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G O V E R N O R A N D C O U N C I L

A t *F O R T W I L L I A M*, &c.

Respecting the Administration of Justice amongst
the Natives in *Bengal*.

NOV 1 1940

The Fortieth Paragraph of the Letter from the President
and Council in *Bengal*, for the Department of the
Revenues, to the Court of Directors, dated 3d *November*;
1772.

THE more regular Administration of Justice was deliberated on by
the Committee of Circuit, and a Plan was formed by them, which
afterwards met with our Approbation: We cannot give you a bet-
ter Idea of the Grounds on which this was framed, than by referring you to
a Copy of it, together with a Letter from the Committee to the Board, on
the

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the Occasion, both of which make Numbers in this Packet, and we earnestly recommend them to your Perusal, requesting to be assisted with such further Orders and Instructions thereon, as they may require for compleating the System, which we have thus endeavoured to establish, on the most equitable, solid and permanent footing. We hope they will be read with that Indulgence, which we are humbly of Opinion is due to a Work of this Kind, undertaken on the plain Principles of Experience and common Observation, without the Advantages which an intimate Knowledge of the Theory of Law might have afforded us: *We have endeavoured to adapt our Regulations to the Manners and Understandings of the People, and Exigencies of the Country, adhering, as closely as we were able, to their ancient Usages and Institutions.* It will be still a Work of some Months, we fear, before they can be thoroughly established throughout the Provinces, but we shall think our Labours amply recompensed, if they meet with your Approbation, and are productive of the good Effects we had in View.

Letter from the Committee of Circuit, to the Council
at *Fort William*, dated *Cossimbuzar*, 15th August,
1772.

IN the Copy of our Proceedings, which accompanied our Letter of the 28th *ultimo*, we intimated our Intention of communicating to you our Sentiments in a future Address, upon the Subject of the Magistracy of this Province, which, though an Appendage of the Nizamut, we considered as not necessarily connected with the Propositions, which were then recommended to your Attention, and of too much Importance to be lightly or only occasionally treated.

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WE now transmit to you the Result of our Deliberations on this Subject, in the enclosed Paper, entitled "A Plan for the Administration of Justice;" and if it meets with your Approbation, we wish to receive your Instructions for carrying it into immediate Execution.

FOR the Information of our Honourable Employers, it may be necessary to premise, what you will readily perceive, that, in forming the inclosed Plan, we have confined ourselves, with a scrupulous Exactness, to the Constitutional Terms of Judicature, already established in this Province, which are not only such as we think in themselves best calculated for expediting the Course of Justice, but such as are best adapted to the Understandings of the People. Where we shall appear to have deviated in any respect from the known Forms, our Intention has been to recur to the original Principles, and to give them that Efficacy, of which they were deprived by venal and arbitrary Innovations, by partial Immunities, granted as a Relief against the general and allowed Abuse of Authority, or by some radical Defect in the Constitution of the Courts in being; and these Changes we have adopted with the less Hesitation, as they are all of such a Nature, as we are morally certain will prove both of general Satisfaction and general Ease to the People.

THE general Principles of all despotic Governments, that every Degree of Power shall be simple and undivided, seems necessarily to have introduced itself into the Courts of Justice; this will appear from a Review of the different Officers of Justice, instituted in these Provinces, which, however unwilling we are to engross your Time with such Details, we deem necessary on this Occasion, in Proof of the above Assertions, and in Justification of the Regulations, which we have recommended.

First. THE Nazim, as Supreme Magistrate, presides personally in the Trials of Capital Offenders, and holds a Court every Sunday, called the Rôz Adawlut.

Second. THE Dewan is the supposed Magistrate for the Decision of such Causes, as relate to real Estates, or Property in Land, but seldom exercises this Authority in Person.

Third. THE Darogo Adawlut-al-Aalea is properly the Deputy of the Nazim; he is the Judge of all Matters of Property, excepting Claims of Land and Inheritance; he also takes Cognizance of Quarrels, Frays and abusive Names.

Fourth. THE Darogo Adawlut Dewannee, or Deputy of the Dewan, is the Judge of Property in Land.

Fifth. THE Phoujdar is the Officer of the Police, the Judge of all Crimes not Capital; the Proofs of these last are taken before him, and reported to the Nazim for his Judgment and Sentence upon them.

Sixth. THE Câzee is the Judge of all Claims of Inheritance or Succession; he also performs the Ceremonies of Weddings, Circumcision, and Funerals.

Seventh. THE Mohtesib has Cognizance of Drunkenness, and of the vending of Spirituous Liquors and intoxicating Drugs, and the Examination of false Weights and Measures.

Eighth. THE Muftee is the Expounder of the Law. *Memorandum,* The Caze is assited by the Muftee and Mohtesib in his Court: After hearing
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ing the Parties and Evidences, the Muftee writes the Fettwa, or the Law applicable to the Cafe in Question, and the Câzee pronounces Judgment accordingly. If either the Câzee or Mohtefib difapprove of the Fettwa, the Caufe is referred to the Nazim, who fummons the Ijlafs, or General Affembly, confifting of the Câzee, Muftee, Mohtefib, the Darogos of the Adawlut, the Moulavies, and all the Learned in the Law, to meet and decide upon it. Their Decision is final.

