EXPOSITION

OF THE

PRACTICAL OPERATION

OF THE

JUDICIAL AND REVENUE SYSTEMS

OF

INDIA,

AND OF THE

General Character and Condition of its Native Inhabitants,

As Submitted in Evidence to the Authorities in England

WITH

NOTES AND ILLUSTRATIONS.

ALSO

A BRIEF PRELIMINARY SKETCH OF THE ANCIENT AND MODERN BOUNDARIES, AND OF THE HISTORY OF THAT COUNTRY.

Elucidated by a Map.

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CONTENTS.

THE following papers were inserted in the Appendix to the Report of 1831 of the Select Committee of the House of Commons on the affairs of the East India Company, under the heading of "Copy of communication between Ram Mohun Roy and the Board of Control relative to the Revenue and judicial Systems of India." They are to be found in the aforesaid Appendix to the Report of 1831, the first of these in pp. 726—739; the second in pp. 716—723; the third in pp. 723—726; and the fourth in pp. 739—741. The Appendix as well as the Preliminary Remarks were added by the Raja when he published this pamphlet. We have omitted the map which the Raja annexed to the pamphlet, as of not much importance—ED.

PRELIMINARY REMARKS.

INDIA, anciently called the "Bhārat Varsha"* after the name of a monarch called "Bharat"† is bounded on its south by the sea; on the east partly by this sea, and partly by ranges of mountains separating it from the ancient China, or rather the countries now called Assam, Cassay and Arracan; on the north by a lofty and extensive chain of mountains which divides it from Tibet; and on the west partly by ranges of mountains, separating India from the ancient Persia, and extending towards the Western Sea, above the mouth of the Indus, and partly by this sea itself. It lies between the 8th and 35th degrees of north latitude, and the 67th and 93d degrees of east longitude.‡

* "Varshā" implies a large tract of continent cut off from other countries by natural boundaries, such as oceans, mountains, or extensive deserts.

† "Bharat" a humane and powerful prince, supposed to have sprung from the "*Indu-Bangs*" or the lunar race.

‡ The boundary mountains are interrupted on the east between 90° and 91° E. and lat. 26° and 27° N. Hence the countries to the east of the Burrampooter, as Assam, Ava, Siam, &c. as far as 102° E. long. are by some authors considered as part of India, though beyond its natural limits; and by European writers usually called "India beyond the Ganges." There, relics of Sanscrit literature, and remains of Hindu temples are still found. Other ancient writers, however, considered these countries as attached to China, the inhabitants having greater resemblance to the Chinese in features.

The western boundary mountains are in like manner broken at long. 70° East, and at lat. 34° North. Consequently the

Wide tracts of this empire were formerly ruled by different individual princes, who, though Politically independent of, and hostile to each other, adhered to the same religious principles, and commonly observed the leading rites and ceremonies taught in the Sanscrit language, whether more or less refined. These tracts of land are separated from each other by rivers, or hills, or sometimes by imaginary lines of demarcation.

The part styled "the civilized," in the sacred writings of the Brāhmans, consists of two large divisions.*

The first is called "the civilized and sacred land;"† which, extending from the banks of the Indus at 34°

countries beyond that natural limit, such as Caubul and Candahar, are supposed by some to be included in India, and by others in Persia. But many Hindŭ antiquities still exist there to corroborate the former notion.—Not only the northern boundary mountains of India, but also those mountains which form the eastern and western limits of it, are by the ancient writers on India termed Himalaya, and considered branches of that great chain. "In the north direction is situated the prince of mountains, the 'immortal Himalaya' which immersing both in the eastern and western seas, stands on earth as a standard of measure (or line of demarcation.)" Cali Dass.

* Mānu, the most ancient authority, thus defines their limits. "The lands lying as far as the eastern, and as far as the western oceans, *and* between the mountains just mentioned (Himalaya and Vindhya) are known to the wise by the name of "Aryavărtă" or the land inhabited by respectable people." Ch. II. v. 22.

