possession thereof as rent-free, or *vice versâ*, the case must, in the judgment of the Court, be referred to the collector for report.

2. With reference to the 10th paragraph of your letter, I am directed to request, in the event of the collector returning any reference made by you, with an opinion that the case is not one on which he is bound to report, that you will, in the event of your entertaining a different opinion, repeat the order, under the usual precept, requiring a return to be made within a given period. Should the collector still refuse to investigate the case, you will then report the circumstances in English for the information of this Court, in order that such further measures may be adopted as may appear to be necessary and proper.

3. These instructions will of course supersede the mode of proceeding by appeal to the commissioner laid down in the Construction No. 527.

The Western Court, on the 11th March, 1836, concurred in this construction.

September 16, 1835.

See Sudder Dewanny Reports, page 35, 21st January, 1851.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, under date the 16th October, 1835.

No. 982.

1814.
Reg. XXVI. Sec. 4, Clause 3.

It was resolved, in concurrence with the Western Court, that when, in a case decided by a single judge, the deciding judge shall have rejected an application for a review of the judgment, his rejection is to all intents and purposes final; unless he himself shall see grounds, on a subsequent application, to admit a review, and that it is not competent to the Court (the said judge being absent and incapable of hearing a second petition within six months) to authorize a review of the order rejecting the review.

October 26, 1835.

Extract of a Letter from the Commissioner of the 5th Division to the Officiating Register of the Sudder Dewanny Adawlut, Western Provinces, dated 2nd October, 1835.

No. 983.

1799.
Reg. V. Secs. 2 and 3.
1803.
Reg. III. Sec. 16, Clauses 2 and 3.
1806.
Reg. XV. Sec. 6,

I have the honor to request that you will obtain from the Court an opinion on the construction of Section 16, Regulation III. 1803, and Section 6, Regulation XV. 1806.

Question 1st.—Is the interference of the civil judge, by Section 16, Regulation III. 1803, and Section 6, Regulation XV. 1806, strictly limited to cases of persons dying intestate or not?

Question 2nd.—Though the will of the deceased be not forthcoming, or no will may exist, ought the civil judge to interfere if there be "a claimant," a near relation, or respectable friend on the spot, willing to take charge of and to be responsible for the property ?

Question 3rd.—If in the case last mentioned, the judge be considered bound to take charge of the property, may he not use some discretion, such as feeling and delicacy would naturally suggest, in delaying for a few days the necessary advertisement, thereby to give the friends of the deceased on the spot an opportunity of informing those at a distance of their loss, before the formal announcement is made publicly to the world ?

To the Commissioner of Circuit for the 5th Division, dated 16th October, 1835.

I am directed by the Court to communicate to you their opinion as follows, on the several points of Section 16, Regulation III. 1803, and Section 6, Regulation XV. 1806, mentioned in your letter of the 2nd of that month.

2. In reply to your first question, I am directed to inform you that the interference of the civil court with respect to the estates of deceased British subjects, is not restricted by the Sections of the Regulations above quoted to the cases of persons dying intestate, but on the contrary Section 6, Regulation XV. 1806 expressly requires that, on the demise of a British European subject within the limits of the jurisdiction of a zillah or city court, the judge shall take charge of the effects of the deceased, and on a will being discovered shall deliver them over to the person who may obtain probate thereof.

3. In answer to your second question, I am directed to observe that in either of the cases which you have supposed, where the will of the deceased is not forthcoming, or where none may be in existence, notwithstanding that there may be a claimant, near relation, or respectable friend on the spot, willing to take charge of and to be responsible for the property, the Regulation before cited renders it obligatory on the civil court to interfere, as in the case described in the preceding paragraph, and to retain charge of the estate until the registrar of the Supreme Court of Judicature, to whom the circumstance is immediately to be reported, or some other person, shall have obtained letters of administration from that Court, when the property is to be delivered over to the person to whom such letters may have been granted. The terms of the enactment being imperative and express as to the jurisdiction to be exercised by the zillah courts in such cases, the Court observe that no discretion whatever is left to the judge in the matter.

4. With reference to the third point noticed in your letter, the Court direct me to observe that the course to be pursued by the zillah and city judges in matters of this nature is clearly laid down in the

Regulations, and they do not consider themselves competent to authorize any deviation therefrom.

The Presidency Court, on the 13*th November,* 1835, *concurred in this construction.*

October 16, 1835.

See No. 1396.

From the Judge of Zillah Moradabad to the Officiating Register to the Sudder Dewanny Adawlut for the Western Provinces, dated 17*th October,* 1835.

No. 984.

1821.
Reg. I.

With reference to the accompanying copies of letters from the Secretary to the Government of Agra, I beg to be favored with the orders of the Court respecting the mode in which the trial of the cases alluded to, is to be conducted, whether in the form of judicial trials, or agreeably to the provisions of Regulation I. 1821, *as regards the filing of exhibits, applications for the attendance of witnesses, permission to mookhtars, not authorized vakeels of the court, to plead, &c. &c.*

2. *Also, whether in the investigation of such cases the power devolving on the special commissioner, by Section* 5 *of the Regulation quoted, of amending or annulling altogether decrees previously passed in the judicial courts is to be exercised ?*

To the Judge of Zillah Moradabad, dated 30*th October,* 1835.

I am directed by the Court to acquaint you that in the trial of the cases, which have been made over to you under the orders of Government, from the commissioner of the division, you should be guided by the rules applicable to the investigation and decision of claims of that nature as laid down in Regulation I. 1821, *and the subsequent enactments on the same subject ; and that with regard to such suits you must be considered to be vested with precisely the same powers and authority as were possessed and exercised by the officers of the special commission, acting under the provisions of the Regulation above cited, and subsequently, on the abolition of that office, by the commissioners of revenue and circuit, to whom the duties of the commission in question were transferred under the provisions of clause* 1, *Section* 10, *Regulation I.* 1829.

The Presidency Court, on the 20*th November,* 1835, *concurred in this construction.*

October 30, 1835.

To the Deputy Secretary to the Government of Bengal in the Judicial Department, dated 13th November, 1835.

No. 987.

1819.
Reg. II. Sec. 30, Clause 7.

1829.
Reg. X. Sch. B, Art. 8.

I am directed by the Court to transmit to you the accompanying copies of correspondence as per margin, and to request to be informed whether, in the opinion of Government, the rule contained in clause 7, Section 30, Regulation II. 1819, which allows a petition of appeal from the decision of a collector to be written on stamped paper of one rupee value, is to be considered as repealed by the provisions of Regulation X. 1829, which rescinds all the previous Regulations relative to the imposition, levying and collecting of stamp duties.

Letter to the Register Sudder Dewanny Adawlut, Western Provinces, dated the 17th July, 1835.
Resolution of the Court, dated 10th July, 1835.
Letter from the Officiating Register Sudder Dewanny Adawlut, Western Provinces, dated 7th August, 1835, No. 37.
Letter to ditto ditto, ditto, 4th September, 1835.
Letter from ditto ditto, ditto, 25th ditto, No. 43.

2. His Honor in Council will observe that the Court doubt whether, with reference to the peculiar nature of the suits affected thereby, the special indulgence granted to appellants under the rule in question can be held to be abrogated by the Stamp Regulation.

November 13, 1835.

From the Secretary to the Government of Bengal to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 17th November, 1835.

I am directed to acknowledge the receipt of your letter dated the 13th instant, with its enclosures, and to inform you in reply, that in the judgment of the Honorable the Governor of Bengal, Section 2, Regulation X. 1829 must be held, as ruled by the Sudder Court at Allahabad, to rescind clause 7, Section 30, Regulation II. 1819, in common with all other parts of the existing Regulations relating to the imposition, levying and collecting of stamp duties.

Extract from a Letter addressed, under date the 4th September, to the Register of the Western Provinces, in reply to his Letter of the 7th August, 1835.

Para. 2. I am directed to request information as to whether the principle laid down in the third paragraph of that letter, is considered by the judges of the Allahabad Court to be applicable to the first petition of appeal from the collector's decision under clause 7, Section 30, Regulation II. 1819, as well as to the petition of special appeal and to the pleadings, exhibits, &c. in both appeals; as the Court are disposed to doubt whether, with reference to the peculiar character of such suits, the special indulgence granted to appellants under that rule can be held to be abrogated by the Stamp Regulation.

From the Register of the Western Provinces to the Register of the Presidency Court, dated 25th September, 1835.

I am directed by the Court to acknowledge the receipt of your letter, No. 2136, under date the 4th instant, regarding the value of stamp duty to be used for petitions of regular and special appeal in suits under Regulation II. 1819.

2. In reply, the Court direct me to acquaint you, for the information of the judges of the Calcutta Court, that they are of opinion the principle of the rule laid down in paragraph 3 of their letter to your address, under date the 15th March, 1833, must be considered equally applicable to the first petition, that is to say, the petition of regular appeal preferred under clause 7, Section 30, Regulation II. 1819, from the decision of a collector, as to the petition for a special appeal in cases of that nature, and, in like manner, to the pleadings, exhibits, &c. in both appeals.

3. Section 2, Regulation X. 1829, the Court observe, rescinds all Regulations and parts of Regulations then existing in regard to the collection of stamps, and as it contains no provision exempting clause 7, Section 30, Regulation II. 1819 from its operation, the latter enactment must be held to have been repealed by it, equally with all other laws on the same subject; and it having been ruled by the two Courts,* with reference to the provisions of the Regulation first cited, and in consequence of Section 8, Schedule B, Regulation X. 1829 making no exception in favor of petitions for special appeals in cases of the nature of those under consideration, that full stamp duty is leviable thereupon, the Court consider that, by a parity of reasoning, petitions for a regular appeal in such cases as well as the pleadings, exhibits, &c. connected therewith, are also chargeable with the full amount of duty, in the same manner as all other regular suits instituted in the established courts of civil judicature.

See Nos. 338 and 768.

To the Secretary to the Sudder Board of Revenue, Western Provinces, dated 20th November, 1835.

No. 988.

1795. Reg. XXXIV. Sec. 2.

I am directed by the Court to acknowledge the receipt of your letter, No. 107, under date the 30th ultimo, with its several enclosures, on the subject of the pensions payable from the Benares treasury under the provisions of Section 2, Regulation XXXIV. 1795.

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* See construction No. 768.

2. The Board not having been able to obtain for the Court an inspection of the documents called for in Mr. Jackson's letter to your address under date the 6th March last, their construction of the abstract point of law, submitted to them under the orders of Government, must be understood to be given solely with reference to the papers now before them, and on a consideration of the Regulations bearing on the question. With this qualification, and reserving to themselves the liberty of exercising their own judgment with respect to any claims of this nature which may hereafter come judicially before them, and of determining each case strictly according to its merits, they direct me to request you will inform the Board that they concur in the opinion expressed in the letter to your address from the Secretary to Government in the Revenue Department, under date the 3rd February last, that the pensions in question are not transferable by sale, gift, or otherwise, for a longer period than the lives of the original grantees; and that, on failure of heirs of the original grantees, they must be considered to escheat to Government as lapsed or expired grants.

3. In support of this construction the Court observe that by Section 15, Regulation XLII. 1795, the altumgha, ayma, and mududmaash grants specified therein, are expressly declared to be transferable by sale, gift or other mode of conveyance, and all that is required of persons succeeding to them is to register them within six months after the date of their succession; but Section 2, Regulation XXXIV. 1795, although passed nearly at the same time, confers no such power of alienation on the holders of the pensions mentioned in that enactment, and a distinction is thus clearly drawn between the two classes of grants, since, though both are hereditary, the former only are declared open to transfer.

4. And this opinion, the Court observe, would further appear to be strengthened by a reference to Regulation II. 1819, which, as stated in the preamble, was enacted with a view to prevent the Government from being defrauded of its dues by persons receiving pensions, who were not legally entitled to them; and though, as appears from the second paragraph of your letter under acknowledgment, the provisions of that Regulation may not have been acted upon, they are expressly made applicable by the second Section of it to pensions of the nature of those specified in Regulation XXXIV. 1795, while the grants described in Regulation XLII. of the same year, were subjected to no such revision.

The Presidency Court, on the 18*th December*, 1835, *concurred in this construction.*

November 20, 1835.

No. 989.

The collector cannot without application to the judge direct a moonsiff to sell property in liquidation of arrears of revenue.

The Presidency Court held, on a reference from the Judge of Dacca, that a collector is not competent, without application to the judge, to issue a perwannah to a moonsiff to sell personal property and houses attached by his nazir for arrears of public revenue.

The Western Court, on the 26th December, 1835, concurred in this construction.

November 28, 1835.

See No. 918.

From the Judge of Zillah Cuttack to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 13th November, 1835.

No. 990.

1814.
Reg. XXIII. Sec. 15, Clause 4.

I have the honor to forward copy of a proceeding this day received from the moonsiff stationed at Balasore, for the orders of the Court of Sudder Dewanny Adawlut.

2. By clause 4, Section 15, Regulation XXIII. 1814, parties appointing vakeels in the moonsiff's courts are directed to settle the amount of the fees with their pleaders, and no deposit is required to be made on this account ; but there is no provision made in the enactment for securing a proportion of the fees to a pleader, who may be substituted for another who commenced the pleadings.

3. The pleaders in the moonsiffs' courts realize the fee demandable by them from their clients, previous to acting for them, which mode is attended with much inconvenience. Firstly,—They do not pay so much attention to their clients' interests, as if they had the fees in anticipation ; and secondly,—If a pleader is changed while the suit is pending, or if he should die, or be removed, the person appointed to conduct the case in his stead can demand no fee from his client, as whatever was demandable has been paid and received in advance. It appears therefore that some order is required to guard against loss to either clients or pleaders, and I beg to submit the subject therefore for the consideration of the Superior Court.

To the Judge of Zillah Cuttack.

I am directed by the Court to inform you that the Regulations do not require the zillah and city judges to interfere in regard to remuneration of their vakeels by parties in the moonsiffs' courts. They therefore desire that you will refrain from doing so further than to intimate that if a party choose to change his vakeel he is bound to

remunerate the individual engaged in the second instance, as well as him who was entertained originally.

The Western Court, on the 2nd January, 1836, *concurred in this construction.—The letter to the Judge was issued on the* 15*th January,* 1836.

December 11, 1835.

See Act I. 1846.

No. 991.

1793.
Reg. III. Sec. 17.

The following minute having been referred by Mr. Master, officiating judge, for the opinion of his colleagues, the majority of the Presidency Court held that the case therein alluded to was cognizable by the judge of the 24-Pergunnahs.

Minute of Mr. Master, dated 6th November, 1835.

At the request of Mr. N. B. E. Baillie, I beg to refer the following point for the opinion of the judges.

2. Mr. Baillie contends that Section 17, Regulation III. 1793, having never been rescinded, the Dewanny Adawlut of the zillah of the 24-Pergunnahs is strictly prohibited from entertaining any suit whatever against a person who may be an inhabitant of Calcutta at the time the suit may be instituted, or may become a resident within the limits of the town after the suit may be commenced.

3. In the case in which this reference is requested both the plaintiff and defendant are residents of Calcutta, but the cause of action is to recover possession of land situated within the jurisdiction of the 24-Pergunnahs. In admitting and proceeding with the suit, the provisions of Section 7, Regulation IX. 1819, were attended to by the judge of the zillah ; and in my opinion the objection urged by Mr. Baillie is overruled by the provisions of that enactment. To remove the doubt, however, I beg to solicit the opinion of the other judges.

The minutes of the several judges were referred for the opinion of the judges of the Western Court on the 11th December, 1835. The following is the Western Court's reply :

From the Officiating Register, Western Provinces, to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th January, 1836.

I am directed by the Court to acknowledge the receipt of your letter, No. 2926, under date the 11th ultimo, with its enclosed copies of minutes recorded by the judges of the Calcutta Court on a construction of Section 17, Regulation III. 1793.

2. In reply I am directed to acquaint you that the Court are unanimously of opinion, with the majority of the judges of the Calcutta Court, that the suit which gave rise to the present reference, was cognizable in the court of the 24-Pergunnahs.

3. In support of this opinion the Court direct me to adduce the passage noted in margin from Harington's Analysis (volume I. page 36,) and to express their entire concurrence in the construction therein given to the term "nor any suit whatever," as used in the Section of the Regulation above cited, *viz.* that it was intended to apply to personal actions only against the fixed inhabitants of the town of Calcutta, and not to exclude from the cognizance of the zillah court of the 24-Pergunnahs suits, for land or other real property situated within the limits of its jurisdiction, brought against residents of that town. That such was the intention of the Legislature would appear from the fact that the real property excepted from the jurisdiction of the court for the 24-Pergunnahs is especially defined to be lands, tenements, &c. situated within the limits of Calcutta, and that consequently suits for such property, when situated in the 24-Pergunnahs beyond the specified boundary, are within the cognizance of that court. The Court further direct me to observe that they understand the provisions of the Section under discussion to be similar in every respect to Section 12, Regulation II. 1803, quoted by Mr. Harington as a corresponding enactment.

Exception with respect to the town of Calcutta, Reg. III. 1793 and Reg. II. 1803, Section 12.

The town of Calcutta, which is under the immediate jurisdiction of His Majesty's Supreme Court of Judicature, not being comprised in that of any zillah or city court, the above powers do not include the cognizance of any suits for land or other real property situated within the limits of Calcutta; nor *any personal actions* against the fixed inhabitants of that town, which may not be for arrears of revenue, or may be legally considered exclusively cognizable by the Supreme Court.

See No. 956.

From the Officiating Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th December, 1835.

No. 996.

1822.

Reg. XI. Sec. 28, Clause 2.

I have the honor of forwarding two original deeds of sale given by the collector for lands sold at his office, and beg to know whether I am bound (the deeds specifying so little, or I may say nothing,) to send an ameen, or other officer of the court, into the mofussil to try to give the purchaser possession.

2. *The deed No.* 1 *recites that the howala rights in the howala, called Ramakant Sirma, belonging to Ramakant Sirma, added to zillah Rajnuggur from chukla Phoolberia, the collections being*

annexed to zillah Rajnuggur, the sudder jumma being twenty-four rupees, is sold, for a balance of revenue for 1240, *for the sum of twenty-nine rupees to the buyer. The name mentioned is the recorded name in the collector's books, perhaps of a person dead twenty or more years ago, but if he was the last in possession, to what village or part of zillah Rajnuggur is the ameen to proceed?*

3. *The purchaser cannot bring any papers stating the amount of land or ryots' names, or any other particulars.*

4. *The other deed is in the same style, the sudder jumma being ninety-eight rupees one anna: it is sold for one hundred and twenty-seven rupees.*

To the Officiating Judge of Zillah Dacca.

I am directed by the Court to inform you that in the cases reported in your letter of the 8th December last, if the information furnished in the deeds of sale be insufficient to enable you to comply with the requisition made to you, to put the purchaser in possession, you should record the points on which it is defective, and your inability to proceed without full and specific information respecting them, sending a copy of your proceedings to the collector for his information, should the requisition have proceeded direct from that officer.

The Western Court, on the 29th January, 1836, *concurred in this construction.—This letter was issued 12th February,* 1836.

January 2, 1836.

See Act I. 1845.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 29th May, 1835.

No. 997.

Jurisdiction of appellate courts, in regard to the interests of several defendants affected by a decree, from which however only one of them appeals.

I am directed to request that you will ascertain and communicate to the Court the practice and opinion of the Calcutta Court on the following point.

2. A decree is passed in a zillah court against several individuals; one of them appeals to the Sudder Court; the rest do not appeal: in deciding this appeal case, is the Sudder Court competent to take up the case as regards the whole of the persons against whom the zillah decree was passed, should it see reason to do so, or must its proceedings be confined to that part of the decree which affects the rights and interests of the individual appealing? The Court rather

incline to the latter opinion, but are desirous of learning the existing practice of the Calcutta Court before adopting it.

3. The rule in such cases would of course be equally applicable to all other appeals such as those tried by the judge or principal sudder ameen.

The Western Court, on the 22nd January, 1836, *concurred in this construction.*

January 2, 1836.

This construction was rescinded by Circular Order No. 144, dated 9th September, 1851, but is partly revived by the decision in the case of Tarneekanth Lahoree, dated 7th June, 1852, page 463, Sudder Dewanny Reports.

From the Assistant in charge of the Judge's Office, Zillah Dinagepore, to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 10th December, 1835.

No. 998.

Circular Order, 6th February, 1835.

Rules for defining the duties of assistants in charge of the current duties of the judge's office.

I beg leave to solicit through you the opinion of the Court of Sudder Dewanny, on the following point in the rules for defining the duties of assistants or other officers in charge of the current duties of the offices of civil and session judge, which accompanied your letter of the 6th February, 1835.

2. In the 3rd paragraph of these rules it is stated, that "the officer in charge is competent to carry into effect orders passed previously by the judge for the sale of property attached in execution of decrees, or other judicial process, or to stay the sale of such property pending the investigation of objections or claims preferred, but it shall not be competent to the assistant or other officer to hold such investigation or to issue orders for the sale of such property except when it may be of a perishable nature." I beg to be informed, whether this paragraph renders it imperative on the officer in charge to stay the sale of any property, which has previously been ordered by the judge to be sold in every case, in which a petition is given stating objections or preferring claims, or whether he is allowed to refuse to delay the sale without any investigation, but merely on the ground that the objections stated or claims preferred in the petition are insufficient reasons for such delay.

3. I am induced to request information on this point as many decrees of long standing have lately been ordered to be executed by this court, and consequently the petitions of owners of attached property for a delay of the sale are numerous; and as all investigation is forbidden by the rules above-mentioned, I am unwilling to refuse the delay requested, and have consequently in all cases postponed the sale till further orders, taking security from the petitioner when it seems advisable.

4. I beg also to be informed whether I am competent to pass orders on summary appeals from the decisions or orders of sudder ameens, moonsiffs, &c. under the provisions of Regulation XXVI. 1814, Section 3, or to pay over sums of money in deposit to parties who have obtained a decree for the same but have not procured an order for the money from the judge.

To the Officer in charge of the Judge's Office, Zillah Dinagepore.

I am directed by the Court to communicate to you their opinion, that you are competent to suspend the execution of an order passed by the judge for the sale of property, if, in the exercise of a sound discretion, on a perusal of the petition objecting to the sale, you consider it right to do so ; but that you cannot hold any investigation with a view to ascertain the truth or otherwise of allegations or claims contained therein.

2. With reference to your concluding 'paragraph, I am directed to state that, on a petition of summary appeal being presented, you are not competent to make any inquiry on the merits of the case, but should merely record the date of its presentation, and let it lie over for the next coming judge ; and further, that you are not competent to pay any money in deposit unless under an order passed by the judge before you received charge of the office, or unless the payment be directed by an express order of this Court, or of any other court in execution of whose decree it may have been deposited.

The Western Court, on the 5th February, 1836, *concurred in this construction.—Issued* 19*th February,* 1836.

January 8, 1836.

See also Nos. 1038, 1080 and 1242.

On the 8*th January,* 1836, *Mr. Braddon submitted the following Minute for the opinion of his Colleagues.*

No. 999.

1793.
Reg. III. Sec. 16.
1803.
Reg. II. Sec. 10.

A. sued B. for the recovery of a village, which at the time of the settlement B. contrived to get wrongfully included in his own talook as part and parcel thereof. The Court decreed the village to A., directing its disjunction from B.'s estate and its being separately assessed by the collector. But B. having appealed against the decision execution was stayed, and pending the appeal the whole of B.'s talook was sold for balance of revenue, and the purchaser having been put in possession of the village in question along with the other part of the property, B. declined proceeding with the appeal, and it was accordingly dismissed. B. however eventually succeeded in getting the public sale set aside by the courts of judicature, and A.

who came forward as a third party in the case claiming the village, was referred to a regular suit against B. I am desirous therefore of obtaining the opinion of my colleagues whether, under the foregoing circumstances, the decree obtained by A. was not final and conclusive against B., and whether on the sale of B.'s estate being annulled it ought not to have been executed, instead of A.'s being referred to a new suit to establish his right to that which had already been adjudged to him by a competent tribunal, and the appeal from which had been dismissed on the default of B. to proceed with it.

Connected with this case I further solicit the opinion of the judges upon another point, namely, A. having in pursuance of the above order brought an action against B. for the recovery of the village, a decree was passed by the sudder ameen in his favor, and on B.'s appealing from it the zillah judge discovered that B. after the institution of A.'s suit, and notwithstanding he was in possession of the village, had also filed a suit against A. to have himself declared the malik of it. The question therefore is, whether the zillah judge, merely upon having B.'s petition of appeal before him, and without deciding it, was competent, under the rules contained in Section 16, Regulation III. 1793, to dismiss B.'s suit without issuing the prescribed notice to A. to appear and answer to it? The words of the Section in question bearing upon the point are as follows—"The zillah and city courts are prohibited entertaining any cause which, from the production of a former decree or the records of the court, shall appear to have been heard and determined by any former judge or any superintendent of a court having competent jurisdiction."

With reference to the first question the Court were of opinion that the decree obtained by A. was final, and ought to have been executed. The question involved in the concluding paragraph was forwarded for the opinion of the Western Court.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 5th February, 1836.

I am directed by the Court to acknowledge the receipt of your letter, No. 46, under date the 8th ultimo, with its enclosed copies of minutes recorded by the judges of the Calcutta Court on a question involving a construction of Section 16, Regulation III. 1793.

2. The only point on which the Calcutta Court would appear to desire the opinion of this Court is as to what was the proper course of proceeding to be observed by the judge in regard to the disposal of the claim preferred by B., on discovering that a suit had already been instituted by A. in reality for the same cause of action, and which was at that time pending in appeal before him from the decision of the sudder ameen passed in favor of the plaintiff.

3. On this point the Court at large direct me to observe that as the judge had proof before him of the institution of the prior suit by

A. which was furnished by the records of his office, they are unanimously of opinion with the majority of the judges of the Calcutta Court, that under the rules laid down in Section 16, Regulation III. 1793, he was fully competent, on the information before him, to dismiss the suit of B. without issuing any notice to the other party to appear and answer thereto.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 5th February, 1836.

No. 1000.

Execution of process of sale and arrest in jurisdictions other than that in which the decree was passed and is in course of execution.

I am directed by the Court to request you will submit, for the consideration and opinion of the Calcutta Court, the accompanying copies of the correspondence noted in the margin*.

2. The Court propose, with the concurrence of the Calcutta Court, to answer the question submitted by the additional judge of Ghazeepore, in the concluding paragraph of his letter, in the negative. They observe, however, that cases may arise in which it would be proper and necessary for the court called upon to execute the process of another court, either for the arrest of the person against whom it issued, or the sale of property, to suspend execution pending a reference to that court in regard to any objections taken to its order, though the final decision in such cases would still rest with the court issuing the process.

3. As regards the first of the two cases out of which the present reference arose, the Court observe that as the land, ordered to be sold by the additional judge in satisfaction of a decree of the Sudder Dewanny Adawlut, though attached to the collectorate of Benares, was under the jurisdiction of the civil court of Juanpore, the judge of the former city was not competent to exercise any interference in the matter, but should have referred the parties objecting to the sale of the lands in question either to the judge of Juanpore, or additional judge of Ghazeepore for such notice as their claims might appear to require.

4. With respect to the second case the Court consider that the late judge of Benares exceeded his competency in directing the release of the person arrested therein, under the process of the court of Ghazeepore, without previously obtaining the acquiescence of that court in his so doing; the opposite party, however, does not appear to have preferred any appeal from that order; nor did the court of Ghazeepore make any remonstrance at the time; and as on the issue of a second process, in compliance with the requisition of the additional judge of Ghazeepore, the nazir of the Benares Court reported that the person ordered to be arrested was not forthcoming, the Court are of opinion that no other course was left to Mr. Gorton to pursue but

* Copy of a letter from the additional judge of Ghazeepore, dated 4th January, 1836.

Ditto ditto to the judge of Benares, dated 15th January, 1836.

Ditto ditto from ditto ditto, 25th January, 1836.

to forward a copy of his nazir's return for the information of the additional judge.

From the Additional Judge of Zillah Ghazeepore to the Officiating Register of the Western Provinces, dated 4th January, 1836.

* Government and Rajah Oodwunt Narain Singh, Appellants,

versus

Ranee Golaub Koour and Kamtapersaud, &c. Respondents.

In this case,* although I have mentioned the circumstances in a Persian proceeding under this date for the Court's information, I think it proper more particularly to bring them to the Court's notice. In execution of a decree of the Sudder Dewanny Adawlut, a list of property situate in the jurisdiction of the judge of Juanpore and of the collector of Benares having been given in to this court, I requested the judge of Juanpore to have it sold and to remit the proceeds of sale to my court. I have now received a proceeding from the judge of Juanpore, with copy of a proceeding of the collector of Benares, in which the collector states that the judge of Benares has prohibited the sale for the present ; of the reason I know nothing, and have addressed the judge of Benares on the subject ; but I consider the judge of Benares incompetent to forbid the execution of my order, especially without assigning a reason for so doing, and that it was incumbent on that officer to bring his objections to my notice, when I should of course have been ready to give every attention to them. I cannot however imagine any reason for stopping the sale, the property not being situate in the jurisdiction of the judge of Benares.

† Surfraz Ali Plaintiff,

versus

Ramlol and Joogool Kishore, Defendants.

In the same manner in another case (see margin†) a hookumnama in execution of a decree having been issued against a certain Joogool Kishore, defendant, from my court, through the Benares Court ; the person attending on the part of the decree-holder pointed out the said Joogool Kishore, and he was consequently arrested and brought before the Benares Court, when the judge of that court released him unconditionally, stating for my information that he denied that he was the Joogool Kishore in question. The decree-holder immediately requested that the court would send a proceeding requesting that he might be again arrested, which I did, but the individual against whom the process had issued in the mean time found means to conceal himself. The decree-holder positively asserted the identity of the person arrested, (which was attested by four peadas who were present at the the time of his arrest,) and complained bitterly of his release. Now it seems to me that the judge of Benares was not authorized in releasing the person arrested without proper inquiries on oath regarding his identity ; and that had any person who disputed it even deposed on oath to the negative in opposition to the assertion of the decree-holder, he should not at all events have been released without sufficient security for his re-appearance when called for and without a reference to the court issuing the decree.

2. I have mentioned these two cases circumstantially with the view of obtaining the opinion of the Court on this point, *viz.* whether the person of an individual can be released from process of arrest, or his property from attachment and sale, by any other authority than that which issued the process. It would seem to me that a previous reference should be made to the authority issuing the process in each instance.

The Presidency Court, on the 11*th March*, 1836, *concurred in the construction of the Western Court.*

February 5, 1836.

See Circular Order, 8th May, 1840, and Act XXXIII. 1852.

From the Officiating Judge of Zillah Nuddea to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 21*st December*, 1835.

No. 1001.

1831.
Reg. VIII.

I have the honor to solicit the opinion of the superior court on the following points :

1. Are summary cases made over by the collector to the civil court under Regulation VIII. 1831, in consequence of regular suits having been previously instituted relative to the same matter, to be numbered and decided separately ; or are the papers connected with them to be amalgamated with, and form part of the nuthee of the regular suit, and both cases to be disposed of in one decree ?

2. What is the precise meaning of the term " regarding the same matter" in Section 14 of the enactment above referred to ? Does it imply that whenever a regular suit is instituted in the civil court, regarding the rent of the same land for which a summary suit has been previously brought before the collector, the former is to be made over for decision to that officer, and *vice versâ*, or is the transfer to take place only when the cases involve claims to rent not merely of the same land but also for the same period ? Unless some restriction of this kind is observed great confusion may arise, as the following case which has actually occurred in this district will show. A. sued B. summarily before the collector for the rent of certain lands for 1240 B. S. and obtained a decree, to set aside which B. brings a regular suit. Before however the latter was instituted, A. had brought another summary action against B. for the rent of 1241 B. S., and according to the wording of the enactment the regular suit must be made over to the collector if by the expression " the same matter" is to be understood generally the rent of the same land.

3. By Section 8 of the above Regulation, in regular suits for arrears of rent the plaint is expressly allowed to be written on paper

bearing a stamp of one-fourth of the prescribed value. Is this rule to be considered as applicable to all or any of the subsequent pleadings ? The avowed object of the Legislature in authorising a reduction in the value of the prescribed stamp is " to give additional encouragement to persons having claims to arrears of rent to prefer regular suits on account of the same ;" and it may therefore be presumed that the provisions of the Section in question were meant to include all the pleadings filed on the part of the prosecution ; while on the other hand there appears to be no obvious reason why the indulgence should be extended to the defending party.

To the Officiating Judge of Zillah Nuddea.

I am directed to communicate to you the following replies to the queries contained in your letter of the 21st December last.

2. In reply to the first question, I am directed to state that cases made over by the collector under Regulation VIII. 1831 must be numbered separately, and each decided as a distinct suit, though both decisions may be simultaneous.

3. *2nd Question.*—The term in Section 14, " regarding the same matter," is to be considered as meaning that the cause of action in both suits is identical. The applicability of the rule can only be made by the judge or other officer acquainted with the details of each case. If, in conformity with this construction, you should experience difficulty in deciding the case referred to in the conclusion of the 2nd paragraph of your letter, the Court will be prepared, on receiving intimation from you to that effect, and on your supplying more explicit information on the subject, to issue such further instructions as may appear to be requisite.

4. *3rd Question.*—It has been ruled* that suits instituted under Section 8, Regulation VIII. 1831, are to be considered in all respects as regular civil suits ; consequently the pleadings and all other papers should be written on stamped or plain paper, according to the circumstances of the case, in the same manner as if the suit had been instituted on full stamp.

* See Construction No. 711.

The Western Court, on the 4th March, 1836, *concurred in this construction.—Issued 15th April,* 1836.

February 12, 1836.

See No. 951.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, under date the 18th March, 1836.

No. 1003.

1831.
Reg. V. Sec. 28, Clause 1.

The Court, having read again the minutes communicated to the Court of Sudder Dewanny Adawlut for the Agra presidency with their letter of the 8th January last, and the Agra Court's reply dated the 5th ultimo, No. 166, resolve, in concurrence with the opinion of the Western Court, on the following rule of practice.

2. *Whenever it shall appear to the Court, that a sudder ameen or moonsiff has tried and determined a suit which, from its amount or other cause, was not legally within his cognizance, and that the zillah or city judge, without adverting to this fact, has decided an appeal therefrom according to its merits, this Court will admit a summary appeal from the judge's order; and, considering the original decision of the sudder ameen or moonsiff and the judgment of the zillah or city judge in the appeal equally null and void, will quash all the proceedings of the case, and direct the judge to cause the original suit to be tried de novo by the authority competent to do so.*

Rescinded by Circular Order, 26th September, 1842, No. 228.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, under date the 25th March, 1836.

No. 1004.

Putnee talooks as such are sufficient security in cases appealed to the King in Council, if otherwise unexceptionable.

Resolved, with the concurrence of the Western Court, that a sudder putnee talook, unexceptionable in all respects, as such, shall be considered as sufficient security in cases appealed to the King in Council, to the extent of the surplus proceeds thereof.

March 25, 1836.

To the Judge of Zillah Bhaugulpore.

No. 1007.

The local position of a Hindu family does not necessarily determine the law by which their disputes ought to be decided.

I am directed to inform you that the case adverted to in your letter of the 23rd March last should be decided according to the Hindu law current in the pergunnah in which the family reside, provided it accords with the family usage; otherwise the latter must form the rule of guidance.

2. I am also directed to refer you to the cases noted in the margin, as showing that the local position of a family does not necessarily determine the law by which their disputes ought to be decided.

Rajchunder Narain Chowdry, Appellant, versus Gocol Chunder Gop, Respondent.	Page 43, Vol I. Select Reports.	
Gungadutt Jha, Appellant, versus Sree Narain Rai and another, Respondents.	Page 11, Vol. II. Ditto.	

The Western Court, on the 13*th May*, 1836, *concurred in this construction.—Issued* 10*th June*, 1836.

April 22, 1836.

From the Secretary to the Sudder Board of Revenue, Western Provinces, to the Officiating Register of the Sudder Dewanny Adawlut for the Western Provinces, dated 29*th March*, 1836.

No. 1008.

1799. Reg. V. 1803. Reg. III. Sec. 16.

I am directed by the Sudder Board of Revenue to request the favor of your submitting to the Sudder Dewanny Adawlut at Allahabad the following observations regarding doubts which appear to have arisen on the construction of Section 16, Regulation III. 1803.

2. The Board direct me in the first instance to state the circumstances under which the question was brought before them, and subsequently their views on the proper construction of the enactments in question, for the consideration of the Court.

3. A case came before the Board on occasion of a disputed succession to a landed estate; the collector had entered into a judicial investigation, taken an opinion from a law officer, and finally directed the parties to be put in possession of such shares as he considered to be their right.

4. The Board directed the whole of those proceedings to be annulled, and having seen cause to believe that many of the revenue officers in the Western Provinces were accustomed to usurp the exercise of judicial authority, and thereby, in fact, incur the penalty of contempt of court, a circular was issued prohibiting any such practice.

5. At the same time, as the very act of adopting this illegal and irregular proceeding evinced on the part of the collectors an unacquaintance with the laws enacted for their guidance, the Board judged it expedient to indicate to them distinctly under what department such cases would properly fall. This was done not with the remotest view of taking upon themselves to point out to the courts their duty, but to make the revenue officers understand that the utmost legal

limit of their interference was confined to bringing the case to the cognizance of the only authority legally entitled to dispose of it.

6. The Board's view is that a collector is strictly an executive officer and has naturally no connection or concern with judicial authority. In this opinion they consider themselves borne out in the strongest manner by the latter part of the preamble to Regulation II. and by the whole preamble to Regulation III. 1793 which may be considered as fundamental and constitutional laws. The Board have drawn the same conclusion from the fact of the collectors in their official capacity having been made subject to the jurisdiction of the courts.

7. The Board therefore consider that every instance, in which, from reasons of present expediency and necessity rather than from the dictates of sound and durable policy, judicial powers have in later times been given to collectors, must be looked on not as a rule but as an exception; and as a corollary to this conclusion they consider that the collectors must be limited strictly to that extent of judicial power which the law has explicitly conferred upon them.

8. Now the only judicial power which the law has conferred on collectors is, 1st, the power to try summary suits regarding rent and replevin ; 2nd, to try the validity of claims to hold land free of assessment ; 3rd, the power to try certain cases conferred on collectors employed in making or revising settlements. No power has ever been given to try the right or title to succeed to or transfer landed property.

9. Collectors are directed by the Regulations, as ministerial officers, to record successions or mutations of parties on whom they are to look as responsible for the public revenue, when they find such to have occurred ; but there is no authority given to them to question, still less to decide, the right to succeed or to transfer.

10. The Board however have found the collectors in the Western Provinces much inclined to usurp such a power, and their native officers (from obvious causes) much disposed to encourage them in this usurpation ; and the Board are therefore desirous strictly to prevent any such, in their view, illegal and extra-judicial interference.

11. Yet it seems necessary that a power should somewhere reside, to declare who should, *vacante lite*, obtain possession, pending a solemn judicial investigation into the right of many claimants to succeed to a demised estate ; and that power should, in the opinion of the Board, both according to the Regulations of Government and the rule of analogy, reside in the courts.