Ninth. THE Canongoes are the Registers of the Lands. They have no Authority, but Caufes of Land are often referred to them for Decision, by the Nazim, or Dewan, or Darogo of the Dewannee.

Tenth. THE Coctwall is the Peace Officer of the Night, dependent on the Phoujdarree.

FROM this Lift it will appear, that there are properly Three Courts for the Decision of Civil Caufes (the Canongoes being only made Arbitrators by Reference from the other Courts) and one for the Police and Criminal Matters. The Authority of the Mohtefib in the latter being too confined to be confidered as an Exception: Yet, as all defective Inftitutions foon degenerate, by Ufe, into that Form to which they are inclined, by the unequal Prevalence of their component Parts; fo thefe Courts are never known to adhere to their prefcribed Bounds, but when reftained by the Vigilance of a wifer Ruler than commonly falls to the Lot of defpotic States; at all other Times, not only the Civil Courts encroach on each others Authority, but both Civil and Criminal often take Cognizance of the fame Subjects; or their Power gradually becomes weak and obfolete, through their own Abufes, and the Ufurpations of Influence. For many Years paff, the Darogos of the Adawlut-al-Aalea, and of the Dewannee, have been confidered as Judges of the fame Caufes, whether of real or personal Property; and the

Parties

Parties have made their Application, as Chance, Caprice, Interest, or the superior Weight and Authority of either directed their Choice. At present, from obvious Causes, the Dewannee Adawlut is in effect the only Tribunal: The Adawlut-al-Aalaa, or the Court of the Nazim, existing only in Name.

IT must however be remarked, in Exception to the above Assertions, that the Phoujdarree being a single Judicature, and the Objects of it clearly defined, it is seldom known, but in Time of Anarchy, to encroach on the Civil Power, or lose much of its own Authority; this however is much the Case at present.

THE Court, in which the Câzee presides, seems to be formed on wiser Maxims, and even on more enlarged Ideas of Justice, and Civil Liberty, than are common to the despotic Notions of Indian Governments.

THEY must be unanimous in their Judgment, or the Case is referred in Course to the General Assembly; but the Intention of this Reference is defeated, by the Importance which is given to it, and the insurmountable Difficulties attending the Use of it; few Cases of disputed Inheritance will happen, in which the Opinions of Three independent Judges shall be found to concur: There is therefore a Necessity, either that One shall over-rule the other Two, which destroys the Purpose of their Appointment, or that daily Appeals must be made to the Nazim, and his Warrant issued to summon all Learned in the Law, from their Homes, their Studies, and necessary Occupations, to form a tumultuous Assembly, to hear and give Judgment upon them: The Consequence is, that the General Assembly is rarely held, and only on Occasions which acquire their Importance from that of the Parties, rather than from the Nicety of the Case itself: The Câzee therefore either advises with his Colleagues in his own particular Court, and gives Judgment according to his own Opinion, or more frequently decides without their Assistance or Presence.

ANOTHER great and capital Defect in these Courts is the want of a Substitute or subordinate Jurisdiction, for the Distribution of Justice in such Parts of the Province, as lie out of their Reach, which in effect confines their Operations to a Circle, extending but a very small Distance beyond the Bounds of the City of Moorshedabad: This indeed is not universally the Case, but perhaps it will not be difficult to prove the Exceptions to be an Accumulation of the Grievance, since it is true that the Courts of Adawlut are open to the Complaints of all Men; yet it is only the rich, or the vagabond Part of the People, who can afford to travel so far for Justice; and if the industrious Labourer is called from the farthest Part of the Province to answer their Complaints, and wait the tedious Process of the Courts to which they are thus made amenable, the Consequences in many Cases will be more ruinous and oppressive, than an arbitrary Decision could be, if passed against them without any Law or Process whatever.

THIS Defect is not however left absolutely without a Remedy, the Zemindars, Farmers, Shicdars, and other Officers of the Revenue assuming that Power, for which no Provision is made by the Laws of the Land, but which, in whatever Manner it is exercised, is preferable to a total Anarchy: It will however be obvious, that the Judicial Authority lodged in the Hands of Men, who gain their Livelihood by the Profits on the Collections of the Revenue, must unavoidably be converted to Sources of private Emolument; and in effect the greatest Oppressions of the Inhabitants owe their Origin to this necessary Evil: The Câze has also his Substitutes in the Districts, but their legal Powers are too limited to be of general Use, and the Powers which they assume being warranted by no lawful Commission, but depending on their own Pleasure, or the Ability of the People to contest them, is also an Oppression.

FROM this Variety of Materials, we have endeavoured to form the Plan of a more compleat, but more extensive System of Judicature, by constituting Two Superior Courts at the Capital, the one composed of the united Magistracy of the Adawlut-al-Aalea, the Adawlut Dewannee and the Câzee (or Câzee's Office) for the Decision of Civil Causes, the other corresponding to the Phoujdarree, for the Trial of Criminal Cases. To prevent the Abuse of the Power vested in these Courts, and to give Authority to their Decrees, each, instead of a single Judge, is made to consist of several Members, and their Enquiries are to be conducted under the Inspection and Sanction of the Supreme Administration. To render the Distribution of Justice equal in every Part of the Province, similar but inferior Courts are also proposed for each separate District, and accountable to the superior. The usurped Power of the Officers of the Collections, and of the Creditors over the Persons of their Debtors, is abolished.