In his translation of this passage, *Sir William Jones*, by omitting to refer to the commentary, which substitutes the copulative Sanscrit particle "*Ch*" for "*Eb*," has thus translated this passage: "As far as the eastern and as far as the western oceans, between the two mountains just mentioned, lies the tract which the wise have named Aryavărtă." This rendered the description obscure, if not wholly unintelligible; since the countries lying between these two ranges of mountains, are scarcely situated between the eastern and western seas.

† Because this division includes within it the tract which is called the Sacred Land, situated to the north of Delhi, thus described by Mānu. "Between the two divine river, Saraswati and Drishadwati, lies the tract of land which the sages have named Brahmavarta, because it was frequented by gods.

north and 72° 25. east, in a suth-easterly direction, along the foot of the Himālāyā mountains as far as 26° 30. north and 87°30 east, lies between this line and the northern limits of the Vindhya range, which runs from 22° north and 73° east, to 25° north and 87° 30 east, through Rājmahāl, Behar, Benares, the Provinces of Allahabad, and of Malwa, along the north side of the Nerbudda, almost to the west coast of India. The second division is named merely "the civilized land," and is situated between the eastern and western coasts, terminating towards the east at the mouth of the Gānges, about 22° north, and 87° 30. east, and on the west towards the mouth of the Indus, at nearly 22° north, 72° 30. east, comprehending the large province of Guzrāt.

The countries situated beyond the limits of the civilized lands, as above described, whether mountains, valleys, or low lands, though included within the Bhārat Varsha, are declared to have been chiefly inhabited by *Mlechhas*, or barbarians, and were therefore called barbarous countries.*

In consequence of the multiplied divisions and subdivisions of the land into separate and independent kingdoms, under the authority of numerous princes hostile towards each other,† and owing to the successive intro-

* A country, where the distinction of the four classes (Brāhman, Kshatriya, Vaishya, and Sūdra) is not observed, is known as '*Mlechha Desh*' or "barbarous country," as quoted by Raghunandan.

† Compare the feeble state of Persia when ruled by several independent princes, with the formidable power she enjoyed when consolidated under the empire of *Sufi*.

Direct your attention to a still nearer country, I mean England; and compare the consequences formerly arising from her divided resources, with her present state of elevation under the subsisting union.

duction of a vast number of castes and sects, destroying every texture of social and political unity, the country, (or, properly speaking, such parts of it as were contiguous to foreign lands,) was at different periods invaded, and brought under temporary subjection to foreign princes, celebrated for power and ambition.

About 900 years ago, the Mahommedan princes, advancing by the north-west, began to ravage and over run the country; and after continued efforts, during several centuries, they succeeded in conquering the best parts of India. Their rule was transferred in succession from one dynasty of conquerors to another (Ghazni, Ghor, and afghān,) till 1525 of the Chtistian era, when prince Babur, a descendant of Tīmūr (or Tamerlane). in the fifth generation, established his throne in the centre of Hindūstān. His offspring (the Moghul dynasty) exercised the uncontrolled sovereignty of this empire* for nearly two centuries, (with the exception of about sixteen years) under a variety of changes, according to the rise or decrease of their power.

In the year 1712, the star of the Moghul ascendancy inclined towards descent, and has since gradually sunk below the horizon. The princes oftener consulted their own personal comfort than the welfare of the state, and relied for success on the fame of their dynasty, rather than on sound policy and military valor. Not only their crowns, but their lives also, depended on the good will of the nobles, who virtually assume independence of the

* It may be considered as consisting of the following twenty provinces: Delhi, Lahore, Cashmere, Cabul, Candhahar, Ajmere, Malwa, Agra, Oude, Allahabad, Behar, Bengal, Orissa, Candeish, Berar, Aurungabad, Golconda, Bejapoor.

sovereign power, and each sought his own individual aggrandizement.