12. If such a power conforms in all respects with the essential functions of a court of equity, the Board direct me to remark, that they are told the province of equity is to prevent that evil which it is the business of law to redress. To reduce the question from a general definition to particular terms, it may be said to be strictly the province of equity to prevent by previous arrangement the injury and loss of property, which must arise from contested management

and uncertainty of title, in an estate charged with a heavy revenue to Government realizable by public sale.

13. It seems to the Board that the object of Regulation V. 1799, and of Section 16, Regulation III. 1803, is to provide for just so much interference on the part of the court as has been above stated to be an essential part of an equity jurisdiction.

14. By those laws the courts are prohibited to interfere where the deceased has left a will and appointed executors.

15. Also where there is a single heir entitled to succeed to the whole estate.

16. Also where there is more than one heir and they agree among themselves as to the management.

17. The policy and sound reason of these prohibitions are obvious. There is no case which can require interference before trial.

18. If of many claimants one or more may have taken possession (the Board would remark that the verb is in the preterite tense) the court can only interfere previously to trial by a demand of security. But if security be not given the court may interfere to protect the property, or, according to the definition of equity above quoted, to prevent the evil which law could only redress.

19. The Board now proceed to the case which they contemplate, and in which the law has fully acknowledged the equitable jurisdiction of the courts previous even to suit brought. The case is that in which there "may be no person authorised and willing to take charge of the estate of a person deceased."

20. The Board conceive that these two essential terms (authorized and willing) are to be understood in strict connection each with the other. There may be many persons willing to take charge of the estate, but the question is whether they be authorized also.

21. The Board, wishing to give a strong but desirous of putting a common case, will instance that of a man in full vigour of intellect managing his own landed estate, who dies of fever or any rapid complaint, intestate of course, and leaving several grown-up sons by different wives,—all are on the spot, each seizing the ryots, calling on the police, and raining down petitions on the collector, the magistrate, and the civil court. There is no possibility of any one having taken possession, for all are engaged in a struggle. They will never agree—and who among them can be authorized in exclusion of the rest?

22. It seems to the Board to be the intention of the law that in such a case the civil court should interfere, and either put the estate in charge of one of the parties as administrator, taking security from him for the effects until there have been time for a decision on the claims of all by a regular suit, or that he should place the estate in charge of the collector to be kept in trust until some one shall bring suit to try his claim.

23. If the Board's view be considered just in this strong case, then it will obviously be the duty of the court to exercise previous

interference in every case where there may be several claimants and no one may have taken possession.

24. The Board would also beg permission to suggest that in considering a legal enactment, the whole context and the spirit of the whole enactment must be taken into the argument. In fixing the meaning of the expression "may have taken possession" in Section 4, there are, in the view of the Board, two points for consideration—1st, as above noticed, the verb being in the preterite tense, which implies a foregone act, something which occurred previous to the question being raised; 2nd, that the possession referred to must mean legal and peaceable possession at the time it was taken, though subsequently challenged. It must be a taking possession, as declared in Section 3, "so far as the same can be done without violence:" where such previous peaceable possession is not, it seems to the Board that the Regulation authorizes and requires the courts of justice to interfere.

25. The Board find a reference to these enactments in the Book of Constructions, No. 310. In paragraph 4 of that letter, containing the construction referred to, the Sudder Dewanny Adawlut appear to consider the civil courts authorized to declare in whom the title rests, subsidiarily of course to and pending decision on a regular suit.

26. The Board have also heard of a similar decision on a case of some importance in zillah Burdwan or Nuddea, but they have not at present the papers at command.

27. The commissioner of the 4th division has forwarded to the Board copy of the Court's letter, dated 25th February, addressed to the judge of Bundelcund; but as the reference made by the judge did not embrace the general question, the Board do not feel themselves thereby precluded from requesting the Court to take the subject into consideration. The Board request the Court will be pleased to take the whole question into their consideration and favor the Board with their decision on the above point.

28. The Board direct me to submit that this question as regards them is far from a mere speculative matter. It is of great importance to the revenue administration to be authoritatively informed at an early period, in case of a disputed succession after the occurrence of a lapse, to whom they are to look as responsible for the Government jumma; and in the opinion of the Board no authority but a judicial one can resolve the question.

To the Secretary to the Sudder Board of Revenue, Western Provinces.

I am directed to acquaint you, for the information of the Board, that as intimated therein, the Court have consulted with the Calcutta Court of Sudder Dewanny Adawlut on the subject discussed in your

letter, No. 14, under date the 29th March last ; and they now direct me to communicate to you the following observations in reply.

2. The Court have again had before them the correspondence with the officiating judge of Bundelcund, alluded to in the 27th paragraph of your letter, and after duly considering the circumstances therein detailed, they direct me to observe that they see no reason to alter the opinion expressed in their reply to that officer on the point referred by him, *viz.* that, in the particular cases which formed the subject of his reference, he was not competent to interfere except on the institution of a regular suit by the parties concerned.

3. In one of those cases, the Court observe, the dispute in regard to the succession lay between the widow of the deceased zemindar and a person claiming as purchaser ; and there cannot be any question, the Court apprehend, that instead of certifying the case to the judge, and requiring him to pass orders in the matter under the provisions of Regulation III. 1803, the collector should have proceeded to register the widow's name in the place of her husband's, leaving the other party, if he thought proper, to institute a regular suit in the civil court under the alleged deed of sale for possession of the property sold. The circumstances of the other cases brought to the notice of the Court by the officiating judge of Bundelcund were nearly similar to those just related ; and the Court are of opinion that they should have followed the same course.

4. In the 4th paragraph of your letter, however, it is stated that many of the revenue officers in these provinces have been in the habit of exercising judicial authority in cases of disputed succession to the estate of a deceased zemindar, entering into a judicial investigation of the claims of the several claimants, and, in some instances, directing the parties to be put in possession of such shares as appeared to be their right ; it would appear therefore that the collectors have gone beyond the line of their duty, more especially in awarding possession. The Court observe that the rules for the guidance of the revenue authorities in such cases are clearly laid down in Section 41, Regulation XLII. 1803, which requires that, on the receipt of a notice of any person having succeeded by inheritance to the property of a malgoozaree estate or lakhiraj tenure, the collector shall institute such inquiry as shall appear necessary to ascertain the truth of the alleged succession, and if the same may appear to have taken place he is to cause the necessary entries to be made in the proper registers ; and the Court are of opinion that if the collectors were enjoined strictly to conform to those rules, the inconvenience stated to have arisen, and of the existence of which the Court had no previous knowledge, would no doubt immediately cease.

5. With regard to the nature and extent of the jurisdiction to be exercised by the civil courts in cases of the nature of those under discussion, the Court direct me to observe that the general rule prescribed for their guidance is prohibitory of any summary interference ; and although cases may arise which might justify an excep-

tion and require the interference of the civil authority, such for instance as the one described in the 21st paragraph of your letter, the Court can by no means concur in the general position assumed in the 23rd paragraph, that it is the duty of the courts to exercise previous interference in every case where there may be several claimants merely on the ground that none of them had taken possession. But so much must depend upon the circumstances of each case that, in the existing state of the law, it appears to the Court that it would be inexpedient and open to objections to lay down, in the form of circular instructions, any further rules for the guidance of the judicial officers, who must regulate their proceedings according to the peculiar circumstances of each case, as it may arise or be brought forward either on the motion of the collector or by the parties interested, as provided for by Section 26, Regulation V. 1812.

6. As however the subject is one of general interest and importance, and it is highly desirable that some clear and specific rules should be laid down for the guidance of the authorities of both departments, the Court propose to forward the correspondence that has taken place with the Sudder Board, to the Indian law commissioners, with a view to their taking the subject into consideration, and introducing such provisions in regard to it into the civil code, now in the course of preparation, as may appear to them necessary and expedient.

The Presidency Court, on the 17th June, 1836, concurred in this construction.

May 19, 1836.

See Nos. 252 and 1106, also Acts XIX. and XX. 1841.

Extract of a Letter from the Judge of Zillah Tipperah to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 9th April, 1836.

No. 1009.

1814.
Reg. XXVIII.
Secs. 4 to 12.

* Ramgopaul, Ramgovind and others, versus Rubbee Doss and others.

The suit noted in the margin was instituted by the plaintiffs' claiming defendant and others as slaves, and the damages were laid at six hundred rupees. On the 8th Cheyt* 1241 *B. S., a decree was given in favor of the former by the principal sudder ameen. On the 11th Assar* 1242 *B. S., the defendant Rubbeedoss, being dissatisfied with the decision, presented a petition of appeal under the provisions of Section* 12, *Regulation XXVIII.* 1814, *praying to be permitted to sue in formâ pauperis. On perusal of the petition of appeal and the decree passed by the principal sudder ameen, it appeared to me that there was sufficient cause to merit a further investigation of the case in appeal; and I would at once have admitted it had I not enter-*

tained doubts as to the propriety of so doing, it being a case, the subject matter of which appears in my judgment to come under the denomination of "personal injuries," laid down in the 4th Section of the Regulation above-mentioned. I therefore deem it expedient to submit the point for the consideration of the superior court, and request the favor of your obtaining its opinion whether the construction I have put upon the aforesaid section, regarding "slavery" coming under the head of "personal injuries," be correct or otherwise, and consequently whether Rubbeedoss should be permitted to sue in appeal as a pauper or not.

To the Judge of Zillah Tipperah.

I am directed to inform you that, in the opinion of the Court, a person adjudged to be the slave of another is entitled to appeal against the decision in formâ pauperis.

The Western Court, on the 10th June, 1836, *concurred in this construction.—Issued 24th June,* 1836.

May 20, 1836.

See Act V. 1843.

Extract of a Letter from the Judge of Zillah Rajshahye to the Presidency Court of Sudder Dewanny Adawlut, dated 18th March, 1836.

No. 1010.

Circular Orders Nos. 1, 90 and 164, Vol. II., dated respectively 6th June, 1828, 19th July, 1833, and 2nd Jan., 1836.

Para. 5. *There is yet another difficulty to which I must allude. The realization of the amount decreed being thus indefinitely postponed, (should my construction of the Court's order be correct,) on whom should the demand for interest accruing thereon be made? Any delay in the non-receipt of the full amount by the decree-holder is not the act of the individual against whom judgment is given, though in many cases perhaps originating in his collusion with connexions or dependents, one of whom is put forward as a claimant as often as the lands are advertised; to charge him therefore with interest would be unjust; the decree-holder, on the other hand, is entitled to interest on his decree till the whole amount be discharged.*

To the Judge of Zillah Rajshahye.

With reference to paragraph 5 of your letter of the 18th March last, No. 16, *I am directed to inform you that the Court consider it competent to you, under the circumstances stated, to impose the payment of the accruing interest of the debt on any*

claimant, whose objections may in your judgment be evidently collusive and litigious, or vexatious and unfounded, subject of course to an appeal to this Court.

The Western Court, on the 24*th June,* 1836, *concurred in this construction.—Issued* 8*th July,* 1836.

June 3, 1836.

Rescinded by Circular Order, No. 166, 14*th February,* 1852, *and Summary Decision,* 357 *of* 1851.

To the Judge of Moorshedabad.

No. 1015.

1793. Reg. XXXVI. Sec. 7. 1803. Reg. XVII. Sec. 7.

I am directed to communicate to you the opinion of the Court, (in which the Court of Sudder Dewanny Adawlut for the Western Provinces have concurred,) that under the strict wording of Section 7, *Regulation XXXVI.* 1793 *and Section* 7, *Regulation XVII.* 1803, *and Construction No.* 14, *dated the* 29*th November,* 1805, *the registry of a deed in any other district than that in which the land is situated, must be considered as inofficial, and as not entitling the deed to the reference conferred on registered deeds by Section* 6 *of the Regulation cited.*

The Western Court, on the 8*th July,* 1836, *concurred in this construction.—Issued in July,* 1836.

June 17, 1836.

See Act IV. 1845.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 30*th May,* 1836.

No. 1017.

Power of a surety to alienate property, of which in the security bond he calls himself proprietor, but which is not specifically pledged as security for the principal debt.

May I request the favor of your obtaining for me the opinion of the Court on the following point? It is one which probably has been repeatedly before the Court, and with respect to which its practice is sufficiently established.

A. becomes surety for B. (on the latter borrowing a sum of money designating himself as proprietor of certain estates,) but without expressly stating that such property is pledged as security for the debt. The security bond may generally be in the following terms: "Whereas B. has borrowed so much money, I, proprietor of such an estate, bind myself as surety for the debt; in default of payment by B. I will liquidate the debt." In such case can A. legally alienate

the property of which in the bond he calls himself owner until the debt has been satisfied ?

To the Officiating Judge of Zillah Shahabad.

I am directed to communicate to you, in reply to your letter of the 30th May last, the opinion of the Court, that supposing A on becoming security for B. (on the latter's borrowing a sum of money) to designate himself as proprietor of certain estates, without expressly stating that those estates are pledged as security for the debt, he (A.) is not legally precluded from alienating the said property, during the continuance of his liability for the security into which he has entered.

The Western Court, on the 15th July, 1836, *concurred in this construction.—Issued 27th July,* 1836.

June 24, 1836.

No. 1020.

1814. Reg. XXIII. Sec. 74. 1832. Reg. VII. Sec. 7.

In reply to a letter from the additional judge of Burdwan, dated 11th June, 1836, *the Presidency Court held that under the provisions of Section* 74, *Regulation XXIII.* 1814, *the judge, when he has modified or confirmed the order of a native judge imposing a fine, is to proceed to realize the same under the same rules as are prescribed for the execution of decrees. By Section* 7, *Regulation VII.* 1832, *the native judges are authorized to execute their own decrees. The Court are therefore of opinion that the judge may refer his order in such cases to them for execution.*

The Western Court, on the 22nd July, 1836, *concurred in this construction.—The letter to the Additional Judge of Burdwan was issued 12th August,* 1836.

July 1, 1836.

See Circular Order, No. 225, 16th September, 1842, *and Act VI.* 1843.

To the Judge of Zillah Bundelcund, dated 8th July, 1836.

No. 1021.

1826. Reg. III.

With reference to your letter of the 10th March last, on the subject of the difference of opinion existing between yourself and the officiating magistrate of Banda, as to the extent of that officer's jurisdiction over prisoners confined in the Dewanny jail under civil process, I am directed to acquaint you, that, under the provisions of

Regulation III. 1826, you are vested with no legal right to be considered as the medium of communication on the part of the magistrate with such prisoners.

2. At the same time the Court direct me to observe that under Section 6 of the foregoing enactment, you are fully at liberty to communicate with the prisoners in question whenever you may have occasion to do so, without reference to the magistrate.

3. Under this construction the officiating magistrate will of course recall the instructions issued by him to the darogah of the civil jail, desiring him whenever he had any reference to make either to your court or to the collector of the district in regard to any prisoner confined under civil process, to constitute his office the channel of communication ; and you will direct him to continue to observe the practice which obtained with respect to matters of this nature prior to the issue of the orders in question.

Issued with the concurrence of the Presidency Court.

July 8, 1836.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 23rd May, 1836.

No. 1022.

1831.
Reg. V. Sec. 5, Clause 2.
Sec. 15, Clause 2.
Sec. 18, Clause 1.

Power of native jugdes to try and decide suits respecting the right in slaves.

I have the honor to request the opinion of the Court of Sudder Dewanny Adawlut whether, under clause 2, *Section* 5, *clause* 2, *Section* 15, *and Clause* 1, *Section* 18, *Regulation V.* 1831, *it is within the competency of the moonsiffs, sudder ameens and principal sudder ameens respectively to try and decide suits respecting the right in slaves.*

To the Officiating Judge of Zillah Shahabad.

I am directed to communicate to you the opinion of the Court that, as the provisions of Sections 5, 15 *and* 18, *Regulation V.* 1831, *which define the powers of moonsiffs, sudder ameens and principal sudder ameens as to the cognizance of suits, make no exception to slaves, they must be looked upon in the same light as other personal property, and suits regarding them be held cognizable by the native judges. The Court at the same time direct me to add that they consider it highly inexpedient that such cases should go before a native, should the reference of them to a European judge be practicable.*

The Western Court, on the 15*th July,* 1836, *concurred in this construction.—Issued* 29*th July,* 1836.

July 8, 1836.

From the Officiating Judge of City Moorshedabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 18th June, 1836.

No. 1023.

1831.
Reg. V. Sec. 16, Clause 2.

I request you will do me the favor to lay the following questions before the Court of Sudder Dewanny Adawlut for solution:

1st.—Can a principal sudder ameen, authorized to try appeals from decisions of moonsiffs, refer back any case to the moonsiffs for further investigation?

2nd.—If a principal sudder ameen should, on trying an appeal as above, be of opinion, that a moonsiff has improperly nonsuited or dismissed a suit brought in his court, can he return the record, and through the judge request an order to the moonsiff to re-admit and re-try the case?

To the Judge of City Moorshedabad in reply to his letter of the 18th June, 1836.

1st.—The Court are of opinion that a principal sudder ameen, authorized to try appeals from the decisions of moonsiffs, may refer a case to a moonsiff for further investigation.

2nd.—Should he be of opinion that a moonsiff has improperly nonsuited a case, he should return it to the judge with his opinion that the moonsiff should be directed to re-admit it and try it on its merits.

The Western Court, on the 5th August, 1836, concurred in this construction.—Issued 19th August, 1836.

July 8, 1836.

See Act XXVI. 1852.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, dated 8th July, 1836.

No. 1024.

1806.
Reg. II. Sec. 8.

The Court, having had under consideration the fluctuating practice which obtains with regard to allowing or disallowing appellants to assign or mortgage their own lands in lieu of security pending the appeal, observe that Section 8, Regulation II. 1806, which authorizes the "deposit of money or of promissory notes or other obligations of Government, or any other, sufficient money security" in lieu of personal bail or security for money or other property, is silent in regard to an assignment of the land of the party assured.

2. *They further observe that the admission of such assignment is not fair to the respondent, inasmuch as it deprives him of a portion of his security; for, in the event of the appellant being cast, the respondent might always in the first instance come on his lands in satisfaction thereof; by the formal assignment he*

obtains no additional hold on them, while he is deprived of the benefit arising from the security of the lands of a third party.

3. *Under these circumstances the Court deem the assignment or pledge of the lands of the appellant in lieu of security inexpedient, and of but doubtful legality, and accordingly*

Resolve.—That such assignment or pledge be not in future received.

The Western Court, on the 12*th August*, 1836, *concurred in this construction.*

July 8, 1836.

Rescinded by Circular Order No. 157, 27*th November*, 1851.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8*th July*, 1836.

No. 1025.

1814.
Reg. XXVIII.
Sec. 12, Clause 3.

A question having arisen as to whether an appeal lies to the King in Council from a summary order passed by the Court of Sudder Dewanny Adawlut refusing, on the grounds specified in clause 3, Section 12, Regulation XXVIII. 1814, to admit an appeal *in formâ pauperis* from the decision of a zillah judge, in which the sum or value awarded amounted to 50,000 rupees, the petitioner being, at the same time, left at liberty to institute his appeal on performing the conditions prescribed by the Regulations for persons not suing as paupers, I am directed to request you will submit the point for the consideration and opinion of the Calcutta Court.

2. The Court observe that in the case cited in the margin* it was ruled by the Court of Sudder Dewanny Adawlut that an order passed by a Provincial Court refusing to admit an appeal *in formâ pauperis* on the merits of the case, and without reference to the question of pauperism, was final and conclusive; and that in a note appended thereto, it is added that "the Sudder Dewanny Adawlut had on many occasions construed clause 3, Section 12, Regulation XXVIII. 1814, as vesting the appellate authority with discretion to pass a final order not open to special appeal." The Court are of opinion that the same principle must be held to apply to orders passed by themselves of the nature of that described in the preceding paragraph, and that consequently no appeal lies from such orders to the King in Council; and should the Calcutta Court concur in this construction they propose to adopt it as a rule of future practice.

* Syud Kulundur Ali, Appellant,

versus

Dhoomun Bebee and others, Respondents.

Page 105, Vol. IV. Sudder Dewanny Reports.

The Presidency Court, on the 4*th August*, 1836, *concurred in this construction.*

July 8, 1836.

See No. 1032.

From the Additional Judge of Zillah Burdwan, to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 14th May, 1836.

No. 1027.

Circular Order, Vol. 2. 1, June, 6, 1828. 90, July 19, 1833. 164, January 2, 1836.

I would again beg to bring before the Court the subject referred to in their Circulars as noted in the margin.*

2. In the form given at the end of the Circular No. 144, it is stated, "that a perwannah be sent to the treasurer to hold, agreeably to the Circular Order of the 6th June 1828, the amount proceeds of the sale in deposit for three months." On referring, however, to the Circular No. 1, and to the sections† of the Regulation quoted in it, it clearly appears that only one month is allowed for objections to be made to the judge, when any irregularity may have occurred in conducting the sale of real property; and if no objections should be made to the judge within one month, then the amount may be paid away at once. In case any objections should be made to the judge within one month, and the judge should over-rule them, then by the section noted in the margin‡, an appeal of three months lies to the Sudder, but by the Circular No. 164, it is required, whether objections are made or not made to a sale, that the amount should, under the sections of Regulation VII. 1828, quoted in the Circular No. 1, be kept in deposit for three months, while those Sections do really only provide for cases, where only one month is in the first instance allowed for objections to be preferred to the judge.

3. The Circular No. 90 refers entirely to cases where appeals are actually referred from a judge's decision, and three months is certainly the period allowed for such appeals; but nothing whatever is said of three months to be allowed for an appeal to the Sudder, where no objections may be made in the first instance to the judge within one month either before or after a sale. The following is a summary of this question:

* No. 164, 2nd Jan. 1836.
No. 90, 19th July, 1833.
No. 1, 6th June, 1828.

† Reg. VII. 1825, Sec. 3, Clause 3. Sec. 5, Clause 1.

‡ Sec. 3 Clause 5, Reg. VII. 1825.

Before a sale takes place.

§ Reg. VII. 1825, Sec. 3, Clauses 2 and 6, noted. The period of proclamation in Clause 6, is that of the 30 days in Clause 2.

4. By the sections§ and clauses as noted in the margin, thirty days are allowed for claims and objections to be preferred to the judge; and if none are made, the sale may be at once concluded. If objections or claims are made and rejected by the judge, then by the section as noted in margin‖ three months are allowed for an appeal to the Sudder against the judge's decision.

‖ Section 3, Clause 5.

After a sale takes place.

¶ Sec. 3, last part of Clause 3.

** By Circular No. 1 of 1828.

5. The sections as noted¶ allow of one month for objections to be made to the judge, and for one month the money is to be kept in deposit,** and if no objections are made within one month after sale, the amount may be paid away. If objections are made to the judge within one

month, and they are over-ruled, then by the sections as noted* the period for an appeal to the Sudder is three months.

* Sec. 3, Clause 5, and Sec. 5, Clause 3.

6. No man can, agreeably to the practice of the civil courts, appeal to the Sudder Dewanny either before a sale takes place or after it is effected, until the judge has been first petitioned, and by the Circular No. 1, and the sections quoted in it, one month is the period fixed for presenting petitions to the judge, but by the Circular No. 164, it is generally understood, that this period is to be extended to three months. As it appears to me, however, that the period of three months is for appeals to the Sudder from the decision of the judge after claims or objections have been over-ruled by him, I would beg to submit, for the consideration of the Court, whether the proceeds of the sale of real property might not be paid away after the expiration of one month from the date of sale, provided no objection be made *to the judge*, within the period of one month allowed for such objections by the sections of Regulation VII. 1825, as quoted† in the Circular No. 1 of 1828.

† Sec. 3, Clause 3. Sec. 5, Clause 2.

7. A proposal similar to this was made in the seventh paragraph of my letter of the 16th February last, but as it was not referred to in the Court's reply,‡ I fear I was not sufficiently clear and explicit in submitting the proposition for their consideration.

‡ Dated the 11th March, 1836.

To the Additional Judge of Zillah Burdwan, dated 29th July, 1836.

I am directed to inform you that the view taken by you in your letter of the 14th May last, No. 29, in regard to the retention of the proceeds of sales in execution of decrees, is in the opinion of the Court perfectly correct, and I am instructed to take this opportunity of briefly stating the measures which should be adopted in such cases.

2. When claims or objections are preferred to the zillah judge before the sale, and rejected by that officer, the sale must be postponed for three months from the date of the judge's order.

3. When objections are preferred to a zillah judge after the sale, and by him similarly rejected and the sale confirmed, the purchase-money must be kept in deposit for three months from the date of the order of the judge rejecting the petition and confirming the sale.

4. If on the other hand no claims are preferred before the sale, it may take place in thirty days, and if, after the sale, no objections are preferred within thirty days, the purchase-money may, in like manner, be paid to the decree-holder at the expiration of that period.

The Western Court, on the 15th July, 1836, concurred in this construction.

July 29, 1836.

See Circular Order No. 26, 11th August, 1843.

From the Judge of Zillah Rajshahye to the Register of the Court of Sudder Dewanny Adawlut, dated 8th July, 1836.

No. 1028.

1831.
Reg. VIII. Sec. 6.

I beg to refer to the superior court for their construction of Section 6, Regulation VIII. 1831. Do the words " shall be restricted to the period of one year from the date of the delivery of the collector's decision," imply a year from the date of pronouncing judgment? or do they grant the power of instituting a regular suit, to set aside a summary award, to a party at any period within twelve months after the delivery of recorded judgment in the form of a roobukaree to an individual furnishing the required stamped paper? The text and the margin appear to be at variance.

To the Judge of Zillah Rajshahye.

I am directed to communicate to you, in reply to your letter of the 8th July last, the Court's opinion, that the period of one year, to which the admission of regular suits to set aside the awards of the revenue authorities is restricted by Section 6, Regulation VIII. 1831, should be calculated according to the principle laid down in clauses 10 and 11, Section 8, Regulation XXVI. 1814.

The Western Court, on the 19th August, 1836, *concurred in this construction.—Issued 9th September,* 1836.

July 29, 1836.

To the Register of the Sudder Dewanny Adawlut for the Western Provinces, dated 12th August, 1836.

No. 1032.

Demand of security from pauper appellants to the Queen in Council.

I am directed by the Court to acknowledge the receipt of your letter of the 22nd ultimo, No. 680, and in reply to inform you that the Court concur in the rule of practice proposed to be adopted by the judges of the Western Court, *viz.* that persons wishing to appeal to the Queen in council *in formâ pauperis* shall be required equally with other appellants, to furnish security (malzaminee) to the extent of five thousand sicca rupees, to cover the original costs of appeal; and in a further sum of five thousand sicca rupees to reimburse the Honorable the Court of Directors any expenses to which they may be put in the event of their being called upon, under the provisions of Section 22, 3 and 4 William IV. Cap. 41, to conduct the appeal on the part of the party.

August 12, 1836.

See No. 1025, and Order in Council reducing the Security to 4,000 Rs. page 584, *Bengali Gazette,* 25th October, 1853.

No. 1035.

An European defendant in a civil suit filing his pleadings and petitions in the vernacular language may add English translations on unstamped paper.

The Calcutta Court held on a reference from the agent to the Governor General in Hazareebagh, that an European defendant filing his pleadings and petitions in the Persian or vernacular language on the prescribed stamp may be permitted to add translations thereof in English on unstamped paper ; and that all processes issued to him should be written in the ordinary language of the court and in English.

2. They further held that it is no part of the duty of the court to furnish the defendant with translations, but that he should procure a person duly qualified to interpret for him.

The Western Court concurred.—Letter to Agent to Governor General, issued 16th September, 1836.

August 12, 1836.

Deposition of an European witness must be recorded in English.

The Calcutta Court, with the concurrence of the Western Court, subsequently held, on the 27th January, 1837, that the deposition of an European witness must be recorded in English, and a Persian translation made by the principal assistant himself, and annexed thereto.

No. 1036.

1793.
Reg. III. Sec. 14.

1803.
Reg. II. Sec. 18, Clause 3.

* Roobukaree of Mr H. Shakespear, dated 18th March, 1834.

Ditto of Mr. R. H. Rattray, dated 16th April, 1834.

Ditto of Mr. W. Braddon, dated 17th June, 1834.

Ditto of Mr. T. C. Robertson, dated 17th December, 1834.

Ditto of Mr. G. Stockwell, dated 6th January, 1835.

Ditto of Mr. D. C. Smyth, dated 6th August, 1835.

Ditto of Mr. C. R. Barwell, dated 6th January, 1836.

Ditto of Mr. N. J. Halhed, dated 22nd June, 1836.

To the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 12th August, 1836.

I am directed by the Court to request that you will favor me with the opinion of the judges of the Sudder Dewanny Adawlut for the Western Provinces on the following question.

2. A petitioner's estate was sold in 1803 ; objecting to the sale, but not obtaining redress from the revenue authorities, he presented a petition in 1807 to the provincial court, by whom he was directed to apply to the Revenue Board. Ten years after, in 1817, he did apply to the Board, who, on the 17th February, 1818, referred him to the civil court. On the 5th December, 1829, (*viz.* after a lapse of eleven years and nearly ten months,) he instituted his suit in the zillah of Behar. The zillah judge dismissed the suit as barred by the rule of limitations and this Court confirmed the dismissal. Can the petitioner be considered to have saved his right of action by suing within twelve years from the date on which he was referred by the Board of Revenue to the civil court ; or must the period within which he was bound to institute his suit, be reckoned from the date of the order of the provincial court referring him to the Board ?

3. Copies of roobukarees recorded by the Court on the dates noted in the margin* accompany this letter.

From the Officiating Register of the Sudder Dewanny Adawlut, Western Provinces, to the Register of the Presidency Court, dated 9th September, 1836.

I am directed by the Court to acknowledge the receipt of your letter, No. 1894, under date the 12th ultimo, with its Persian enclosures in the case cited in the margin.*

* Oomrao Singh, versus Government, Jhumun Singh and others.

2. In reply, I am directed to acquaint you that the Court at large concur in opinion with the majority of the Calcutta Court that the cognizance of the claim, involved in the suit in question, is barred under the general rule of limitations.

From the Officiating Judge of Zillah Sarun to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 14*th July,* 1836.

No. 1037.

Competency of a principal sudder ameen to pass order in regard to costs incurred in the Sudder Dewanny Adawlut, in a case ordered for re-investigation.

I will thank you to obtain the opinion of the Court of Sudder Dewanny Adawlut on the point mooted in the accompanying letter from Mr. D. DaCosta, the additional principal sudder ameen of this district. I conclude that the principal sudder ameen's decree will carry with it all costs, but as I am in ignorance of any specific rule of practice on the subject, I wish to be guided by the instruction of the superior court.

From the Second Principal Sudder Ameen of Zillah Sarun to the Officiating Judge of Sarun, dated 13*th July,* 1836.

Previously to adjudging costs in the suit of Baboo Gunput Narain Singh, versus Soodist Narain Singh, I beg to solicit your opinion and orders for my guidance, as I am unacquainted with any rule or regulation which applies to the point under reference.

2. Baboo Gunput Narain's case was originally tried by the register of this zillah and by him dismissed ; this decision in appeal was upheld by the judge, and subsequently by the Provincial Court at Patna. As a last resort Baboo Gunput Narain appealed to the Sudder, where, for reasons specified in their roobukaree, dated the 25th July, 1835, the orders of the several courts mentioned above, were reversed, and the former judge of this zillah was directed to transfer the cause for re-investigation, as an original suit, to one of the principal sudder ameens under him, with instructions to confirm the award of the arbitrator, tendered by the plaintiff, should it be just and equitable, otherwise to try it anew. The case came on yesterday, and as the award in my opinion was open to no impeachment, I decreed it in Baboo Gunput Narain's favor.

3. The question therefore is, whether in addition to present costs of the suit, I can adjudge him those incurred in the superior courts, no order either for or against this having been passed in the roobukaree of the Sudder?

To the Officiating Judge of Zillah Sarun.

The Court are of opinion that the principal sudder ameen is fully competent in the case of Baboo Gunput Narain Singh, versus Soodist Narain Singh, to adjudge the costs of all the courts in such manner as may appear just; his order being of course open to an appeal to your court.*

The Western Court, on the 2nd September, 1836, *concurred in this construction.—Issued 7th October*, 1836.

August 12, 1836.

From the Assistant in charge of the Office of Judge of Cuttack to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 11th July, 1836.

No. 1038.

Circular Order, Vol. II, No. 131, February 6th 1835—duties of assistants in charge of the office of civil judge.

Under the orders contained in the Court's Circular, No. 2638 of the 6th November, 1835, moonsiffs are directed to carry their decrees into execution—unless an order be issued by the appellate court for staying the same. As officer in charge of the judge's office I have no authority to sanction appeals, and there are now sixty-eight petitions of appeal presented awaiting the arrival of a judge. In the mean time the moonsiffs and sudder ameens are executing their decrees, and in many cases selling the property of an appellant. Under these circumstances I have stayed the sale of all appellant's property pending the arrival of the judge, and should I be in error request directions may be issued by the Court for my future guidance.

To the Register of the Western Provinces, dated 19th August, 1836.

I am directed by the Court to request you will lay before the judges of the Court of Sudder Dewanny Adawlut for the Agra Presidency, the accompanying copy of a letter from Mr. E. Repton, assistant in charge of the office of judge of Cuttack, dated the 11th July last.

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* See Circular Order, No. 191, 4th November, 1836.

2. The Court propose, with the concurrence of the judges of the Western Court, to inform Mr. Repton, that it was competent to him, under the concluding words of the first paragraph of the rules for defining the duties of assistants in charge, circulated on the 6th February, 1835,* to cause the execution of the decrees from which appeals had been preferred, to be stayed; taking the usual security from the party against whom the decree was given, if necessary.

The Western Court, on the 16*th September*, 1836, *concurred in this construction.*

August 19, 1836.

See Nos. 998, 1080 and 1242.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 19*th July*, 1836.

No. 1039.

1827. Reg. V. Ses. 3 and 4

I have the honor to request the opinion of the Court of Sudder Dewanny Adawlut respecting the applicability of Sections 3 and 4, Regulation V. 1827, to estates exempted from the payment of revenue.

2. A person obtained many years ago a decree for two annas share of thirteen lakhiraj villages; owing to obstacles thrown by the other party in the way of a full enforcement of the decree, the decree-holder has not yet been able to obtain possession; quarrels, &c. have been frequent: I wish to be informed whether I can appoint a manager to make the collections and provide for the management of the estate till the matter has been definitively settled, and if a decision be ordered, whether the court is to carry it into effect or to issue a precept to the collector.

To the Officiating Judge of Zillah Shahabad.

The Court are of opinion that as the terms used in the preamble of Regulation V. 1827, are general, they include rent-free land as well as land paying revenue to Government, and therefore whenever it is necessary to cause such lands to be attached, it must be done by the issue of a precept to the collector.

The Western Court, on the 16*th September*, 1836, *concurred in this construction.—Issued* 30*th September*, 1836.

August 19, 1836.

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* Such assistant or "other officer shall confine himself to the exercise of such part of the powers of judge as may be indispensably necessary for the immediate execution of processes, &c. &c., or for such other cases of emergency as will not admit of delay."

From the Acting Judge of Zillah Chittagong to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 13th May, 1836.

No. 1040.

Suits for inheritance should include the whole claim arising out of the same cause of action.

I beg leave to submit, for the consideration and orders of the Sudder Dewanny Adawlut, the copy of a letter dated the 6th instant, received from Mr. G. Doucett, principal sudder ameen, and copies of the petitions, &c. of plaint the subject of the reference.

2. The point involves one of practice which does not appear to me ever to have been duly determined, *viz.* in a claim of inheritance whether (or no) an heir may bring to issue his claim to hereditary right in any one zemindary or talook or landed estate, reserving to himself the power of subsequently suing for the portion of any other estate, and whether in pursuit of claims of inheritance heirs are bound to bring forward their whole claim for both the real and personal effects, or whether they may sue in the first instance for either one or the other.

To the Officiating Judge of Zillah Chittagong, dated 5th August, 1836.

I am directed by the Court to communicate to you their opinions that suits founded on the right of inheritance should include the whole claim arising out of the same cause of action.

The Western Court concurred.

August 5, 1836.

See Sudder Dewanny Reports, Vol. VII. page 15, 10th February, 1841.

From the Officiating Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 19th July, 1836.

No. 1042.

1793.
Reg. XXXIX.

I request you will have the kindness to obtain for me the instructions of the Court of Sudder Dewanny Adawlut on the following points :

1*st.*—Whether a pergunnah cazee can sue for the amount of his fees for the performance of ceremonies ?

2*nd.*—If he can do so, though he may not have performed them, the parties having employed some one else to perform the duty?

3*rd.*—Whether the zillah court should take any steps to give them possession of their pergunnahs ?

2. My reasons for applying are, that on perusal of Section 8, Regulation XXXIX. 1793, it would appear they are only entitled

to such fees as the parties choose to give, and that consequently they could not bring an action for fees; again I have been frequently applied to by the cazees, stating that certain villagers or ryots of certain talookdars, would not employ them, but got the ceremonies performed by others; I therefore wish to know if I should take any steps in the case, such as requiring mochulkas from the parties.

3. I am inclined to think that the cazees are appointed that the services of a duly qualified individual may be available to the inhabitants; but that they may, if they think proper, employ any one else, though the act performed by that person may not be valid in law.

To the Officiating Judge of Zillah Daccą.

I am directed to communicate to you the following replies to the questions contained in your letter of the 19th July, No. 364.

2. *1st and 2nd Questions.*—A pergunnah cazee may sue to recover what he may consider himself entitled to, for fees of office; but it rests with the court to determine the extent to which such claim should be admitted and it must be remembered that the payment of fees is entirely voluntary (see Section 8, Regulation XXXIX. 1793.)

3. *3rd Question.*—The zillah court cannot summarily interfere to put a cazee in possession of his pergunnahs, unless a decree expressly sanctions such a proceeding.

4. With reference to your third paragraph I am directed to observe that for all offices analogous to those which, under English courts, are included in the ecclesiastical department, such as the celebration of marriages and the performance of religious duties or ceremonies, the acts of any cazee, though not specially empowered for the immediate locality, would be valid and lawful; but that the drawing up and attestation of papers and making a record of them must be performed (to be legal) by the cazee of the jurisdiction in which the property specified may be situated.

The Western Court, on the 9th September, 1836, *concurred in this construction.—Issued 30th September,* 1836.

August 19, 1836.

See Sudder Dewanny Reports, Vol. VI., page 31, 6th July, 1835.

To the Judge of Zillah Mymensing, dated 16th September, 1836.

No. 1046.

1829.
Reg. X. Sch. B, Art. 8.
1814.
Reg. XXVI. Sec. 7.

I am directed by the Court to forward the following reply to your letter of the 4th July, No. 96.

2. The question submitted appears to the Court to be, in what manner the amount of cause of action is to be computed and settled when disputes on this particular point arise between the parties.