THE Judicial Authority, which by the Tenth Regulation is still allowed to the Farmers of the Revenue, is a single Exception to the General Rule, which we have laid down of confining such Powers to the Two Courts of Adawlut; but as this is restricted to Cases of Property not exceeding Ten Rupees, and as they have no Power of inflicting Punishment, or levying Fines, we think an ill Use is not likely to be made of so inconsiderable a Privilege, especially as they themselves are amenable to the Courts of Justice, which will be always ready to receive Complaints against them; and some such Means of deciding the trifling Disputes of the Ryots upon the Spot, are absolutely necessary, as they cannot afford, nor ought to be allowed, on every mutual Disagreement, to travel to the Sudder Cutcherry for Justice.

THE detestable and authorized Exactions of the Phoujdarree Court, which had its exact Imitators in every Farmer and Aumil of the Province,
under

under the Denomination of Bazeé Jumma, have been prohibited, conformably to the wise and humane Injunctions of our Honourable Masters, who, from the same Spirit of Equity, have renounced the Right hitherto exercised by the Country Government, and authorized by the Mahometan Law, to a Commission on the Amount of all Debts, and on the Value of all Property recovered by the Decrees of its Courts; a Practice repugnant to every Principle of Justice, as it makes the Magistrate a Party in the Cause on which he decides, and becomes a legal Violation of the Rights of private Property, committed by that Power which should protect and secure it.

It has also been our Aim to render the Access to Justice as easy as possible.

By keeping exact Records of all Judicial Proceedings, it is hoped that these Institutions, if they receive the Sanction of your Approbation, will remain free from the Neglects and Charges, to which they would be liable from a less frequent Inspection.

WE have judged it necessary to propose some Exceptions to the Order of the Honourable Court of Directors, for the total Abolition of Fines in the Court of Phoujdarree. All Offences are not punishable by Stripes, and to sentence Men of a certain Rank in Life, or of a superior Cast, to such a public Disgrace, would exceed the Proportion of the Offence, and extend the Punishment to all the Relations and Connections of the Delinquent; to suffer him to escape, with total Impunity, would be an Injustice in the other Extreme; in such Cases there is but the middle Way, which we can adopt with an equal Regard to the Spirit of our Honourable Masters Commands, and the Rights of Justice, and that is, by levying the Fine upon the Offender, but converting it to a Reparation of the Injury.

OUR Motives, for the Abolition of the Fees of the Câzees and Mustees, will best appear, in the following Extract of a Minute of our Proceedings at Kishen-Nagur, relating to the Haldarree, or Tax on Marriages, which, for the Reasons therein assigned, we forbid to be levied any longer, and deducted from the Settlement of Nuddea: Convinced of the pernicious Effects of so impolitic a Tax, we propose to grant the same Exemption to the other Districts subject to our Direction, and submit to your Consideration, whether it will not be proper to make it general throughout the Province.

THE same Reasons, which have induced us to abolish the Haldarree, operate with equal Force against the Fees of the Câzees and Mustees, which have always proved a heavy Grievance to the Poor, and an Impediment to Marriage: We have therefore determined on a total Abolition of these, and of the other less Dues hitherto allowed to these Officers, and to put them on the footing of Monthly Servants with fixed Salaries: We were led to this Resolution, not only by the speculative Advantages which it promised, but by the Experience which this Country has already had of its Effects, from a similar Institution of the Nabob Meer Cossim, about the Beginning of the Year 1763, which (as we are assured) was productive of more Marriages than had been known to take place for Years before; and Instances have been even quoted of Men of Forty and Fifty Years of Age, who, till then had led a Life of Celibacy, immediately availed themselves of this Exemption to enter into a State, from which they had been before precluded, solely by the want of Means to support the various Expences attending it.

Extract of the Proceedings of the Committee at *Kishen-*
Nagur, dated the 28th *June*, 1772.

“ THE Collector explains the Haldarree, or Custom on Marriage, to be a
“ Tax levied by Government, at the variable Rate of Three Rupees; Three
“ Rupees Eight Annas, and Four Rupees Four Annas each: Besides the
“ Haldarree, there are Fees paid to the Câzees and Muftees: The former
“ receive from the principal Inhabitants Two Rupees; from the Second Class,
“ One Rupee Eight Annas; and from the lowest Class, One Rupee: The
“ Fees of the Muftees are received from the Musicians, and other People
“ who officiate at the Festival, so that, on the whole, the Fees of Marriage may
“ be estimated at Six Rupees for each, exclusive of the Dues, or voluntary
“ Benefactions of the Gentoos to their Bramins.”