At present, all the southern and eastern, as well as several of the western provinces of the empire, have gradually fallen into the possession of the English. The army they employed chiefly consisted of the natives of India, a country into which the notion of patriotism has never made its way. Those territories were in fact transferred to British possession from the rule of a number of the rebellious nobility. While the greatest part of the northern provinces beyond the river Sutlej has fallen into the hands of Runjeet Singh, the chief of a tribe commonly called *Sikhs*.

Akbar the Second, present heir and representative of the imperial house of Timur, enjoys only the empty title of "King of Delhi," without either royal prerogative or power.

Runjeet Singh, sovereign of north-western India, (consisting of Lahore, Multan, Cashmere, and Eastern Cabul,) is considered highly gifted with prudence and moderation, and apparently inclined towards liberal principles; judicious in the discharge of public duties, and affable in private intercourse. The idea of constitutional government being entirely foreign to his mind, he has necessarily followed the same system of arbitrary rule which has been for ages prevailing in the country. The government he has established, although it be purely military, is nevertheless mild and conciliatory.

With regard to the circumstances under which a body of respectable English merchants (commonly known by the name of the Honorable East India Company) first obtained their Charter of Privileges in 1600, during the

reign of Queen Elizabeth, to carry on trade with the East Indies; and with respect to the particulars of their success in procuring from the Emperor of Hindoostan (Jahingir), and from several of his successors permission to establish commercial factories, as well as the enjoyment of protection, and various privileges in that country; with relation further to their conquests, which commencing about the middle of the 18th century have extended over the greater part of India,—conquests principally owing to ihe dissensions and pusillanimous conduct of the native princes and chiefs, as well as to the ignorance existing in the East, of the modern improvements in the art of war, combined with the powerful assistance afforded to the Company by naval and military forces of the crown of England,—I refer the reader to the modern histories of India,* such particulars and details being quite foreign to the object which I have for the present in view.

The government of England, in the meantime, received frequent intimations of the questionable character of the means by which their acquisitions had been obtained and conquests achieved, and of the abuse of power committed by the Company's servants,† who were sent out to India from time to time to rule the territory thus acquired; and the impression in consequence was that

* Bruce's Annals; Anderson's History of Commerce in M'Pherson's Annals; Sir Thomas Roe's Journal and Letters; Raynal's East and West Indies; Orme's Historical fragments, and on the Government and people of Hindostan; Dow's History; Malcolm's Sketch of the political History of India; Ditto, Central India; and Mill's History of British India.

† They were generally relations and friends of the leading members of the company, twenty-four in number, called the "Directors," first elected in 1709, and invested by the general body of the company with the power of managing their territorial possessions in India, as well as their commerce in the East and West.

the immense, or rather incalculable, distance, between India and England, impeding intercourse between the natives of the two countries, and the absence of efficient local check on the exercise of power by the Company's executive officers, as well as the hope of support from their influential employers in England, might lead many of them to neglect or violate their duties and bring reproach on the national character. Under these apprehensions the British Parliament in 1773, by 13th Geo. III. commonly called the Regulating Act, declared that all territorial acquisitions by conquest or treaty belong to the state, directed that all correspondence connected with their civil or military government should be submitted to the consideration of the Ministers; and subsequently in 1784, (by act 24th Geo. III. cap. 25.) a Board of Commissioners was established by the crown as a control over the East India Company and the executive officers in India. The Board consists of a president, who usually has a seat in the British cabinet, and of several members, honorary and otherwise, with a secretary and other requisite subordinate officers. This institution has answered the purpose as far regards subjects of a general nature.

The system of rule introduced and acted on in India by the executive officers of the Company, previous to 1793, was of a mixed nature—European and Asiatic. The established usages of the country were for the most part adopted as the model of their conduct, in the discharge of political, revenue, and judicial functions, with modification at the discretion of the local authority. In addition to the exercise of the sovereign power, power declared through policy to have been vested in them by the throne of Delhi, they continued to act in

their commercial capacity with greater success than previous to their sovereignty.* In consideration of the extensive territories acquired by the Company in different parts of India, they deemed it advisable to establish three governments at the three presidencies of Bengal, Madras and Bombay; the two latter being, since, 1773, subordinate to the first in matters of a political nature.