3. In reply I am directed to refer you to Article 8, Schedule B, Regulation X. 1829, and to observe that the objections of the defendant to the plaintiff's valuation should generally be brought forward in his answer to the plaint, when the presiding judge, after such summary inquiry as may appear necessary, may permit the plaintiff, should the value be underrated, and without apparent fraudulent intent, to file a duplicate of plaint agreeably to the provisions of Section 7, Regulation XXVI. 1814. This decision will be liable to alteration or reversal by the court having appellate jurisdiction, either summarily or on a regular appeal. Cases may also arise in which, though the defendant have not objected to the plaintiff's valuation of the property in the court of primary jurisdiction, it would be the obvious duty of the court trying the appeal to notice and rectify the same.

The Western Court, on the 2nd September, 1836, *concurred in this construction.*

September 16, 1836.

The first half of para. 3 of this Construction is modified by the Western Court's Circular Order No. 130, dated 23rd May, 1851. See also para. 5 Circular Order No. 65, 2nd February, 1849.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 29th August, 1836.

No. 1047.

1829.
Reg. X. Schedule B, Article 8.

Valuation of property in suits of pre-emption.

I have the honor to request the opinion of the Court of Sudder Dewanny Adawlut respecting the amount or value to be inserted in the plaint in cases of pre-emption, whether in cases of malgoozaree land it is to be laid at thrice the sudder jumma, at the amount inserted in the deed of transfer between buyer and seller, or at the aggregate of both? I am obliged to make the reference, as precedents of the superior court are to be found for all three in this office, and there being no appeal from the zillah orders in the cases I have in view in making this reference, I am anxious to avoid falling into error.

To the Judge of Zillah Shahabad.

The Court are of opinion that, if the land, the right of pre-emption of which is claimed, be land paying revenue to Government either as an entire mehal, or a specific portion thereof with a defined jumma, the cause of action must be estimated at three times the amount of the sudder jumma, as prescribed by Article 8, Schedule B. Regulation X. 1829 ; if lakhiraj, at eighteen times the amount of the computed annual rent ; and if it be land paying revenue to Government, but neither an entire mehal nor a specific portion with a defined jumma, at the estimated selling price.

The Western Court, on the 14*th October*, 1836, *concurred in this construction.—Issued* 28*th October*, 1836.

September 23, 1836.

Extract of a Letter from the Judge of City Patna to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 30*th August*, 1836.

No. 1048.

A zillah judge incompetent to set aside a decision of a subordinate tribunal, in the absence of an appeal, notwithstanding such decision may appear to him irregular or illegal.

Para. 1. I beg to be informed whether it is within the competency of a judge to set aside a decision passed by any of the inferior judicial authorities in a regular suit, when any irregularity or illegality in their proceedings may be brought to his notice by either party, or may transpire incidentally in the course of executing the decree, or in any other miscellaneous proceedings held subsequently thereto.

To the Judge of City Patna.

I am directed to inform you that you are not competent summarily to cancel the decisions of inferior tribunals on the ground of illegality or irregularity, but that you should direct the parties interested to appeal therefrom even although the prescribed period for such appeals should have elapsed.

The Western Court, on the 21*st October*, 1836, *concurred in this construction.—Issued* 4*th November*, 1836.

September 30, 1836.

See No. 979.

From the Judge of Zillah Rajshahye to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 30th June, 1836.

No. 1050.

Sale of property by moonsiffs in execution of decrees.

It having been brought to my notice, that the practice of executing decrees for small amount, by sale of personal property through the moonsiffs, is attended with considerable inconvenience to the courts, by obliging those officers to absent themselves from their sudder station (for many days on some occasions), thereby putting a stop to business of greater importance, and at the same time forcing them to incur an expense which the trifling fee of one anna in the rupee cannot possibly re-pay, I beg to submit the expediency of allowing the moonsiffs to entertain, each, an individual on their establishment, whose name shall be registered and for whose conduct the nominating officers shall be held responsible, to preside at sales of real property to the amount of one hundred rupees; such individual to receive the commission hitherto drawn by the moonsiff under Regulation XXIII. 1814.

To the Judge of Zillah Rajshahye, dated 30th September, 1836.

I am directed by the Court to inform you that if in your letter of the 30th June last, No. 34, *you allude to decrees passed at the sudder station, the difficulty alluded to by you might be surmounted by entrusting the duty of selling property, &c. to the nazir, his naib, or any other officer nominated by you for that purpose: and that if you allude to decrees passed by the moonsiffs themselves, they may depute any officer on their own establishment to sell the property of a debtor.*

2. *In cases however in which the moonsiffs may have been directed by the judge, or other superior officer, to perform this duty, the Court are of opinion that they cannot properly delegate it to another.*

The Western Court, on the 2nd September, 1836, *concurred in this construction.*

September 30, 1836.

See Act XIV. 1845.

To the Secretary to the Government of Bengal in the Judicial Department, dated 16th September, 1836.

No. 1051.

1836. Act XI.

I am directed by the Court to request that you will lay before the Right Hon'ble the Governor of Bengal the accompanying copy* of a letter from the Register of the Sudder Dewanny Adawlut for the Western Provinces, dated the 17th June last, No. 492, and to solicit the favor of your informing me whether it was intended by the provisions of Act XI. 1836, to render magistrates and other judicial functionaries liable to civil actions in the courts specified in the Act, for damages on account of alleged injuries committed in their official capacity.

2. The majority of the Court hold it to have been intended to extend the jurisdiction of the native courts specified in the Act, over certain classes not previously amenable to their authorities, without altering or adding in any way to the subjects or matters originally within their legal cognizance; and consequently that suits of this nature will not lie against any public officers not rendered specially amenable to the courts. On the other hand it is contended that civil actions for damages against official persons, not being excluded by the Act from the cognizance of the native courts specified, and the individuals themselves being unreservedly made amenable to their jurisdiction, no legal ground could be assigned for the non-admission of such suits.

From the Secretary to the Government of Bengal in the Judicial Department to the Register of the Sudder Dewanny Adawlut at the Presidency, dated 25th October, 1836.

In compliance with the request conveyed by your letter dated the 16th ultimo, and its enclosures, I am directed by the Right Hon'ble the Governor of Bengal to transmit, for the information of the Court of this Presidency and that of the North-Western Provinces, the accompanying copy of a letter from the Secretary to the Government of India, under date the 10th instant, regarding the construction of Act XI. 1836.

To the Secretary to the Government of Bengal.

I am directed by the Right Hon'ble the Governor General in Council to acknowledge the receipt of your letter dated the 27th ultimo, with its enclosed reference from the Register to the Court of Sudder Dewanny Adawlut, as to the intent and meaning of Act XI. 1836.

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* Not printed.

2. In reply I am desired to request that that Court may be apprised that the Act in question, in providing that no person shall by reason of place of birth or by reason of descent be exempted from the jurisdiction of certain courts, does not take away any exemption to which any person may be entitled by virtue of his office, and consequently that judicial functionaries who were not liable to civil actions in the courts specified in the Act for damages on account of alleged injuries committed in their official capacity before the passing of the Act, will not be liable now.

Council Chamber, 10th October, 1836.

See Section 5, Regulation XIII. 1829.

From the Officiating Judge of Zillah Ghazeepore to the Officiating Register of the Sudder Dewanny Adawlut, Western Provinces, dated 5th October, 1836.

No. 1052.

1814.
Reg. XXVII. Sec. 31.

With reference to the sentence underlined in the following extract, Section 31, Regulation XXVII. 1814, may I beg the favor of your obtaining the orders of the Court as to whether the filing of the *juwab-dawee* only in a suit, without the completion of the other requisite pleadings, is sufficient to entitle the respective pleaders to have the regular fees, or whether, under the precise wording of the English version, all the requisite pleadings must be filed before the pleaders can be entitled to half the fees.

Extract.—"If a suit shall be withdrawn or dismissed on default, after all the requisite pleadings shall have been filed in court, the respective pleaders are to be entitled to one-half the fees which they would have received if judgment had been given in the cause."

To the Officiating Judge of Zillah Ghazeepore, dated 14th October, 1836.

The Court are of opinion that to entitle the respective pleaders of the parties in cases withdrawn or dismissed on default to one-half the amount of the established fee, under the provisions of Section 31, Regulation XXVII. 1814, it is necessary that the whole of the requisite pleadings should have been filed, and not merely the answer or *juwab-dawee.*

The Presidency Court, on the 11th November, 1836, *concurred in this construction.*

October 14, 1836.

See Act I. 1846.

No. 1054.
1831.
Reg. V. Sec. 5.

On a reference from the judge of Beerbhoom, it was held by the two Sudder Courts concurrently, that Section 5, Regulation V. 1831, does not restrict moonsiffs from taking cognizance of claims to lakhiraj lands attached in execution of their own decrees.

Calcutta Court, 14th October, 1836; *Western Court, 4th November,* 1836.

See Nos. 798 and 1373.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 17th October, 1836.

No. 1055.
1831.
Reg. V. Sec. 28.

A question having arisen as to whether an appeal lies to the Court of Sudder Dewanny Adawlut from an original order, passed by a zillah or city judge in a matter connected with the execution of a decree of his court, confirming or reversing in appeal the decision of a sudder ameen or moonsiff, I am directed to request that you will submit the point for the consideration and opinion of the Calcutta Court.

2. In the case which gave rise to the present reference, the judge, in affirming the decision of a moonsiff, omitted to provide in his decree for the payment of interest on the sum adjudged, and on the decree-holder subsequently applying to him, under the rule contained in the Circular Order of the 11th September, 1829, to have this omission supplied, he rejected his application; from this order the decree-holder has appealed to the Court, and the question now is whether his appeal can be entertained. The Court are of opinion that as the order objected to originated with the judge, and was not passed in appeal from an order of the lower court, they are competent to receive an appeal from it and either to reverse the judge's decision and direct the payment of interest to the party in whose favor the decree was passed, or to desire the judge to revise his decision and to pass a modified order in conformity to the Circular Order above cited. Previously however to adopting either of these measures, they are desirous of learning the practice of the Calcutta Court in cases of this nature, as well as their opinion upon the general question.

3. The Court are aware of the resolution adopted by the Calcutta Court under date the 13th December, 1833, in the case of Mihr Ban Sing and another, but they observe that the rule therein laid down is applicable only to interlocutory orders passed by the zillah and city judges in the hearing of appeals in which their decision may be final, as in the case referred to, and does not affect the present question.

October 17, 1836.

To the Officiating Register of the Sudder Dewanny Adawlut, Western Provinces, dated 25th November, 1836.

I am directed by the Court to acknowledge the receipt of your letter of the 17th ultimo, No. 893.

2. In reply the Court direct me to observe that it was ruled by the resolution of the 18th March last (communicated to you by my letter of the same date, No. 632,) that a summary appeal will lie to the Courts of Sudder Dewanny Adawlut from the decision of a zillah judge in appeal from the judgment of a sudder ameen or moonsiff, provided it should appear that the sudder ameen or moonsiff had decided a case in which he had no jurisdiction. On the same principle, the Court hold that it is competent to the Court to amend, on a summary appeal, any order which may be obviously illegal or contrary to any positive Regulation or Circular Order, and this principle has been invariably acted upon in this Court for the last two years and a half.

3. In the case out of which this reference arose, the zillah judge appears to have acted in direct opposition to the Circular Order of the 11th September, 1829; and the Court are therefore of opinion that the Western Court, provided they are satisfied that there exist no valid grounds for refusing the interest, are competent to direct the judge to award the same, on execution of the decree, without subjecting the party to the expense and delay of a regular suit.

To the Officiating Judge of Dacca, dated 21st October, 1836.

No. 1056.

Distribution of assets among several decree-holders.

I am directed by the Court to inform you that it has been ruled by both Courts of Sudder Dewanny Adawlut that all decrees, under which process of attachment has been issued, provided they are dated previous to distribution, entitle the holders to share in proportion to their claims, (exception being allowed in case of *bonâ fide* mortgages,) in preference to the claimants under decrees in which no such process has been issued.

2. The Court therefore direct me to request that you will in the first instance satisfy the demand of Bholanath Misser from the proceeds of the sale of the property of Raja Ram Deo, provided no other decrees exist under which process of attachment had been issued on the date on which you received the application of the judge of Tipperah: should any surplus remain you will be pleased to remit it to the judge of Tipperah in satisfaction of the demand of Sheo Pershad Sing.

The Western Court concurred in this construction.

October 21, 1836.

See No. 935, Circular Order No. 42, dated 26th January, 1844, and Circular Order No. 64, 2nd February, 1849.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, under date the 11th November, 1836.

No. 1057.

1814. Reg. XXVI. Sec. 4.

Doubts have been entertained whether in a case in which the Court has rejected an application for a special appeal from the decision of the zillah judge in appeal from the original decision of a principal sudder ameen ; or in a case in which the Court, under the power vested in them by clause 2, Section 2, Regulation IX. 1831, have confirmed the original decision of a zillah judge ; the last order of the Sudder Dewanny Adawlut, or the decision of the zillah judge, is to be considered as the judgment which is open to review under the provisions of Section 4, Regulation XXVI. 1814.

2. The Court are of opinion that as in the first instance no appeal has been admitted from the judgment of the zillah judge, the judge may, under the circumstances stated in clause 2, Section 4, Regulation XV. 1814, apply for permission to review his decision.

3. When, on the other hand, the Sudder Court has confirmed a decision under the provisions of clause 2, Section 4, Regulation IX. 1831, the order is to all intents and purposes a judgment, open to review by it (the Sudder Court) only.

The Western Court, on the 25th November, 1836, *concurred in this construction.*

November 11, 1836.

See No. 1402 and Report Summary Cases, 20th April, 1841, page 42, and 9th August, 1847, page 137, Carrau's Edition.

At a Court of Sudder Dewanny Adawlut for the North-Western Provinces, held at Allahabad under date the 18th November, 1836—

No. 1058.

1814. Reg. XXVI. Sec. 4.

It was resolved, with the concurrence of the Calcutta Court of Sudder Dewanny Adawlut, that documents filed with applications for a review of judgment under the provisions of Section 4, Regulation XXVI. 1814, should be considered as exhibits, and made liable, as such, to the rule contained in Article 5, Schedule B, Regulation X. 1829, in the same manner as if they had been filed or entered on the proceedings of the original suit, or when it was before the Court in appeal, whether regular or special.

The Presidency Court, on the 21st October, 1836, *concurred in this construction.*

November 18, 1836.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 17th August, 1836.

No. 1059.

Power of the civil courts summarily to set aside fraudulent leases in executing their decrees.

I have the honor to request the opinion of the Court of Sudder Dewanny Adawlut respecting the construction to be put on Section 4, Regulation XLIV. 1793, and further to be informed on the general practice adopted by the Court with respect to leases sought to be set aside on the transfer of landed property, whether the Court consider the enactment as bearing reference only to *bonâ fide* leases, or that it is imperative to uphold all leases entered into between the farmers and former proprietors till the period specified for their expiration.

2. The rule alluded to is taken advantage of in two ways to defeat the ends of justice. 1st.—On an action being instituted for right and possession of real property, the defendant who is in possession gives a lease for a long period, say twenty or thirty years, at a rent just sufficient to pay the sudder jumma. The plaintiff on obtaining his decrees is opposed on taking possession by the farmer, and finds that he has got a decree for property, it may be, for the benefit of his posterity, but that he is himself excluded from its enjoyment with every prospect of being so for the term of his life, while the former incumbent, against whom the decree has been given, in collusion with the fictitious lessee, is still enjoying the profit of the land to which the decision of the court says he has no right.

3. It is also resorted to by debtors to defraud their creditors. On an action being instituted for the recovery of monies the debtor gives a lease of his property in the manner above noticed : on execution being sued out against his property he laughs at his creditor, for he has completely barred its purchase by any other party by the clog he has put upon it. It does not appear to me that such devices can possibly be supported by law, but the wording of the Regulation it is hard to get over. As it is, the difficulties encountered in the execution of decrees are manifold ; and if this rule is to be construed as applicable to all leases without exception, those difficulties must be increased tenfold.

4. Should it be the opinion of the Court that such fraudulent leases cannot be upheld, they are of course to be set aside summarily,—in the first instance mentioned by me, by permitting the decree-holder, in the second, the purchaser, to collect from the cultivating tenants.

To the Officiating Judge of Zillah Shahabad, dated 2nd December, 1836.

I am directed by the Court to inform you that Section 4, Regulation XLIV. 1793 is rescinded by Regulation XVIII. 1812, but that under the circumstances stated by you, you are authorized in

cases of execution of decrees, after holding a summary investigation into the claims of the parties concerned, to quash any lease which may be satisfactorily shown to be fraudulent, leaving the party dissatisfied with your decision to appeal summarily to this Court, or institute a regular suit to recover possession of their alleged rights.

December 2, 1836.

See Reported Summary Cases, 26th April, 1841, page 43, Carrau's Edition.

From the Officiating Judge of Zillah Chittagong to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 23*rd November*, 1836.

No. 1062.
1806.
Reg. II. Sec. 11.

I beg leave to submit copy of my proceedings of to-day's date, together with copies of a petition and list of property and deposition on oath of the petitioner, a debtor imprisoned under a decree of the Sudder Dewanny Adawlut.

2. The petitioner moves for release under Section 11, Regulation II. 1806, and is not opposed by the holder of the decree; the judgment appertains to and the execution of the decree is under orders of the Sudder Dewanny Adawlut; I doubt my powers to release the petitioner, and therefore submit this reference for the Court's final orders. And for my future guidance in similar cases, I request to know if I can release, as judge of a zillah court, a man confined in execution of a decree of the Sudder Dewanny Adawlut, without the special orders of the Sudder?

To the Officiating Judge of Zillah Chittagong.

I am directed to communicate to you the Court's opinion that when the execution of a decree of the Sudder Dewanny Adawlut has been entrusted to the zillah judge, he is competent, without referring the case to the Court, to apply the rule contained in Section 11, Regulation II. 1806, to any defendant who may be confined in execution of the decree.

The Western Court, on the 30*th December*, 1836, *concurred in this construction.—Issued* 27*th January*, 1837.

December 16, 1836.

From the Judge of Zillah Bundelcund to the Officiating Register of the Western Provinces, dated 17th December, 1836.

No. 1063.

1814.
Reg. XXVIII. Sec. 8.

The practice of this Court has heretofore been to admit the records of hajir-zaminee, in pauper cases, on country unstamped paper, but these records not being specified in Section 8, Regulation XXVIII. 1814, as exempted from stamp duties, it appears to me to be irregular, and I have to request the favor of a communication of the orders of the Sudder Dewanny Adawlut on the subject.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 23rd December, 1836.

I am directed by the Court to request that you will submit, for the opinion of the Calcutta Court, the accompanying copy of a letter from the judge of Bundelcund, under date the 17th instant.

2. There being no exemption in favor of security bonds of the description of those referred to by Mr. Fraser, the Court propose, with the concurrence of the Calcutta Court, to inform him that the practice which obtains in his district of admitting such instruments on plain paper is opposed to the Regulations, and should be discontinued accordingly.

The Presidency Court concurred in this construction.

December 23, 1836.

See No. 1132.

From the Officiating Judge of Zillah Meerut to the Register of the Court of Sudder Dewanny Adawlut, for the Western Provinces, dated 28th December, 1836.

No. 1064.

1836.
Act XVII.

Trial of cases instituted in the courts in the territories lately held by the Begum Sumroo.

I have the honor to solicit the instructions of the Sudder Dewanny Adawlut on the following points connected with the investigation of civil suits in the territories which were lately held by the Begum Sumroo.

2. Many of the tumasooks and other description of bonds, agreements, &c. are written on plain paper, and some on common paper, bearing an ink stamp of a certain value from which a revenue was collected by the Begum, but under what Regulations these stamps were issued and used, I am not informed. I request to know whether these documents may be received in support of claims, and to submit herewith three of the stamped papers of different value for the inspection of the Court.

3. With reference to Act XVII. 1836, regarding the administration of justice in the territories of the late Begum, I beg to know whether the unexecuted decrees, which were passed previous to the death of the Begum, are to be carried into execution by our courts. On one of the stamped papers herewith submitted is written a decree by an officer of the Begum.

4. As there were no usury laws in the Begum's territories, many of the tumasooks and other agreements for the payment of money contain an acknowledgment of payment of interest at the rate of two, three or more rupees per cent. per mensem. What is to be determined regarding the payment of interest beyond the legal amount authorized in our territories ?

5. It will doubtless be necessary to ascertain what description of officers were authorized to issue decrees in civil suits in the territories of the late Begum, and also under what processes they were ordered to be used.

To the Officiating Judge of Meerut, dated 6th January, 1837.

The Court having again had before them your letter, No. 199, under date the 28th ultimo, direct me to communicate to you their opinion as follows on the several points therein referred, connected with the investigation of civil suits which may have originated in the territories held by the late Begum Sumroo.

2. On the first and third points I am desired to inform you, that the provisions of the stamp and usury laws are inapplicable to deeds executed within the territories of the Begum Sumroo prior to the date on which they were annexed to the British dominions ; and in the decision, therefore, of cases which may involve claims of the nature of those described in the fourth paragraph of your letter, you must be guided by the laws and usage of the country.

3. With respect to the second point referred by you, the Court direct me to observe that your court must be considered as standing in the place of the local courts which existed under the Begum's government, and that on application being made to you in the prescribed form for the execution of any decrees passed by the Begum's officers prior to her highness's demise, you should proceed to enforce the same under the general rules applicable to the execution of decrees of court, which will of course include an investigation into any objections which the opposite party may have to offer to such awards, on the plea of their not having been passed by a competent tribunal, or on any other ground.

The Presidency Court, on the 27th January, 1837, *concurred in this construction.*

January 6, 1837.

From the Officiating Register, Western Provinces, to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 13th January, 1837.

No. 1066.

Execution of decrees passed by His Majesty in Council.

With reference to the orders lately received from the Honorable the Court of Directors, forwarding copies of the judgments passed by His Majesty in Council in several cases of appeal from the decisions of the Sudder Dewanny Adawlut, I am directed by the Court to request that the Calcutta Court will do them the favor of stating what may be the practice of that Court in regard to the execution of such decisions; viz. whether it has been usual for the Court to execute the decrees themselves, including the determination of any objections which may arise in the course of the execution, or to forward the decrees to the judges of the districts in which the cause of action arose, with an order generally to carry the same into effect in the same manner and under the same rules as prescribed for the execution of decrees of court, leaving any party, dissatisfied with their proceedings or orders, to appeal therefrom in the usual form.

2. *I am further directed to request the opinion of the Calcutta Court as to the competency of the Courts of Sudder Dewanny Adawlut to award wasilat or interest to the holder of a decree passed by the King in Council for money or landed property, where the decree may contain no provision for the payment of the same. The case which has given rise to this question, is that of Lal Dhokul Singh, appellant, versus Lal Rooder Pertaub Singh, respondent, a full report of which is given at page 253, volume I. of the Sudder Dewanny Reports.*

3. *Under the decree passed in that case by the Court of Appeal at Benares, setting aside the decision of the zillah court which dismissed the claim, the plaintiff obtained possession of the talooka in dispute, and continued to hold it for two years, when he was dispossessed by order of the Sudder Dewanny Adwalut, who reversed the decision of the Benares Court, and directed that the plaintiff should refund the mesne profits for the period of his possession.*

4. *Lal Dhokul Singh, son and successor of the original plaintiff, being dissatisfied with this decision, appealed from it to the King in Council, and a final decree was passed by His Majesty under date the 7th February, 1835, a copy of which is annexed, reversing the decision of the Sudder Dewanny Adawlut, and affirming that of the provincial court, but without giving any order as to the payment of mesne profits or the costs of the Sudder Court.*

5. *Adverting, however, to the terms of His Majesty's decision, the Court are of opinion that it must be presumed to be the intention of it that the parties should be placed in precisely the situation in which they would have been but for the decree of the*

Sudder Dewanny Adawlut, and that consequently the decree-holder is entitled, upon the principal laid down in the Circular Order of the 11th September, 1829, to receive from the respondent, without a fresh suit, the amount with interest of the mesne profits refunded by him by order of the Sudder Court, as well as for the whole period of his subsequent dispossession, together with the costs of the appeal to the Sudder Dewanny Adawlut, and that the Court, in the execution of the present decree, are competent to award him the same.

6. *Should the Calcutta Court concur in this opinion the Court propose to act upon it in the instance under consideration, as well as in all future cases of a similar nature.*

January 13, 1837.

To the Register of the Court of Sudder Dewanny Adawlut for the Western Provinces, dated 17th February, 1837.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter dated 13th of January last, in which, at the requisition of the Sudder Dewanny Adawlut for the Western Provinces, you solicit information from them regarding their manner of proceeding to execute decrees passed by His Majesty in Council, with its enclosures.

2. *In reply, I am instructed to state, that it has been usual to forward the decrees in question to the judges of the districts in which the cause of action may have arisen, with an order, generally to carry the same into effect, in the same manner, and under the same rules, as those prescribed for the execution of other decrees of court, leaving any party, dissatisfied with their proceedings or orders, to appeal therefrom in the usual form.*

3. *I am further directed to state that the Court entirely concur in the opinion expressed in the fifth paragraph of your letter, regarding the adjudication of costs and mesne profits.*

See Act XXV. 1852.

No. 1067.

1819.
Reg. II. Sec. 30.

On a reference from the judge of Chittagong, the Courts of Sudder Dewanny Adawlut held that a suit brought by a zemindar for the rent of lands in which the defendant claims the right of property in virtue of a rent-free grant, is not referrible to the collector under the provisions of Section 30, Regulation II. 1819, but must be considered in the light of a boundary dispute, and disposed of in the ordinary mode by the civil court.

Calcutta Court, 30th December, 1836—*Western Court, 13th January,* 1837.

See No. 981.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 27th December, 1836.

No. 1068.

1829.
Reg. X. Schedule B.

The sicca rupee to be taken as the standard for estimating the powers of the native judges in the investigation of regular suits, until altered by an Act of the Government.

I have the honor to request the opinion of the Court of Sudder Dewanny Adawlut on the following points:

Amount of action in Sicca rupees 4,646, *Company's rupees* 5,254: *must the plaint be written on paper of* 150 *rupees or* 250 *rupees value?*

2. *I take this opportunity of requesting the opinion of the Court whether, in calculating the power of moonsiffs and the native judges in the investigation of regular suits, the amount of action cognizable by each is to be calculated in Sicca or Company's rupees?*

To the Officiating Judge of Zillah Shahabad.

I am directed by the Court to inform you that under the circumstances stated in the first query contained in your letter of the 27th December last, No. 412, *the plaint must be written on a stamp value* 150 *rupees, and further that the Sicca rupee must be taken as the standard coin for estimating the powers of moonsiffs and other native judges in the investigation of regular suits until altered by some Act of the Government.*

The Western Court, on the 3rd February, 1837, *concurred in this construction.—Letter to the Officiating Judge issued 17th February,* 1837.

January 20, 1837.

Rescinded by Circular Order No. 193, *15th April,* 1842.

From the Officiating Judge of Zillah Chittagong to the Register of the Court of Sudder Dewanny and Nizamut Adawlut, Fort William, dated 14th November, 1836.

No. 1069.

1814.
Reg. XXIII. Sec. 10, Clause 2.

I beg leave to transmit the copy of a letter received by me from the commissioner of this division regarding the case of Alleemooddeen, moonsiff of Sittakhoond; and for the object of a precedent I submit a reference for the orders of the superior court.

2. The moonsiff was made over by me to the court of circuit under the following charges:

1*st.*—Abstracting from the nuthee of a suit in which Ribbeeah Bebee was plaintiff, a chittee, dated 15th Assin, 1195, and an ikrar, dated in Sawun, 1185.

2nd.—Fabricating in the above case a roobukaree, 3rd March, 1834, and the second furd of the deposition of Rammanick, 23rd April, 1835, and the second furd of the draft of the final decision, 24th December, 1835, both dates of crime included within the period 3rd of March, 1835, to 19th January, 1836.

3. Mr. Dampier has not adverted to the charge of forgery; but this does not alter the doubt that may arise, and which requires removal, that is, if a moonsiff in a civil case is found by the judge guilty of fabricating papers, and at the same time of official misconduct, how is the judge to proceed to commit, for both charges, as in cases of forgery? or, as the commissioner suggests, to make the moonsiff over to the magistrate?

4. Again under clause 2, Section 10, Regulation XXIII. 1814, what course is a judge to take?—first of all he is to satisfy himself of the necessity of a criminal prosecution, but whether is he to commit the moonsiff to the court of circuit, or direct the vakeel of Government to petition the magistrate? On either course the clause is silent. May I solicit the orders of the Nizamut Adawlut on these points for future guidance?

To the Officiating Judge of Zillah Chittagong, dated 27th January, 1837.

I am directed to communicate to you, in reply to your letter of the 14th November last, the opinion of the Court, that after you had inquired into the alleged misdemeanors and other criminal acts, charged against the moonsiff, you ought, provided you saw reason to believe the charges were well founded, (vide Section 10, Regulation XXIII. 1814) to have made over the case to the magistrate, to be disposed of according to law; directing the Government pleader to prosecute on the part of Government.

The Western Court concurred in this construction.

January 27, 1837.

See No. 781.

To the Judge of Zillah Mymensing.

No. 1070.

Mode of proceeding when records of the civil courts are required by officers in the resumption department.

I am directed to communicate to you, in reply to your letter of the 26th December last, the opinion of the Court that you ought not, in ordinary cases, to furnish the officers employed in the resumption department with the original records of your court, but that you should inform the special commissioner and deputy collector, that you will furnish them with copies of any papers that they may require, on their authorizing you to defray the expense of transcribing

them. Should an inspection of the original record, or any papers filed therein, be indispensably necessary, you will then, previous to forwarding the same, retain an attested copy, the expense of making which must be defrayed by the revenue authorities.

The Western Court, on the 10th February, 1837, concurred in this construction.—Letter to the Judge of Mymensing issued 24th February, 1837.

January 27, 1837.

See No. 693.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 5th January, 1837.

Domun Singh, versus Girdharee Loll.

No. 1073.

When a suit is sent back for re-trial, unless the order specially restricts the inquiry to any particular point or points, the whole case must be considered as re-opened.

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Ju. 30. 1842.

I have the honor to transmit herewith a copy of a proceeding of the Court of Sudder Dewanny Adawlut, in the above case, dated 29th August last, with respect to which I beg to be favored with the orders of the Court as to whether in such cases I am required to investigate only the points, and to take the particular evidence to those points, indicated by the Court's order, or whether I am at liberty to enter into a further investigation of the entire merits of the case and take evidence not indicated by the superior court?

2. The vakeel of the appellant in the superior court stated that a pedigree pleaded by him could be proved by two witnesses whose evidence I had omitted to take: at the time he made this statement one of the witnesses (a party to this case in the principal sudder ameen's court) was dead, the other was a plaintiff in another suit against the same defendant on the very same ground; the pleader in this court consequently demurs to calling him, and gives no other evidence to prove the pedigree as he is permitted to do by the court, but offers oral testimony to prove a point to which I am directed by the superior court to take documentary evidence mentioned in their proceeding. I beg to be apprised whether it is allowable for me to receive evidence at variance with that, the non-receipt of which formed the ground of the annulment of the orders of this court?

To the Officiating Judge of Zillah Shahabad.

I am directed to inform you, in reply to your letter of the 5th January last, that when a suit is sent back for re-trial, unless the order specially restrict the inquiry to any particular point or points, the whole case must be considered as re-opened.

The Western Court, on the 24th February, 1837, concurred in this construction.—Letter to the Officiating Judge issued 10th March, 1837.

February 10, 1837.

See Sudder Dewanny Reports, Vol. VII., page 107, 30th June, 1842, and Sudder Dewanny Reports, North-Western Provinces, 1st May, 1849, page 101.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 12th November, 1836.

No. 1075.

1822.
Reg. XI. Sec. 38.

I have the honor to request that you will obtain for me the opinion of the Court of Sudder Dewanny whether, if the collector is sued, together with others, for an act done by him under an order of court, the case must be necessarily be nonsuited under the wording of Section 38, Regulation XI. 1822, or is it sufficient that the collector's name be struck out of the list of defendants, and the case be allowed to proceed against the other defendants ?

To the Officiating Judge of Zillah Shahabad, dated 21st February, 1837.

I am directed to communicate to you the opinion of the Court, that in suits of the nature of those referred to by the late officiating judge, in his letter of the 12th November last, No. 339, on the case being first brought up for a hearing, under the rule contained in Section 10, Regulation XXVI. 1814, it should be pointed out to the plaintiff or his vakeel, that he had rendered himself liable to be nonsuited, for improperly making the collector a defendant in his official capacity ; and if he should plead that he had done so from inadvertence, and it should appear to the satisfaction of the court that the act was not wilful, and had not proceeded from any fraudulent or other improper motive, he should be allowed to file a supplemental plaint, withdrawing his claim against the collector as a Government officer ; when it would be competent to the judge to proceed with the suit against the other defendants, and either to dispose of the case himself, or to refer it to any of the subordinate judicial functionaries, by whom, from its amount, it might be cognizable under the general rules in force.

The Western Court, on the 13th January, 1837, concurred in this construction.

February 21, 1837.

See Circular Order, No. 206, 7th July, 1837.

Extract of a Letter from the Judge of Zillah Tirhoot to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 28th December, 1836.

No. 1076.

1819.
Reg. II. Sec. 30, Clauses 7 and 8.

Para. 1. Doubts have ocurred to me as to the construction to be given to clause 8, Section 30, Regulation II. 1819, and I therefore solicit the solution of them, through you, from the Court of Sudder Dewanny Adawlut.

2. In the first place, what is meant by the words "and shall proceed to investigate and decide on the case in like manner as if it had been instituted in the court?" for cases originally instituted in court are regular suits, not appeals.

3. If it is intended to mean that they are to be proceeded in as regular appeals, I would inquire, whether in that case the rules of practice in appeals under clause 3, Section 16, Regulation V. 1831 shall apply, or the old rules for regular appeals? because no allusion is made to appeals under clause 8, Section 30, Regulation II. 1819, in Regulation V. 1831, and therefore not being rescinded, the rules formerly obtaining, regarding all regular appeals, may be held to be still binding in these appeal cases under Regulation II. 1819, and in that case process must be served on respondent, and security tendered for eventual costs with the petition of appeal.

4. In this court appeal cases of this nature appear to have been considered in some degree to come under Regulation V. 1831, and have been taken up in the first instance with a view to ascertain whether an appeal ought to lie without serving process on the respondent.

To the Judge of Zillah Tirhoot, dated 24th February, 1837.

I am directed to inform you that the provisions of clause 3, Section 16, Regulation V. 1831 are applicable only to appeals from the decisions of moonsiffs, sudder ameens and principal sudder ameens: appeals from the decisions of collectors under clause 7, Section 30, Regulation II. 1819, must therefore be taken up and tried under the rules in force prior to the enactment of the clause first cited.

The Western Court, on the 10th February, 1837, *concurred in this construction.*

February 24, 1837.

From the Judge of Zillah Ghazeepore, to the Officiating Register of the Western Provinces, dated 28th February, 1837.

No. 1077.

1808.

Reg. XIII. Sec. 11, Clause 2.

The construction of clause 2, Section 11, Regulation XIII. 1808, contained in the Court of Sudder Dewanny Adawlut's order (paragraph 2) dated 12th September, 1811, No. 90 of the printed Construction Book, would appear to imply a discretion in the zillah court, somewhat at variance with the modified rules laid down in the provisions of Section 11, Regulation XIII. 1808, namely, that of staying the execution of its own decrees for real property, in case the appellant (being in possession) should have regularly preferred his appeal, and tendered to the zillah court proper security, and moved it to suspend execution until the orders of the superior court be received; whereas, under the spirit of the last quoted enactment, the admission of such motions on the part of the appellant, under any circumstance whatever, has virtually ceased to exist. I request therefore to be favored with the Court's instructions, whether it is competent to this tribunal or the subordinate courts to entertain any motion of the above description without the previous issue of an order to that effect from the appellate court or otherwise.

2. With reference to the Court's further construction of the same clause, under date the 1st January, 1830, paragraph 2, No. 536 of the printed Construction Book, taken in connection with the rule passed in the latter part of clause 3, Section 16, Regulation V. 1831, for enabling the respondent to take immediate measures for the execution of the decree confirmed in appeal, I wish to be informed, whether it is imperative on the courts, in all cases where the Regulations allow a second or special appeal, to demand from the decree-holder security to abide the ultimate award, in the event of his wishing to obtain possession under the decree within the period allowed for the appeal. A practice the reverse of this has hitherto prevailed in this district.

From the Officiating Register of the Western Provinces, to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 10th March, 1837.

I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Ghazeepore, under date the 28th ultimo, involving a construction of clause 2, Section 11, Regulation XIII. 1808.

2. With regard to the first point noticed by Mr. Smith, the Court observe, that the construction adverted to in his letter (No. 90 of the Construction Book) had reference merely to the power vested in the appellate tribunals of restoring an appellant to possession after it had been given to the respondent by the lower court; though, as

noticed by Mr. Smith, it incidentally implies a discretion on the part of the lower court to delay for a reasonable period the execution of its own order for giving possession to the respondent in case of an appeal, until the receipt of instructions from the appellate Court; and the Court do not see any thing in the clause under consideration which would preclude the exercise of a sound discretion in particular cases, which may appear to require it.

3. The Court remark that the second point preferred by Mr. Smith, has already been provided for in the letter to the address of the judge of Cawnpore dated 1st January, 1830, No. 536 of the Construction Book, and they are of opinion that the rule therein laid down, which they do not consider to have been superseded by clause 3, Section 16, Regulation V. 1831, or any subsequent enactment, should continue to be observed.

The Presidency Court, on the 25th March, 1837, concurred in this construction.

March 10, 1837.

From the Judge of Zillah Tirhoot to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 11th February, 1837.

No. 1078.

Circular Order No. 197, Vol 2nd, 13th January, 1837.

I have the honor to acknowledge the Court's circular of the 13th ultimo, directing the discontinuance of the obtaining practice of employing moonsiffs to conduct investigations under Sections 50, 51, 52, 53 and 54, Regulation XXIII. 1814.

2. With reference to the 5th clause of the 4th paragraph of the above order, I beg to be informed how and from whom the zillah courts shall levy for the ameens the fee of one anna in the rupee, in cases of investigations into sufficiency of securities tendered to the Court of Sudder Dewanny or other zillahs, and in cases of paupers, and in cases of inquiries directed by judges of other zillahs?

3. It is my intention to endeavour to obtain the aid of the central cazees of each moonsiffship to carry into effect the order now issued, as it appears to me they would have more local experience, and would therefore be better able to afford efficient aid.

To the Judge of Zillah Tirhoot.

I am directed to inform you that no fees can be levied for the remuneration of the ameen appointed under the Circular Order of the 13th January last, No. 217, in cases in which he may be employed in investigating the sufficiency of securities tendered to the Court of Sudder Dewanny Adawlut or other zillahs, and the circumstances of

parties wishing to sue *in formâ pauperis*. Should you therefore consider it objectionable to employ, on these duties, persons who do not receive any fees, you are at liberty, as heretofore, to confide this duty to your nazir or to the moonsiffs.

2. In regard to inquiries directed by the judges of other districts, the Court direct me to observe that whether any fees can be levied or not, must depend upon the nature of the inquiry.