“ THE Committee are of Opinion, and resolve accordingly, that all the
“ Fees and Taxes of this Article, which produce a Revenue to Government,
“ be abolished, as tending to discourage Population, an Object at all Times
“ of Importance to Government, but more especially at this Time, from the
“ great Loss of Inhabitants, which the Country has sustained by the late
“ Famine, and the Mortality which followed it: They are further of Opi-
“ nion, that the abolishing of the Fees to the Câzee and Muftee will afford
“ a great Relief to the Inhabitants, as it will not only absolve them from the
“ Fees themselves, but also from the Effects of the oppressive Mode, in which
“ these Dues are exacted: But on this Subject, they judge it will be more
“ proper to come to a general Resolution at the City, and therefore postpone
“ the further Consideration of it, until their Arrival at that Place.”

WE have judged it necessary to add to the Regulations, with respect to the Courts of Phoujdarree, a Proposal for the Suppression and Extirpation of Decoits, which will appear to be dictated by a Spirit of Rigour and Violence, very different from the Caution and Lenity of our other Propositions, as it in some respects involves the innocent with the guilty. We wish a milder Expedient could be suggested, but we much fear, that this Evil has acquired a great Degree of its Strength from the Tendernefs and Moderation, which our Government has exercised towards those Banditti, since it has interfered in the internal Protection of the Provinces. We confess, that the Means which we propose can in no wise be reconcileable to the Spirit of our own Constitution; but till that of Bengal shall attain the same Perfection, no Conclusion can be drawn from the English Law, that can be properly applied to the Manners or State of this Country. The Decoits of Bengal are not like the Robbers in England, Individuals driven to such desperate Courses by sudden Want: They are Robbers by Profession, and even by Birth: They are formed into regular Communities, and their Families subsist by the Spoils which they bring home to them; they are all therefore alike criminal; Wretches, who have placed themselves in a State of declared War with Government, and are therefore wholly excluded from every Benefit of its Laws. We have many Instances of their meeting Death with the greatest Insensibility; it loses therefore its Effect as an Example, but when executed in all the Forms and Terrors of Law, in the midst of the Neighbours and Relations of the Criminal, when these are treated as Accessaries to his Guilt, and his Family deprived of their Liberty, and separated for ever from each other, every Passion, which before served as an Incentive to Guilt, now becomes subservient to the Purposes of Society, by turning them from a Vocation, in which all they hold dear, besides Life, becomes forfeited by their Conviction; at the same Time, their Families, instead of being lost to the Community, are made useful Members of it, by being adopted into those of the more civilized Inhabitants.

Inhabitants. The Ideas of Slavery, borrowed from our American Colonies, will make every Modification of it appear, in the Eyes of our own Countrymen in England, a horrible Evil : But it is far otherwise in this Country ; here Slaves are treated as the Children of the Families to which they belong, and often acquire a much happier State by their Slavery, than they could have hoped for by the Enjoyment of Liberty ; so that, in effect, the apparent Rigour, thus exercised on the Children of convicted Robbers, will be no more than a Change of Condition, by which they will be no Sufferers, though it will operate as a Warning on others, and is the only Means, which we can imagine, capable of dissipating these desperate and abandoned Societies, which subsist on the Distress of the general Community.

Alexander Higginson, *Secretary.*

Revenue Department,
Fort William, 3d Nov. 1772.

A PLAN,

A P L A N,

F O R T H E

A D M I N I S T R A T I O N O F J U S T I C E,

Extracted from the Proceedings of the COMMITTEE
OF CIRCUIT, 15th AUGUST, 1772.

I.

THAT in each District shall be established Two Courts of Judicature, one by the Name of Mofufful Dewannee Adawlut, or Provincial Court of Dewannee, for the Cognizance of Civil Causes; the other by the Name of Phoujdarree Adawlut, or Court of Phoujdarree, for the Trial of all Crimes and Misdemeanors.

II.

THAT for the better ascertaining the Jurisdiction of each Court, and to prevent Confusion, and a Perversion of Justice, the Matters cognizable by each respectively are declared to be as follows :

ALL Disputes concerning Property, whether real or personal; all Causes of Inheritance, Marriage and Cast; all Claims of Debt, disputed Accounts, Contracts, Partnerships, and Demands of Rent, shall be judged by the Dewannee Adawlut.

BUT

BUT from this Distribution is excepted the Right of Succession to Zemindarrees and Talucdarrees, which shall be left to the Decision of the President and Council.

ALL Trials of Murder, Robbery and Theft, and all other Felonies, Forgery, Perjury, and all Sorts of Frauds and Misdemeanors, Assaults, Frays, Quarrels, Adultery, and every other Breach of the Peace, or violent Invasions of Property, shall be submitted to the Phoujdarree Adawlut.

III.

THAT in the Provincial Court of Dewannee, the Collector of each District shall preside on the Part of the Company, in their Quality of King's Dewan, attended by the Provincial Dewan, appointed by the President and Council, and the other Officers of the Cutcherry; that the Court shall be regularly held on every Monday and Thursday, and oftner if Necessity require, and that no Causes shall be heard or determined, but in the open Court regularly assembled.

IV.