The Marquis of Cornwallis, a straight-forward honest statesman, assumed the reins of government in Bengal in 1786.† He succeeded not only in consolidating the British power in its political relations in those remote regions, but also in introducing, in 1793, material changes in every department, particularly in the revenue and judicial systems. These changes approximating to the institutions existing in England, are calculated to operate beneficially, if regularly reduced to practice.

As my evidence respecting the government of India which will form the main body of this treatise gives a particular account of the practical operation of these systems, I refrain from a repetition of it in this place.

From occasionally directing my studies to the subjects and events peculiarly connected with Europe, and from an attentive though partial, practical observation in regard to some of them I felt impressed with the idea, that in Europe literature was zealously encouraged and knowledge widely diffused; that mechanics were almost in a

* The monopoly of salt has proved an immense source of revenue to them. Besides the factories of opium, silk, cloth &c. have been established in many places favourably situated for commerce.

† Since the formation of the Board of Commissioners for the affairs of India, the Crown has exercised the right of selection in regard to the governor-general to be nominated by the Company.

state of perfection, and politics in daily progress; that moral duties were, on the whole, observed with exemplary propriety notwithstanding the temptations incident to a state of high and luxurious refinement; and that religion was spreading, even amid scepticism and false philosophy.

I was in consequence continually making efforts for a series of years, to visit the Western World, with a view to satisfy myself on those subjects by personal experience. I ultimately succeeded in surmounting the obstacles to my purpose, principally of a domestic nature; and having sailed from Calcutta on the 19th of November 1830, I arrived in England on the 8th of April following. The particulars of my voyage and travels will be found in a Journal which I intend to publish; together with whatever has appeared to me most worthy of remark and record in regard to the intelligence, riches and power, manners, costoms, and especially the female virtue and excellence existing in this country.

The question of tbe renewal of the Honorable East India Company's Charter* being then under the consideration of the government, and various individuals connected with India having been examined as witnesses on the subject, the authorities wished me also, as a native of that country, to deliver my evidence; which was, in consequence, given as in the following pages.

Although it has been printed among the other minutes of evidence taken before the select committee of the

* The company's charter was last renewed by the crown in 1813, with certain modifications for a period of twenty years, and consequently expires in 1833, unless previously renewed

House of Commons, I deem it proper to publish it in a separate form, for the purpose of prefixing these preliminary explanations, and of accompanying it with notes and replies to remarks made thereon, by persons whose opinions are deserving of notice.

QUESTIONS AND ANSWERS

ON THE

JUDICIAL SYSTEM OF INDIA.

———o———

1. Question. *Have you observed the operation of the Judicial System in India?*

Answer. I have long turned my attention towards the subject, and possess a general acquaintance with the operation of that system, more particularly from personal experience in the Bengal presidency, where I resided.

2. Q. *Do you think that the system hitherto acted upon is calculated to secure justice?*

A. The judicial system established in 1793, by Lord Cornwallis, was certainly well adapted to the situation of the country, and to the character of the people as well as of the government, had there been a sufficient number of qualified judges to discharge the judicial office, under a proper code of laws.

3. Q. *Explain particularly in what points you consider the practical operation of the system defective?*

A. In the want of a sufficient number of judges and magistrates, in the want of adequate qualification in many of them to discharge the duty in foreign languages, and in the want of proper code of laws, by which they might be easily guided.