The Western Court, on the 31st March, 1837, concurred in this construction.

March 10, 1837.

From the Secretary to the Government of Bengal to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 24th January, 1837.

No. 1079.

1819.
Reg. II. Sec. 13.

I am directed by the Right Honorable the Governor of Bengal to transmit to you in original the correspondence specified in the margin, and to request the opinion of the Court regarding the construction of Section 13, Regulation II. 1819, in cases where the final decision may be in favor of the right of Government to assess the lands attached, and also where the lands may be eventually decreed not liable to assessment.

Letter from Secretary Sudder Board of Revenue, with enclosures, dated 20th August, 1836.
To ditto in reply, dated 30th ditto.
From ditto, with enclosures, dated 2nd January, 1837.

To the Secretary to the Government of Bengal, dated 10th March, 1837.

I am directed by the Court to acknowledge the receipt of your letter of the 24th January last No. 123, and its enclosures, and, in reply, to forward the accompanying copies of minutes* recorded on the subject thereof by the judges of the Court, from which the Right Honourable the Governor of Bengal will perceive that the majority of the Court are of opinion that if the attached lands be finally adjudged liable to assessment, Government are entitled to the mesne profits during the attachment, while, on the other hand, if the lands be declared exempt from public assessment, the proprietors have a just claim against Government for the mesne profits which accrued while the lands were under the charge of the revenue authorities.

March 10, 1837.

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* It has not been considered necessary to print the minutes.

From the Assistant in Charge of the Office of the Judge of Sylhet to the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut, dated 7th February, 1837.

No. 1080.

Civil Circular Order No. 131, Vol. 2nd, 6th February, 1835.

I request to know whether an assistant in charge is competent to try and punish cases of resistance to processes in giving possession of lands bought at the public sale ?

2. Though not exactly a current duty of the office as specified in the Sudder Dewanny Circular of the 6th February, 1835, No. 131, I am induced to ask for permission, as otherwise great delay will arise in giving possession, and the unfortunate purchasers, without having any benefit from their purchase, are called upon to pay the rents as if they were in full enjoyment of the estate.

To the Assistant in Charge of the Office of the Judge of Sylhet.

I am directed to communicate to you the opinion of the Court that an assistant in charge of the office of civil judge may summon parties charged with resistance of civil process, and examine the witnesses for and against the prosecution, and, if he consider the charge proved, hold the offenders to bail until the arrival of the judge, who, under the provisions of Section 3, Regulation IX. 1799, must pass the final order.

The Western Court, on the 31*st March* 1837, *concurred in this construction.—Letter to the Assistant issued* 21*st April,* 1837.

March 16, 1837.

See Nos. 998, 1038 and 1242.

From the Judge of Zillah Ghazeepore to the Officiating Register of the Western Provinces, dated 23*rd March,* 1837.

No. 1082.

A pleader dismissed from his situation by a judge cannot be permitted to practise again by such judge's successor, without sanction having been obtained from the Sudder Dewanny Adawlut to review the order for dismissal.

Under the generally received maxim, that it is not within the competency of a public functionary to reverse, of his own authority, any order regularly recorded by his predecessor, however much he may dissent from the opinion which formed the basis of that order, I am doubtful of my competency to admit as a pleader of this court, an individual dismissed from that situation by the late additional judge, with the concurrence of my predecessor in office, for having been guilty of an irregularity in the course of his official duty.

2. Without however adverting to the merits of this particular case, which has been twice before the Court of Sudder Dewanny Adawlut in the form of an appeal, I am desirous of being favored

with the Court's opinion on the general principle above stated, as far as regards questions of a purely miscellaneous nature, wholly unconnected with any cause or suit decided or depending.

From the Officiating Register, Western Provinces, to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 31st March, 1837.

I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of Ghazeepore under date the 23rd instant.

2. The Court are of opinion that the principle of the rule, referred to in the first paragraph of Mr. Smith's letter, must be considered equally applicable to cases of the nature of those described in the latter part of his communication, and that if in any instance a judge should see reason to question the propriety or legality of any order passed in such cases by his predecessor, and a revision of it should appear to him requisite for the ends of justice, he should apply to the Court for authority to grant the same in the prescribed form.

The Presidency Court, on the 14th April, 1837, concurred in this construction.

March 31, 1837.

From the Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 10th March, 1837.

No. 1083.

Mode of proceeding against a vakeel, neglecting or refusing to give up his sunnud of office.

Kisheneh Nund Barajyah, formerly a vakeel of the court of the moonsiff of Talmah, who has been dismissed, will not give up his sunnud of appointment as required by Regulation XXVII. 1814, Section 4, but has made a futile pretence on being applied to for the same, and gone out of the way when again sought for that purpose.

2. *Whilst legislating for taking back these sunnuds, the legislators have forgotten to point out any process by which they are to be obtained from parties unwilling to give them up: I solicit therefore the instructions of the Sudder Dewanny Adawlut in regard to such cases.*

To the Judge of Zillah Dacca.

I am directed to inform you that in the case cited you should summon the vakeel to attend at your court; and in the event of his neglecting to attend, or, attending, to deliver up his sunnud,

you are competent to punish him for evasion of process, or contempt of court.

The Western Court, on the 21st April, 1837, concurred in this construction.—Letter to the Judge issued 5th May, 1837.

March 31, 1837.

Act XXX. 1841.

From the Officiating Judge of Zillah Sylhet to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 30th December, 1836.

No. 1084.

1814.
Reg. XXVI. Sec. 14, Clause 8.

I have the honor to submit, for the consideration of the superior court, the urgent necessity for modifying clause 8, Section 14, Regulation XXVI. 1814, by substituting the following clause in lieu thereof, should it meet with the approval and sanction of the Court to recommend the same.

Modified Rule, Clause 8.

" When the process is taken out, the nazir shall pay the peon serving the same two-fourths of the amount of the tulubana received by him on account of such process, and when it shall have been executed and returned according to the preceding rules, the nazir shall pay another one-fourth to the peon and shall be entitled to appropriate the remaining one-fourth of the tulubana to his own use."

As the rule at present stands every peada must perform the duty required from him by the nazir of serving process without a particle of tulubana in his pocket, thereby leaving the individual clothed with the authority of his badge to commit oppression, and which, I fear, is sometimes done with impunity.

To the Judge of Zillah Sylhet, dated 31st March, 1837.

I am directed to communicate to you the opinion of the Court that a judge is not competent to exercise any interference in the matter referred to in your letter of the 30th December last, No. 46 ; but that the nazir may himself be permitted to exercise his discretion in advancing to the peon, on his own responsibility, such portion of the tulubana as he might consider necessary for the subsistence of the latter while engaged in serving the process on account of which it was paid ;

consequently no modification of clause 8, Section 14, Regulation XXVI. 1814, appears to be called for.

The Western Court concurred in this construction.

March 31, 1837.

See Circular Order No. 98, 28th August, 1840, and No. 190, 11th March, 1842.

From the Acting Additional Judge of Zillah Chittagong to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 13*th February*, 1837.

No. 1087.

The fact of two distinct and separate debts, due by different individuals, being engrossed on a stamp of a value sufficient to cover the whole amount, would not vitiate the deed.

I have the honor to solicit the Court's construction, as to the legality of a judge receiving a *tumasook* filed by a plaintiff suing for the amount, wherein money is stated to be lent to two persons unconnected with each other. Thus five rupees in the bond is stated to be lent to A. and twenty-nine rupees to B., these persons are, as far as I can judge, unconnected, and even unknown to each other ; it is in evidence the loans are embodied in one bond to evade the stamp duty the bond comes under, (on account of its date, Regulation I. 1814,) which prescribes that bonds for these two sums should be written on paper of the value of two annas each. If I admit this document and decree on it, I afford means of defeating the intent of the Stamp Regulations.

To the Acting Additional Judge of Chittagong, dated 21*st April*, 1837.

I am directed by the Court to inform you that, provided the value of the stamp be sufficient, under the Regulation in force at the time the bond was executed, to cover the total amount of thirty-four rupees, the fact of two distinct and separate debts, one of five and the other of twenty-nine rupees, due by different individuals, being engrossed thereon, would not vitiate the deed. The bond is herewith returned.

The Western Court, on the 23*rd March*, 1837, *concurred in this construction.*

April 21, 1837.

To the Judge of Zillah Jessore.

No. 1088.

1829.
Reg. X. Schedule B.
1832.
Reg. VII. Sec. 3.

I am directed to observe that Section 3, Regulation VII. 1832, modifies Schedule B., Regulation X. 1829, only so far as relates to the value of the stamp on which "pleadings" in suits in the judge's court shall be written, and that all "ismnuveeses" or the names of witnesses must, as heretofore, be charged as "exhibits," and written on stamped paper of the value of one rupee (see Arts. 5 and 11, Schedule B.)

2. In reply to your second question, I am directed to state that in regular cases still pending before the Sudder Dewanny Adawlut, in which that court may direct the zillah judge to take evidence to any particular point, the ismnuveesee or the list of the names of witnesses filed before the zillah judge must be written on a stamp of the same value as if the same had been filed in the Court of Sudder Dewanny Adawlut, *viz.* two rupees; but in suits sent back for further investigation and re-trial to the zillah judge, the ismnuveesees will be received on stamp paper value one rupee.

The Western Court, on the 12th May, 1837, concurred in this construction.—Letter to the Judge of Jessore issued 26th May, 1837.

April 21, 1837.

See No. 145.

Extract of a Letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 28th April, 1837.

No. 1089.

Parties under attendance on the revenue authorities, exercising judicial powers, enjoy privilege from arrest by the civil courts.

Para. 1. I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copies of the correspondence, noted in the margin, involving the general question whether parties in attendance under process before a collector or deputy collector, exercising judicial powers under Regulation VII. 1822, or any other enactment, enjoy any legal privilege from arrest by the civil courts, or courts of Dewanny Adawlut.

Letter from additional judge of Ghazeepore, dated 23rd July, 1836.
Ditto to Secretary to Lieutenant-Governor, dated ditto.
Ditto from ditto, with its enclosures, dated 20th October, 1836.
Ditto to Secretary to Government, dated 3rd March, 1836.
Ditto from ditto, dated 22nd ditto.
Advocate-General's opinion.
Copies of Persian enclosures received from Sudder Board with letter, 17th February, 1837.

5. The Court observe that the existing Regulations contain no provisions expressly exempting parties in attendance on the courts of Dewanny Adawlut from arrest in civil cases, but that on a reference

to the Advocate General under date the 24th August, 1810, a copy of whose reply is annexed, the following opinion was obtained from that officer, *viz.* "that a man attending a court of justice as a party or witness in a cause of any sort, could not be arrested on process in a civil suit, the protection being *eundo, morando* and *redeundo,* and a reasonable construction being given as to what is going, staying and returning." By this rule the Court observe that the practice of the civil courts in matters of this nature has hitherto been regulated, and with reference to the terms of clause 1, Section 23, Regulation VII. 1822, which declares that "in so far as concerns the summoning and examination of witnesses, &c. in cases of the description of those therein mentioned, the cutcherry or office of the collector shall for the time being be deemed and held a court of civil judicature," the Court are of opinion that under the spirit thereof the same principal must be held to apply to the proceedings of the revenue authorities when exercising judicial functions under the Regulation above cited, or any other enactment, and that consequently, when so engaged, they must be considered to be invested with the same powers in regard to the protection of parties, in attendance before them under process, from arrest in civil cases, as are possessed and exercised by the courts of Dewanny Adawlut.

Opinion of the Advocate General.

It is a rule with us that no man attending a court of justice as party or witness in any cause of any sort shall be arrested on process in a civil suit. The protection is *eundo, morando,* and *redeundo,* as we term it, and a reasonable indulgence is given in the construction of what is going, staying, and returning. As to the mode of procuring redress where a party is arrested contrary to this rule, if the arrest were made in the face of the court which he was attending, that court would take upon itself to liberate him and probably to punish those who are actually concerned in the arrest, for the contempt and disturbance, and they would probably interfere if the arrest was within reach of their aid, though not within their walls, so that they could by their interference give the party his privilege at the time. But if the arrest were made while the party was on his way to or from the court and out of its immediate reach for the purpose of prevention, he must apply to that court from which the process issues, to discharge him from the arrest.

The majority of the Calcutta Court concurred.

See Nos. 885 and 893.

From the Officiating Additional Judge of Zillah Jessore to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 4th March, 1837.

No. 1090.
1830.
Reg. VI. Sec. 3.

I have the honor to forward herewith a copy of my proceeding under date the 1st instant, on a durkhast presented to this Court by Mr. Rainey, a zemindar of this district, applying for the confinement, in the civil jail here, of a person named Mirtunjoy Rai, against whom he holds a decree of the late court of appeal ; and as I am uncertain whether, under the peculiar circumstances of the case, it can or should be complied with, request the favor of your procuring me the opinion of your Court in the matter for my guidance, &c.

2. Section 3, Regulation VI. 1830 states, "that if the plaintiff in any case shall neglect to pay the diet allowance for any defendant on or before the day on which it may become due, such defendant shall forthwith be discharged, and shall not again be liable to personal arrest and confinement in the same matter, &c. &c." Now in the case under report, it appears that Mirtunjoy was once before (in July, 1825,) arrested and brought in this very matter and kept under charge of the nazir's chupprassees for seven days, when (no diet allowance being paid) he was released ; and what I wish to know is, whether, under these circumstances, the said Mirtunjoy can again be arrested and confined for the same debt, or in other words, whether temporary confinement under charge of peadas, &c. is to be considered as a bar to all further personal arrest towards defendants in all such cases ?

To the Officiating Additional Judge of Zillah Jessore.

I am directed by the Court to inform you that under the circumstances stated, Mirtunjoy, never having before been confined in jail on account of the demand against him, is liable to be arrested and committed to jail under the decree of the late Calcutta Court of Appeal.

The Western Court, on the 2nd June, 1837, concurred in this construction.—Letter to the Officiating Additional Judge of Jessore, issued 23rd June, 1837.

May 19, 1837.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 2nd June, 1837.

No. 1092.

1823. Reg. VI.
1831. Reg. V. Sec. 5.
1836. Act X. Sec. 5.

I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying extract, paragraph 52, of a letter from the officiating judge of Furruckabad, containing his annual report on the administration of civil justice in that district for the past year.

2. *With regard to the general question involved in the paragraph under consideration, the Court direct me to state that it might be inferred from the terms of Section 5, Act X. 1836, that the moonsiffs had no jurisdiction in regular suits of the nature of those therein described, though otherwise in all respects within their cognizance; the Court observe, however, that Regulation V. 1831 contains no exception in respect to such cases, nor are they aware of any other rule on the subject; and they are, therefore, of opinion that, under the strict spirit of the existing laws, regular suits instituted in conformity to the provisions of Regulation VI. 1823, or of the Act above cited, in which the amount or value of the claim may not exceed 300 rupees, and in which neither party may be an European British subject, European foreigner, or an American, are cognizable by the moonsiffs in like manner with all other cases legally within the competency of those officers to dispose of.*

Extract from a Letter from the Officiating Judge of Furruckabad.

Mr. Birch, versus Jooulpershad, &c. defendants, rupees 21-6, penalty three times the sum advanced under clause 4, Section 5, Regulation VI. 1823.

Para. 52. Suits under Regulation VI. 1823, regarding indigo, are not included in the exceptions of Section 5, Regulation V. 1831, which detail the suits cognizable or otherwise by moonsiffs. I have in the case of a suit noted in the margin prohibited the moonsiff of Chilrarnow from trying it, adverting to Section 5, Act X. 1836, by which it is rendered competent to the judge to refer such suits to the sudder ameen or principal sudder ameen, whence an inference may be drawn that the moonsiffs are not empowered to try such suits.

The Presidency Court, on the 23rd June, 1837, concurred in this construction.

June 2, 1837.

See Act VI. 1843.

From the Judge of Zillah Moradabad to the Officiating Register of the Western Provinces, dated 3rd April, 1837.

No. 1093.

Applications on stamped paper for the payment of money deposited in court are necessary, except when payment has been specifically ordered.

It has been the custom in this zillah, and I believe is generally observed in other courts, to require applications for an order for the payment of money deposited in court to be written on stamped paper of the value of eight annas. This course appears to me to subject the persons for whom the money is deposited, to a stamp duty not contemplated by the Regulations. Sums for a less amount than fifty rupees, when paid to claimants, are given on receipts taken on plain paper, but before they can procure an order for the payment, they must be subjected to a demand of eight annas, and when the sums are trifling this is found to be a heavy tax. After the amount has reached the treasury of the court, the applications to receive the sum, in my opinion, should be made on plain paper, the receipts of course, when the amount exceeds fifty rupees, being on stamped paper. I request the Court's opinion on this point.

To the Judge of Zillah Moradabad, dated 9th June, 1837.

The Court having again had before them your letter No. 20, under date the 3rd April last, direct me to communicate to you their opinion, in reply to the question therein submitted, that applications for the payment of sums of money deposited in court must in every case be made on stamped paper as a record, unless a specific order should, at any time, have been passed ordering payment of the amount.

The Presidency Court concurred in this construction.

June 9, 1837.

From the Judge of Zillah Chittagong to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 23rd May, 1837.

No. 1094.

1831.
Reg. VIII. Sec. 15.

I beg leave to submit, for the orders of the superior court, a copy of my proceedings under date the 13th instant, held in the case of Ameen Shurreef, appellant, versus Mahomed Bouhir, respondent. The point I desire to bring to the notice of the Court is the want of observance on the part of the revenue authorities to the legal requisitions of the court calling for the record of a summary suit under Section 15, *Regulation VIII.* 1831. *The collector indeed contends that the matter is not the same.*

The decision of the collector and the decisions of the lower tribunals are herewith submitted; and I believe there will not be two opinions upon the question that really the cause of action originates from the same source—a claim on the part of the appellant to hold a talook at a fixed rent, and a claim on the part of the respondent to assess the lands at the village rates; the appellant by Section 33, *Regulation XI.* 1822, *has a right to resist payment until a final decree is passed by a competent court of justice.*

2. *That decree has not yet been given, for the cause of action is under abeyance in a special appeal, and the series of actions constitutes only one suit. The retention of the record, and the judgment of the collector may therefore involve what the legislature sought to avoid, that is, contrariety of opinion. And opposition to what appears to me a legal order of the court is, to say the least, not treating it with that respect which is its due. I call upon the superior court, if I am not in error in the premises, to support my authority.*

To the Judge of Zillah Chittagong.

I am directed to inform you that, in the opinion of the Court, it is not necessary for them to pronounce whether the matter pending before the collector and yourself is, or is not, the same. It is sufficient that you at present believe it to be so, and that you conceive it to be essential to the decision of the suit instituted in your court that you should be furnished with the record in question.

2. *Accordingly the Court desire me to inform you that if the collector refuses to obey your orders, it is competent to you to proceed according to Section* 36, *Regulation XIV.* 1793.

The Western Court, on the 11*th August,* 1837, *concurred in this construction.—Letter to the Judge issued* 1*st September,* 1837.

June 23, 1837.

Cancelled by Circular Order No. 83, 30*th November,* 1849.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, under date the 30th June, 1837.

No. 1095.

Circular Order No. 171, Vol. II. 4th March, 1836.

The Court, having had under their consideration the Circular Order No. 171, of the 4th March, 1836, are of opinion that interest on the costs of suits should be granted in all cases, whether the claim be for money, land, or any other description of property.

The Western Court, on the 21st July, 1837, concurred in this construction.

June 30, 1837.

See No. 715.

From the Officiating Judge of Zillah Chittagong to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 28th February, 1837.

No. 1096.

Fines under Sec. 12, Reg. III. 1793; Sec. 9, Reg. II. 1803; Sec. 21, Reg. IV. 1793; Sec. 22, Reg. III. 1803; Sec. 3, Reg. XIII. 1796; Sec. 25, Reg. IV. 1803; how to be realized.

I beg to solicit the opinion of the superior court whether in case of the non-attendance of a party fined under Section 21, Regulation IV. 1793, and Section 3, Regulation XIII. 1796, also Section 12, Regulation III. 1793, the fine is to be levied under process as in execution of decrees, and whether or no Section 3, Regulation XIII. 1796, is to be construed as contempt of court: in instances coming under Regulation XIII. 1796, are not the person and property both tangible?

To the Officiating Judge of Zillah Chittagong, dated 7th July, 1837.

I am directed to inform you that, as the law now stands, in cases coming under the provisions of Section 12, Regulation III. 1793, the party fined is liable to be committed to close custody until the amount be paid, but that, where the fine may be imposed for a litigious appeal in conformity to Section 3, Regulation XIII. 1796, the amount, if not immediately forthcoming, should be realized under the same rules as are applicable to the execution of decrees of court.

The Western Court concurred in this construction.

July 7, 1837.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut, dated 8th July, 1837.

No. 1097.

1814.
Reg. XXVIII.
Sec. 12, Clause 3.

An order of the Sudder Dewanny Adawlut, refusing to admit an appeal *in forma pauperis* is not appealable to the King in Council.

A question having arisen as to whether an appeal lies to the King in Council from a summary order passed by the Court of Sudder Dewanny Adawlut, refusing, on the grounds specified in clause 3, Section 12, Regulation XXVIII. 1814, to admit an appeal *in formâ pauperis* from the decision of a zillah judge, in whicht he sum or value awarded amounted to 50,000 rupees, the petitioner being, at the same time, left at liberty to institute his appeal on performing the conditions prescribed by the Regulations for persons not suing as paupers, I am directed to request you will submit the point for the consideration and opinion of the Calcutta Court.

The Court observe that in the case cited in the margin it was ruled by the Court of Sudder Dewanny Adawlut that an order passed by a provincial court, refusing to admit an appeal *in formâ pauperis* on the merits of the case, and without reference to the question of pauperism, was final and conclusive; and that in a note appended thereto, it is added that "the Sudder Dewanny Adawlut had, on many occasions, construed clause 3, Section 12, Regulation XXVIII. 1814, as vesting the appellate authority with discretion to pass a final order not open to special appeal." The Court are of opinion that the same principle must be held to apply to orders passed by themselves of the nature of that described in the preceding paragraph, and that consequently no appeal lies from such orders to the King in Council; and, should the Calcutta Court concur in this construction, they propose to adopt it as a rule of future practice.

Syud Kulundur Ali,
versus
Dhoomun Bebee and others, respondents.
Page 105, volume IV., S. D. Reports.

The Presidency Court, on the 4th August, 1837, *concurred in this construction.*

July 8, 1837.

See No. 1102.

From the Judge of Zillah Ghazeepore to the Register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated 19th July, 1837.

No. 1101.
Reg. X. 1829.
Schedule B. Article 8.

I request you will have the goodness to obtain for me the opinion of the Court of Sudder Dewanny Adawlut on the following point.

2. The rules for estimating the value of property, real or personal, claimable by action in the civil courts, contained in Section 14, Regulation I. 1814, Section 23, Regulation XXVI. 1814, and Section 5, Regulation XIX. 1817, have been either formally or virtually superseded by the provisions of the note attached to Article 8 of Schedule B. referred to in Section 17, Regulation X. 1829, but no provision is expressly made in the fourth paragraph of the note in question, to meet the description of suits contemplated in the penultimate paragraph of Section 5, Regulation XIX. 1817, above quoted, as per extract in the margin.

"If the suit be not for a right of property, or for a permanent tenure, but for a farm leasehold of any denomination, during a limited term; or for any interest in the land during a limited period only; the valuation of the plaintiff's claim, in pursuance of the Regulations above-mentioned, is to be made according to the nearest estimate that can be formed of the actual value of the thing sued for."

3. The question I would ask therefore is, whether the rules latest enacted, namely, those prescribed in the said fourth paragraph of the note to Schedule B. of Regulation X. 1829, are applicable to such cases, as well as to suits of the description particularized below, and to all other actions whatsoever, not coming within the meaning of the first three paragraphs of the note.

First.—Suits of kashtkars against the proprietors of the land, whether assessed or rent-free, to maintain, preserve, or obtain possession of their right of cultivation in a given quantity of land, held on a potta by prescription or otherwise; or suit to reverse a summary decision of ejectment, passed against them in the zemindar's favor, under the provisions of Regulation XLIX. 1793.

Secondly.—Suits on the part of the proprietors whether malgoozars or mafeedars, to eject an under-tenant from lands held by him in ryotee tenure.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 4th August, 1837.

I am directed by the Court to request that you will submit, for the opinion of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Ghazeepore, No. 207, under date the 19th ultimo.

2. The Court propose, with the concurrence of the Calcutta Court, to inform Mr. Smith, that Section 5, Regulation XIX. 1817,

as well as all other existing Regulations relating to the imposition, levying and collecting stamp duties is rescinded by Section 2, Regulation X. 1829; and as the latter enactment contains no express provision for computing the amount value of suits of the nature of those described in his letter, they must be considered as falling under the general rule laid down in the fourth paragraph of the note to Article 8, Schedule B. of that Regulation.

The Presidency Court, on the 25th August, 1837, concurred in this construction.

August 4, 1837.

See Sudder Dewanny Reports, N. W. P., 4th January, 1848, page 1.

Resolution of the Court of Sudder Dewanny Adawlut, held at Fort William, under date the 18th August, 1837.

No. 1102.

Orders of the Sudder Dewanny Adawlut in miscellaneous cases, are not appealable to the King in Council.

Read a translation of a petition presented by Ranee Jye Doorga, praying that she may be allowed to appeal to the King in Council against an order of Mr. D. C. Symth, for the sale of her property in satisfaction of a decree against her.

Read a proceeding held before Mr. D. C. Smyth, in which that gentleman records his opinion that the case is not appealable to the King in Council, but at the same time directs, in compliance with the petitioner's request, that the matter be brought before the English sitting.

The Court, having taken into consideration the papers laid before them, concur in opinion with Mr. Smyth, that the orders of this Court in all miscellaneous cases are final. Accordingly it is resolved that the Court will in future decline to admit any appeals to the King in Council, excepting such as are expressly provided for by Regulation XVI. 1797.

The Western Court, on the 15th September, 1837, concurred in this construction.

August 18, 1837.

See No. 1097.

Extract from a Letter from the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 3rd February, 1837.

No. 1103.

Meaning of the term "*ba furzundan*" as applicable to grants whether of land or money.

Para. 1. I am directed by the Court to request that you will lay before the Calcutta Court the accompanying copies of a letter from the Secretary to the Honourable the Lieutenant Governor, under date the 21st ultimo, and of its enclosure from the Honourable the Court of Directors, calling upon the Court for a definition of the legal and practical meaning of the term "*ba fuzundan*" when made use of in "*jaghire*" grants of the nature of those referred to by the Honorable Court.

Extract of a Letter from the Deputy Register to the Register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated 18th August, 1837.

Para. 1. I am directed by the Court to acknowledge the receipt of your letter noted in the margin,* on the subject of a reference from the Government of Agra regarding the import of the term "*ba furzundan*" when found in grants or sunnuds.

* No. 77 of the 3rd February.

2. The Presidency Court have had a similar reference made to them by the Government of Bengal, and have resolved to submit a reply thereto, in the terms of the accompanying draft, which is now forwarded to you, for the concurrence of the judges of the Western Court, together with the several documents* therein referred to.

* Futwa of the law officers of the Court given in 1819, with a translation by Dr. Lumsden.
Futwa of the present law officer with a translation.

August 18, 1837.

To the Secretary to the Government of Bengal in the Judicial Department, dated 27th October, 1837.

I am directed by the Court to acknowledge the receipt of Mr. Secretary Mangles' letter of the 13th December last, No. 1840, and its enclosures, requesting the Court's opinion in regard to the meaning and scope of the term "*ba furzundan*" as applicable to grants whether of land or money.

2. In reply I am directed to observe that the only futwas the Court have been able to discover touching this question are, that in the case of Musst. Hya-oon-Nissa and Khoondgar Abdoolla, appellants, versus Mofukhur-ool Islam, respondent, (see page 106, volume I. Sudder Dewanny Adawlut Reports,) decided in 1805, a translation of which is found in page 331, Macnaghten's Principles and Precedents of Mahomedan Law, and one given by the law officers of this Court.

3. The first defines the term "*furzundan.*" The question assumes that the grant is hereditary (and from its nature, and endowment for religious purposes, it is so,) and asks whether the grandson in the female line or grandson in the male line can be enumerated among the offspring or "*furzundan*" of the grantee. The answer declares "*furzundan*" to mean "lineal descendants in the male line," and excludes the grandson in the female line of the grandson in the male line, "because the descendants of a man's daughters are not the lineal descendants of that man, lineage being derived from the father, and not from the mother." It does not determine the meaning of the terms "*ba furzundan*" or "*mye furzundan.*" The doubt is, whether the use of these terms creates in themselves an hereditary title without the addition of *nusulun baad nusulun* or words of the same import, or merely a joint interest during the lives of the grantee and his *furzundan.*

4. The futwa of 1819 is rather in favor of the latter interpretation. The phrase "such and such places are granted in *jaghir* to Gholam Ahmed Khan and his children *(mye furzundan)* must therefore be understood to signify that the places in question are granted to him and the children sprung from his loins, and will remain in their possession during his own life and that of those children ; but if at the period of the grant, or subsequently, he had no children sprung from his loins, but only grandchildren, (literally the children of children,) then the grant must be understood to intend the latter."

5. As in the former case the grant is presumed to be hereditary, so in this a grant in *jaghir* is presumed ; and a *jaghir* has been determined to be a life grant merely, (see case of Collector of Bareilly, versus William, Charles, and John Martindell, page 188, volume II. of Select Reports).

6. Under these circumstances the Court deemed it proper to consult their law officer ; and from his futwa, in which they entirely concur, the Honorable the Deputy Governor will observe that the term *ba furzundan* is considered as conveying an hereditary title to the grantee and his lineal descendants, in the same manner as if the words *nusulun baadnusulun* had been used.

The Western Court, on the 22nd September, 1837, *concurred in this construction.*

From the Officiating Judge of Zillah Azimghur to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 9th August, 1837.

No. 1105.

Pleaders' fees in cases sent back for re-trial.

I have the honor to submit, for the orders and opinion of the Court of Sudder Dewanny Adawlut, the accompanying copy of a petition of Seetuldeal Tewary, who is a defendant in the case of Sunkerdeal (pauper) versus Seetuldeal, to obtain possession of mouzah Mullooah Phar, &c. at rupees 6,095-13-0.

2. *Sunkerdeal instituted a suit as pauper which was decided in favor of the defendant by the additional judge of the zillah court of Juanpore, who dismissed the suit. The plaintiff appealed to the Court of Sudder Dewanny Adawlut, who, in their proceedings of the 22nd August,* 1835, *considering that the decision was irregular, reversed the order of the additional judge, and directed that the case be tried de novo, having entered it on the file in the same number as it previously bore.*

3. *In the mean time this court was established, and the case being within its jurisdiction, it was sent here for trial.*

4. *The petitioner states that in this same case, he deposited in the court of Juanpore the sum of about rupees* 271-14½ *as fee for his vakeel, who, on the decision of the case, drew out the amount, which he appropriated to his own use, and that the vakeels in this court now refuse to take up his case without his again depositing in this court a further amount of* 271-14½ *which sum he states that he cannot afford to pay.*

5. *By the order of the Court of Sudder Dewanny Adawlut, directing that the case be returned for further investigation, having brought it on the file in its former number, I am of opinion that it is not their intention that a further deposit for vakeels' fees should be made, but that it should be carried on by the same vakeels without other remuneration, which, however, in this instance cannot be effected, and I shall therefore feel obliged by your informing me whether it is necessary that the further deposit shall be made or not, as there are very many cases of the same nature frequently arising.*

6. *Also whether they consider that the vakeels are precluded by Section* 23, *Regulation XXVII.* 1814, *from acting in a suit where a deposit has not been made into court on their account, although the amount prescribed by the Regulations had before been deposited, and, on the decision of the suit in the first instance, been taken out by the vakeels previously employed.*

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th September, 1837.

I am directed to request you will submit, for the consideration of the Calcutta Court, the accompanying copies of a letter and

its Persian enclosure from the officiating judge of Azimghur, dated the 9th ultimo.

2. *The Court observe that under the provisions of Section* 34, *Regulation XXVII.* 1814 *the vakeels, entertained in a regular civil suit, are required, without any additional fee, to make all motions and do all acts which may be requisite relative to such suit, not only during the trial of it, but after a decision shall have been passed, until the final judgment shall have been enforced; and as the case which has given rise to the present reference, cannot be considered to have been finally disposed of by the zillah court, the decision having been pronounced incomplete and the case ordered to be tried de novo, the Court propose, with the concurrence of the Calcutta Court, to inform Mr. Heyland that the defendant's vakeel should be required to refund the amount paid to him, leaving it to the court who may eventually decide the case, to award to him such portion of the authorized fee as may appear an adequate remuneration for the trouble which he may have taken in the matter.*

The Presidency Court, on the 29th September, 1837, *concurred in this construction.*

September 8, 1837.

See Act I. 1846.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Nizamut Adawlut, dated 8th September, 1837.

No. 1106.

A collector is not authorized to administer an oath in investigating claims to pensions of the nature described in Regulation XXIV. 1803.

I am directed by the Court to request you will lay before the Calcutta Court the accompanying copy of a letter from the session judge of zillah Allighur, under date the 22nd ultimo, submitting his proceedings on the trial cited in the margin.

Government, versus Buldoo Doss.
Charge—Perjury.

2. The Court observe that wherever it has been the intention of the Legislature that officers, employed in the revenue department, should have power to examine parties on oath, or solemn declaration, in cases pending before them, either judicially or otherwise, and that the legal penalties for perjury should be applicable to such parties in the event of their giving deliberately and intentionally a false deposition on oath, or under a solemn declaration, taken instead of an oath, an express provision to that effect is contained in the Regulations, as, for instance, in Section 22, Regulation XII. 1817; Sec-

tions 19 and 29, Regulation II. 1819 ; Section 19, Regulation VII. 1822, and other similar enactments. The Court remark, however, that Section 29, Regulation II. 1819, applies only to money pensions granted in lieu of land, the validity of the original tenure of which may be called in question, and invests the revenue officers with no power to examine parties on oath as regards the general class of pensions referred to in Regulation XXIV. 1803, under which head the one in point would appear to be included ; nor are the Court aware of any other enactment conveying such authority as respects that description of cases. Under these circumstances the Court see reason to doubt the competency of the collector to administer an oath to the prisoner in the case before them, and by consequence whether the prosecution for perjury can be legally maintained. Previously however to passing orders on the case, the Court are desirous of learning the opinion of the Calcutta Court upon the point of law involved in it.

September. 8, 1837.

From the Session Judge of Zillah Allighur to the Register of the Nizamut Adawlut, Western Provinces, dated 22nd August, 1837.

I transmit herewith, to be laid before the Nizamut Adawlut, the proceedings on the trial noted in the margin held at the station of Allighur on the 10th instant.

Court of session judge, zillah Allighur, trial No. 4 of the calendar for the July sessions of 1837.

Government, prosecutor, versus Buldoo Doss, aged 60 years, son of Mohun Loll, prisoner, apprehended on the 23rd June, 1837.

Committed on the 24th July, 1837.
Charge—Perjury, 3rd June, 1837.

2. The perjury in this case consisted in the prisoner falsely representing himself to be Mohun Loll, the son of Sudhaloll, the grantee of a pension given in Scindia's time, when, as sworn to by seven witnesses, it was shown that he was Buldoo Doss, the son of the above-named Mohun Loll, which was corroborated by the prisoner's witnesses Rambuksh and Pirb Sing, who on being confronted with him at once called him Buldoo, son of Mohun Loll, and on being asked if he had any other name, replied they had heard he was also called Mohun in his *junnum puttree*, or horoscope, but spoke from hearsay.

3. Hyder Ally, peishkar, and Sheo Sing, writer of the deposition, further deposed that the prisoner acknowledged his name was Buldoo at the Khyr Tehseelly.

4. The prisoner in this court persisted in calling himself Mohun Loll, and one witness appeared on his behalf, who declared he had not known him by any other name.

5. In concurrence with the assessors I deemed the prisoner guilty.

6. In accordance with the verdict, I referred to the Regulations for a punishment suitable to the crime, and to my surprize was not able to discover any authorizing the collector to administer an oath in investigating pensions.

7. It will be perceived that, of the pension Regulations, XI. of 1813 alone touches on the abuses committed, and though the preamble states they merit exemplary punishment, yet no further provision is made to check the evil than the payment of six months' amount of any pension to the person, who shall satisfactorily prove to the proper authority that such pension has been fraudulently and unduly received.

8. Doubting therefore if Section 13, Regulation XVII. 1817, can apply to a collector in such a case, I have thought it best to submit the case for the Court's orders.

To the Register of the Nizamut Adawlut, Western Provinces, dated 6th October, 1837.

I am directed by the Court to acknowledge the receipt of your letter, No. 943, of the 8th ultimo, and to state in reply that they concur in the view taken of the case in question by the Western Court, but observe that if the act of perjury was committed in the course of an investigation into the conduct of the native officer authorized to pay the pensions, clause 5, Section 10, Regulation VIII. 1809 would apply.

See Nos. 252 and 1008.

From the Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th August, 1837.

No. 1108.

1806.
Reg. II. Sec. 11.

I request to be informed whether principal sudder ameens, sudder ameens and moonsiffs are authorized to inquire into the insolvency of prisoners confined in execution of decrees of their respective courts, and to order their release under the provisions of Section 11, Regulaton II. 1806, or whether the judge alone is competent to order the release of an insolvent prisoner ?

To the Judge of Zillah Shahabad.

I am directed by the Court to inform you that in cases of insolvency where individuals have been inprisoned on an application from a native court, the judge presiding in such court is evidently the proper person to determine whether or not the debtor ought to be released. The petition should however be presented to the European

judge, who may either take the deposition of the prisoner himself, or refer it to the officer presiding in such native court for investigation; and if the decision should be for a release, then an application should be made to the judge for an order on the jailor to that effect, leaving any parties dissatisfied with the decision of the lower court, the option of an appeal.

The Western Court, on the 22nd September, 1837, *concurred in this construction.—Letter to the Judge of Shahabad issued 27th October*, 1837.

September 8, 1837.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 15th September, 1837.

No. 1109.

Circular Order No. 205, Vol. II. June 30, 1837.

I am directed to request you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of Zillah Mynpooree, under date the 4th instant, relative to the Calcutta Court's circular letter of the 30th June last, which was issued by this Court on the 4th ultimo.

2. *From the reference to clause* 2, *Section* 16, *Regulation XXVI.* 1814, *in the circular in question, the Court conclude that the Calcutta Court intended it to apply only to the courts of the zillah and city judges, there being no similar rule applicable to the principal and other sudder ameens, and should they be right in this view they propose to furnish the judge of Mynpooree with an answer to that effect.*

September 15, 1837.

From the Judge of Zillah Mynpooree to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 4th September, 1837.