THAT in the Phoujdarree Adawlut, the Câzee and Mufree of the District, and Two Moulavies, shall sit to expound the Law, and determine how far the Delinquents shall be guilty of a Breach thereof; but that the Collector shall also make it his Business to attend to the Proceedings of this Court, so far as to see that all necessary Evidences are summoned and examined, that due Weight is allowed to their Testimony, and that the Decision passed is fair and impartial, according to the Proofs exhibited in the Course of the Trial; and that no Causes shall be heard or determined, but in the open Court regularly assembled.

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THAT, in like Manner, Two Superior Courts of Justice shall be established at the Chief Seat of Government, the one under the Denomination of the Dewannee Sudder Adawlut, and the other the Nizamut Sudder Adawlut.

VI.

THAT the Dewannee Sudder Adawlut shall receive and determine Appeals from the Provincial Dewannee Adawlut; that the President with Two Members of the Council shall preside therein, attended by the Dewan of the Khalfā, the Head Canongoes, and other Officers of the Cutcherry; in case of the Absence of the President, a Third Member of the Council to sit, that is to say, not less than Three Members to decide on an Appeal, but the whole Council may sit if they choose it.

VII.

THAT a Chief Officer of Justice, appointed on the Part of the Nazim, shall preside in the Nizamut Adawlut, by the Title of Darogo Adawlut, assisted by the Chief Cāzee, the Chief Musfee, and Three capable Moulavies; that their Duty shall be to revise all the Proceedings of the Phoujdarree Adawlut, and in Capital Cases by signifying their Approbation or Disapprobation thereof, with their Reasons at large, to prepare the Sentence for the Warrant of the Nazim, which shall be returned into the Mofussil, and there carried into Execution; that with respect to the Proceedings in this Court, a similar Control shall be lodged in the Chief and Council, as is vested in the Collectors in the Districts, so that the Company's Administration in Character of King's Dewan may be satisfied; that the Decrees of Justice, on which both
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the Welfare and Safety of the Country so materially depend, are not injured or perverted by the Effects of Partiality or Corruption.

VIII.

THAT, in order to preserve the Dignity and Importance of the Two Superior Courts, there shall be Two Courts of Adawlut established at the Seat of Government, exactly on the same Plan as those of the Districts: In that of the Dewannee, a Member of the Council shall preside; and in that of the Phoujdarree, another Member of the Council shall exercise the Control, specified in the Fourth Regulation: These Duties to be performed by the Members in Rotation.

IX.

THAT as nothing is more conducive to the Prosperity of any Country, than a free and easy Access to Justice and Redress, the Collectors shall at all Times be ready to receive the Petitions of the injured; and further, to prevent their being debarred this Access from Motives of Interest, Partiality, or Resentment in the Officers or Servants of the Cutcherry, that a Box shall be placed at the Door of the Cutcherry, in which the Complainants may lodge their Petitions at any Time or Hour they please; that the Collector shall himself keep the Key of this Box, and each Court Day have such Arzees as he may find in it read immediately in his Presence, by the Arizbeggy of the Cutcherry.

X.

THAT, in summoning from the Farmed Lands Persons complained against, or Evidences called on by the Parties, the Rule laid down in the Ninth Article of the Public Regulations is to be strictly adhered to. The Collector ought further to avoid, as studiously as possible, summoning any Persons from
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the Mofufful, who are any way connected with the Revenue, during the Months of Bhadoom, Assin, Aughun, and Poos, unless in Cases which call for immediate Enquiry and Example.

XI.

THAT, in order to facilitate the Course of Justice in trivial Causes, and relieve the Ryot from the heavy Grievance of travelling to a great Distance to seek for Redress, all Disputes of Property, not exceeding Ten Rupees, shall be decided by the Head Farmer of the Purgunnah, to which the Parties belong, and his Decree shall be final.

XII.

THAT the Process observed for trying Causes, in the Provincial Dewannee Adawlut, shall be as follows: First, To file and read the Petition of the Complainant. Secondly, To allot a limited Time for the Defendant to give Answer, which when received shall also be filed and read. Thirdly, To hear the Parties, *viva voce*, and if necessary examine Evidences; and Lastly, To pass Decree — That, if in adhering to this Order of Process, the Defendant shall evade or delay giving Answer within the limited Time, Judgment shall pass against him.

XIII.

THAT complete Records shall be kept in the Mofufful Dewannee Adawlut, in which shall be inserted the Petition of the Complainant, the Answer of the Defendant, the subsequent Process, and Examination of Evidence, and finally the Decree; that, upon Decree being passed, both Parties shall be furnished with a Copy thereof, free of Expence, and that such Copies shall be authenticated under the Public Seal, and the signing of the Collector: That a Copy of the Records entire shall be also transmitted, twice a Month, to
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the Sudder Dewannee Adawlut, through the Channel of the President and Council.

XIV.

THAT each Collector shall also keep an Abstract Register of his Adawlut, in English, containing the Names of the Plaintiff and Defendant, the Substance of the Suit, the Substance of the Decree, the Date of the Cause being filed, and the Date of the Decree being passed; and this Abstract also shall be transmitted twice a Month to the Sudder Dewannee Adawlut.

XV.