4. Q. *Can you explain what evils result from the want of a greater number of judges?*

A. 1st, The courts being necessarily few in number in comparison to the vast territories under the British

rule, many of the inhabitants are situated at so great a distance from them, that the poorer classes are in general unable to go and seek redress for any injury, particularly those who may be oppressed by their wealthier neighbours, possessing great local influence. 2ndly, The business of the courts is so heavy that causes often accumulate to such an extent, that many are necessarily pending some years before they can be decided; an evil which is aggravated by subsequent appeals from one court to another, attended with further delay and increased expense. By this state of things wrong-doers are encouraged, and the innocent and oppressed in the same proportion discouraged, and often reduced to despair. 3rdly, Such a mass of business transacted in foreign languages being too much for any one individual, even the ablest and best intentioned judge, may be disdisheartened at seeing before him a file of causes which he can hardly hope to overtake; and he may therefore be thus induced to transfer a great part of the business to his native officers, who are not responsible, and who are so meanly paid for their services, that they may be expected to consult their own interests.

5. Q. *Will you inform us what evils arise from the want of due qualification in the judges?*

A. It is but justice to state that many of the judicial officers of the company are men of the highest talents, as well as of strict integrity, and earnestly intent on doing justice. However, not being familiar with the laws of the people over whom they are called to administer justice by these laws, and the written proceedings of the court, answers, replies, rejoinders, evidence taken, and documents produced, being all conducted in a language

which is foreign to them, they must either rely greatly on the interpretation of their native officers, or be guided by their own surmises or conjectures. In one case, the cause will be decided by those who in point of rank and pay are so meanly situated, and who are not responsible to the government or public for the accuracy of the decision; in the other case, a decision founded on conjecture must be very liable to error. Still, I am happy to observe that there are some judicial officers, though very few in number, whose judgment and knowledge of the native languages are such, that in cases which do not involve much intricacy and legal subtlety, they are able to form a correct decision independent of the natives around them.

6. Q. *Can you point out what obstructions to the administration of justice are produced by the want of a better code of laws?*

A. The regulations published from year to year by the local government since 1793, which serve as instructions to the courts, are so voluminous, complicated, and in many instances, either too concise or too exuberant, that they are generally considered not a clear and easy guide; and the Hindu and Mahommedan laws administered in conjunction with the above regulations, being spread over a great number of different books of various and sometimes doubtful authority, the judges, as to law points, depend entirely on the interpretations of their native lawyers, whose conflicting legal opinions have introduced great perplexity into the administration of justice.

7. Q. *Is there any other impediment to the fair administration of justice besides these you have stated?*

A. The first obstacle to the administration of justice is,

that its administrators and the persons among whom it is administered have no common language. 2ndly, That owing partly to this cause and also in a great measure to the difference of manners &c., the communication between these two parties is very limited; in consequence of which the judges can with the utmost difficulty acquire an adequate knowledge of the real nature of the grievances of the persons seeking redress, or of the real character and validity of the evidence by which their claims are supported or opposed. 3rdly, That there is not the same relation between the native pleaders and the judge as between the British bar and the bench. 4thly, The want of publicity owing to the absence of reports and of a public press, to take notice of the proceedings of the courts in the interior: consequently there is no superintendence of public opinion to watch whether the judges attend their courts once a day or once a week, or whether they attend to business six hours or one hour a day, or their mode of treating the parties, the witnesses, the native pleaders or law officers, and others attending the courts—as well as the principles on which they conduct their proceedings and regulate their decisions; or whether in fact the investigate and decide the causes themselves, or leave the judicial business to their native officers and dependants. (In pointing out the importance of the fullest publicity being afforded to judicial proceedings by means of the press, I have no reference to the question of a free press, for the discussion of local politics, a point on which I do not mean to touch.) 5thly, The great prevalence of perjury, arising partly from the frequency with which oaths are administered in the courts, having taken from them the awe with which they