With reference to your circular letter No. 844 *of the 4th ultimo, I have the honor to request the instructions of the Court whether the decrees of the principal sudder ameen should be engrossed on Europe paper as well as those of the judge, and if so whether I am at liberty to furnish that officer with paper for this purpose at the charge of Government?*

2. *As the decrees of principal sudder ameens are now of great importance, it appears to me desirable that they should be written on Europe paper, and with ink of European manufacture, which is not so readily obliterated as the Indian ink.*

The Presidency Court, on the 27th September, 1837, concurred in this construction.

See Circular Order No. 131, 23rd May, 1851.

To the Officiating Secretary to the Government of Bengal in the Judicial Department, dated 20th October, 1837.

No. 1110.

In case of a sale of property (sold in execution of a decree) being reversed, and the deposit (previously forfeited to Government) ordered to be restored, the revenue authorities are bound to comply with the Court's order, appealing therefrom, if dissatisfied.

I am directed by the Court to request that you will lay before his honor the Deputy Governor of Bengal the accompanying copy of a letter from the judge of zillah Shahabad, dated the 18th ultimo, No. 248.

2. His honor will perceive that the revenue authorities have refused to comply with an order issued by the Shahabad zillah court, because they consider it to be illegal. The Court concur in opinion with Mr. Dent, the present judge of the district, who holds that the collector should have complied at once with the order without questioning its legality, and then have appealed from it to the superior court. They accordingly request that his honor will be pleased to issue such instructions to the revenue authorities as he may deem proper.

October 20, 1837.

From the Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 18th September, 1837.

Jeenwur Doss, Plaintiff, versus Acouree Jeycurn Singh, Defendant.

For the recovery of rupees 396-10, the amount of a decree against the defendant.

No, 1 Roobukaree of the additional principal sudder ameen, dated 10th September, 1836.
No. 2. Roobukaree of the judge, dated 14th September, 1836.
No. 3. Roobukaree of the judge, dated 29th September, 1836.
No. 4. Roobukaree of the Collector of Shahabad, 4th January, 1837.
also,
No. 5. Roobukaree of the commissioner of Patna, dated 10th December, 1836, as bearing on the points referred to the Court.

I have the honor to submit the Persian proceedings noted in the margin, and to solicit the orders of the Court thereon.

2. The following is a brief statement of the circumstances of the case :

3. The right and title of the defendant in Mouza Chooramunpore alias Koorkooree, was brought to sale on the 2nd June, 1836, in execution of a decree in the above case, and purchased by Jaukee

Singh and others, who made the usual deposit at the time of sale, and failing to pay up the balance of the purchase-money within the stipulated period, the collector declared the deposit forfeited and carried it to the credit of Government. The sale was subsequently cancelled by this Court, and the collector was ordered to return to the purchaser the forfeited deposit, with which order, however, under instructions from the commissioner, the collector declined compliance. Under these circumstances, I beg to refer the matter for the orders of the superior court.

4. I agree with the commissioner in considering the judge's order for the return of the deposit illegal, for, agreeably to the Regulations, the deposit is forfeited to Government; still I am of opinion that the revenue authorities should have appealed the order, instead of declining compliance with it.

From the Officiating Secretary to the Government of Bengal in the Judicial Department to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 21st November, 1837.

I am directed by the Honorable the Deputy Governor of Bengal to acknowledge the receipt of your letter No. 3173, dated the 20th ultimo, with its enclosure, and to request in reply, that you will inform the Court that His Honor concurs with them in the view they have taken of the point referred to them by the judge of Shahabad, in accordance with which, instructions will be issued through the Sudder Board of Revenue to the revenue authorities of that district.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 10th November, 1837.

No. 1112.

1837.

Act XXV.

Government suits referrible to principal and other sudder ameens.

I am directed to request you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Ghazeepore, under date the 2nd instant, soliciting the opinion of the Court as to whether suits, in which the Government or its officers may be a party, are referrible, under the provisions of Act No. XXV. 1837, to principal and other sudder ameens.

2. The Court observe that the enactment in question makes no exception in favor of cases of the foregoing description; and as, at the time of passing the Act, the question of jurisdiction in respect to such suits was before the Government on a reference from this Court, while in the resolution, published with the draft of the Act, under date the 31st July last, it is expressly stated that the

Governor General in Council does not deem it proper to maintain the rule, which precludes the native judges from adjudicating claims to which the Government or its officers may be a party, the Court are decidedly of opinion that it was not the intention of the Legislature to exclude cases of the nature of those described by Mr. Smith from the cognizance of the principal and other sudder ameens, and that consequently they are referrible to those officers at the discretion of the judge in like manner with all other cases legally within their competency to dispose of.

The Presidency Court concurred in the above construction.

November 10, 1837.

Extract of a Letter from the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 17*th November*, 1837.

No. 1113.

1819.
Reg. X. Sec. 114.

Para. 1. I am directed by the Court to acknowledge the receipt of your letter, No. 3030, under date the 6th ultimo, relative to Section 114, Regulation X. 1819.

2. Adverting to the terms of the first part of the section in question, which are positive and express, and distinctly declare that in cases of the nature of those therein described the award passed by the civil judge, under the preceding section, shall be final and conclusive, and not subject to any appeal whatever, the Court are of opinion that no appeal would lie to the Sudder Dewanny Adawlut on the merits of the case; but upon the general principle laid down in your letter of the 25th November, 1836,* they conceive that if the decree passed by the lower court in any case of the above description were manifestly illegal upon the face of it, or any such gross or glaring irregularity should have occurred in the course of the investigation as to vitiate the proceedings, it would be competent to the Court, under its general powers of superintendence and control, to order the zillah judge to revise his proceedings, with a view to the correction of the error observable in them, and to proceed in the case according to law.

The Presidency Court, on the 1*st January*, 1838, *concurred in this construction.*

See Section 32, Act XXIX. 1838.

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* See Construction No. 1055, dated 17th October, 1836.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 24th November, 1837.

No. 1114.

It is not competent to a judge to liberate a civil prisoner solely on the ground of illness, without the consent of the party at whose instance he was confined.

I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Juanpore, under date the 13th instant.

2. The Court observe that the law makes no provision for cases of the nature of that which forms the subject of Mr. Morrieson's reference; the only authority, however, possessed by the civil courts under the Regulations of releasing a prisoner, confined in execution of a decree of court, is in cases coming under the provisions of Section 11, Regulation II. 1806, where the insolvency of the prisoner may be clearly established in the mode prescribed in that enactment; and the Court are therefore of opinion, that it is not competent to a judge to liberate a civil prisoner solely on the ground stated in Mr. Morrieson's letter, unless with the consent of the party at whose instance he was confined.

The Presidency Court, on the 8th December, 1837, *concurred in this Construction.*

From the Judge of Zillah Juanpore to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 13th November, 1837.

I request you will submit the following question for the consideration and orders of the Court. In the event of a prisoner confined in the civil jail being reported by the surgeon dangerously ill, and recommended for immediate removal, can the judge of his own authority on such an occasion, without the concurrence of the creditor, liberate him from confinement? An instance of this kind has lately occurred, and I allowed a court peon to accompany a prisoner home, and to remain with him there till his recovery or otherwise, as the only way of saving the man's life; but I doubt if I have acted altogether legally, and I shall be obliged by a communication of the Court's sentiments on this point for my future guidance.

November 24, 1837.

From the Register of the Sudder Dewanny Adawlut, Western Provinces, to the Register of the Presidency Court, dated 24th November, 1837.

No. 1115.

Mode of proceeding in cases of resistance of process, when the process has been issued by one court, but executed within the jurisdiction of another.

I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Etawah, under date the 18th instant.

2. With regard to the first question referred by Mr. Davidson, the Court observe, that when the judge of one district may be called upon to aid the process of another zillah court, the practice is for him to back the same with his official signature, and to send one or more of the peons of his court to aid in its execution ; and they are therefore of opinion, that in ordinary cases any resistance to such process must be considered as a resistance to the process of the court within whose jurisdiction it took place, and is cognizable as such by the judge of that court.

3. As respects the second question, the Court are of opinion that it will be sufficient to communicate to Mr. Davidson the construction adopted, with the concurrence of both Courts, on a reference from the commissioner of the Patna division, dated the 21st May, 1836,* wherein it was held, that as under the provisions of Sections 23 to 26, Regulation III. 1803, the civil courts are fully competent and required to take cognizance of cases of resistance to their process and to dispose of them under the rules therein laid down, the reference of such cases to the magistrate could become necessary only when the resistance was attended with any act of violence so as to bring the matter properly within his cognizance, in which event the case would probably be brought direct to the notice of the magistrate, or so far as the judge was concerned, it would simply be necessary for him to make over the papers to that officer without passing any opinion or order thereon, and to request him to dispose of the case under the general Regulations. In cases of this nature, the Court observe that, upon the principle above laid down, the offence would of course be cognizable by the magistrate, within whose jurisdiction it was committed, without reference to the court from which the process issued.

4. Should the Calcutta Court concur in the foregoing opinions, the Court propose to communicate them to the judge of Etawah, in reply to his letter under consideration.

From the Judge of Zillah Etawah to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 18th November, 1837.

May I beg the favor of your obtaining for me the orders of the Court on the two following questions of procedure :

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* See Construction No. 1033, 12th August, 1836.

1*st.*—On process being issued by the civil court of another district and served by its peons within the jurisdiction and by the aid of this court afforded through its peons, should resistance of process take place within the jurisdiction of this court, are the offenders amenable for the act of resistance solely to the original court issuing the process or to that within whose jurisdiction the offence occurs, and whose peons whilst aiding in the service are also resisted ?

2*nd.*—In the event of the original court having solely cognizance of such a case of resistance of its process, I beg to know whether the resisting parties be also liable to a criminal prosecution for an act of assault committed on the peons of this court.

The Presidency Court, on the 8th December, 1837, concurred in this construction.

November 24, 1837.

See Section 7, Act XXXIII. 1852.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th December, 1837.

No. 1116.
1814.
Reg. II.
1829.
Reg. X.
Sch. B, Art. 8.

I am directed to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of Bundelcund, under date the 29th ultimo, requesting the opinion of the Court as to the stamped paper which should be used for petitions of complaint preferred, agreeably to the provisions of Regulation II. 1814, against the officers of Government in their official capacity.

2. The Court observe that the Regulations make no exception in favor of such petitions, and they are, therefore, of opinion that it was intended they should be written, when first presented, on stamped paper of the full value, in like manner with all other plaints.

The Presidency Court concurred in the above construction.

December 8, 1837.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 15th December, 1837.

No. 1118.

1831. Reg. V. Sec. 20. 1832. Reg. VII. Sec. 3. 1837. Act XXV.

I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of Benares, No. 267, under date the 8th instant, regarding the stamped paper to be used for pleadings in cases referrred to the principal sudder ameens under the provisions of the 1st Section of Act XXV. 1837.

2. The Court observe that under the rule contained in Section 20, Regulation V. 1831, the pleadings in all cases up to 5,000 rupees in amount or value, referred for trial and decision to the principal sudder ameens, are required to be written on stamped paper of one rupee value ; and as Act XXV. 1837, in enlarging the powers of those officers, makes no provision on the point under reference, they are of opinion that as the law now stands, the same rule must be held to apply in respect to cases made over to the principal sudder ameens under Section 1 of that enactment.

3. With regard to Section 3, Regulation VII. 1832, referred to by Mr. Mainwaring, the Court remark that the provisions of that Section are applicable only to the courts of the zillah and city judges, and they are of opinion that the enhanced rate of stamps thereby prescribed for the pleadings in those courts in certain cases could not be extended to the courts of the principal sudder ameens without a specific enactment.

From the Judge of the City of Benares to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 8th December, 1837.

By Section 3, Regulation VII. 1832, pleadings in the courts of zillah or city judges under Regulation V. 1831, are to be written on paper of the value of four rupees, except in original suits for property not exceeding in value or amount 1,000 rupees, in which case they are to be written on stamped paper of only one rupee value.

2. By the operation of Act XXV. 1837, the pleadings that have, under the rule above quoted, been written on paper of only one rupee value, involving a very considerable loss to Government, I beg to bring this to the notice of the superior court, and to be informed if it is intended that all pleadings in cases before the principal sudder ameen, without reference to amount, are to be received, as cases of limited amount have heretofore been, on stamped paper of the value of one rupee.

The Presidency Court, on the 5th January, 1838, *concurred in this construction.*

December 15, 1837.

See Nos. 767 and 834.

From the Officiating Register of the Presidency Court to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 15th December, 1837.

No. 1120.
1829.
Reg. X. Sec. 18.

I am directed by the Court to request that you will lay before the judges of the Court for the Western Provinces, the accompanying copy of a letter from the officiating judge of Sylhet, dated the 29th ultimo, No. 26.

2. *The Court propose to inform the officiating judge, with the concurrence of the Agra Court, that, in their opinion, it is not optional with a judge to remit the fine which is declared by Section* 18, *Regulation X.* 1829, *to attach to parties filing papers contrary to the provisions of that enactment.*

From the Officiating Judge of Zillah Sylhet to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 29th November, 1837.

I have the honor to request the instructions of the Court whether I am competent to remit the penalty declared in Section 18, *Regulation X.* 1829, *being assured that a stamp of inadequate value filed in a case, is filed under circumstances which leave no doubt that the filing party was ignorant of the inadequacy of its value?*

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 12th January, 1838.

I am directed to acknowledge the receipt of your letter, No. 3781, *under date the 15th ultimo, with its enclosure, from the officiating judge of zillah Sylhet, and in reply to state that the Court concur with the Calcutta Court in the opinion that Section* 18, *Regulation X.* 1829, *gives no discretion to the presiding officer, but that he is bound in all cases to levy the fine, therein prescribed, from any vakeel or authorized pleader or mookhtar, who may file any paper contrary to the provisions of that enactment.*

Section 18, *Regulation X.* 1829, *is repealed by Act XVIII.* 1852.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 29th December, 1837.

No. 1121.

Circular Order No. 216, Vol. II. 27th October, 1837.

I am directed to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Mynpooree, No. 44, under date the 9th instant, relative to the Circular of the 27th October last, which originated with the Calcutta Court, on the subject of security bonds.

2. Mr. Begbie, it will be observed, considers the construction laid down in the Circular in question, opposed to that contained in the letter written to the judge of the Jungle Mehals, under date the 21st June, 1821, No. 341, of the printed Construction Book.

3. The Court direct me, however, to remark that the construction adverted to by Mr. Begbie, referred to the case of a person becoming security for the payment of a sum of money, and affixing his signature to the bond in recognition of his liability equally with the principal for the amount, the transaction being as it were a joint one, in which case it was held by the Court that it was not necessary to the admissibility of an action against the surety that he should have entered into a regular security bond on separate stamped paper of the same value as that of the original obligation ; whereas the present construction has reference to a formal security bond executed on the same paper as the original instrument, which the Court have declared is not admissible under the Stamp Regulations as evidence against the surety : the two cases are, therefore, quite distinct, and the constructions are not, as supposed by Mr. Begbie, at variance with each other.

From the Judge of Zillah Mynpooree to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 9th December, 1837.

I have the honor to acknowledge the receipt of your circular letter, No. 1410, under date 27th October last, on the subject of security bonds, and with reference to the instructions therein conveyed, I beg to submit that the opinion now expressed seems to be opposed to that contained in the letter to the address of the acting judge of Jungle Mehals under date 1st June, 1821, (No. 341, Book of Constructions), wherein it is declared that it is not necessary for a surety to enter into a regular security bond on separate stamped paper of the same value as that of the original obligation, but that by affixing his signature to the original deed he may be sued jointly with the principal in the deed.

The Presidency Court, on the 2nd February, 1838, *concurred in this construction.*

December 29, 1837.

See No. 1147.

No. 1123.
1814.
Reg. XXVI. Sec. 4.

On a reference from the judge of Tirhoot, it was held by the Calcutta Court, in concurrence with the Western Court, that a judgment passed by an additional judge during the time he officiated for the judge of the district, is to be reviewed by the former if still attached to the district, and not by the judge.

December 29, 1837.

No. 1126.
1793.
Reg. IV. Sec. 6.

In a regular suit, in which the witnesses named by the plaintiff had been duly summoned, but had neglected to attend under the summons and give their evidence as required, it was held by the Calcutta Court, in concurrence with the Western Court, that it was incumbent on the judge, under the spirit of Section 6, Regulation IV. 1793, to call on the plaintiff's counsel to satisfy him by evidence on oath, that these witnesses were material to the cause; and that he ought not to have struck the case off the file, until he had explicitly called upon the party to proceed in the manner above indicated.

January 26, 1838.

See Act XIX. 1853.

No. 1127.

Calculation of the time allowed for an appeal in a regular suit when a review of judgment has been applied for to the court of decision and rejected.

Held by the majority of the Western Court, in concurrence with the majority of the Calcutta Court, that a party having applied for a review of judgment, under the provisions of clause 2, Section 4, Regulation XXVI. 1814, in a case open to appeal, but in which no appeal may have been preferred, and such application having been rejected, is not entitled of right to the deduction of the time, during which his application for a review was pending before the lower court, in calculating the period allowed him under the Regulations for preferring a regular appeal from the original decision: but that where such party may plead as the reason of his not having presented his petition of appeal within the period prescribed by law, that the case was pending before the lower court on an application for a review of judgment, it would be the duty of the appellate court to take such plea into consideration, and to admit it or not, according as, under all the circumstances of the case, it might appear just and proper, in like manner with any other cause assigned for delay.

February 2, 1838.

The following Extract from a Note, laid before the Calcutta Court by their Register on the 5th February, 1838, embodies the substance of the several constructions which have been adopted on the subject of the jurisdiction of the Civil Courts in regard to Lands under settlement by the Revenue authorities under the provisions of Regulation IX. 1833.

No. 1128.

1833.
Reg. IX.

Jurisdiction of the civil courts in regard to lands under settlement by the revenue authorities under the provisions of the above Regulation.

PARA. 4. The first reference formed the subject of the letter of the Western Court, No. 33, dated 4th December, 1835. The question mooted for opinion was as follows : " A suit is instituted regarding a boundary dispute between two villages, and an ameen is deputed to make local inquiries. Before the decision is given the collector decides the disputed boundary : can the court interfere in this decision ; or does it bar any investigation of the merits of the case ?" The two Courts concurrently ruled* that under the circumstances stated, there was nothing which should operate to interrupt the progress of the suit, or prevent it taking its course.

* Calcutta Court's letter No. 51, dated 2nd January, 1836.

5. The second reference was that of the Agra Court's letter No. 41, dated 11th December, 1835. It arose out of a collision of jurisdiction between the judge of Goruckpore and the settlement officer appointed under the provisions of Regulation IX. 1833, in certain parts of that district. In this instance it was held by both Courts,* that it was not competent to the settlement officer to interfere with regard to awards of court given previously to the period of his appointment, unless by order of the court, or with the consent of the parties.

* Calcutta Court's letter No. 95, dated 9th January, 1836.

6. The third case was forwarded for the opinion of this Court with the letter of the Western Court, No. 1075, dated 16th December, 1836. The reference of the judge of Ghazeepore was to the following effect :—" A case of disputed boundary between two contiguous estates under settlement is litigating in the moonsiff's court, and still undecided, when the settlement officer proceeds, under the authority vested in him by Sections 6 and 7, Regulation IX. 1833, to appoint a punchayet by drawing lots. In the mean time the moonsiff gives a decree in favor of one party, and the arbitrators base their award on the said decree, acting upon which the collector marks off his boundary, and concludes his settlement. Such being the case, is it competent to the judge to entertain the question in appeal from the moonsiff's decision, with the chance of course of reversing the arbitration award, or is he precluded from interference by Section 9, Regulation IX. 1833 ?" The Western Court proposed to reply that there was nothing in the explanation to operate to prevent the appeal taking its course.

7. In this opinion the Calcutta Court* did not originally concur. They observed that the award of the punchayet, and the decision of the collector thereon, being subsequent to the date of the moonsiff's decree, the award could not be affected by any order the judge might pass on the trial of the appeal : and that the appeal being in fact a

* Calcutta Court's letter No. 261, dated 27th January, 1837.

suit brought to set aside the collector's decision must be nonsuited with costs under the rule contained in Section 9, Regulation IX. 1833.

8. The Western Court in their letter, No. 1105, dated 15th September last, requested that this Court would re-consider the reference. They forwarded further correspondence on the subject of the particular case previously referred, and of other similar cases. They entered at large into the consideration of the subject: and in the 3rd paragraph of their letter observed as follows:—

"The following general questions appear to arise out of the present correspondence, which it seems desirable to determine for the future guidance of the judicial and revenue officers, and with a view to define the jurisdiction to be exercised by those authorities respectively in cases of the nature of those under reference.

1*st*.—Is it competent to a revenue officer, engaged in making settlements under the provisions of Regulation IX. 1833, or any other enactment, to interfere in regard to any case pending before any court of civil judicature at the date of settlement, either as an original suit, or in appeal?

2*nd*.—Is it competent to such officer to interfere, under the provisions of the above-mentioned Regulations, in regard to any case which may have already been judicially determined by a court of civil judicature, either as an original suit or in appeal?

3*rd*.—Does any limitation of time exist under the Regulations, in regard to the cognizance by the revenue officers of disputed private claims brought before them under the provisions of Regulation IX. 1833; or is it competent to those officers to take cognizance of all cases of that nature without reference to the date of the cause of action, which at the time of settlement may not be depending before any court of civil judicature, or which may not have already been judicially determined by a court of competent jurisdiction?"

9. The Western Court were of opinion that it was not competent to the revenue officers to exercise the powers described in the first question, unless the parties should themselves apply by petition for the removal of their cause to the court of the settlement officer, with a view to its being decided under the provisions of Sections 5 to 8, Regulation IX. 1833.

The Court were further of opinion that the second question must also be determined in the negative, unless the interference took place by order of the court, or with the consent of the parties.

In regard to the third question the Western Court ruled that no case could be tried by the revenue officers, in which the cause of action may have arisen more than one year previous to the complaint, and that only such cases could be taken up by them as regards the extent of interest of parties in possession, and the decision of which was necessary to the due allotment of the Government jumma, leaving all old and extraneous claims to the decision of the courts: such opinion being in conformity with instructions issued by the Sudder Board of Revenue to the subordinate revenue authorities.

74. Feb. 7. 1842 vol. 7.

10. On a re-consideration of the whole subject the Calcutta Court concurred in the above opinions, as expressed in their letter to the Western Court, No. 3444, of the 3rd November last.

No. 1129.

Miscellaneous orders passed in the execution of a decree, carrying into effect the original intentions of the court, are not open to dispute by a regular suit.

Held by the Western Court, in concurrence with the Calcutta Court, that any order passed in the execution of a decree in regard to mesne profits, interest, or other matter in dispute between the parties to the suit, which may be involved in the decision, must be looked upon as a necessary process for carrying into effect the original intentions of the court passing the decree, in respect to a point, in which it may, in fact, be said already to have pronounced a formal judgment, and cannot, therefore, be considered as constituting a new cause of action.

February 9, 1838.

See Sudder Dewanny Reports, Vol. VI. page 303, 12th November, 1840, and page 521, 8th June, 1853.

No. 1130.

1830.
Reg. V. Sec. 5, Clause 1.

Held by the Calcutta Court, in concurrence with the Western Court, that a zillah judge has no summary jurisdiction under the provisions of clause 1, Section 5, Regulation V. 1830, in the case of an application by a ryot to settle his accounts with an indigo factory, before the expiration of his contract. A summary decision of the judge of Rajshahye in a case of this nature, was quashed by the Court on a summary appeal.

February 9, 1838.

See No. 934.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 16th February, 1838.

No. 1132.

1814.
Reg. XXVIII. Sec. 8.

A question having arisen in a case, now depending before the Court, as to whether an application from a pauper appellant to stay the execution of the decree given against him, pending the appeal, is admissible on plain paper, I am directed to request that you will submit the point for the consideration of the Calcutta Court.

2. The Court are of opinion, that as applications of the nature of that above-mentioned, are not included amongst the exceptions, contained in Section 8, Regulation XXVIII. 1814, which distinctly specifies the description of papers on which the stamp duties are to be remitted to paupers, they must be drawn out on stamped paper of the value prescribed for petitions presented to the courts in which they may be filed. The Court direct me to add that this principle has already been acted upon in regard to vakalutnamas where the pauper may himself appoint a vakeel, as well as in respect to security bonds filed under Section 6, Regulation XXVIII. 1814, and it appears to them equally applicable to petitions presented to the Court for the purpose before stated. The Court propose accordingly to adopt it as a rule of future practice.

The Presidency Court, on the 9th March, 1838, *concurred in this construction.*

February 16, 1838.

See No. 1063.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 16th February, 1838.

No. 1133.

Mode of proceeding in regard to the decree of a foreign court or a decree passed in an extra-regulation jurisdiction, when the decree-holder desires to sue out execution against property situated in any of the regulation districts.

An appeal having been presented to the Court from an order passed by the judge of zillah Mirzapore, in regard to the attachment and sale of a house, situated within the limits of his jurisdiction, in execution of a decree passed by a court of civil judicature in the Saugor and Nerbudda Territories, to which the civil Regulations of the British Government have not been extended, a question has arisen whether it was competent to the judge to exercise any interference in the matter, and I am directed, therefore, to request that you will submit the point for the consideration of the Calcutta Court.

2. *The Court observe that on a reference being made to the Advocate General under date the 27th June,* 1809, *to ascertain whether any and what measures could be adopted in the case therein mentioned, to recover from the defendant, who had proceeded to England, the amount of a decree given against him by the Court of Sudder Dewanny Adawlut at Calcutta, the following opinion was obtained from that officer: "A foreign judgment is, generally speaking, considered as a primâ facie ground of action in our courts, and the judgments of courts in the colonies and dependencies are to this purpose upon the same footing in*

the courts in England with foreign judgments. If however a foreign judgment should appear on the face of it to be erroneous, it will not support an action, as we only profess to give effect to those judgments, where they are conformable to justice, and the general principles of law, which is presumed till the contrary appears. The proper course for the appellants under the general rule would be to transmit an exemplification of the judgment of the Sudder Dewanny Adawlut, and of the whole proceedings in the cause under the seal of the Court, and the signatures of the judges, with proper powers of attorney, to some person in England to institute a suit on the judgment of the Sudder Dewanny Adawlut against the respondent."

3. *It appears to the Court that the same principle is equally applicable to the case which has given rise to the present reference: and they propose, in the event of the Calcutta Court concurring in this opinion, to act upon it accordingly in disposing of the appeal now before them, by setting aside, as illegal, the whole of the proceedings held by the judge of Mirzapore, and intimating to the decree-holder that he is at liberty to institute a suit in that court against the opposite party, founded on the judgment passed in his favor by the civil court in the Saugor and Nerbudda Territories.*

Adopted in concurrence with two of the judges of the Calcutta Court.

February 16, 1838.

See Act XXXIII, 1852.

Extract of a Letter from the Register of the Presidency Court to the Judge of Zillah Chittagong, dated 2nd March, 1838.

No. 1135.

1819.
Reg. X. Secs. 110, 111 and 115.

Para. 1. I am directed by the Court to state that in their opinion the salt authorities are empowered by Sections 110, 111 and 115, Regulation X. 1819, to award either of two penalties, *viz.* a fine, or imprisonment in commutation of the same, according to the scale laid down in Section 110. The judge, therefore, who enforces the order in cases where the fine does not exceed fifty rupees, and judicially disposes of the cases where the fine exceeds that amount, must proceed to realize the fines by the usual process of execution. If the fine is forthcoming before the defendant is committed to jail, the case is concluded: if forthcoming after commitment to jail, the case is likewise disposed of, and the prisoner must be immediately released: if the fine be not forthcoming, the person

fined must undergo the prescribed period of imprisonment in commutation, and the levy of the fine is then barred, that is, the fine is not demandable after the imprisonment has been undergone, and the party released.

Majority of the two Courts concurred.

March 2, 1838.

See Nos. 1374 and 1405.

No. 1138.

1796.
Reg. XIII. Sec. 3.

S.R. St. 104 p. 64. Jul. 5. 1842.

On a reference from the judge of Chittagong, it was held by the Calcutta Court, in concurrence with the Western Court, that it is not competent to a zillah judge to impose a fine under the provisions of Section 3, Regulation XIII. 1796, on the appellant in a miscellaneous case, the rule therein laid down not being applicable to such appeals.

March 16, 1838.

See Summary Reports, 13th March, 1843, page 73 Carrau's Edition.

No. 1139.

1814.
Reg. XXVI. Sec. 2.
Circular Order, Sudder Dewanny Adawlut, No. 33, November 5, 1812.

Applications for the admission of special appeals to be considered as miscellaneous petitions until the appeal has been admitted: notice prescribed by Circular Order of the 5th November, 1812, not necessary in such cases.

A copy of the decree appealed against should always accompany a petition of special appeal.

On a reference from the judge of Tirhoot, it was held by the Calcutta Court, in concurrence with the Western Court, that a petition of special appeal until the appeal has been admitted, is to be viewed as a miscellaneous petition, and that consequently it is not necessary in such cases to issue the notice prescribed by the Circular Order No. 33, *of the* 5th *November,* 1812, *which refers to suits admitted and pending.*

2. *Held further that a copy of the decree appealed against must always accompany the application for the admission of a special appeal.*

March 23, 1838.

See Act XVI. 1853.

From the Officiating Additional Judge of Tirhoot to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 9th December, 1837.

No. 1140.

1806.

Reg. XVII. Sec. 8.

I beg to solicit the opinion of the Court of Sudder Dewanny Adawlut on the following point.

2. A suit is instituted by A., for the possession of certain landed property which had been mortgaged to him by B. Previous to the institution of suit the usual petition under Section 8, Regulation XVII. 1806, was presented by A., and the notice required by that enactment duly served on the seller, who failed to deposit the amount demanded within the prescribed period. B., in his defence, admits the execution of the deed of mortgage, but alleges that the amount therein specified was not justly due, inasmuch as A., taking advantage of his necessities when he applied to him for the loan of the money, demanded a higher rate of interest than the legal one, and prevailed upon him to sign a deed in which a large amount of interest in advance at the above illegal rate, together with other unjust charges, were included in the principal, upon which the legal rate of interest was stipulated to be paid. He accounts for his not having deposited the amount when called upon to do so under Section 8, Regulation XVII. 1806, by asserting that he was prevented doing so by A., who till the very last deceived him by the promise of making an equitable adjustment of their accounts, and of not claiming possession of the mortgaged property.

3. Under such circumstances is the court competent, under the general spirit of the Regulations, to inquire into the plea advanced by the seller with regard to the amount not being justly due, and to decide accordingly ? Or is it bound to consider the sale absolute, if it is proved that the rules laid down in Section 8, Regulation XVII. 1806, were duly observed, and that the seller failed to pay the amount within the prescribed period ? It would appear from the Circular Orders of the 22nd July, 1813, that the seller is not bound to pay the amount demanded should he dispute its correctness, and as the judge has no authority under the above Section to inquire into the authenticity of the deed, the defendant B. may have considered it unnecessary to deposit the amount, under the idea that he would be at liberty to dispute the demand when A. filed his suit for possession. I find that on the 28th February, 1834, a somewhat similar case to the above, *viz.* that in which Parusnath Chowdry was appellant and Lalla Peareh Lal was respondent, was decided by the Sudder Court, in which the purchaser's claim was dismissed on the grounds of the amount not being justly due, notwithstanding that the usual notice under Section 8, Regulation XVII. 1806, was issued. It appears however to have been doubtful in that case whether the seller received the notice or not.

4. I also wish to be informed whether, under the above circumstances, the court could issue a further notice to the seller, calling on him to make good the amount within a reasonable period.

To the Judge of Zillah Tirhoot, dated 23rd March, 1838.

I am directed to inform you, with reference to the 2nd and 3rd paragraphs of Mr. Gouldbsbury's letter, No. 63, dated the 9th December last, that in a suit brought by a mortgagee for the foreclosure of a mortgage, it is competent to the court in which the suit was preferred to inquire whether the transaction was an illegal one *ab initio*, and to decide accordingly.

2. With regard to the question in the 4th paragraph of the letter adverted to, the Court are of opinion that if it was proved that the notice was not duly issued to the mortgagee, the plaintiff ought to be nonsuited, leaving him to apply for the issue of the prescribed notice.

The Western Court, on the 2nd March, 1838, *concurred in this construction.*

March 23, 1838.

Extract of a Letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 24th March, 1838.

No. 1143.

1829.
Reg. X.
Sch. B, Art. 8.

I am directed to request that you will submit, for the consideration and opinion of the Calcutta Court, the following point of law, involving a construction of Article 8, Schedule B, Regulation X. 1829, which has arisen in an appeal now depending before the Court.

2. The Government, having resumed a jaghir, situated in the district of Benares, concluded a zemindaree settlement of it with the jaghirdar for a term of years; another party claiming the proprietary right of the estate, has brought the present suit to establish the same, and the question that arises is as to the manner in which he should value his claim; whether at the annual jumma at which the estate has been assessed, or at three times the amount, or, under the general rule contained in part 4 of the note annexed to the article in question, according to the estimated selling price.

3. The Court observe, that the first part of the note above-mentioned, merely declares, that in suits for lands situated in the Ceded or Conquered Provinces, including Cuttack, the value shall be assumed at the amount of the annual jumma, or, where the land may have been assessed in perpetuity, at three times the amount of the annual jumma, but makes no provision for cases of the nature of that in point, where the land is neither situated in the Ceded or Conquered Provinces, nor permanently assessed. It appears, however, to the Court to be a fair and equitable principle to observe in such cases

the distinction laid down in the first part of the note above cited, the reasons of which are obvious; and they propose, should the Calcutta Court concur in this opinion, to act upon it accordingly in disposing of the appeal now before them.

The Presidency Court, on the 6th April, 1838, *concurred in this construction.*

No. 1147.

Circular Order, Sudder Dewanny Adawlut, 27th October, 1837, No. 216.

Held that the object of the Circular Order of the 27th October, 1837, regarding security bonds written on the same sheet of paper with the principal deed, and bearing the stamp required for the latter instrument, was to explain the law on the subject for the protection of the interests of the Government, and not to declare deeds drawn up under those circumstances inadmissible, provided the proper measures were taken to have them legalized. Parties holding such documents are at liberty to apply to the revenue authorities, under Section 14, Regulation X. 1829, to have a stamp affixed to the deeds, so as to make them legal evidence in courts of law.

April 27, 1838.

See No. 1121.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 27th April, 1838.

No. 1148.

1837 Act XXV.

I am directed to transmit to you, for the purpose of being laid before the Calcutta Court, the accompanying copy of a letter from the judge of Benares, No. 83, dated the 14th instant, requesting the opinion of the Court on certain points connected with Act XXV. 1837.

2. In reply to the first question, submitted by Mr. Mainwaring, the Court propose to communicate to him the construction recently adopted by both Courts* to the effect, that appeals from orders passed by the principal sudder ameens, under clause 6, Section 3, Regulation VII. 1825, in execution of their own decrees in suits above the value of 5,000 rupees, will lie direct to the Court of Sudder Dewanny Adawlut.

3. Upon the same principle the Court are of opinion, that summary appeals of the nature of those described in the 3rd paragraph of Mr. Mainwaring's letter must follow the like course.

* Subsequently circulated by Circular Order, dated 11th May, 1838.

4. With regard to the question submitted in the 2nd paragraph of Mr. Mainwaring's letter, the Court observe, that the terms of the proviso contained in Section 8 of the Act under consideration, are general, and must, they are of opinion, be held to include cases referred to the principal sudder ameens under that Section in which the amount or value of the matter at issue may exceed 5,000 rupees, equally with those under that sum, and that, consequently, the appeal in such cases from the order of the principal sudder ameen should lie in the first instance to the zillah or city judge, and specially to the Sudder Dewanny Adawlut.

5. Should the Calcutta Court concur in the opinions above expressed, the Court propose to communicate them to Mr. Mainwaring.

From the Judge of the City of Benares to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 14*th April*, 1838.

With reference to paragraph 5th of the Court's circular letter No. 491, dated the 23rd February last, I request I may be furnished with the instructions of the Court whether summary appeals from the decision of principal sudder ameens in suits above the value of 5,000 rupees, made under clause 6, Section 3, and Section 5, Regulation VII. 1825, are to be made direct to the Sudder Dewanny or as heretofore to this court?

2. Further, with reference to Section 8, Act XXV. 1837, whether the proviso that appeals from the decisions of principal sudder ameens in miscellaneous or summary proceedings, transferred under that Section, are to be made in the first instance to the judge, applies to cases above the value of 5,000 rupees, or whether the appeal in such cases is to be made direct to the Sudder Dewanny Adawlut?

3. And again, whether summary appeals from the decisions of principal sudder ameens passed under Sections 4 and 5, Regulation II. 1806, in cases exceeding 5,000 rupees in value, are to be made direct to the Sudder Dewanny Adawlut or, as heretofore, to this court?

4. Although the principal sudder ameens have now the full power heretofore vested in a judge, the special authority vested in judges by clause 3, Section 16, Regulation V. 1831, and other enactments, has not yet been declared applicable to the principal sudder ameens' courts.

The Presidency Court, on the 11*th May*, 1838, *concurred in this construction.*

April 27, 1838.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 27th April, 1838.

No. 1149.

1837. Act XXV. 1831. Reg. V. Sec. 18.

I am directed by the Court to request that you will lay before the Calcutta Court the accompanying copy of a letter from the judge of Benares, No. 86, under date the 16th instant, submitting certain further questions connected with Act XXV. 1837 and the Calcutta Court's circular letter of the 23rd February last, issued by this Court on the 30th ultimo.

2. With regard to the first point contained in Mr. Mainwaring's letter, the Court direct me to observe that Act XXV. 1837, in enlarging the powers of the principal sudder ameens, in no way modifies that part of clause 1, Section 18, Regulation V. 1831, which prohibits the reference to those officers of suits in which themselves, their relatives or dependants, or the vakeels or officers* of their court may be a party ; and the Court are, therefore, of opinion that such prohibition must be considered to be still in full force.

3. With regard, however, to the second point involved in Mr. Mainwaring's reference, it appears to the Court, that the mere circumstance of a vakeel of the judge's court being authorized by that officer, under the discretionary power vested in him by clause 3 of the same Section, to practise in the court of the principal sudder ameen either in any case, or in any particular class of cases, such, for instance, as those in which the Government or its officers may be a party, cannot be considered as constituting such vakeel, a vakeel of the principal sudder ameen's court, within the intent and meaning of the enactment above cited, and they propose, therefore, with the concurrence of the Calcutta Court, to inform Mr. Mainwaring accordingly.

From the Judge of the City of Benares to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 16th April, 1838.

With reference to the instructions conveyed in the second paragraph of the Court's circular letter No. 491, under date the 23rd of February last, and to the provisions of Section 18, Regulation V. 1831, I request I may be informed if I am to retain all suits on my own file in which the relations or dependants, or the vakeels or officers of the principal sudder ameen's court are a party. In consequence of the principal sudder ameen being now authorized to dispose of suits in which Government or its officers are a party, the

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* Section 1, Act XXVII. 1838, rescinds so much of clause 1, Section 18, Regulation V. 1831, as prohibits the reference to principal sudder ameens of suits in which the vakeels or officers of their courts are a party.