THAT as the Litigiousness and Perseverance of the Natives of this Country, in their Suits and Complaints, is often productive not only of Inconvenience and Vexation to their Adversaries, but also of endless Expence and actual Oppression, it is to be observed, as a standing Rule, that Complaints of so old a Date as Twelve Years shall not be actionable: And further, should they be found guilty, as is often the Case, from the Principles above-mentioned, of flying from the one Court to the other, in order to prevent and protract the Course of Justice, the Party, so transgressing, shall be considered as nonsuited, and shall, according to his Degree in Life, and the Notoriety of the Offence, be liable to Fine or Punishment.

N. B. By the Mahometan Law, all Claims which have lain dormant for Twelve Years, whether for Land or Money, are invalid.—This also is the Law of the Hindoos, and the legal Practice of the Country.

XVI.

THAT the Custom of levying Chout, Duffuttra, Puchuttra, or any other Fee or Commission on the Account of Money recovered, or Etlâk on the

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Decision

Decision of Causes, as well as all heavy arbitrary Fines, is absolutely and for ever abolished.

XVII.

THAT as however Cases may occur, in which it will be highly necessary, for the Welfare of the Community, to curb and restrain trivial and groundless Complaints, and to deter Chicane and Intrigue, which Passions amongst these People often work, to the undoing of their Neighbours, a Discretion shall in such Cases be left to the Court, either to impose a Fine, not exceeding Five Rupees, or inflict Corporal Punishment, not exceeding Twenty Lashes with a Rattan, according to the Degree of the Offence, and the Person's Station in Life.

XVIII.

THAT in adjusting the Claims of old Debts, it shall be observed, as a Rule, that they bear no further Interest after such Adjustment, but that the Amount shall be payable by Kistbundee, according to the Circumstances of the Party: And as the Rates of Interest, hitherto authorized by Custom, have amounted to the most exorbitant Usury, the following Rates are now established to be received and paid, as well for past Debts as on future Loans of Money, *viz.* On Sums not exceeding One Hundred Rupees Principal, an Interest of Three Rupees Two Annas *per Cent. per Menssem*, or Half an Anna in the Rupee: On Sums above One Hundred Rupees Principal, an Interest of Two Rupees *per Cent. per Menssem*, the Principal and Interest to be discharged according to the Condition of the Bond; and all Compound Interest, arising from an intermediate Adjustment of Accounts, to be deemed unlawful and prohibited: When a Debt is sued for upon a Bond, which shall be formed to specify a higher Interest than the established Rates, the Interest shall be wholly forfeited to the Debtor, and the Principal only recoverable; and that

that all Attempts to elude this Law, by Deductions from the Original Loan, under whatever Denomination, shall be punished, by a Forfeiture of One Moiety of the Amount of the Bond to the Government, and the other Half to the Debtor.

XIX.

THAT all Bonds shall be executed in the Prefence of Two Witneffes.

XX.

THAT whereas it has been too much the Practice in this Country, for Individuals to exercise a Judicial Authority over their Debtors; a Practice, which is not only in itself unlawful and oppressive, seeing a Man thereby becomes the Judge in his own Cause, but which is also a direct Infringement of the Prerogative and Powers of the regular Government; that Publications shall therefore be made, forbidding the Exercise of all such Authority, and directing all Persons to prefer their Suits to the established Court of Adawlut; and that the Collector shall particularly attend to this Regulation, which, it is apprehended, will prove a great Means of Relief to the helpless Ryot from his merciless Creditor, the Money Lender.

XXI.

THAT in all Cases of disputed Property, regarding Lands, Houses, Landmarks, &c. where a local Investigation is required, an Aumin shall be chosen with the mutual Consent of the Parties, or if they cannot agree in the Choice of one Person, each shall have the Privilege of nominating his own, and the Collector shall decide upon their joint Report of Circumstances. The Collector is also to attend, that the Aumins do not accumulate Expences by unnecessary Delays, but that their Scrutinies, and their Wages, be limited to the Time he judges sufficient for performing the
Service

Service in Question. The Expence of the Inquiry to be defrayed by the Person who is cast.

XXII.

THAT in all Cases of disputed Accounts, Partnerships, Debts, doubtful or contested Bargains, Non-Performances of Contracts, and so forth, it shall be recommended to the Parties to submit the Decision of their Cause to Arbitration, the Award of which shall become a Decree of the Dewannee Adawlut; the Choice of the Arbitrators is to rest with the Parties, but they are to decide the Cause without Fee or Reward. The Collector, on the Part of Government, is to afford every Encouragement in his Power to Inhabitants of Character and Credit, to become Arbitrators, but is not to employ any coercive Means for that Purpose.

XXIII.

THAT in all Suits regarding Inheritance, Marriage, Cast, and other religious Usages or Institutions, the Laws of the Koran with respect to Mahometans, and those of the Shaster with respect to Gentoos, shall be invariably adhered to: On all such Occasions, the Moulavies or Bramins shall respectively attend to expound the Law, and they shall sign the Report, and assist in passing the Decree.

XXIV.

THAT the Decree of the Provincial Dewannee Adawlut, on all Causes, for Sums not exceeding Five Hundred Rupees, shall be final; but that for all above that Amount, an Appeal shall lie to the Sudder.

XXV. THAT

XXV.

THAT the Court shall have a Right of decreeing to the Party, in whose Favour Judgment is given; any specific Sum for Cofts within the real Amount, or in general to decree with Cofts. The Bill in both Cafes to be taxed by the Court.

XXVI.

THAT Persons found guilty of preferring groundless, litigious or vexatious Appeals, shall be punished at the Discretion of the Sudder Dewannee Adawlut, by an Enhancement of the Cofts, which shall be given to the Respondent, as a Compensation for the Trouble and Expence which he shall have sustained.

XXVII.

THAT complete Records shall be kept and transmitted from the Provincial Phoujdarree Adawlut, to the Nizamut Sudder Adawlut, twice every Month, through the Channel of the President and Council. This exclusive of the Proceedings in Trials for Capital Crimes, which are to be transmitted as soon as closed.

XXVIII.

THAT the Collector shall also keep an Abstract Register, in English, of the Proceedings of this Court, in which shall be inserted only the Names of the Prisoners, the Crimes or Offences of which they stand charged, and the Sentence or Acquittal, which shall be transmitted in like Manner, twice every Month, to the Sudder Adawlut.

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XXIX. THAT

XXIX.

THAT the Authority of this Court shall extend to Corporal Punishment, Imprisonment, sentencing to the Roads and Fines, but not to the Life of the Criminal. In Capital Cases, the Opinion of the Court, with the Evidences and Defence of the Prisoner, shall be transmitted to the Nizamut Adawlut, and, having obtained their Confirmation, it shall be ultimately referred to the Nazim for his Sentence, which shall be carried into immediate Execution, as directed in the Seventh Article.

XXX.

THAT Persons guilty of petty Misdemeanors, whose Rank, Cast, or Station in Life, shall be thought to exempt them from Corporal Punishment, may be made liable to Fines; but should such Fines be laid for a larger Sum than One Hundred Rupees, they are not to be enforced or levied without the Confirmation of the Nizamut Adawlut; for which Purpose they are to be immediately reported, with a State of the Case, and the Cause of their being imposed.

XXXI.

THAT as the Forfeiture and Confiscation of the Property and Effects of Delinquents, sentenced to the Loss of Life, may often occur, it is to be observed, that such Forfeiture, and Confiscation, is not to depend on the Provincial Phoujdarree, but upon the Nizamut Adawlut: It is to be a standing Rule therefore to transmit, with the Proceedings of the Trial, an Account of the Property and Effects of the Delinquent, and wait the Orders of the Sudder, whether they are to be surrendered to the Heirs, or confiscated to the State: In the latter Case a Sale is to be made, and the Amount brought to Public Account.

XXXII. THAT

XXXII.

THAT whereas the Honourable Company, from Motives of Tenderness and Solicitude, for the Peace and Happiness of the Ryots, have determined to abolish the Revenue, which has hitherto arisen from the Collections of the Phoujdarree Bazee Jumma, the same is accordingly to be made public; the Court is still to take cognizance of all such Offences, but shall inflict no other Punishment for them than Stripes or Imprisonment, or Damages to the Party injured.

XXXIII.

THAT the same Motives of Regard for the Tranquillity and Happiness of the Ryots, having induced the Government to relinquish the Revenue arising from the Raffooms, or Fees of the Câzee, and his inferior Officers, of which the Inhabitants have long complained, as a severe Grievance, the Câzee and Musfee are therefore introduced in the List of Adawlut Officers, at a Monthly Salary: In this Capacity they are to continue to attest all Writings, to perform all Ceremonies of Marriages, Births and Funerals, and to discharge all their other Functions, as was customary heretofore; and as they are thus to be supported at the Expence of Government, they are to exact no Fees, Dues or Taxes whatsoever. Any Present or Gratification made with the entire free Will of the Party, on the Occasion of a Marriage or of a Funeral, is not prohibited by this Regulation: But if upon Complaint it shall appear, that Force, or any other undue Influence, has been used to extort such Gratifications, the Câzee or Musfee, so convicted, shall be *ipso facto* dismissed from his Office, with Marks of public Disgrace.

XXXIV.

THAT the Office of Yetasfaub, having become obsolete, is now totally abolished, but that the Câzee and Musfee shall be allowed each Two Deputies,

ties, for performing the Duties of their Office in the Purgunnahs; these to be stationed by the Collector, at such convenient Distances as that the Ryots may not have above One Day's Journey to perform, for calling in their Assistance.

XXXV.

THAT whereas the Peace of this Country hath for some Years past been greatly disturbed by Bands of Decoits, who not only infest the High Roads, but often plunder whole Villages, burning the Houses, and murdering the Inhabitants: And whereas these abandoned Outlaws have hitherto found Means to elude every Attempt, which the Vigilance of Government hath put in Force, for detecting and bringing such atrocious Criminals to Justice, by the Secrecy of their Haunts, and the wild State of the Districts, which are most subject to their Incurfions, it becomes the indispenfable Duty of Government to try the most rigorous Means, fince Experience has proved every lenient and ordinary Remedy to be ineffectual: That it be therefore resolved, that every fuch Criminal, on Conviction, fhall be carried to the Village to which he belongs, and be there executed, for a Terror and Example to others; and for the further Prevention of fuch abominable Practices, that the Village of which he is an Inhabitant fhall be fined, according to the Enormity of the Crime, and each Inhabitant, according to his Substance; and that the Family of the Criminal fhall become the Slaves of the States, and be difpofed of for the general Benefit and Convenience of the People, according to the Difcretion of the Government.