Government vakeel has become a vakeel of the principal sudder ameen's court; and if the prohibition contained in Section 18, Regulation V. 1831, is still in force, several suits in which the vakeel of Government is himself a party must be retained on my file, and those of a similar description now pending before the principal sudder ameen must be re-transferred to the court.

The Presidency Court, on the 18th May, 1838, concurred in the construction of the Western Court.

April 27, 1838.

See Act XX., 1853.

No. 1151.
1836.
Act XIII.

The following answers were given to the questions in juxtaposition, arising out of a reference made by the judge of Patna, regarding the operation of Act XIII. 1836:

Question 1st.—The sicca rupee being abolished, are all accounts in future, in suits filed in court, to be settled at par, or where the agreement was in sicca rupees, is the calculation to be made at Company's rupees 106-10-8 per 100 siccas?

Answer.—The question supposes that the agreement is for value and not for specific coins. The calculation will therefore be made at 106-10-8 Company's for 100 siccas, *i. e.*, the intrinsic difference.

Question 2nd.—From 1st January in the present year, are parties to be allowed to write bonds, deeds, &c. in sicca rupees, and then take exchange at Company's rupees 106-10-8, or must all agreements be drawn out in Company's rupees?

Answer.—It is not necessary that bonds, &c. should be drawn out in Company's rupees; they may be drawn in siccas, and then, if for value, they will fall under the last question. If for specific coin (as where a man may covenant to deliver so many coins of the sicca currency, or so many dollars) the payment must be in the coin covenanted.

April 27, 1838.

See Circular Order, No. 193, 15th April, 1842.

To the Judge of Zillah Behar, dated 11th May, 1838.

No. 1153.
1813.
Reg. VI. Secs. 2 & 3.

I am directed to state, that as no mention is made of arbitration bonds in Sections 2 and 3, Regulation VI. 1813, the Court are of opinion, that the mere circumstance of such bonds not having been executed, cannot of itself be held to bar the summary jurisdiction of the civil courts in cases referred to private arbitration under the

provisions of those Sections; but that if the reference of the case to arbitration be not denied, the Court should proceed summarily to enforce the award, subject of course to all the rules and limitations laid down in the enactment in question.

2. *When, however, the agreement to abide by the award of arbitrators may be disputed, the Court consider that it would be dangerous to allow this point to be determined in a summary form; and they are of opinion, therefore, that in such cases the parties should be referred to a regular suit.*

The Western Court concurred in this consturction.

May 11, 1838.

Rescinded by Circular Order, No. 112, 14th November, 1845.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 22nd June, 1838.

No. 1155.

Civil courts competent to award costs in miscellaneous cases.

A question having arisen as to whether it is competent to the civil courts to award costs in miscellaneous cases, either original, or in appeal, I am directed to request that you will sumbit the point for the consideration and opinion of the Calcutta Court.

2. The Court observe that it has not hitherto been the practice of this Court, nor, so far as they are informed, of the Calcutta Court, to award costs in such cases. Upon general principles of equity and justice, however, the Court can see no good reason why a party in a miscellaneous case should not be reimbursed, by the opposite party, any reasonable costs to which he may be subjected in prosecuting or defending a just claim, in the like manner as in a regular suit; and they are, therefore, of opinion, there being nothing prohibitory that they are aware of in the Regulations, that the same rules which govern the award of costs in the one case, should equally extend to the other. Should the Calcutta Court concur in this opinion, the Court propose to act upon it in the case, which has given rise to the present reference, and also to adopt it as a rule of future practice.

3. The Court direct me to add that they understand the practice of awarding costs in miscellaneous cases is very generally followed in the lower courts, and that it is not objected to, at least it has never formed the subject of an appeal to them.

The Presidency Court, on the 13*th July,* 1838, *concurred in this construction.*

June 22, 1838.

See Circular Order, No. 26, 25th August, 1854.

To the Judge of City Patna, dated 13th July, 1838.

No. 1158.

1819.
Reg. VII. Sec. 6.

I am directed by the Court to observe that in all cases in which it has been the intention of the Legislature to render a summary decision subsidiary to a suit in the civil courts, the Regulations contain specific provision to that effect, as for instance, in cases coming under the provisions of Regulation XV. 1824. No such provision is however made as regards cases of the nature of those specified in Section 6, Regulation VII. 1819; and they are therefore of opinion that cases decided by the criminal authorities under the rules laid down in that Section are not open to a civil action. The civil court of course can have no power to issue an injunction to a magistrate for the purpose of stopping execution of his order.

The Western Court, on the 22nd June, 1838, *concurred in this construction.*

July 13, 1838.

See Circular Order, No. 18, 31st August, 1838, and Sudder Dewanny Reports N. W. P., 7th January, 1851, page 11.

No. 1159.

1814.
Reg. XXVI. Sec. 8, Clause 2.

Held by the Calcutta Court, in concurrence with the Western Court, on a reference from the judge of Tirhoot, that agreeably to the provisions of clause 2, Section 8, Regulation XXVI. 1814, petitions of appeal presented to the zillah judge against the decision of the principal sudder ameen, sudder ameen, and moonsiff, in original suits, do not require to be accompanied by a copy of the decree appealed from.

July 20, 1838.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 27th July, 1838.

No. 1160.

1837.
Act XXV. Sec. 12.

I am directed by the Court to request that you will submit, for the consideration and opinion of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Goruckpore, No. 170, under date the 19th instant, relative to Section 12, Act XXV. 1837.

2. The Court observe, that the law does not require the confirmation of the zillah or city judge to the appointment by the subordinate judicial functionaries of his district of the ministerial officers of their respective courts, but merely declares that the appointment of

those officers shall be made subject to the general control of the zillah and city judges and of the Court of Sudder Dewanny Adawlut; and they are, therefore, of opinion that, as stated in the 2nd paragraph of your letter of the 17th November last, the interference of the district judges in such cases shall be exercised only with a view to prevent the appointment of improper persons, or the dismissal, without good and sufficient cause, of individuals already appointed.

From the Judge of Zillah Goruckpore to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 19th July, 1838.

With reference to Section 12, Act XXV. 1837, I request the Court's opinion, whether by the words "general control" it is intended that the subordinate courts should obtain the sanction of the judge to the appointment or dismissal of their ministerial officers, or whether they have the power of appointing and dismissing them without any reference to the judge?

2. It appears to me desirable that the point at issue should be clearly understood.

The Presidency Court, on the 17th August, 1838, *concurred in the above construction.*

July 27, 1838.

See Circular Order, No. 178, 25th February, 1842.

From the Judge of Zillah Tirhoot to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 25th May, 1838.

No. 1161.

1829.
Reg. X. Secs. 14 and 15.

Permit me to solicit the construction of Sections 14 and 15, Regulation X. 1829, by the Court of Sudder Dewanny Adawlut, on the following points:

1*st.*—When a deed bearing an improper stamp is presented to a court, are the courts authorized to interfere, and direct that the parties shall procure it to be re-stamped under the provisions of Section 14, or is this entirely at the discretion of the party, in which the court ought not to give any assistance?

2*nd.*—In the event of a deed requiring to be re-stamped, is it competent for any collector of any district, to receive the petition and to pass the order on reference to the commissioner?—or does this pertain alone to the collector of revenue of the district and commissioner of the division in which the property is situated?

3rd.—If the collector of the district and commissioner of the division in which the property affected is situated, decline to sanction the affixing the stamp, can the party move the collector and commissioner of a distant district and division, and, in the event of a stamp being affixed under the authority of these last, shall that deed be held valid and good in the court of the district in which the property is situated ?

4th.—If an improperly stamped deed shall have been filed, and if, in ignorance of the insufficiency of the stamp, a decree shall have been passed thereon by the court of first instance, and if on appeal the error is found out, and the deed be declared invalid, and the first decree consequently shall be set aside, and if thereafter, the holder of the deed, after failing to obtain the sanction of the collector of the district and commissioner of his own division, shall procure a re-stamp, through the interference and orders of the collector and commissioner of another district and division, and shall then re-tender the re-stamped deed in the court of special appeal, shall such re-stamped deed be filed and admitted or not ?

I beg to state that I consider a construction on these points necessary, because there would be no further appeal in this matter, and because the wording of the Sections appears to me to allow of two meanings.

To the Judge of Zillah Tirhoot, dated 3rd August, 1838.

I am directed by the Court to communicate the following replies to your queries :

2. *Query 1st.—A civil court is at liberty to instruct a party presenting a deed bearing an improper stamp, to apply to the revenue authorities for the purpose of having the proper stamp affixed.*

3. *Query 2nd.*—A deed is admissible as evidence in a court of justice upon which the proper stamp has been affixed under the orders of any commissioner of revenue, on the representation of any collector subordinate to his authority.

4. *Query 3rd.*—It is not the province of the civil courts to decide upon the powers of the revenue officers in respect to each other ; but if a deed when presented to a court bears the proper stamp, it should be received in evidence, without a question being admitted as to the competency of the authority by whose orders such stamp was affixed.

5. *Query 4th.—A special appeal having been admitted, in a case originally decided on the evidence of a deed bearing an improper stamp, the decisions of both the lower courts should be set aside, and the court of first instance directed to restore the case to its original number on the file, and to proceed to dispose*

of it by allowing the plaintiff an opportunity of supplying the defect in his deed.

Issued in concurrence with two of the Judges of the Western Court.

August 3, 1838.

See Sudder Dewanny Reports 17th September, 1850, *page* 487, *and 19th February*, 1851, *page* 89.

From the Judge of Zillah Beerbhoom to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 26th May, 1838.

No. 1165.

Interference of the civil court with property attached by the collector, in execution of a summary award passed under Regulation VIII. 1831, or for the realization of the Government dues, under the circumstances of the case.

A question has arisen which I own I find it difficult to decide.

2. I request that you will lay this letter before the Sudder Dewanny Court.

3. In Regulation II. 1805, Section 4, it is clearly stated that the summary inquiry and process authorized by the Regulation therein quoted shall not apply to any arrear of rent or other demand which may have been due more than a complete year before the delivery of the petition of arrest or application for such summary inquiry and process.

4. Acting upon this it has been the practice of this court, in the event of a farmer or zemindar, or other proprietor, having attached the property of a defaulting ryot, in executing a decree on that ryot, to release to the landholder the *hal* balance, or the sum due for twelve months previous to the attachment, and to pay the balance to the decree-holder, leaving the landholder to sue the ryot for the *bukya* or balance of former years in a regular suit.

5. A certain ghatwalee mehal was attached by the collector of Beerbhoom some time since for a balance of revenue, as well as by the orders of this court for the execution of a decree against the ghatwal.

6. A decree is now obtained in the moonsiff's court against a ryot in the above mehal, and his crops, &c. are attached by the decree-holder for his money and by the collector's attaching officer for a balance of revenue due from the same ryot.

7. Under these circumstances the collector requires the whole of the ryot's property to be sold to realize the balance of revenue, being a balance for four years from the ryot to the estate. But acting upon the practice above cited I issued orders to the moonsiff to sell the property, to give to the collector's officer the balance due for the twelve months preceding the attachment, and the remainder to the decree-holder.

8. The collector objects to this, and claims the balance of former years from the ryot, quoting the latter part of Section 4, Regulation II. 1805 above cited, commencing with the orders "provided however," to the end of the paragraph.

9. Now in this quotation in the English Regulations it is clear that the collector as attaching officer can claim; but if so why should the explanation immediately above it distinctly declare the contrary, that is, if I am right in considering the attaching officer on the part of the collector to be *in loco* zemindar?

10. It is in this case of little consequence as the sum is small, but I cannot alter the practice which has prevailed for years in this court, and I believe generally, without express orders from the Sudder Dewanny Adawlut.

Proceedings of the judge, dated 26th March, 1838.

11. I have the honor to forward the proceedings on this subject as noted in the margin.

Proceedings of the collector, dated 16th April, 1838.

To the Judge of Zillah Beerbhoom, dated 17th August, 1838.

I am directed to observe that if the collector has attached the property of the ryot alluded to in your letter No. 92, dated 26th May last, in satisfaction of a summary award of his own court, his jurisdiction in summary suits being quite independent of that of the judge, and himself, in such cases, in no way subordinate to the authority of that officer, they do not see on what ground the judge could exercise any interference in the matter; while if the whole estate should have been placed under attachment, or *kham* management, with a view to the realization of the Government revenue, whether for former years, or the present, and the collection be made direct by the collector, or his officers, it does not appear to the Court how the judge could interfere either with the general management of the estate, or with the appropriation to the payment of the Government demand of the rent arising from it.

The Western Court, on the 20th July, 1838, *concurred in this construction.*

August 17, 1838.

See Nos. 738 and 1181.

Lall Bee and Omeid Alee, Appellants,

versus

Mahomed Wassuck, representative of Maktool Behee, deceased, Respondents.

From the Additional Judge of Zillah Chittagong to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 31*st May*, 1838.

No. 1166.

1810. Reg. XIX.

I have the honor to submit, for the consideration of the Court, a copy of my proceedings in the above case, dated the 2nd of September last, and of the collector of this district's reply, dated the 9th of January last. The Court will observe that the collector declines to sell Mouzah Undar Manick, the property of defendant's sureties, because it is a tenure appropriated for the support of a musjid, and he is of opinion that Regulation XIX. 1810, does not authorize the sale of such property for the recovery of the amount of a decree, or on any other account.

2. May I solicit the Court's construction of the law in question? The case has been for many years pending, and the decree is still unexecuted.

To the Additional Judge of Zillah Chittagong, dated 17*th August*, 1838.

I am directed to communicate to you the opinion of the Court, that "wuqf property" cannot be alienated, or diverted from the purposes for which such property was intended.

The Western Court, on the 20*th July*, 1838, *concurred in this construction.*

August 17, 1838.

No. 1168.

1833. Reg. XII. Sec. 2. 1831. Reg. V. Sec. 18, Clause 3.

Held by the Calcutta Court, in concurrence with the Western Court, that a pleader appointed under the provisions of Section 2, *Regulation XII.* 1833, *can practise, under the rules contained in that enactment, only in the judge's court, but that he may be authorized under clause* 3, *Section* 18, *Regulation V.* 1831, *to practise in the court of the principal sudder ameen under the rules in force for that court.*

August 17, 1838.

From the Judge of Zillah Mymensing to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 3rd July, 1838.

No. 1171.

A petition for special appeal once struck off by the zillah judge, cannot be re-admitted by him without the sanction of the Sudder Dewanny Adawlut.

May I request the favor of your obtaining for me the Court's opinion on the following point!—Can a judge, after striking out of the file a petition for special appeal, in consequence of the petitioner or appellant not having, as ordered, within the time allowed, furnished security for the eventual costs of the appeal, again bring it on the file on the petitioner's showing good and sufficient reason why the security was not filed within the prescribed time?

2. *What may have been the practice of the Provincial Courts or the Sudder Dewanny I know not, but adverting to the mania for appealing here, if some rule was laid down, it would save the superior court perhaps the trouble of receiving and hearing this description of miscellaneous appeals.*

3. *The case of a petitioner who wants me to bring his appeal again on the file, which was struck off in consequence of a default of the nature above alluded to, is the cause of the present reference.*

To the Judge of Zillah Mymensing, dated 7th September, 1838.

I am directed by the Court to inform you that it is not competent to you, without the sanction of the superior court, to re-admit a petition for special appeal which has once been struck off the file for any reason.

The Western Court, on the 10*th August,* 1838, *concurred in this construction.*

September 7, 1838.

See Act XVI. 1853.

To the Judge of Zillah Behar, dated 14*th September,* 1838.

No. 1172.

Cases in which native judges making local inquiries are entitled to their expenses.

With reference to your letters Nos. 78 and 111, dated respectively the 12th May and 16th July, I am directed to communicate to you the opinion of the Court that the native judges are not entitled to any allowance for travelling expenses or other account in cases "in which, for their own satisfaction or at the request of the parties, they may deem it proper to visit and inspect the property in dispute, and to make inquiries in regard to it on the spot."

2. The Court however consider that those authorities are entitled to the payment of their expenses when deputed to make local inquiries by a superior court.

September 14, 1838.

To the Judge of Zillah Shahabad, dated 21*st September*, 1838.

No. 1175.

The pay of a sepoy cannot be attached in satisfaction of a decree against him.

With reference to your letter No. 216, of the 24th July last, I am directed by the Court to inform you that the pay of a sepoy cannot be attached in liquidation of the amount of a decree against him.

2. The decree-holder is of course at liberty to proceed against the person or property of the sepoy, as in any other case.

The Western Court, on the 31*st August*, 1838, *concurred in this construction.*

September 21, 1838.

See No. 902.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 12*th October*, 1838.

No. 1179.

1806. Reg. XVII. Sec. 8, Circular Order No. 37, July 22, 1813.

I am directed to request that you will submit the following point of law, arising out of a case now pending before the Court, for the consideration and opinion of the Calcutta Court.

2. The circumstances of the case, in which the present reference originated, are briefly as follows. An application having been presented to a zillah judge for the foreclosure of a mortgage and conditional sale, the usual notice, prescribed in Section 8, Regulation XVII. 1806, was ordered to be served on the alleged mortgagor, who, on receiving the same, gave in a petition to the judge, representing that the deed of mortgage stated to have been executed by him, and on which the motion of the opposite party was founded, was a forgery, and praying inquiry. The judge, on inspecting the deed, seeing reason to question its genuineness, directed the immediate apprehension and confinement in jail of the persons by whom it was filed, as well as of several others, whom he suspected of having been concerned in, or privy to the alleged forgery, including amongst the rest the cazee of one of the pergunnahs of his district, who had attested the deed, and one of the mohurirs of his office, who had charge

of the papers with which it was filed, and whom he considered to have aided in the forgery while those papers were in his possession; he then proceeded to inquire into the forgery, but had not closed his proceedings when the case was brought before the Court in appeal.

3. The question that now arises for consideration is, whether it was competent to the judge, with reference to the circumstances under which the case was pending before him, to enter into a formal investigation of the alleged forgery, which necessarily involved the determination of the validity or otherwise of the deed, with a view to pronounce a judicial opinion on that point, and to found such ulterior proceedings thereon as might appear proper, or whether he should not have confined his inquiries to ascertaining whether any of the officers under his control, sudder or mofussil, had been guilty of any neglect, or other misconduct in the matter, leaving the party, who alleged the deed to be a forgery, to have recourse to such means as were open to him under the Regulations, to establish the same, and the question of the genuineness or otherwise of the deed to be determined, so far as the civil court was concerned, in a regular suit in the usual manner.

4. The Court are of the latter opinion. They observe that the duty of the zillah and city judges, in cases coming under the Section of the Regulation above quoted, is expressly declared in the Circular Order of the 22nd July, 1813, to be purely ministerial, so far as relates to the purchaser, leaving them nothing to do but to cause the prescribed notice to be served on the seller, and to receive and pay over to the purchaser, if desirous of receiving the same, whatever money may be paid in by the seller, or if the purchaser should refuse to accept it, to restore it to the seller; and as such cases cannot therefore be considered to be pending judicially before the civil courts, they are not competent, in the opinion of the Court, to entertain and inquire into any pleas of the nature of those urged by the mortgagor and conditional seller in the present case, at the stage and in the manner in which they were brought forward by him; and they propose, therefore, should the Calcutta Court concur in this view, to act upon it in disposing of the case now before them.

October 12, 1838.

To the Register of the Sudder Dewanny Adawlut for the Western Provinces, dated 2nd November, 1838.

I am directed by the Court to acknowledge the receipt of your letter No. 1403, of the 12th ultimo, and to state in reply that they concur in the view taken by the judges of the Western Court of the measures which the zillah judge should have adopted under the circumstances of the case referred to, and that it was not competent to the judge to entertain and inquire into any pleas of the nature of

those urged by the mortgagor and conditional seller, at the stage and in the manner in which they were brought forward by him.

See Act I. 1848.

To the Judge of Zillah Beerbhoom, dated 26th October, 1838.

No. 1181.

It is competent to the civil court to stay the sale of property about to be sold in execution of the collector's summary award, on the motion of a third party claiming it, he having instituted a regular suit for it.

I am desired to communicate to you the opinion of the Court that in cases of the contemplated sale of property in execution of a summary award given by the collector, it is competent to the civil court, on the motion of a third party claiming the property ordered to be sold, to stay the sale pending the result of a regular suit instituted by such party to establish his claim.

The Western Court concurred in this construction.

October 26, 1838.

See Act X. 1846.

No. 1182.

Principal and interest of a debt must be sued for together, in courts of limited jurisdiction, or the claim to interest must be foregone.

Held by the Calcutta Court in concurrence with the Western Court, on a reference from the judge of zillah Jessore, that a person suing for the principal of a debt in a court, which he knows is not competent to adjudge a larger amount, without at the same time claiming interest, must be presumed to have relinquished his claim to interest. It was further held that in such a case, the plaintiff cannot institute a second suit to recover the interest after having obtained a decree for the principal; as this would amount to splitting the cause of action to render the suit cognizable by a particular court of inferior jurisdiction, which is opposed to the practice of the courts.

November 2, 1838.

See Circular Order, No. 29, 11th January, 1839.

Extract of a Letter from the Judge of Zillah Mymensing, under date the 4th September, 1838.

No. 1186.

A pauper decree-holder should be put in possession of the property decreed to him, by a Government

Para. 1. May I request of you to obtain the superior Court's opinion on the following question?

2. Is a person who sues *in formâ pauperis* and obtains a decree, to be put in possession of the property decreed (*i. e.* land or houses) by means of the officers of the court, and free of expense to him,

though the cost may be recoverable afterwards from the losing party or defendant; or is he to be considered liable for the expenses of an ameen or other person employed to give him possession?

officer, the cost being made chargeable to the party cast.

To the Judge of Zillah Mymensing, dated 16th November, 1838.

I am directed to communicate to you the opinion of the Court that a pauper decree-holder should be put in possession of the property decreed to him, by a Government officer, the cost being made chargeable to the party cast.

The Western Court, on the 2nd November, 1838, concurred in this construction.

November 16, 1838.

To the Judge of Futtehpore, dated 30th November, 1838.

No. 1187.

A decree-holder purchasing property sold in satisfaction of his decree, may, under certain circumstances, be permitted to give his receipt for the amount of his claim, in payment of so much of the purchase-money.

The Court have again had before them your letter No. 33, under date the 30th June last, requesting their opinion as to whether the civil courts are competent to allow a decree-holder, purchasing property sold in satisfaction of his decree, to file his receipt to the extent of the sum awarded him, in lieu of paying the whole amount of purchase-money into court.

2. In reply I am directed to inform you that a decree-holder should be permitted, under the circumstances above stated, to give his receipt for the amount of his claim in payment of so much of the purchase-money, provided the arrangement do not interfere with equal claims of other parties, and that, as respects the delivery of possession of the property sold, the same rules are observed in regard to him as would be applied to any other purchaser, and provided also that where the property sold may be land paying revenue to Government, the demands of Government on the estate are previously satisfied.

The Presidency Court concurred in this construction.

November 30, 1838.

No. 1190.

Costs of suit not to be added to the original amount of action, in cases of appeal.

Held by the Calcuttta Court, in concurrence with the Western Court, on a reference from the judge of Sylhet, that the practice of estimating the value of the property claimed, in appeal, by adding the costs of suit to the original amount, is improper.

December 14, 1838.

No. 1191.

1814.
Reg. XXVI. Sec. 12.

Held by the Calcutta Court, in concurrence with the Western Court, that Section 12, Regulation XXVI. 1814, is not applicable to cases of appeals, but only to original suits.

December 14, 1838.

Extract of a Letter from the Register of the Western Court to the Register of the Calcutta Court, dated 21*st December*, 1838.

No. 1192.

1822.
Reg. XI. Sec. 38.
Circular Order No. 206, vol. II.

3. The Court observe, however, that in all cases, in which the collector may be made a party in his official capacity, whether against law or not, he must, on being served with the prescribed notice, either defend the suit in the usual manner, whatever may be the nature of the plea that he may put in, either denying the jurisdiction, or otherwise, or take the consequences of allowing the cause to be tried *ex parte*: and they are of opinion that where, in the former case, he may file his answer through the Government vakeel, the court trying the suit, on nonsuiting the plaintiff's claim with costs, as required by the law above cited, should proceed, as in all other cases, to order the payment of the Government vakeel's fees in the first instance by the collector on the part of Government, leaving him ultimately to recover the amount, in the usual manner, from the party declared liable for the same.

The Presidency Court, on the 18*th January*, 1839, *concurred in this construction.*

No. 1193.

Mode of proceeding when the collector may not conform to the orders of the native judges.

Held by the Western Court, in concurrence with the Calcutta Court, on a reference from the judge of Furruckabad, that it would be objectionable to allow the native judicial functionaries to exercise, at their discretion, the power of imposing fines on the collectors of their respective districts for not conforming to the orders of their court; and that their proper course, where their orders are not carried

into effect, is to report the particular circumstances of each case, as it may arise, to the judge, leaving that officer to take such steps in the matter as he may deem proper consistently with the regulations.

December 21, 1838.

To the Judge of Zillah Tipperah, dated 28th December, 1838.

No. 1194.

1793.
Reg. XLV. Sec. 12.

I am directed by the Court to inform you that the rule laid down in Section 12, *Regulation XLV.* 1793, *regarding the adjustment of the jumma, is applicable only to portions of estates paying revenue to Government directly, and not to Shikmee or dependent talooks, the rent of which, payable to the zemindar, is disputed between him and the proprietor of the under-tenure. The Court therefore see nothing illegal in the order of the commissioner to the collector (referred to by you) for the omission of the jumma in the sale papers prepared by the latter officer.*

The Western Court concurred in this construction.

December 28, 1838.

See Act IV. 1846.

Extract from a Letter to the Judge of Mymensing, dated 18*th November,* 1836.

No. 1196.

1806.
Reg. II. Sec. 11.

Para. 2. The provisions of Section 11, Regulation II. 1806, are intended, as appears from the preamble thereof, solely for the relief of insolvent debtors who may be in confinement; consequently Mr. ——— not being in confinement, cannot be relieved from his present difficulties under that Section.

3. Section 10 of this Regulation, however, expressly provides, that "when no property shall be pointed out from which the judgment can be enforced, and the party against whom it is passed, may be willing to engage for the liquidation of the amount due by instalments, it shall be competent to the court to accept the engagement so offered, and to cause execution of the decree in conformity therewith, as long as the conditions of it shall be duly fulfilled." The previous confinement of the debtor is not necessary in this case; for the Section provides that "if the person delivering the accepted engagement shall have been taken into custody, he shall be immediately released."

5. In conclusion I am directed to inform you that, under the existing Regulations, none of the civil courts have the power of granting a general release to a debtor, and that the Government and private individuals are on precisely the same footing in regard to the realiza-

tion of debts from the property of released insolvents; for the private creditor, under Section 11, Regulation II. 1806, may at any time after the release of the debtor bring to sale any property which may subsequently be found in the possession of the latter.

The Western Court concurred, 26th August, 1836.

No. 1201.
1822.
Reg. XI. Sec. 15.

A bidder who has been fined by a collector cannot institute a regular suit against that authority in the civil court to obtain a refund of the fine.

Held on a reference from the judge of Sylhet that a bidder at a public sale who has been fined by a collector, cannot institute a regular suit against that authority in the civil court to obtain a return of the fine, supposing it to have been levied by distress or otherwise.

Calcutta Court, 15th February, } 1839.
Western Court, 8th March, }

See Section 36, Act. I. 1845.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 15th March, 1839.

No. 1205.
1819.
Reg. VIII. Sec. 18, Clauses 4 and 5.

I am directed to transmit to you, for the purpose of being laid before the Calcutta Court, the accompanying copy of a letter, No. 68, under date the 7th instant, from the officiating judge of Ghazeepore, requesting the opinion of the Court, whether, in cases in which a landholder may institute a suit for arrears of rent, and at the same time for the ejectment of the tenant from the land in consequence of the arrear sued for being due, the amount of stamp should be computed according to the value of the land, together with the amount of arrear, or merely with reference to the latter?

2. The Court propose, with the concurrence of the Calcutta Court, to inform Mr. Heyland that they do not very clearly understand how the question submitted by him, as above stated, can arise. They remark that under the provisions of clauses 4 and 5, Section 18, Regulation VIII. 1819, the landholder must first establish by a suit, either summary or regular, the existence of an arrear before he is at liberty to cancel the lease of an under-tenant, while as regards khoodkhast ryots, they have also the power of immediately paying into court any sum adjudged to be due from them before they can be ejected.

3. With regard to a suit brought by a resident cultivator against his landholder to obtain a reversal of a summary decision passed by a collector, adjudging a balance to be due from him, and to regain possession of his jote from which he may have been ejected

consequent on such decision, the Court propose to refer Mr. Heyland to the letter addressed by them under date the 7th February, 1834, to the judge of zillah Mynpooree, (No. 862 of the Construction Book,) as explaining the manner in which such suits should be estimated.

4. The Court further propose, as connected in some measure with Mr. Heyland's present reference, to refer him to the letter addressed to the judge of zillah Burdwan on the 6th July, 1832, (No. 702 of the Construction Book,) by which it has been ruled that though the land included in an ijara or a jote of a cultivating ryot is not transferrible by sale, the interest of the party claiming the ijara or jote is capable of being valued; and that the plaintiff should be allowed in such cases to lay his suit at the amount which he may consider the value of his interest in the thing claimed. The Court see reason from Mr. Heyland's letter to believe that this distinction has not been sufficiently attended to by him.

From the Officiating Judge of Zillah Ghazeepore to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 7th March, 1839.

I shall feel obliged by you soliciting the opinion of the Court of Sudder Dewanny Adawlut, whether it is necessary, on a landholder instituting a suit for arrears of rent, and at the same time for the ejectment of the ryot from the land merely in consequence of the arrears sued for being due, that the amount of stamped paper should be computed according to the value of the land, together with the amount of arrears claimed, or merely according to the arrears.

2. There are many cases of this description, and the rule in this district has been that the amount of stamped paper in such cases should be computed according to the arrears, together with the value of the land. I am of opinion that it is not required that the amount of value of the land should be added, where the right to the land is not questioned and does not come under investigation; the mere question, whether the arrear is due or not, being the point in dispute, particularly as by Section 18, Regulation VIII. 1819, it would appear that if the arrear was not paid the plaintiff was at liberty, of his own authority, to cancel the ryot's lease, on its having been adjudged to be due, thus making the second part of the action unnecessary and entailing a very serious extra expense on the ryot.

3. I beg to observe that there was a reference made by my predecessor on the 19th July, 1837, on the subject of stamped paper required in suits instituted by landholders for possession, and a reply was made by the Court on the 12th September, 1837, stating that the amount should be computed according to the value of the land; but I conceive that the subject of suits of the above description was not in contemplation by the Court.

4. I shall feel much obliged by an answer to this question, which is one of some moment; and as the decisions of most cases of this description are final in this court, there is no other mode of knowing what may be the opinion of the Court of Sudder Dewanny Adawlut.

The Calcutta Court concurred, 12th April, 1839.

From the Register of the Presidency Court of Sudder Dewanny Adawlut to the Register of the Western Provinces, under date the 1st April, 1839.

No. 1207.
1814.
Reg. XXVIII. Secs. 12 and 13.

I am directed by the Court to request that you will lay before the judges of the Court of Sudder Dewanny Adawlut for the Western Provinces, the accompanying extract from a letter from the judge of Jessore, dated the 19th June last.

2. The Court propose to inform the judge of Jessore, with the concurrence of the Agra Court, that in their opinion the rules contained in Sections 12 and 13, Regulation XXVIII. 1814, are applicable to any pauper appellant, whether he was a pauper in the original suit or not. If, however, the appellant appeared originally as a pauper, he would of course be at liberty to file a copy of the decree of the lower court on a plain paper, being entitled to such copy under Section 8 of the same Regulation.

Extract from a Letter from the Judge of Zillah Jessore, under date the 19th June, 1838.

Para. 6. Whilst on this subject I take this opportunity of requesting the opinion of the superior court, in order to satisfy a doubt that has arisen in my mind regarding the actual meaning of Sections 12 and 13, Regulation XXVIII. 1814. Is it intended that the provisions of Sections 12 and 13 of the Regulation should be made applicable to a pauper plaintiff desirous of appealing *in formâ pauperis* from the decision passed on his original suit, or are they only applicable to a person, not originally admitted as a pauper, but desirous of appealing as such?

7. On the above question I should be obliged by the opinion of the Court, as I am of opinion that, on the principle laid down in Section 14 of the said Regulation, (wherein an original pauper plaintiff is allowed to respond to an appeal made against him, as a pauper and without any further inquiry,) the provisions of Sections 12 and 13 are only applicable to persons not originally admitted as paupers, and not to pauper plaintiffs desirous of appealing *in formâ pauperis*, to whom, however, I find it has been the custom of this court to

apply them, such pauper plaintiff or appellant being, I conceive, at liberty to prefer his petition of appeal on plain paper and without any further inquiry.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 26th April, 1839.

I am directed to acknowledge the receipt of your letter No. 890, dated 1st instant, with annexed extract of a letter from the judge of Jessore, requesting the opinion of this Court as to the applicability of the rules contained in Sections 12 and 13, Regulation XXVIII. 1814, to pauper appellants, and in reply, to inform you that the Court concur in the view taken by the Court at the Presidency, that, whether the party appealing as a pauper was or was not a pauper in the original suit, the rules in question must still be binding on the appellant, who, however, if he appeared originally as a pauper, would be entitled to the privilege conferred by Section 8 of the Regulation quoted in respect to filing a copy of the decree.

No. 1209.
A civil judge not competent to call upon the magistrate to enforce his orders when resisted.

Held that it is not competent to a civil judge, in cases of resistance of the process of his court, to call upon the magistrate to enforce his order, but that he must pursue the course laid down in the Regulations.

Calcutta Court, 12*th April,* } 1839.
Western Court, 3*rd May,* }

Letter issued to Judge of Sarun, 31*st May,* 1839.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 26th April, 1839.

No. 1210.
1833.
Reg. XII. Sec. 2, Clause 3.

A question having arisen respecting the construction of clause 3, *Section* 2, *Regulation XII.* 1833, *I am directed by the Court to request that you will ascertain and communicate the opinion of the Calcutta Court on the following point.*

2. *Under the terms of clause* 3, *Section* 2, *Regulation XII.* 1833, *is it competent to the Court to authorize, on application being made to that effect, the employment, by a party, of more than one general agent, not being authorized pleaders, for the purporse of conducting generally all suits or other business before the Court; or is the number under that rule, confined to one?*

3. *The majority of the Court are of opinion that the clause above quoted contains no limitation of the nature described. Mr. Monckton, on the other hand, thinks that it must be construed to restrict the licence granted by the Court to one general agent, and, the object of the provision appearing to be to enable parties to employ a confidential agent, who, should he require legal aid, can associate with himself any authorized pleaders of the Court, considers any excess beyond the number of one as objectionable.*

4. *In the event of your Court concurring with the majority of this Court, that more than one agent can be appointed, I am directed to suggest whether it would not be desirable that the party appointing such agents should be required to state in his power of attorney that he acknowledges any acts jointly and severally performed by them, in the discharge of their duties as agents, to be binding on him. If the Presidency Court should agree as to the general question, the Court propose, with their concurrence, that the above condition be required in all mookhtarnamas of the sort described.*

From the Register of the Presidency Court of Sudder Dewanny Adawlut to the Officiating Register of the Western Provinces, dated the 10th May, 1839.

I am directed by the Court to acknowledge the receipt of your letter No. 679, *under date the* 26*th ultimo, and in reply to state, that they concur in the opinion of the majority of the judges of the Western Court, that the provisions of Regulation XII.* 1833, *authorize the employment by parties of more than one general agent for the conduct of suits and other business.*

2. *The Court approve of the suggestion, that parties appointing more than one general agent be required to declare their responsibility for the acts jointly or severally done by such agents, in the discharge of their duties, and will adopt the same as a rule of practice.*

See Act I. 1846.

No. 1211.

1826.
Reg. X. Sec. 3.

Held that scraping a salt chur with a view to collect salt earth, is not an offence punishable under the provisions of Section 3, Regulation X. 1826.

Western Court, 19th April, } 1839.
Calcutta Court, 10th May, }

No. 1214.

1793.
Reg. IV. Sec. 25.

Held that a fine imposed under the provisions of Section 25, Regulation IV. 1793, may be levied under the same rules as are applicable to the execution of decrees of court, that is, either by sale of

the property of the individual on whom the fine is imposed, or by the imprisonment of the individual.

Calcutta Court, 3rd May, } 1839.
Western Court, 24th May, }

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 17th May, 1839.

No. 1216.

"Whether persons on whom a summons has been issued to answer a charge of resistance of process, are at liberty to answer a charge through a vakeel without appearing in person?"

Ruled in the affirmative.

With reference to a question put to them by the judge of Futtehpore, as indicated in the margin, I am directed by the Court to request that you will bring the same before the Court at the Presidency for their opinion thereon.

2. This Court propose, with your Court's concurrence, to inform the judge that, as the object of a summons, in the case referred to, is to give the summoned party an opportunity of defending himself against the charge, which is distinct from ordering his apprehension after conviction, in consequence of non-payment of any fine that may have been imposed, with a view to his imprisonment in jail, they are of opinion that a person summoned on the charge described is clearly at liberty to answer such charge through a vakeel, without being obliged to appear in person.

Calcutta Court concurred, 7th June, 1839.

No. 1217.

1814.
Reg. XXVIII.
Sec. 12, Clauses 3 and 4.

A question having arisen whether, on the rejection under clause 3, Section 12, Regulation XXVIII. 1814, of a petition suing to appeal as pauper, the petitioner having been admitted as a pauper in the lower court, the party so rejected, receiving back his copy of the decree of the inferior court, which he obtained on plain paper, and being desirous of instituting his appeal in the manner provided for by clause 4 of the same Section and Regulation, may accompany his petition of appeal with the copy on plain paper above-mentioned, or whether he must obtain a fresh copy of the decree on the prescribed stamp in the mode required from parties who were not paupers in the lower court; it was held that under the circumstances stated, a pauper may accompany his petition of appeal presented under clause 4, Section 12, Regulation XXVIII. 1814, with a copy of the decree of the lower court on plain paper.

Western Court, 17th May, } 1839.
Calcutta Court, 21st June, }

No. 1218.

1793.
Reg. XXXVI. Sec. 9.
1812.
Reg. XX. Sec. 2.

Held, on a reference from the judge of Mymensing, that a hibbanama, or deed of gift, could not be registered after the death of the donor, and that the register of deeds was quite right in refusing to register it.

Western Court, 24th May, } 1839.
Calcutta Court, 21st June, }

Applies to Wills also. See letter to judge of Dacca, No. 844, May 28, 1847.

No. 1219.

1839.
Act I.

Held that Act I. 1839, does not deprive moonsiffs of the power of selling property in satisfaction of decrees, passed by themselves in regular suits for recovery of arrears of rent.

Calcutta Court, 21st May, } 1839.
Western Court, 21st June, }

Letter to Judge of Cuttack issued 2nd August, 1839.

No. 1222.

1795.
Reg. VI. Sec. 33.
Reg. XX. Sec. 13.
1803.
Reg. XXVI. Sec. 25.
1822.
Reg. XI. Sec. 21.
1820.
Reg. VII. Sec. 7,
Clause 1.