XXXVI.

THAT the Tannadars and Pikes of the Districts fhall be punished by Difmiffion, or Fines, if they neglect the Duties of their Charge; and as an Encouragement for them, to exert themselves in the Protection of the Villages committed

committed to their Care, and in detecting, opposing and bringing to Justice all Decoits, and other Offenders against the Public Peace, pecuniary Rewards; Grants of Lands, or particular Privileges and Immunities, shall be granted them, proportioned to their Deserts, and the Services which they shall have rendered the State.

XXXVII.

THAT in Addition to these General Regulations, the Collector shall form such subsidiary ones, for promoting the due Course of Justice, and the Welfare and Prosperity of the Ryots, as the local Circumstances of their respective Districts shall point out and require, and that they shall report the same to the Committee of Circuit, in order to their being communicated to the Board, for their final Sanction and Confirmation.

THAT they shall in particular, and without Delay, regulate and transmit, for Confirmation, the Fees to be received by all Peons and Pikes, employed in the Service of the Courts of Adawlut, which can only be done, with Accuracy, from Information on the Spot. And that they shall further establish such Rules, with Penalties annexed, as may serve effectually to eradicate the Practice among the Officers and Servants of the Cutcherry, of exacting and receiving Bribes, from the Parties who have Causes in Suit; a Practice, not only criminal in the Persons who are guilty of it, but which reflects Discredit and Reproach on the Government under which they serve.

Alexander Higginson, *Secretary.*

Revenue Department,
Fort-William, 3d Nov. 1772.

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The Twelfth Paragraph of a Letter from the President and Council in *Bengal*, for the Department of the Revenues, to the Court of Directors, dated the 25th of *March*, 1773.

WE on the 18th Instant opened the Court of the Dewannee Sudder Adawlut, where several Appeals were lodged from the Provincial Courts; at this Meeting, it appearing to the Members of the Court, that in order to render more complete the Judicial Regulations, to preclude arbitrary and partial Judgments, and to guide the Decisions of the several Courts, a well digested Code of Laws, compiled agreeably to the Laws and Tenets of the Mahometans and Gentoos, and according to the established Customs and Usages, in cases of the Revenue, would prove of the greatest public Utility; the Court resolved that such a Code should be prepared, and properly digested, and they accordingly appointed fit Persons to execute this Work, by Three distinct Commissions, Two consisting of the present Officers of the Two Sudder Adawluts (or Supreme Courts of Justice) and a Third of Ten of the most learned Pundits, or Expounders of the Gentoow Law; we are aware that it will be a Work of Time; but as when completed, it promises to contribute essentially to the Security of the Property and Person of the Subjects, we shall spare no Pains to see it accomplished.

Letter from *Warren Hastings*, Esq; Governor General of *Fort-William*, in *Bengal*, to the Court of Directors, for the Affairs of the United Company of Merchants of *England*, Trading to the *East-Indies*.

HONOURABLE SIRS,

I HAVE now the Satisfaction to transmit to you a complete and corrected Copy of a TRANSLATION of the GENTOO CODE, executed with great Ability, Diligence and Fidelity, by Mr. *Halked*, from a Persian Version of the original Shafcrit, which was undertaken under the immediate Inspection of the Pundits or Compilers of this Work.

I HAVE not Time to offer any Observations upon this Production; indeed it will best speak for itself: I could have wished to have obtained an Omission or Amendment of some Passages in it, to have rendered it more fit for the Public Eye; but the Pundits, when desired to revise them, could not be prevailed upon to make any Alteration in them, as they declared, they had the Sanction of their Shaster, and were therefore incapable of Amendment; possibly these may be considered as essential Parts of the Work, since they mark the Principles on which many of the Laws were formed, and bear the Stamp of a
 very

very remote Antiquity, in which the Refinements of Society were less known,
and the Manners more influenced by the natural Impulse of the Passions.

I HAVE the Honour to be, with the greatest Respect,

HONOURABLE SIRS,

Your most obedient

And most faithful humble Servant,

Warren Hastings.

Fort-William,
27th March, 1775.

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L O N D O N:

PRINTED in the YEAR M DCC LXXVI.



L E T T E R

F R O M

WARREN HASTINGS, Esq.
Governor-General of *Fort-William*, in *Bengal*,

T O T H E

C O U R T O F D I R E C T O R S

O F T H E

United Company of Merchants of *England*, Trading to the
E A S T - I N D I E S.

HONOURABLE SIRS,

I HAVE now the Satisfaction to transmit to you a complete and corrected Copy of a TRANSLATION of the GENTOO CODE, executed with great Ability, Diligence and Fidelity, by Mr. *Halbed*, from a Persian Version of the original Shanscrit, which was undertaken under the immediate Inspection of the Pundits or Compilers of this Work.

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