Held that there is nothing in the law as it now stands to warrant the imposition, on a first purchaser of a permanently assessed estate sold for arrears of revenue, who may fail to fulfil the conditions of sale, of any other penalty than the annulment of such sale, and the forfeiture of the amount paid.

Western Court, 3rd June, } 1839.
Calcutta Court, 5th July, }

See Act I. 1845.

No. 1223.

1831.
Reg. V. Sec. 22.
1832.
Reg. VII. Sec. 7.

Held that as by Section 7, Regulation VII. 1832, the rule regarding the execution, by principal sudder ameens, of their own decrees, contained in Section 22, Regulation V. 1831, is declared applicable to all sudder ameens and moonsiffs who may be appointed under the latter Regulation, and as the first named Section unqualifiedly declares that decrees passed in the courts of principal sudder ameens "shall be executed" by those courts, without any reservation or exception, a civil judge is not competent to transfer, of his own authority, to the principal sudder ameen, applications for the execution of moonsiffs' decrees, (such moonsiffs' having been appointed under the provisions of Regulation V.

1831,) and that all decrees passed by moonsiffs must, under the above law, be enforced by those officers, except under such circumstances as would have precluded them by law from themselves hearing and determining a regular suit.

Western Court, 7th June, } 1839.
Calcutta Court, 12th July, }

No. 1224.

1828.
Reg. VII. Sec. 20.

Held, with advertence to the terms of Section 20, Regulation VII. 1828, that there is nothing to bar the cognizance under it, by the native commissioners appointed according to that Regulation, of suits for the rent, revenue, or produce of lakhiraj lands.

Western Court, 14th June, } 1839.
Calcutta Court, 12th July, }

No. 1226.

1814.
Reg. XXVI. Secs. 10 and 12.
1831.
Reg. V. Sec. 18, Clause 4 and Sec. 12.

Held, on a reference from the judge of Goruckpore that Sections 10 and 12, Regulation XXVI. 1814, though applicable to the courts of the principal sudder ameens, are not applicable to those of the sudder ameens and moonsiffs.

Western Court, 21st June, } 1839.
Calcutta Court, 2nd August, }

See Act XV. 1850.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 21st June, 1839.

No. 1227.

Question regarding the legality of detaching the materials of a building for the purpose of bringing them to separate sale in execution of a decree.

A question having arisen as to whether, in executing a decree, if no purchaser be forthcoming for a house as it stands, and individuals should signify their willingness to purchase the materials, it is legal to detach or cause them to be detached from the building for the purpose of bringing them to separate sale, I am directed to request you will obtain the opinion of the Calcutta Court on the point.

2. The opinion of this Court is that such a proceeding is not warranted by law, which seems to require that the property should suffer no detriment in any way prior to sale, the auction purchaser being of course at liberty, on his own responsibility, after the pur-

chase may have been concluded, to remove any part of the same, being at the same time answerable to any other claimants who may contest the extent of right acquired by him at sale.

3. The Court observe that no hardship could result from the observance of the above rule, as under the construction recently adopted by both Courts (circulated by this Court under date 18th January last) the decree-holder would always have the option of himself becoming the purchaser by filing his receipt for the amount of his claim.

4. The same principle, the Court remark, would apply to the case of trees in a similar predicament, which ought not to be cut down till after they shall have been sold.

The Calcutta Court concurred, 2nd August, 1839.

No. 1228.

1814.
Reg. XXIII. Sec. 27, Clause 2.
Construction 870, answer to query 6th.
1838.
Acts VII. and XXII.

Held, on a reference from the officiating judge of Goruckpore, that under Acts VII. and XXII. 1838, *the provisions of clause* 2, *Section* 27, *Regulation XXIII.* 1814, *and the printed construction thereon of the* 21*st February* 1834, *must be considered as virtually superseded.*

Western Court, 28th June, } 1839.
Calcutta Court, 2nd August, }

See Act XXIX. 1841.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 5th July, 1839.

No. 1229.

1814.
Reg. XXVI. Sec. 4.
1839.
Act IX.

I am directed to request that you will lay before the Calcutta Court, for their consideration and opinion, the accompanying copies of correspondence connected with a reference made to this Court by the officiating judge of Goruckpore.

Letter from Mr. Harington, No. 108, dated 7th ultimo. Ditto in reply, from Court, No. 1037, dated 14th ditto. Ditto from Mr. Harington, No. 117, dated 25th idem.

2. With respect to the first question on which the judge has asked their opinion, I am desired to say that the Court propose to inform him that they consider his view to be correct, and that petitions to sue as pauper, remaining undisposed of at the date of Act IX. of the present year coming into force, must of course be considered subject to the rules provided by that law.

3. As to the second point, however, stated by Mr. Harington, this Court do not concur in the opinion which he has expressed thereon, and would acquaint him, with your Court's concurrence, that, under the circumstances described in his 3rd paragraph, he is not, in their judgment, competent to admit, of his own authority, a second application after the rejection of the first, but must treat it as a petition for a review of his orders, and proceed accordingly.

From the Officiating Judge of Zillah Goruckpore to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated the 7th June, 1839.

There are two points connected with the operation of Act IX. of the present year, on which I am desirous of obtaining the opinion of the Court of Sudder Dewanny Adawlut, and have to request the favor of your laying this letter before the Court with that object.

2. The first is, whether the provisions of the Act in question, are to be considered applicable to petitions to sue *in formâ pauperis* presented under Regulation XXVIII. 1814, but which remained undisposed of at the date of the promulgation of the recent enactment?

And the second, whether the application of a party to institute a suit *in formâ pauperis* having been rejected by the judge, under the discretionary power vested in him by the first section of the Act, in consequence of there not appearing to him to be probable cause for instituting the suit, the judge is competent to receive one, of his own authority, to admit a second application from the same party relating to the same matter, either urging fresh grounds for the institution of his suit, or supplying any omission or correcting any thing which may have led to the rejection of his first application; or whether such second application must be looked upon by the judge as an application for a review of his first order, and treated accordingly?

3. With regard to the first point, the law distinctly declares that no person shall be hereafter entitled to institute any suit *in formâ pauperis* unless upon certain conditions, therein detailed; and however severely such a construction may operate as regards pending applications presented previously to the passing of the Act, the terms of it are so general and imperative that, under a strict interpretation of the law, it must, I conceive, be held to include such applications. Regulation XXVI. 1814 and Regulation II. 1825, and that part of Regulation V. 1831, which relates to the finality of the decisions of the zillah judge in appealed suits from the sudder ameens and moonsiffs, were, I have reason to believe, construed in a similar manner on their promulgation, so that precedents are not wanting to support the opinion which I have above expressed.

4. With regard to the second point, I am disposed to think that the zillah judge may receive such second application under the circumstances stated by me, and that in the event of the petitioner being able to satisfy him, in the manner laid down in the Act, that there is probable cause for his instituting his suit, it would be competent to the judge, of his own authority, to comply with the petitioner's application to sue as a pauper.

The Calcutta Court concurred, 2nd August, 1839.

Ruled, that this construction does not apply to cases in which the judge has dismissed an application on default. Resolution, 23rd May, 1845.

No. 1230.

Registry of deeds written in the Persian language.

Held, on a reference from the judge of Allahabad, that officers appointed to register or authenticate deeds, would not be justified in refusing to attest or register any document presented to them for that purpose, by reason of its being written in the Persian language.

Western Court, 5th July, } 1839.
Calcutta Court, 2nd August, }

No. 1235.

1831. Reg. V. Sec. 15, Clause 4.
1806. Reg. II. Sec. 2, Clause 3.

Held, on a reference from the judge of Dinagepore, that the processes of the principal sudder ameens and sudder ameens, required to be enforced in another zillah, should be issued under their seal and signature, as prescribed by clause 4, Section 15, Regulation V. 1831, and with reference to clause 3, Section 2, Regulation II. 1806, be sent by the sudder ameen to the judge of the zillah or city court in which they are to be executed.

2. *The processes of the moonsiffs' courts intended to be served in another zillah, should be issued through the channel and under the signature of the judge.*

Western Court, 19th July, } 1839.
Calcutta Court, 9th August, }

See Act XXVI. 1852, *Section* 2.

No. 1236.

1814. Reg. XXVI. Sec. 15, Clause 8.
1825. Reg. VII. Sec. 7.

The following reference was made by the judge of Futtehpore: "Whether in cases in which an italanama in lieu of a hookumnama has been issued for the defendant to show cause, &c. under Regulation XXVI. 1814, Section 15, clause 8, and Regulation VII. 1825, Section 7, and such defendant be not met with, it is then incumbent on the court issuing the process, to issue a proclamation or not ?"

It was held that on the contingency contemplated by the judge, *viz.* the failure to serve a notice on the party, occurring, it is incumbent to issue a proclamation, but that the object would be best answered by including its purport in the notice, which should be accompanied by a perwannah to the nazir, instructing him, in the event of personal service being impracticable, to affix the process to the defendant's house.

Western Court, 19*th July*, *Calcutta*, *Court*, 16*th August*, } 1839.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 16*th August*, 1839.

No. 1242.

Regarding the power of officers in charge of the judge's office, to grant leave of absence to the vakeels and amlah.

An instance having occurred in which a principal sudder ameen, in charge of the current duties of a judge's office, considered himself not authorized to grant leave of temporary absence on the application of a vakeel, I am directed to request that you will obtain the opinion of the Calcutta Court on the question.

2. This Court observe that Circular Order No. 161, dated 6th February, 1835, contains rules for defining theduties of functionaries in charge of the office of a civil judge, and they are aware that the power of granting leave of absence to vakeels or other officers attached to the court is not expressly included therein.

3. The Court are, however, clearly of opinion that the power should be possessed by officers in charge of current duties, of giving leave of absence for a limited term *to the vakeels of the court*, and generally to the amlah of the judge's establishment. Such an arrangement would conduce to convenience, and no objection to it occurs to the Court, provided the exercise of the authority alluded to be restricted (which this Court would propose it should be) to cases of emergency, not admitting of delay.

The Calcutta Court, on the 20*th September*, 1839, *concurred.*

See Nos. 998, 1038 and 1080, and Act XX. 1853.

No. 1243.

1819.
Reg. VIII. Secs. 9 and 13, and Sec. 17, Clause 5.

The following question arose out of a reference made by the judge of Beerbhoom.

The holder of a putnee tenure having defaulted, his tenure was brought to sale ; the defaulter himself became the purchaser in a fictitious name, in opposition to the provisions of Section 9, Regulation VIII. 1819, and ousted the dur-putneedar. In such case what remedy has the latter ? Can he sue for recovery of possession

of his tenure, or is he restricted to the remedies pointed out in Section 13, and clause 5, Section 17, of the above-mentioned Regulation ?

It was decided by the Government, in concurrence with the Calcutta Court, that as the actual defaulter is prohibited from purchasing the putnee tenure, a fictitious purchase, contrary to the law, cannot confer upon him the right of cancelling the under-tenures ; and that consequently the holder of any such tenure, in the event of the power of cancelling having been exercised, has his remedy in an action for recovery of possession against the fictitious purchaser, laying his suit at the value at which he estimates his interest in the property.

Calcutta Court, 16th August, 1839.

Letter of Secretary to Government, Judicial Department, 25th February, 1840.

From the Judge of Mynpooree to the Officiating Register to the Sudder Dewanny Adawlut, Western Provinces, dated 22nd August, 1839.

No. 1244.

Circular Order, July 12, 1839.

I have the honor to acknowledge the receipt of your circular letter No. 1351, under date 12th ultimo, on the subject of security of costs demanded from appellants, and with reference to the 2nd paragraph thereof, I beg to observe that as, under the construction communicated in the register's letter of the 12th June, 1835, in reply to Mr. Monckton's letter of the 2nd April preceding, no security of costs is demandable from individuals appealing from the decisions of moonsiffs ; and as in consequence of there being no sudder ameen in this district, none but appeals from the moonsiffs' orders can possibly be referred to the principal sudder ameen for decision, I conclude that the rule of practice now communicated is not intended to have immediate operation in this district.

2. To avoid any misapprehension on the part of the principal sudder ameen, I shall delay the communication of the present orders to him, until I am favored with a reply to this letter. The delay is immaterial, as, at present, I dispose of all appeals from the moonsiffs, myself.

3. I beg further to be certified as to the precise meaning to be attached to the words "after the expiration of one month" in the 1st paragraph of your letter of the 12th ultimo ; that is, from what date the period of one month is to be calculated. I conclude from the date of the decree ? I infer also that if the order for summoning the respondent should be passed, before the period of one month

from the date of the decree have expired, although only one day may be wanting to fulfil that period, still a further indulgence of six weeks is to be allowed to the appellant for the filing of his security ?

To the Judge of Zillah Mynpooree, dated 31*st August*, 1839.

Your letter No. 39, dated 22nd instant, submitting certain questions suggested by the circular recently issued under date 12th ultimo, having been laid before the Court, I am directed to communicate to you the following reply.

2. On the point adverted to in your 1st and 2nd paragraphs, I am instructed to say that you should apprise the principal sudder ameen of your district, of the order contained in the circular referred to, to serve as a rule of practice for the general guidance of his court, explaining to him, at the same time, that so long as there may be no sudder ameen in the district, the rule cannot of course come into practical operation, as far as regards the proceedings of his court.

3. With respect to the doubt expressed in paragraph 3 of your letter, the Court desire me to say that you are correct in calculating the period of one month, alluded to in the opening paragraph of the circular, from the date of the decree. They further observe that, although the circular does not expressly advert to the contingency of the order being passed within the period of one month, so calculated, with reference to the course which should be then followed, it is at the same time obvious that should that contingency occur, and the period remaining to the completion of the month be so brief as not to allow the appellant to furnish security prior to its expiration, you can always exercise your discretion as to making such further allowance on that score as may appear just and reasonable, the same principal being applicable in either case of the month having elapsed or the contrary.

The Presidency Court, on the 4*th October*, 1839, *concurred.*

See Act III. 1845.

No. 1245.

1819.

Reg. II. Sec. 30, Clauses 6 and 7.

Held, on a reference from the judge of West Burdwan involving a construction of clauses 6 and 7, Section 30, Regulation II. 1819, that should it be found that the collector has omitted to perform any act which he was required to do by law, and has either forwarded his report according to clause 6, or passed a decision under clause 7, as the case may be, without such defect being remedied, thereby precluding the judge who may decide, or hear in appeal, the case, from proceeding with and adjudicating it in a legal manner, the latter

officer would be authorized, and it would be his duty to return the proceedings, pointing out to the revenue officer his want of conformity to the law applicable to the case, and desiring him to rectify the error or supply the omission, and on his refusal, the judge should bring his conduct to the notice of Government.

In no case, however, except those in which such a course might be found essential to enable him to proceed legally, ought the judge to follow it, as the terms of clause 6 of the Section and Regulation in question sufficiently provide for such other occasions as may arise.

Calcutta Court, 23*rd August*,
Western Court, 13*th September*, } 1839.

No. 1248.

1814.
Reg. XXVI. Sec. 15.
Construction 293, 18th June, 1818.

Held, on a reference from the judge of Cawnpore, that unproved claims of B. against C. may be considered as assets available in the execution of A.'s decree against B., and be sold by auction; when the auction purchaser would acquire the right of demanding payment from C., or, in the event of non-payment, of suing him for the recovery of the debt.

Held further, that the same principle is applicable to proved claims in respect to which a decree has already passed, the auction purchaser possessing in this instance a right to sue out execution of decree in the same manner as the orginal decree-holder.

Western Court, 6*th September*, 1839.
Calcutta Court, 3*rd January*, 1840.

See No. 1341.

No. 1249.

1814.
Reg. XXVI. Sec. 4, Clause 2.

Held, on a reference from the judge of Behar, that the spirit of clause 2, Section 4, Regulation XXVI. 1814, is applicable to miscellaneous cases. *

Calcutta Court, 13*th September*, .
Western Court, 4*th October*, } 1839.

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* For Summary Cases, see Construction 216.

No. 1250.
1829.
Act IX.

Decided by the Government, in concurrence with the opinion of the Calcutta Court, that the provisions of Act IX. 1839, have equal reference to the respondent in an appeal, as to the defendant in an original suit.

Calcutta Court, 13th September, 1839.

Letter of Secretary to Government, Judicial Department, 16th January, 1840.

See No. 1314.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 20th September, 1839.

No. 1251.

A suit for the recovery of damages in the civil court can be legally entertained against a party who has been already punished for abduction by the sentence of a criminal court.

I am directed to request, that you will lay before the Calcutta Court the accompanying copy of a letter from the commissioner in Kumaon, and of a petition of plaint, and that you will obtain the Court's opinion, with reference thereto, whether a suit for the recovery of damages in the civil court can be legally entertained against a party who has been already punished for abduction by the award of a criminal tribunal.

2. This Court are disposed, on a review of the case out of which the present reference arose, to consider that as the penal imposition of fine and award of imprisonment in the criminal court were on account of the abduction of the complainant's wife, such criminal sentence does not bar the institution of a civil suit for any pecuniary losses alleged to have been sustained by the husband in consequence of the act so punished; and, should the Presidency Court concur, they will inform Mr. Lushington accordingly, and adopt the principle as a rule in future.

To the Officiating Register of the Sudder Dewanny Adawlut, North-Western Povinces, from the Officiating Commissioner of Kumaon.

In reply to your letter of the 5th instant (acknowledging the receipt of mine of the 15th ultimo,) relative to a point of law in cases of seduction, I have the honor to state that the facts of the case which gave rise to that reference were as follows:

2. A sepahee of the 61st regiment, now stationed at Almora, had enticed away the wife of a bunya of this district, and the latter in consequence preferred a complaint to the junior assistant in the criminal court. After some delay and recusance on the part of the sepahee, the woman was produced in court; and the fact of her having been enticed away by the sepahee appearing to be establish-

ed, the assistant proceeded to pass sentence on the prisoner, but instead of the punishment and fine, authorized by Regulation VII. 1819, awarded damages to the husband in lieu of losses alleged to have been sustained by him. A petition having been presented to the senior assistant, complaining of this decision, the case was revised by him and a sentence of fine and imprisonment passed, *viz.* six months' imprisonment and 100 rupees fine, commutable to six months' further imprisonment in the event of non-payment, but the fine was made conditional on the plaintiff failing to obtain a decree in the civil court for damages.

3. Since my letter to the Court, the case has been appealed to me by the sepahee, and the punishment of imprisonment and fine upheld; for as far as I am able to judge, the offence of enticing and taking away a married woman is established against him.

4. It now remains for the Court to decide whether a civil action for marriage expenses can be instituted against this sepahee, who has already been punished criminally. The Kumaon rules are silent on the subject, and I have in vain searched the Regulations of Government for any rule by which to shape my opinion.

The Calcutta Court, on the 1*st November*, 1839, *concurred.*

No. 1252.

1831.
Reg. VIII.
Secs. 14 and 15.

Held, on a reference from the judge of Jessore, that the Courts of Sudder Dewanny Adawlut are not included in the rule contained in Sections 14 and 15, Regulation VIII. 1831, which refer exclusively to the zillah and city courts and to the courts subordinate to them.

Calcutta Court, 27*th September*, } 1839.
Western Court, 31*st October*, }

No. 1254.

1814.
Reg. XXVIII. Sec. 12, Clause 1, and Sec. 5, Clause 1.

On an application to the Sudder Dewanny Adawlut, made on the part of a guardian of a deaf and dumb person, appointed under Regulation I. 1800, *to be allowed to appeal in formâ pauperis on behalf of his ward, by presenting his petition through an authorized agent, it was held that a petition to be allowed to appeal in formâ pauperis cannot be received, through an agent, from any person not being a female of the rank and description stated in clause* 1, *Section* 5, *Regulation XXVIII.* 1814.

Calcutta Court, 4*th October*, } 1839.
Western Court, 8*th November*, }

Aee Act XIX. 1840.

No. 1255.

1812.
Reg. V. Sec. 16.
1839.
Act I.

Held, on a reference from the judge of Tirhoot, that as the power to receive security, in cases of distraint for arrears of rent, was conferred on moonsiffs under Section 16, Regulation V. 1812, in virtue of their office as commissioners for the sale of distrained property, that power necessarily ceases with the withdrawal of the commission under the operation of Act I. 1839.

Calcutta Court, 18th October,
Western Court, 22nd November, } 1839.

With the concurrence of the Western Court, the following Letter dated 1st November, 1839, was written to the Additional Judge of Chittagong by order of the Calcutta Court, in reply to a reference made by that officer.

No. 1257.

Rule regarding the competency of moonsiffs to try suits for damages in respect to marriage on account of breach of contract, or in regard to slander.

In continuation of my letter No. 2340, of the 23rd August last, I am directed to communicate to you the Court's opinion that suits involving indemnificatory claims to an arbitrary amount of damages, in respect to marriage, on account of breach of contract, or in regard to slander on account of loss of character, are not cognizable by moonsiffs.

2. *Supposing, however, a claim to be preferred on account of a specific loss sustained by expenses actually incurred in prosecuting a marriage afterwards broken off, such claim should not be included in the prohibitory rule, but should be regarded in the light of any other claim to money or personal property, within the competency of a moonsiff to decide, under clause 2, Section 5, Regulation V.* 1831.

3. *The principle of the prohibitory rule, it should be observed, consists in the exclusion from the jurisdiction of a moonsiff, of all suits in which, though the claim may be defined, the amount to be awarded is arbitrary and at the discretion of the tribunal trying the suit, constituting a license which it would be inexpedient to accord to a native functionary of that grade, an objection to which a fixed and definite claim for a certain sum actually expended is not liable.*

November 1, 1839.

See Section VIII, Act VI. 1843.

No. 1258.

1814.
Reg. XXVIII. Sec. 2.
Construction 621, 10th January, 1831.

Held, on a reference from the judge of Chittagong, that in a pauper suit, after the payment of vakeels' fees, as prescribed by Construction 621, the dues of Government in respect to stamp expenses have the next claim, since there is no reason why the pauper plaintiff who has gained his cause, should have any advantage in this particular over other suitors who have to pay beforehand; but, after the payment of the Government stamp dues, the principle of the above-mentioned construction, that the order of satisfying claims is determinable by the circumstances of the case, is applicable to any other costs which may be incurred by Government as well as to claims of other parties.

Calcutta Court, 1*st November*, } 1839.
Western Court, 6*th December*, }

No. 1259.

Rule regarding the power of a moonsiff to call for the record of a case from another court.

Held, on a reference from the judge of Mymensing, that a moonsiff has the power to call for the record of a case from any court, (such call being made through the judge of the district to which he is attached,) whenever any peculiar circumstances may render it necessary for him to do so: but that in general if any particular paper is required, the party who wishes to file it should obtain an attested copy in the usual manner.

Calcutta Court, 1*st November*, } 1839.
Western Court, 6*th December*, }

No. 1260.

1830.
Reg. VII. Sec. 7, Clause 2.

On a reference from the judge of Cuttack, it was decided by Government, in concurrence with the opinion of the Western Court, that clause 2, *Section* 7, *Regulation VII.* 1830, *is applicable only to sales of estates permanently assessed.*

Western Court, 1*st November*, 1839.

Secretary to Government, Judicial Department, 16*th January*, 1840.

See Act I. 1845.

From the Judge of West Burdwan to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 26th September, 1839.

No. 1261.

1819.
Reg. II. Sec. 30.
1831.
Reg. V. Sec. 5, Clause 3.

With reference to the provisions of Section 3, *Act XXV.* 1837, *and to para.* 3 *of the Circular Orders of the Court, No.* 478, *dated the 23rd February,* 1838, *I have the honor to request that I may be favored with the opinion of the Court on the following point:*

2. *In the event of its appearing, in the course of the investigation, either by this court, or by the principal sudder ameens, of an appeal from the decision of a moonsiff, that the matter at issue is of such a nature as to render a reference to the collector, under the provisions of Section* 30, *Regulation II.* 1819, *necessary,—is the appellate court competent to make this reference, while the suit is pending in appeal, or would it be necessary that the suit should be tried de novo? I have been induced to apply for instructions on this subject, from having observed that the principal sudder ameens are in the habit of remanding such suits for retrials to the moonsiffs, notwithstanding that the latter have no authority to order the collector to investigate and report on them.*

To the Judge of West Burdwan, dated 3rd January, 1840.

In continuation of my letter No. 3031, *of the 1st November last, I am directed by the Court to observe that, under the spirit of clause* 3, *Section* 5, *Regulation V.* 1831, *a moonsiff cannot legally receive a suit of a nature requiring a reference to the collector under Section* 30, *Regulation II.* 1819; *and therefore that a principal sudder ameen, having before him a suit of that description of appeal, should send the case to the judge under the circular of the 14th June last, recommending the annulment of the moonsiff's decision, and the return of the case to that officer on the ground that he ought to have rejected the suit in the first instance, as illegally instituted, and in order that he should now follow that course.*

The Western Court, on the 6th December, 1839, *concurred.*

See Act XXVI. 1852, *Clause* 4.

No. 1262.

1825.
Reg. XII. Sec. 6, Clause 2.
Para. 10. Circular Order Sudder Dewanny Adawlut, No. 91—Western Provinces, 16th July, 1833—Lower Provinces, 1st November, 1833.

On a reference from the judge of 24-Pergunnahs, it was held that a moonsiff is competent to ascertain the fact of resistance of a process of his court or other contempt, and to determine the amount of fine which in his opinion ought to be levied on the offender: but that, prior to proceeding to levy such fine, he should report the case for the orders of the judge.

Western Court, 16th November, 1839.
Calcutta Court, 3rd January, 1840.

See Section 4, Act VI. 1843

No. 1266.

Period allowed for execution of a summary decree for arrears of rent.

Held, on a reference from the judge of Hooghly, that, under the existing law, execution of a summary decree for arrears of rent may be taken out within twelve years from the date of such decree.

Calcutta Court, 9th August,
Western Court, 6th September, } 1839.

See No. 3.

No. 1268.

1833.
Reg. XII.
Competency, in a special case, of the manager of the property of an absent party, to appoint special agents under Regulation XII. 1833.

A., before his departure on a pilgrimage to Mecca, appointed B. his attorney, with general powers of management and superintendence of his property during his absence. The power of attorney executed by A. further empowers B. to defend all suits in the civil courts, to appoint and remove mookhtars or agents, and specifically provides for the appointment of vakeels or pleaders, without any specification as regards the appointment of agents under Regulation XII. 1833. Held that a person vested with the management of the property of an absent party, under a document of the above-mentioned nature, is competent to appoint special agents under Regulation XII. 1833, on behalf of his principal.

Western Court, 20th December, 1839.
Calcutta Court, 20th March, 1840.

See Act I. 1846.

No. 1269.

1814.
Reg. XXVI. Sec. 4.

Held that the order of a zillah judge dismissing a suit on default, or without any investigation of its merits, is open to review, under the provisions of Section 4, Regulation XXVI. 1814.

Western Court, 3rd January.
Calcutta Court, 7th February.

No. 1270.

1812.
Reg. XX. Sec. 5.

Held that security bonds for the eventual payment of costs of suit, may be registered under the provisions of Section 5, Regulation XX. 1812.

Calcutta Court, 10*th January.*
Western Court, 28*th February.*

See Circular Order, No. 134, 17th July, 1846.

No. 1271.

Circular Order, No. 197, Lower Provinces, 13th January, and Western Provinces, 10th February, 1837.

Held, on a reference from the judge of Futtehpore, that as the ameens appointed under the Circular Order of 13th January (Western Provinces, 10th February) 1837, are ministerial officers of the zillah courts, it is competent to a zillah judge to pass an order for the dismissal of an ameen, of his own authority, subject to the usual appeal allowed by law.

Western Court, 16*th January*, 1840.
Calcutta Court, 2*nd February*, 1840.

No. 1272.

Mode of valuing ryots' holdings in civil actions.

Held that suits instituted with a view to fix the jumma of ryots' holdings should be laid at one year's rent.

Calcutta Court, 31*st January.*
Western Court, 19*th June.*

See No. 811.

No. 1276.

The civil court is not competent to require from the magistrate delivery, on civil process, of the person of a prisoner after the expiration of his imprisonment in the criminal jail.

Held, on a reference from the judge of Mymensing, that the civil courts cannot require the magistrate to deliver up, after the expiration of his term of imprisonment, a prisoner against whom a process had been taken out while yet in confinement; and that the process should issue, on the release of the prisoner, according to the established form.

Calcutta Court, 20*th March.*
Western Court, 24*th April.*

No. 1277.

1837.
Act XXV. Sec. 5.

Held, on a reference from the judge of Rungpore, that as suits for personal damages and rent-free lands, as well as those enumerated in clause 2, *Section* 13, *Regulation XXIII.* 1814, *even though the value of these may not exceed* 300 *rupees, are not within the competency of the moonsiff to try, they cannot fall under the rules of Section* 5, *Act XXV.* 1837, *and therefore on being referred to the sudder ameen are subjected to the stamp duty prescribed for his court.*

Calcutta Court, 10*th April.*
Western Court, 24*th April.*

See Section 4, *Act XXVI.* 1852.

No. 1278.

1829.
Reg. X. Schedule B, Article 7.

Held, on a reference from the judge of Allahabad, that parties, objecting to the sale or transfer of property in execution of decrees, may petition the moonsiffs' courts on plain paper.

Western Court, 5*th June.*
Calcutta Court, 26*th June.*

No. 1279.

1829.
Reg. X. Schedule A, Articles 4, 5 and 6.

The following question arose out of a case in the Court of Sudder Dewanny Adawlut for the Western Provinces.

A., a resident of Shajehanpore, purchases of B., a shroff of the same place, a hoondee for a certain amount, payable in Calcutta, at the kootee of a Calcutta banker C., and sends it, in payment of a debt or otherwise as the case may be, to D. ; D. presents it to C. for acceptance, and, after acceptance, negotiates the hoondee to E. ; eventually, on presentation, the hoondee is not paid by C. : E. recovers the amount from the last endorser D., who returns it to A., who sues B., in the court of Shajehanpore, for the amount.

Can the hoondee be admitted as evidence, in the above suit, on plain paper ? or, it having been negotiated while in Calcutta, between D. and E., must the instrument be stamped, or a copy be affixed to it engrossed on a paper bearing the prescribed stamp ?

Held by a majority of both Courts, that the hoondee, having been negotiated after acceptance, could not be admitted in court as a legal instrument, except on stamped paper, or with a copy on paper bearing the prescribed stamp.

Western Court, 19*th June.*
Calcutta Court, 14*th August.*

No. 1282.

1837.
Act XXV. Sec. 4.

Held, on a reference from the judge of Mymensing, that in a suit laid at a sum exceeding 5,000 rupees, but in which the principal sudder ameen gives a decree for a sum less than that amount, the appeal from the principal sudder ameen's decree lies to the Sudder Dewanny Adawlut.

Calcutta Court, 7th August.
Western Court, 26th August.

This is opposed to the principle adopted regarding appeals to the Privy Council, S. D. R. 24th March, 1854.

No. 1283.

1812.
Reg. V. Sec. 26.

Held, on a reference from the judge of Mymensing, that the provisions of Section 26, Regulation V. 1812, are not applicable to dependent talooks.

Calcutta Court, 7th August.
Western Court, 4th September.

No. 1284.

1832.
Reg. VII. Sec. 7.

Held that the mode of proceeding laid down in Section 7, Regulation VII. 1832, is to be followed in the case of defendants ordered into confinement by the principal sudder ameen, in execution of civil process, in suits exceeding 5,000 rupees.

Western Court, 7th August.
Calcutta Court, 4th September.

See No. 947.

No. 1285.

1839.
Act IX. Sec. 1.

Held, on a reference from the judge of Seharunpore, that the zillah judges cannot delegate to another authority the duty of making the inquiry contemplated by Section 1, Act IX. 1839, in the case of parties applying to sue *in formâ pauperis*.

Western Court, 7th August.
Calcutta Court, 7th September.

See Circular Order, No. 27, 11th August, 1843.

No. 1286.

1799.
Reg. V. Sec. 7.

Held, on a reference from the judge of Rungpore, that hoondees or other obligations for the payment of money, appertaining to the estates of parties dying intestate, may be realized by the civil court on falling due, and the amount kept in deposit until the expiration of the period of 12 months specified in Section 7, Regulation V. 1799. But the interference of the civil court should be limited to the simple presentation of instruments payable at a fixed period, the failure to present which would involve a risk of loss, and to the realization of monies indisputably due thereon, and not extend any further, or include the assertion and prosecution of denied or disputed claims.

Calcutta Court, 14*th August*.
Western Court, 4*th September*.

No. 1289.

1839.
Act XXVI. Sec. 11.

Held that if a commissioner appointed under Act XXVI. 1839, have not subscribed the oath, required by Section 11 of that Act, before an officer authorised to administer the same, his proceedings are altogether illegal and invalid.

Western Court, 28*th November*.
Calcutta Court, 10*th December*.

See Act XXXVII. 1850.

No. 1291.

A civil court is not competent to entertain an action to contest the award of a military court of requests.

A. and B. have dealings within a military cantonment, but are not residents therein. A. sues B. in the military court of requests and obtains a decree, B. demurring to the jurisdiction ; the award is enforced, and B. sues in the civil court for the recovery of the sum paid under the award.

Held that a suit of the nature mentioned cannot legally be entertained by a civil court.

Western Court, 13*th February*, } 1841.
Calcutta Court, 19*th March*. }

No. 1292.

1793.
Reg. XVI. Sec. 2.
1803.
Reg. XXI. Sec. 2.

Held that under the provisions of Section 2, Regulation XVI. 1793, principal sudder ameens are competent, with consent of parties, to refer suits to arbitration.

N. B. The question having reference only to principal sudder ameens, the reply was restricted to that class of judges.

Calcutta Court, 26*th March*, } 1841.
Western Court, 10*th April*, }

See No. 1320.

No. 1293.

1831.
Reg. V. Sec. 6, Clause 4.

The written notification prescribed by clause 4, *Section* 6, *Regulation V.* 1831, *should precede the usual notice to defendant. Claimants coming forward in obedience to such proclamations are liable to bear a proportion of costs.*

Western Court, 30*th April*, } 1841.
Calcutta Court, 30*th July*, }

See Act XXVI. 1852.

No. 1294.

1831.
Reg. V. Sec. 19, Clause 2.

Held that the order of a zilliah judge, dissenting from the principal sudder ameen, as to the propriety of a review of the latter's judgment on a reference made under clause 2, Section 19, Regulation V. 1831, is final, and not open to revision on appeal to the Sudder Dewanny Adawlut.

Calcutta Court, 14*th May*, } 1841.
Western Court, 28*th May*, }

No. 1295.

Rules regarding the imposition of fines by moonsiffs on their ministerial officers.

Held that a moonsiff imposing a fine on any of his ministerial officers, cannot proceed to levy it, without previously obtaining the judge's sanction, and by analogy cannot remit it without the permission of the same authority; but that, if the orders have not been recorded and signed by the moonsiff, the fine may be remitted by him without any such reference.

Calcutta Court, 21*st May*, } 1841.
Western Court, 18*th June*, }

See Section 4, *Act VI.* 1843 *and Circular Order, Sudder Dewanny Adawlut*, 16*th September*, 1842, *No.* 225.

No. 1297.

1833.
Reg. XII. Sec. 2, Clause 6.

On a reference from the judge of Jessore as to whether the provisions of clause 6, *Section* 2, *Regulation XII.* 1833, *extended to pauper suits, it was held that the rule was applicable to all suits in which private engagements exist between parties and pleaders.*

Calcutta Court, 28*th May*, } 1841.
Western Court, 18*th June*, }

See Act I. 1846.

No. 1299.

Mode of proceeding in the case of a decree founded on a collusive action, instituted with a view to evade execution of a just decree.

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The judge of West Burdwan asked the opinion of the Sudder Dewanny Adawlut, in regard to the course to be pursued under the circumstances stated in the following extract from his reference :

PARA. 2. "It appeared from the inquiry held by me in consequence of a petition presented to me by Dahooram Shaha, that on the 6th June, 1840, he instituted a suit in the moonsiff's court at Sonamookhy against Gunness Gurrain for rupees 196-0-0, and that the latter, with a view to evade the execution of any decree that might be passed against him, got a relation of his own, named Gopal Gurrain, to file a fictitious suit against him before the moonsiff of Burjorah on the 5th of the same month, in which on the 8th idem he put in a collusive 'iqbal dawee,' admitting the fictitious claim, and pledging the whole of his property in satisfaction of it, on the strength of which a decree was passed on the same day in his favor."

He was informed, that under the circumstances stated the aggrieved decree-holder should be referred to a regular suit against the colluding parties, for all damages that he may have sustained by their fraudulent proceedings, pending the issue of which the whole of the property in question might be attached, and the interest of the decree-holder protected.

Calcutta Court, 4*th June*, } 1841.
Western Court, 25*th June*, }

See Sudder Dewanny Reports, North-Western Provinces, 13th May, 1851, page 153.

No. 1300.

1831.
Reg. V. Sec. 6, Clause 4.

The inquiry to be made by the moonsiff, under the provisions of clause 4, *Section* 6, *Regulation V.* 1831, *is to be limited to the rights of claimants in the property actually sued for, and cannot extend to the entire estate of the deceased.*

Calcutta Court, 18*th June*, } 1841.
Western Court, 9*th July*, }

See Act XXVI. 1852.

No. 1301.

1829.

Reg. X. Sch. B, Art. 8.

A. having obtained a decree, points out certain lands for sale in satisfaction thereof, the property, as he alleges, of the defendant, B. a claimant, however, interposes his claim, which is allowed, and the sale stopped, when A. is recommended, if he has still any claim, to file a regular suit. He accordingly brings a suit to obtain the sale of certain lands in realization of his decree. The question arises—how is A. to estimate the value of his suit, according to the note on Article 8, Schedule B, Regulation X. 1829 ?

It was held that as the suit in question was brought, not for possession, but to obtain leave to sell the interests of the original defendant in the estate, and to appropriate the proceeds of sale in liquidation of A.'s claim ; or, in other words, as the suit was for the amount that the estate would sell for, the value should have been computed at the estimated selling price, (or the amount of plaintiff's claim under the decree, supposing the selling price to have been in excess of that claim,) according to the 4th clause of the note on Article 8, Schedule B, Regulation X. 1829, the suit being viewed rather as for an interest in malgoozaree land, not capable of valuation under the 1st clause of the note.

Western Court, 25th June, } 1841.
Calcutta Court, 16th July, }

No. 1303.

1831.

Reg. VIII. Sec. 6.

The provisions of Section 6, Regulation VIII. 1831, are held to be applicable to the summary decrees of the judicial authorities passed prior to the enactment of that law ; that is, all regular suits to contest the summary awards of the judicial authorities should have been instituted within one year of the promulgation of that Regulation.

Calcutta Court, 16th July, } 1841.
Western Court, 6th August, }

Temporary.

No. 1304.

1831.

Reg. V. Sec. 5, Cl. 2.

Held that an undefended suit for an instalment below 300 rupees, on a bond for an aggregate sum above that amount, is cognizable by the moonsiff.

The same principle is applicable to an undefended action for an arrear of rent below 300 rupees, due on a farming engagement or lease of higher value.

Calcutta Court, 16th July, } 1841.
Western Court, 13th August, }

See Circular Order No. 12, 14th May, 1847.

No. 1306.

1829.
Reg. X. Sch. A, Clause 2.

A memorandum of agreement for the time of the services of a mookhtar, specifying a fixed sum as his monthly stipend in money, and guaranteeing to him his daily food, must be written on a stamp under the rule in clause 2, Schedule A., Regulation X. 1829.

Western Court, 20th July, } 1841.
Calcutta Court, 20th August, }

No. 1308.

1814.
Reg. XXIII. Sec. 25, Clause 3.

A. prosecutes B. in the moonsiff's court for possession of real property in virtue of a deed of sale. After the suit is instituted but before its decision, the rights and interests of B in the said property, are sold by the collector to C. in satisfaction of a decree of court.

Has the moonsiff authority to receive an amended plea, including C. amongst the defendants; or can the judge give him such authority?

It was held that the application by the plaintiff to include C. as a defendant in his action, under the circumstances stated, is not of the nature of a supplemental plaint (which the moonsiff is not competent to receive) contemplated by the Regulations, which provide a remedy for enabling parties to supply omissions arising from mistake, inadvertence, or other cause (Section 5, Regulation IV. 1793.) The case submitted does not embrace either the rectification of any error, or the supplying of any omission, but involves the competency or otherwise of a plaintiff to make application to the court, with a view to meet circumstances arising subsequently to the institution of the suit over which the plaintiff had no control whatever. It was ruled accordingly that the moonsiff is competent to receieve an application from the plaintiff to include C. in his action, and to proceed with it accordingly.

Western Court, 28th August, } 1841.
Calcutta Court, 17th September, }

See Section 2, Act XXVI. 1852.

No. 1309.

1833.
Reg. XII. Sec. 2, Clause 5.

Held that the provisions of clause 5, Section 2, Regulation XII. 1833, are applicable to pauper as well as to other cases.

Western Court, 15th September, } 1841.
Calcutta Court, 22nd October, }

See Act I. 1846.

No. 1310.

1823.
Reg. VI. Sec. 5, Clause 4.

A question having been referred by the judge of Allahabad, whether it was intended by clause 4, Section 5, Regulation VI. of 1823, to be ruled that the highest amount of penalty, including interest on the sum advanced, awardable against a contractor, is not to exceed three times the sum advanced; or whether the penalty may be to the amount of three times the sum advanced, and of any interest that may have accrued upon that sum, at the time of the suit being decided? It was held that the meaning of the enactment is that interest is included in the "three times the sum advanced."

Western Court, 24th September, } 1841.
Calcutta Court, 22nd October, }

No. 1311.

The civil courts cannot interfere with the estate of a lunatic, consisting only of personal property.

The estate of a lunatic consisting exclusively of personal property, there is no law which authorizes the intervention of the civil courts.

Western Court, 15th October, } 1841.
Calcutta Court, 5th November, }

No. 1313.

1814.
Reg. XXVIII.
Case of a plaintiff having instituted his action originally on stamped paper, but pleading pauperism when required to file a supplementary plaint to amend his original plaint.

A. sues B. having paid the stamp duty and his vakeel's fees. Pending the trial, B. takes out execution of a decree, and sells A.'s landed property. After decision of the suit, A. appeals to the Sudder Dewanny Adawlut, and the case is remanded for re-trial to amend the plaint, (in consequence of which amendment a higher stamp would be required and the amount of vakeel's fees, &c. considerably enhanced.) A.'s property having been sold in satisfaction of the defendant's decree, A. pleads that he is a pauper, and, therefore, unable to pay for the additional stamp required to fulfil the orders of the court. The principal sudder ameen, holding that a party cannot be admitted a pauper in the middle of the suit, not having been one at the commencement, strikes the case off the file on default. A summary appeal is preferred to the Sudder Dewanny Adawlut, and the question is, whether A. should have been allowed to carry on his suit as a pauper, after due inquiry made on that point, or should have been nonsuited and allowed to institute a suit *de novo* for the whole claim?

It was held that, when a plaintiff, on the plea of pauperism, urges his inability to comply with the permission of the court to file an amended plaint, his pauperism should be inquired into, and, if estab-

lished, his prayer granted ; and that, supposing the suit to be pending before the principal sudder ameen or sudder ameen, and plaintiff to plead inability to give the amended plaint, the court before which the suit is should allow him time to present a petition to the judge, setting forth his pauperism, with a schedule of his property, when the judge would refer it to the principal sudder ameen, or investigate it himself.

Western Court, 3rd December, } 1841.
Calcutta Court, 31st December, }

No. 1314.

1839.
Act IX.

The following questions having been submitted to the Court :

" Under the provisions of Act IX. 1839, and Construction 1250, can a defendant (not being a pauper) appeal on plain paper against a decision passed in favor of a pauper plaintiff by the lower court ?

" Also, is such defendant to be allowed to take a copy of the lower court's decree on plain paper, for the purpose of presenting it with his petition of appeal ?"

It was held :

1*st*.—That a decision passed in favor of a pauper plaintiff by the lower court cannot be appealed against by the defendant (not a pauper) on plain paper.

2*nd*.—That the appealing defendant may be allowed a copy of the lower court's decree on plain paper, for presentation with his petition of appeal.

Calcutta Court, 10th December, 1841.
Western Court, 10th January, 1842.

No. 1315.

1841.
Act XXIX. Sec. 1.

In cases in which the petition of appeal is filed in the Sudder Dewanny Adawlut, the date of institution of the appeal must of course be calculated from the day of filing the petition. In cases however in which the petition of appeal is presented to the court of original jurisdiction, the date of institution must be calculated under Section 3, *Regulation XII.* 1797, *from the date of the filing of the petition of appeal in the Sudder Court, that is, from the date of the petition reaching the Court. From the date of institution in either case, as above stated, the appellant must, under the provisions of Section* 1, *Act XXIX.* 1841, *proceed within six weeks. The question arises what is " proceeding with a case ?"*

Ruled that the appellant must be held to have defaulted, and be liable to dismissal of his appeal, unless he appear in person or by vakeel, and file his reasons of appeal within the term (six weeks) allowed, and that the mere appointment of a vakeel would not suffice to bar the liability referred to.

Calcutta Court, 31*st December*, 1841.
Western Court, 7*th January*, 1842.

See Act XV. 1853.

No. 1316.
1841.
Act XX.

The following questions having been submitted by the judge of Delhi :

1*st.*—Whether the petition for a certificate under Act XX. of 1841, should be on stamped paper, and of what value ?

2*nd.*—Whether the petition for a certificate may be written in the English or Urdu language ?

3*rd.*—Whether the certificate should be issued on stamped paper ?

It was held :

1*st.*—That under Section 2 of the Act, petitions for certificates are required to be presented to the judge of the zillah or district court, and ought consequently to be engrossed on a stamp of the value prescribed in the 7th Article of Schedule B., Regulation X. 1829.

2*nd.*—That the petition should be couched in the official language prescribed by the Legislature, that is, the vernacular, that objectors, who in the majority of cases will be those who are best acquainted with that language, may know the nature of the appellant's claim in order to answer it. Parties however, may, if they please, accompany such petition with an English translation.

3*rd.*—That neither in Act XX. 1841, nor any other law, is it provided, directly or constructively, that certificates of representation shall be written on stamped, they should therefore be granted on plain paper.

Western Court, 14*th January*, } 1842.
Calcutta Court, 11*th February*, }

No. 1317.

1793.
Reg. IV. Sec. 6.
1803.
Reg. III. Sec. 6.

On a reference from the judge of Ghazeepore, as to the proper course to be pursued in the event of a defendant absenting himself, after having filed an answer to a plaint in an original suit.

It was held that, under the rule of Section 6, Regulation IV. 1793, and Section 6, Regulation III. 1803, the proper course would be to affix in the court-house a notice of 8 days, as therein directed, and, in the event of the defendant not appearing within that time, to decide the case *ex parte*.

Western Court, 18*th January*, } 1842.
Calcutta Court, 11*th February*, }

No. 1319.

1841.
Act XIX. Sec. 3.

S.R. No 91. p. 59. Apr. 13. 1842

Held, with reference to the provisions of Section 3, *Act XIX.* 1841, *that the complainant must appear in person to make the solemn declaration thereby required; and that such declaration cannot be made through an authorised agent.*

Calcutta Court, 11*th February*, } 1842.
Western Court, 4*th March*, }

Rescinded by Circular Order No. 145, 10*th Sept.* 1851.

No. 1320.

1793.
Reg. XVI. Sec. 2.
1803.
Reg. XXI. Sec. 2.

Held that, under the provisions of Section 2, Regulation XVI. 1793, sudder ameens and moonsiffs are competent, with consent of parties, to refer suits to arbitration.

Calcutta Court, 11*th February*, } 1842.
Western Court, 4*th March*, }

See No. 1292.

No. 1321.

1814.
Reg. XXIII. Sec. 27, Clause 1.
1841.
Act XXIX.

On a reference from the judge of Moradabad, whether Act XXIX. 1841, is to be considered as superseding the rule of procedure laid down for moonsiffs, in cases of default of plaintiffs, in clause 1, Section 27, Regulation XXIII. 1814, and whether it is therefore incumbent on moonsiffs to wait until the expiration of six weeks before dismissing suits for default:

It was held that Act XXIX. 1841, does not repeal any clause or Regulation allowing a moonsiff to dismiss a cause after a prescribed and notified time, on default of plaintiff, within the period of six weeks, but only provides for the disposal of suits by dismissal,

which, under the rule heretofore in force, have been wont to remain longer than that term.

Western Court, 18*th February*, } 1842.
Calcutta Court, 8*th April*, }

See No. 1339 and Section 2, Act XXVI. 1852.

No. 1323.

Rule of calculating the period of appeal from orders of moonsiffs in miscellaneous cases.

Held, on a reference from the judge of Allahabad, that the period allowed for appealing from the orders of moonsiffs in miscellaneous cases, (copies of which orders are to be granted on plain paper,) should be calculated from the date of the order appealed from, deducting the interval that may elapse between the date of the copy being applied for, and its being ready for delivery.

N. B. The moonsiffs should always note on the copy the date of application for the copy, and that of its being ready for delivery.

Western Court, 26*th March*, } 1842.
Calcutta Court, 8*th April*, }

No. 1327.

1841.
Act XXIX. Sec. 2.

The judge of Moradabad having inquired, whether, with reference to the comprehensiveness of the wording of the provision contained in Section 2, *Act XXIX.* 1841, *viz.* "*in all cases in which a suit or appeal is dismissed,*" *costs are required to be awarded to respondents who shall have made answer and appointed a vakeel, without having been first summoned to defend an appeal, when such appeal may be dismissed under the Act in question :*"

It was held, that the contingency of the opposite party appearing without being summoned did not appear to be comprehended in the rule adverted to by the judge, inasmuch as till the said party be called on to "*respond,*" *he cannot, in the strict meaning of the word, be termed a* "*respondent.*" *The judge was further referred to Construction* 675, *in which the designation is accordingly restricted to* "*opposite party.*"

Western Court, 18*th February*, } 1842.
Calcutta Court, 4*th March*, }

See Circular Order No. 163, 12*th January*, 1852.

No. 1331.
1829.
Reg. X.

The judge of Dacca having directed the return of a document written on plain paper, in order to have a stamp affixed, which the revenue authorities were of opinion did not require a stamp, it was held, on a reference from the former officer, that as the law vests the revenue local authorities, and the Board of Customs, Salt and Opium, with the power of determining points of the kind mooted, a deed declared by such authority, exempt from stamp duty, must be received by the courts.

Calcutta Court, 1*st, and Western Court*, 15*th April*, 1842.

See No. 1161, and page 61, Sudder Dewanny Reports, 31st January, 1852, and Sudder Dewanny Reports, North-Western Provinces, 27th March, 1848, page 95.

No. 1334.
1841.
Act XXIX.

With advertence to that part of Act XXIX. 1841, which makes the institution of a new appeal, after dismissal on default under Section 1, conditional on the party not being precluded by "lapse of time and period of appeal:" it was held, on a reference from the judge of Furruckabad, that the law being general, refers to all appeals; and that, consequently, if an appellant to the zillah judge default under Act XXIX. 1841, and his case is, in accordance with its provisions struck off, his appeal is lost.

Western Court, 15*th April*, } 1842.
Calcutta Court, 27*th May*, }

No. 1335.
1816.
Reg. XV.

Held, on a reference from the judge of Moradabad, that the provisions of Regulation XV. 1816, are applicable to native officers and soldiers of irregular corps on service in Affghanistan, that is, on foreign service.

Western Court, 28*th April*, } 1842.
Calcutta Court, 20*th May*, }

No. 1336.
1838.
Act XXVII. Sec. 2.

A suit, instituted in zillah Bhaugulpore, having been transferred to zillah Purnea, under the provisions of Section 2, Act XXVII. 1838, and by the judge of the latter district referred to his sudder ameen for trial:—it was held, on a reference from the judge of Purnea, that the appeal from the sudder ameen's decision will lie to the Purneah and not the Bhaugulpore Zillah Court.

Calcutta Court, 13*th, and Western Court*, 27*th May*, 1842.

No. 1337.

Civil Circular Order, No. 177, Vol. III.

The following questions were submitted by the judge of Tipperah, with reference to the Court's printed Circular Order No. 177, dated 31st December, 1841, (Western Court, 17th January, 1842,) relative to the duties and remuneration of ameens.

1.—When the measurement of lands, in addition to other local inquiries, becomes necessary, may the court appoint a mohurrir and a nullee, or nullees, subordinate to the ameen, with allowances not exceeding those of the ameen, but in addition thereto?

2.—In giving possession of lands, so extensive as to render it impossible for one ameen to complete the duty, within a moderate period, may the court appoint an assistant, or assistants, on separate allowances, not exceeding those of the ameen?

3.—Has the court no power to appoint an ameen to give possession, with larger allowances than 12 annas per diem, however extensive the lands may be, and however important the duty?

The reply to the 1st and 2nd questions was in the affirmative, and to the third in the negative.

Calcutta Court, 13th May, } 1842.
Western Court, 3rd June, }

See Circular Order, No. 2, 2nd January, 1854.

No. 1339.

1841.
Act XXIX.

On a reference from the judge of Allahabad, relative to the applicability, or otherwise, of the provisions of Act XXIX. 1841, to the moonsiffs' courts in the stage of a case prior to the filing of the answer:—the Courts of Sudder Dewanny Adawlut were of opinion that the Act in question, must be held applicable, in supersession of Construction 758, and that no suit can be struck off on default, prior to the filing of the answer, before the expiration of six weeks.

Western Court, 18th May, } 1842.
Calcutta Court, 10th June, }

See No. 1321.

No. 1340.

1829.
Reg. X. Schedule B. Note to Art. 8.

Held, on a reference from the judge of Meerut, that in suits for fractional portions of malgoozaree estates, the valuation, according to the note at Article 8, Schedule B, Regulation X. 1829, is to be computed on a portion of the jumma of the entire estate corresponding with the fractional share sued for, and not, as has been the erroneous practice in some districts, according to the estimated selling price:—thus, for instance, if the suit be for a four annas share of an estate, assessed at 1,000 rupees, and within the range of the perpetual

settlement, the valuation will be 750 rupees, or three times the jumma (250 rupees) of the fractional portion.

Western Court, 18*th May*, } 1842.
Calcutta Court, 17*th June*, }

No. 1341.

Rule regulating the course of procedure in the event of a decree-holder transferring his decree to another party.

Held, on a reference from the judge of Futtehpore, that in the event of A. endorsing over a decree passed in his favor to B., it is essential to the formal recognition by a civil court of such a transfer that A., the transferring party, should certify in person, or by mookhtar, appointed for that special purpose, either verbally, or by petition, his having made the transfer to B., whose name should then be inserted in place of that of the original decree-holder, in the execution of decree process.

Western Court, 20*th May*, } 1842.
Calcutta Court, 17*th June*, }

See No. 1248.

No. 1342.

1813.
Reg. VI. Sec. 3.

The following letter was addressed to the judge of Nuddea, in reply to a reference from that officer :

"The Court having had before them your predecessor's letter, No. 216, on the 20th September last, direct me to observe that the award in question being dated 28th December, 1840, the period of six months, within which parties are required by Section 3, Regulation VI. 1813, to apply to the courts for enforcing such awards, did not expire till the 29th June, 1841. But as the 28th, the last day available to the petitioner in the present case, was a holiday, together with the following day, the 29th, the Court hold that it was allowable to him to present his application on the next first court day."

In considering the question raised by the judge of Nuddea, it was recognized as a general principle, that a party under legal obligation to move a court within a given period, may be allowed to postpone such motion to a day beyond the period, supposing the last day of the latter to be a Sunday or holiday.

Calcutta Court, 18*th, and Western Court*, 29*th March*, 1842.

See No. 1368, and Reported Summary Cases, 10th May , 1842, page 62, Carrau's Edition.

No. 1343.

A suit cannot be proceeded with against a defendant who has left the country, and upon whom notice of action cannot be served.

On a reference from the judge of Chittagong as to whether a suit could be carried on against a party who had proceeded to England, it was held that a case cannot be tried *ex parte* when it is known that the usual notice has not, and cannot, be served on the defendant.

Calcutta Court, 20th May, } 1842.
Western Court, 17th June, }

S.R. by. No. 116. Nov. 7. 1842.

No. 1346.

1817.
Reg. XII. Sec. 24.

1819.
Reg. I. Sec. 3, Clause 2.

Held, on a reference from the judge of Purnea, that the rule in Section 24, Regulation XII. 1817, which requires putwarees to produce their accounts when required by the courts of justice, is applicable to the subordinate courts. Moonsiffs who may require to put the rule in force should send the putwaree with a proceeding to that effect to the zillah judge.

Calcutta Court, 24th June, } 1842.
Western Court, 2nd August, }

No. 1348.

1805.
Reg. II. Sec. 2.

Rule of limitation in executing decrees passed in favor of Government.

On a reference from the additional judge of Benares, as to the right of Government to take out execution of a decree in its favor, after the expiration of 12 years from the date of judgment, it was held, that the terms of Section 2, Regulation II. 1805, which section declares claims on the part of Government to be cognisable by the courts if preferred within 60 years from the origin of the cause of action, have reference to to "hearing, trying, and determining" by the courts of civil justice of all claims preferred on the part of Government, but do not extend to the case of claims already adjudged; and that, therefore, Construction No. 136, declaring that decrees may be executed after 12 years, provided good and sufficient cause for the delay be shown, must be the rule of guidance in all cases, whether the decree be in favor of Government, or a private individual.

Western Court, 1st July, } 1842.
Calcutta Court, 22nd July, }

See No. 3.

No. 1350.

1839.
Circular Order. No. 30.

Regarding a decree-holder purchasing his debtor's property at public sale.

With reference to the printed Circular Order No. 30, dated the 18th January, 1839, it was held, on reference from the judge of Midnapore, that a decree-holder purchasing his debtor's property at a public sale by the collector, for a higher sum than the amount of his decree, must deposit 15 per cent. on the whole amount of the purchase-money, or the balance in full; as, should the balance

above the amount of his decree not be paid, the sale falls to the ground, and the purchaser forfeits the earnest money on the sum total bid by him.

Calcutta Court, 15th July, } 1842.
Western Court, 5th August, }

Extract from a Letter from the Judge of Backergunge, to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 11th July, 1842.

No. 1351.
1793.
Reg. XXXVI.

"Para. 2. A petition has been presented to this Court by A., stating that—on the rejection, by the officer in charge of the registry office, of a deed of sale executed by him in favor of B., on the ground of a similar deed purporting to have been executed by him in favor of C., a third party, having been already registered by a person acting under A.'s mookhtarnama, duly attested and sworn to by witnesses,—A. applied by written petition to the officer before mentioned, alleging that the deed and mookhtarnama were both forgeries, and requesting that such proceedings should be taken as might protect his interest from prejudice, but that this petition was rejected without any reasons assigned. Now, as the order on the petition does not state whether any and what inquiry into the validity of the mookhtarnama was instituted, subsequent to the date of the petition, I should think the proper course for the ends of justice would be to direct the register to institute an inquiry, if it had not been done, both as to the mookhtarnama and deed of sale already registered, and, if they, or at any rate if the mookhtarnama, appeared to be a forgery, to cause the delinquents to be proceeded against by application to the judge for commitment for forgery, or perjury, or both, as might be warranted.

"3. I cannot however discover any thing in the Regulations authorising such interference of the judge with the proceedings of the officer in charge of the office for the registry of deeds; on the contrary, he is directed to bring any irregularities to the notice of Government, and therefore, particularly as the case is a novel one, I have decided on applying for instructions.

"4. Another point apparently requires to be cleared up: on the mookhtarnama, or registered deed, being proved before a competent tribunal to be a forgery, it would, I conceive, be the duty of the registering officer to cancel the registry already made, and to admit the deed now tendered to registry; would the judge be competent, under these, or any other circumstances, to receive an appeal brought with a view to compel the registering officer to register or cancel the registry of a deed on his refusal to do either?"

Extract from the reply of the Calcutta Court.

"The register should register the deed brought to him for that purpose, leaving it to the courts to declare which of the two deeds of sale is the true and valid document, whenever that question may be raised in a regular suit. The register, however, must satisfy himself of the identity of the party registering the deed, if the latter appear in person, or, if by attorney, ascertain the due attestation and validity of the mookhtarnama."

The Western Court concurred.

Calcutta Court, 22nd July, } 1842.
Western Court, 12th August, }

No. 1355.

1829.
Reg. XIV.

Held, on a reference from the judge of Futtehpore, that parties instituting and defending suits in the Company's courts, and who reside in a foreign state, but hold lands and other property within the limits of the British territories, must nevertheless find security for costs, under the provisions of Regulation XIV. 1829.

Western Court, 5th August, } 1842.
Calcutta Court, 26th August, }

See No. 1377.

No. 1356.

1839.
Act IX. Sec. 1.

Held, by a majority of the Courts of Sudder Dewanny Adawlut, that orders passed by the zillah judges under Section 1, Act IX. 1839, rejecting applications to sue *in formâ pauperis*, are appealable to the Sudder Dewanny Adawlut.

Calcutta Court, 22nd July, } 1842.
Western Court, 19th August, }

No. 1357.

1823.
Reg VI.
1836.
Act X.

Held, on a reference from the session judge of Midnapore, that the decision of a principal sudder ameen, or sudder ameen, passed in a summary suit instituted under Regulation VI. 1823, which has been referred to him for decision under Section 5, Act X. 1836, is not appealable with reference to the rule of Section 6 of the former enactment.

Calcutta Court, 5th August, } 1842.
Western Court, 2nd September, }

No. 1358.

1829.
Reg. X.
Sch. B, Art. 8.

The following question was put to the Sudder Dewanny Adawlut for the North-Western Provinces by the judge of Cawnpore:

"I have a suit before me for possession of a Government 4 per cent. promissory note for 5,000 Sicca rupees, and have some doubt whether the appeal should not have been made to the superior court."

Extract of a Letter from the Register of the Sudder Dewanny Adawlut for the North-Western Provinces.

"The majority of the Court do not think any legal objection exists to the judge hearing the appeal. They observe the suit is not brought for the recovery of 5,000 Sicca rupees, but for a document valued at 5,000 Company's rupees, and which, if now sold in the bazar, would certainly not realize the sum at which the suit is brought; it was pledged for rupees 4,600, the amount for which it is said to be redeemable is 4,930."

Reply of the Calcutta Court.

"I am directed by the Court to acknowledge the receipt of your letter No. 1557, of the 5th ultimo, and to state, in reply, that the suit in question having been brought to recover possession of a Government promissory note for rupees 5,000, without mention of any currency, which amount is covered by a stamp of 150 rupees, and no objection having been urged against the valuation in the court of first instance, the Court are of opinion, with the majority of the Western Court, that the appeal lies to the zillah court."

Western Court, 5th August,
Calcutta Court, 2nd September, } 1842.

No. 1360.

Rule regarding the payment of deposits to vakeels.

Held, on a reference from the judge of Futtehpore, that money deposited in court as payable to a party, should never be paid to a vakeel, save under specific authority conveyed in the vakalutnama; and that for any sums paid away in any other mode, the officers making the disbursement must be held personally responsible.

Western Court, 5th August,
Calcutta Court, 9th September, } 1842.

No. 1362.

1837.
Act XXV.
Sec. 5.

On a reference from the judge of Furruckabad, whether in a suit referred to the principal sudder ameen, under Section 5, Act XXV. 1837, that officer would be bound by the rules regarding tulubana for service of process and the receipt of supplemental proceedings, applicable to the court of the moonsiff:—it was held, that the law

having made a specific declaration of the particular instances, *viz.* as regards stamp duties, and appeal, in which principal sudder ameens, acting in such a character are to be subject to the rules prescribed for the courts of the moonsiffs, the requirement must he held to be limited to the purport of that declaration, and that consequently, in the points instanced, the principal sudder ameen would not be tied down by the restrictions imposed by law on the moonsiffs' courts.

Western Court, 26th August, } 1842.
Calcutta Court, 9th September, }

No. 1363.

Rule regarding supplemental proceedings.

Held that a civil court, authorised to admit supplemental proceedings, may allow one supplemental plaint or answer to be filed on the application of the party wishing to do so, but has no authority to dictate to the parties, and order one to be filed without such application.

Western Court, 24th August, } 1842.
Calcutta Court, 23rd September, }

No. 1364.

1817.
Reg. XX. Sec. 10, Clause 4.

Held, on a reference from the session judge of the 24-Pergunnahs, that putneedars are included in the terms "landholders, proprietors, and farmers of land," made use of in clause 4, Section 10, Regulation XX. 1817, and therefore liable to be called upon to perform the duties referred to in that clause.

Calcutta Court, 2nd, and Western Court, 23rd September, 1842.

A zemindar can recover payment made by him for his putneedar for the zemindaree Dawk—Sudder Dewanny Reports 16th February, 1854.

From the Register of the Western Court to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 22nd December, 1842.

No. 1367.

1842.
Act X.

I am directed to request that you will lay the accompanying copy of a letter No. 493, *dated* 1st *instant, with its original enclosure, from the officiating commissioner of Meerut, before the Calcutta Court, for the opinion of the judges thereon.*

2. *On the several points, regarding which an interpretation of Act X.* 1842, *is sought, this Court would answer as follows:*

3. *Differing from Mr. Begbie, the Court would restrict the meaning of the term "householder" used in the Act to house pro-*

prietor, tenants not being included in the definition—an interpretation that seems obvious with reference to the provision, in Section 3, for the rate being raised by a per centage on the rent, or yearly value of the premises within the settlement, which could not be intended to be assessed by mere tenants of the property.

4. *On the second point of inquiry the Court agree with Mr. Begbie as to the permanent character of the committee when once constituted, subject to the liability of dissolution contemplated in Section 8, and in respect to the rates being annually revisable at the discretion of the committee. In the third subject of inquiry also the Court concurred with the commissioner.*

5. *With respect to the 4th question, the Court conceive that, under the terms of the Act, the committee in all its members would be jointly and severally responsible for any misappropriation of monies collected, to purposes foreign from those contemplated in the enactment; but they observe, that the fact, whether the Act complained of, was or was not a "misapplication" of the nature described in Section 3, would be determinable on trial of the "civil action" provided by the same section.*

From the officiating Commissioner of the 1st Division to the Register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated 1st December, 1842.

I have the honor to lay before the Court, the accompanying letter to my address from Major Angelo, secretary to the local committee at Mussooree, proposing, for resolution, certain points of doubt entertained by the residents at that place, regarding the meaning and intent of Act X. 1842.

2. *The points discussed by Major Angelo, are four in number.*

First.—The meaning to be attached to the word "householder" used in the Act.

Second.—Whether the application to be placed under the operation of the Act, is to be made annually, or only once, and the operation of the Act to be considered permanent when sanctioned by Government.

Third.—The propriety of appointing the political agent at Dehra, and the resident magistrate, to be ex-officio members of the committee; and

Fourth.—The degree of responsibility which will attach to the committee.

3. *On the first point, it appears to me that the word "householder" must be understood generally, as comprehending both tenants and house-proprietors. I see no difference between tenants in the hills and tenants in the plains, the rents of houses being fixed by the proprietors for the season, and being generally as high or higher, than the annual rents of houses in the plains. I apprehend no injury to the proprietors of houses likely*

to arise from the rates being voted by the tenants; as the former always have it in their power to raise their rents; and it appears to me that the latter have an equal, if not greater, interest than the proprietors in maintaining the roads or other public works in good repair. The interests of the proprietors are moreover protected by the limit of taxation fixed by Section 3 of the Act.

4. *On the second point, I conceive that when the Act shall have been once rendered operative, on the application of the householders, it must continue so permanently; and that a revision of rates should be made annually by the committee, with reference to the increase or decrease in the number of inhabited houses, and the rise or fall in rents.*

5. *Regarding the third point, I am of opinion that, with reference to Section 2 of the Act, the Political Agent at Dehra, not "being an inhabitant of the place," could not be appointed a member of the committee. I see no reason, however, why the resident magistrate should not be nominated a member of the committee, if so desired by that body, during the time of his actual residence in the hills.*

6. *With respect to the fourth and last point of doubt, it seems to me clear enough, that the intent of Section 3 of the Act is to hold the committee responsible for any fraudulent misapplication of the money collected by them; and not for any mere error of judgment "in respect of any contract entered into by them bonâ fide on behalf of the inhabitants."*

The Calcutta Court concurred on the 20th January, 1843.

See Act XXVI. 1850.

No. 1368.
1841.
Act XXIX.

On a reference from the judge of Cawnpore, it was held, in adoption of the rule of Circular Order of the Sudder Dewanny Adawlut, No. 25, dated 7th January, 1831, that the interval of the established vacations must not be allowed to be deducted, in the calculation of the period beyond which default is incurred under Act XXIX. 1841.

Western Court, 2nd, Calcutta Court, 23rd December, 1842.

See No. 1342.

No. 1369.

1825. Reg. IX. Sec. 3. 1822. Reg. VII. Secs. 11, 12, 14 and 16 to 35. 1833. Reg. IX.

Held, on a reference from the judge of Ghazeepore, that the Government are, by Section 3, Regulation IX. 1825, competent to authorise the revenue authorities, though not employed in revising settlements, to perform all the acts described in Sections 11, 12, 14, and 16 to 35, Regulation VII. 1822, in any specified tract within the provinces of Bengal, Behar, Orissa and Benares, in the summary adjudication of suits between individuals; that the provisions of Regulation IX. 1833, are applicable to adjudications in such parts, made in conformity with those provisions; and that, therefore, the collector is competent to adjudge claims connected with disputed boundaries in those tracts.

Western Court, 27*th January*, } 1843.
Calcutta Court, 10*th February*, }

See Sudder Dewanny Reports, 10th March, 1851, page 131.

No. 1371.

1833. Reg. IX.

Held, on a reference from the officiating judge of Jaunpore, that the jurisdiction of the civil courts is only barred by the provisions of Regulation IX. 1833, when the proceedings of the collector, or other officer, engaged in making settlements, are in conformity with the rules prescribed in the enactment; and that when a suit, brought to set aside the decisions passed and adjustments made by the revenue authorities, acting under the law quoted, is deemed admissible, it must be tried and decided, not with reference to the informality of the collector's proceedings, but on the merits of the plaintiff's claim.

Western Court, 7*th November*, 1842.
Calcutta Court, 17*th March*, 1843.

See Sudder Dewanny Reports, North-Western Provinces, 25th June, 1850, page 128.

No. 1372.

Circular Order No. 128, dated 2nd January, 1835.

Held, on a reference from the officiating judge of Hooghly, that copies or extracts of merchants' accounts and books, to be kept with the record, must be made on stamps of the value of 8 annas per sheet.

Calcutta Court, 20*th January*, } 1843.
Western Court, 6*th February*, }

No. 1373.

1814.
Reg. XXIII. Sec. 13, Clause 2.

Held, on a reference from the judge of Rungpore, that the prohibition contained in clause 2, Section 13, Regulation XXIII. 1814, does not extend to summary suits; and that moonsiffs are competent to try the fact of possession, by a European, of land attached by them in execution of decree, in the same manner, as they can inquire into the possession of lakhiraj land, as ruled by Constructions Nos. 798 and 1054.

Calcutta Court, 27*th January*, } 1843.
Western Court, 15*th February*, }

See Sec. 8. *Act* VI. 1843.

No. 1374.

Construction No. 1135, dated 2nd November, 1838.

Held, on a reference from the officiating judge of Chittagong, that fines, not exceeding 50 rupees, must be made commutable by imprisonment (Section 111, Regulation X. 1819,) and the orders executed by confinement of the individual for the prescribed period, unless the fine be paid in the interim, when the party is entitled to his discharge; and that if the fine exceed 50 rupees, but be not more than 400, (Section 31, Act XXIX. 1838,) and the order contain no provision for commuting the same to imprisonment, in default of payment, then the judge must proceed to realize the fine exactly in the same manner as he would do in the execution of a decree of his own court of the same amount as the fine imposed, taking care that the term of imprisonment in no case exceeds the scale laid down in Section 110, Regulation X. 1819.

Calcutta Court, 27*th January*, } 1843.
Western Court, 17*th February*, }

See No. 1405.

No. 1375.

1825.
Reg. II. Sec. 2, Clause 1.

Reviews of orders of remand in regular appeals.

Held, by a majority of the two Courts, that a case, without trial of the merits, being remanded for irregularity, either party being desirous of a review of that order, after the expiration of three months, must move the Court by a petition, engrossed on a stamp of the value prescribed for petitions given after the period of three months by clause 1, Section 2, Regulation II. 1825.

Western Court, 31*st January*, } 1843.
Calcutta Court, 24*th February*, }

No. 1376.

1793.
Reg. 1838.
Act XXX.

The office of register of deeds at a station, where a zillah court is located, is constituted according to the provisions of Regulation XXXVI. 1793, and the subsequent enactments bearing on the same subject. Act XXX. 1838, is only applicable to those stations where civil courts have not hitherto been established.

Western Court, 10*th June*, } 1843.
Calcutta Court, 30*th June*, }

No. 1377.

1829.
Reg. XIV.

The provisions of Regulation XIV. 1829, which require that foreigners suing in Company's Courts, shall give security for costs, held to be applicable to the courts of the sudder ameens and moonsiffs.

Western Court, 1*st July*, } 1843.
Calcutta Court, 21*st July*, }

See No. 1355.

No. 1385.

1843.
Act XII.

Held by the Western Court, in concurrence with the Calcutta Court, that Act XII. 1843, renders it obligatory on judges of all denominations to record, in their own handwriting, their original decisions and the reasons thereof.

Western Court, 3*rd May*, } 1844.
Calcutta Court, 21*st June*, }

No. 1388.

1835.
Act XI. Sec. 4.

Held, on a reference from the commissioner of the 5th or Benares Division, that the districts over which the Government of the North-Western Provinces extends are to be considered within the jurisdiction of the Calcutta Supreme Court, *quoad* the purposes specified in Section 4, Act XI. 1835.

Western Court, 14*th May*, } 1844.
Calcutta Court, 7*th June*, }

No. 1389.

1831.
Clauses 2, and 3,
Sec. 5 Reg. V.
1843.
Sec. 8, Act VI.

Held, on a reference from the judge of Mynpooree, that moonsiffs are competent to receive and determine suits for the property in, and the possession of lands held exempt from revenue, as well as suits for damages on account of personal injuries, and for personal damages of whatever kind, provided the suits be in other respects admissible.

Western Court, 24*th June*, } 1844.
Calcutta Court, 23*rd August*, }

No. 1396.

1803.
Clause 7, Sec. 16.
Reg. III.
1806.
Sec. 6, Reg. XV.
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British subject.

A zillah judge is not required to take charge of the property of a deceased British subject, whose will is forthcoming, and that whether a trustee or executor be on the spot or not.

If the will be found subsequently to his taking charge, the judge is to keep the property under his custody, until probate is duly taken out.

A person born in India, in wedlock, of a European father and East Indian mother, is a British subject, and entitled to all the privileges enjoyed by that class.

Western Court, 28*th April*, } 1845.
Calcutta Court, 16*th May*, }

No. 1397.

1822.
Reg. VII.
1825.
Reg. IX.

Held, on a reference from the officiating judge of Goruckpore, that there is no legal prohibition against the same individual's trying in the capacity of judge cases which may have been judicially determined by him as collector or settlement officer.-

Western Court, 20*th May*, } 1845.
Calcutta Court, 13*th June*, }

No. 1399.

1845.
Sec. 3, Act IV.

On a reference from the judge of Furruckabad, as to the construction of the term "usual fee," in Section 3, Act IV. 1845, it was held that a fee of 2 Rupees, as usual in the registration of a deed, should be levied for every copy of a deed sent to the Register of another district for registration.

Western Court, 23*rd June*, } 1845.
Calcutta Court, 25*th July*, }

No. 1402.

1814.
Clause 2, Sec. 4.
Reg. XXVI.

After the admission of an appeal from a judgment in a regular suit, no application for a review of that judgment can be received by the lower court, whatever be the result of the appeal.

The same rule will apply in case of admission of a special appeal, although the admission and determination of such appeal are irrespective of the facts on which rests the judgment of the lower courts, and on which an application for review must be grounded.

Western Court, 28*th July*, } 1845.
Calcutta Court, 5*th September*, }

See No. 1057.

No. 1405.

1819.
Sec. 110, Reg. X.

The following extract from a letter addressed to the judge of Tipperah on the 4th July, 1845, contains the opinion of the Calcutta and Western Courts, on a question which arose regarding the realization of fines under the salt laws.

The principle of Section 110, Regulation X. 1819, is, that imprisonment can only be awarded in commutation of fine. When, therefore, a party has suffered the full period of imprisonment adjudged for non-payment of fine, or an order is passed for imprisoning him, all proceedings against his property for the realization of the amount should cease. But if the judge, agreeably to the request of the salt agent, proceeds to attach property with a view to realization of the fine, he cannot simultaneously pass an order for the confinement of the party. In the event, however, of his not being able to realize the fine imposed in full, he may confine the party for the entire period of imprisonment in commutation.

Western Court, 4th June, } 1845.
Calcutta Court, 4th July, }

See Nos. 1374 and 1135.

No. 1410.

1841.
Sec. 2, Act XI.

Ruled, on a reference from the judge of Cawnpore, that suits under Section 2, Act XI. 1841, can be instituted only before a Military Court, and are not liable to the ordinary rules of jurisdiction in regard to the place in which the cause of action may have arisen.

Western Court, 26th May, } 1846.
Calcutta Court, 19th June, }

No. 1414.

1829.
Para. 4 of Note to Article 8, Schedule B, Reg. X.

The valuation of a suit for possession of land, under a farming lease, must, according to the spirit of paragraph 4 of the note to Article 8, Schedule B, Regulation X. 1829, be laid at the estimated value of the plaintiff's interest therein, or, in other words, at the estimated selling price.

Western Court, 12th June, } 1847.
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