were formerly regarded, partly from the judges being often unable to detect impositions in a foreign language, and to discriminite nicely the value of evidence amongst a people with whom they have in general so little communication; and partly from the evidence being frequently taken, not by the judge himself but by his native officers (Omlah), whose good will is often secured before hand by both parties, so that they may not endeavour to detect their false evidence by a strict examination. Under these circumstances the practice of perjury has grown so prevalent that the facts sworn to by the different parties in a suit are generally directly opposed to each other, so that it has become almost impossible to ascertain the truth from their contradictory evidence. 6thly, That the prevalence of perjury has again introduced the practice of forgery to such an extent as to render the administration of justice still more intricate and perplexing. 7thly, The want of due publicity being given to to the regulations which stand at present in place of a code of laws. From their being very voluminous and expensive, the community generally have not the means of purchasing them; nor have they a sufficient opportunity of consulting or copying them in the judicial and revenue offices where they are kept. As these are usually at a distance from the populous parts of the town, only professional persons or parties engaged in suits or official business are in the habit of attending these offices. 8thly, and lastly, Holding the proceedings in a language foreign to the judges, as well as to the parties and to the witnesses.

8. Q. *In what language are the proceedings of the courts conducted?*

A. They are generally conducted in Persian, in Ami-

tation of the former Mohammedan rules, of which this was the court language.

9. Q. *Are the judges, the parties, and the witnesses sufficiently well acquainted with that language to understand the proceedings readily?*

A. I have already obeerved that it is foreign to all these parties. Some of the judges, and a very few among the parties, however, are conversant with that language.

10. Q. *Would it be advantageous to substitute the English language in the courts, instead of the Persian?*

A. The English language would have the advantage of being the vernacular language of the judges. With regard to the native inhabitants, it would not doubt, in the mean time, have the same disadvantage as the Persian; but its gradual introduction in the courts would still, notwithstanding, prove ultimately beneficial to them by promoting the study of English.

11. Q. *Does the native bar assist the judge, and form a check on the accuracy of the decisions?*

A. It is no doubt intended to answer this most useful purpose, and does so to some extent; but, from the cause alluded to above (Ans 7. No. 3.), not to the extent that is necessary to secure the principles of justice.

12. Q. *Do the judges treat the native pleaders with the consideration and respect due to their office?*

A. They are not always treated in the inferior courts with the consideration due to their office.

13. Q. *To what do you attribute it, that the bar is not treated with respect?*

A. The native pleaders are so unfortunately situated from there being such a great distance between them and the judges who belong to the rules of the country,

and from not being of the same profession, or of the same class as the judges, and having no prospect of promotion as English barristers have, that they are treated as an inferior *caste* of persons.

14. Q. *Do not the native judicial officers employed under the judge assist him in his proceedings?*

A. Of course they assist him, and that very materially.

15. Q. *What kind of assistance do they render to the judge?*

A. They read the proceedings, viz. bill (darkh'ast, or arzi), answers, replies, rejoinders, and other papers produced in the court; they write the proceedings and depositions of the witnesses; and very often, on account of the weight of business, the judge employs them to take the depositions of the witnesses: sometimes they make abstracts of the depositions and other long papers, and lay them before the judge for his decision.

16. Q. *Are they made responsible with the judge for the proceedings held?*

A. They are responsible to the judge, but not to the government or the public.

17. Q. *Are not the judges assisted also by Hindu and Mohammedan lawyers, appointed to act as interpreters of the law?*

A. They are: learned natives of this description being attached to the courts to give their opinion on the Hindu and Mohammedan law points which may arise in any case.

18. Q. *Are natives of the country empowered to decide causes of any description?*

A. Yes: there are native Munsifs, or commissioners, for the decision of small debts; and Sudder Aumeens

who are authorised to try causes under five huudred rupees, whether connected with landed or moveable property.

19. Q. *Are they qualified to discharge the duties entrusted to them?*

A. Many of them are fully qualified; and if proper care can be taken in the selection, all the situations might be filled with well-qualified persons.

20. Q. *What is your opinion of the general character and conduct of the judges in their official capacity as such?*

A. I am happy to state that in my humble opinion the judicial branch of the service is at present almost pure; and there are among the judicial servant of the Company gentlemen of such distinguished talents, that from their natural abilites, even without the regular study of the law, they commit very few, if any, errors in the administration of justice. Others are not so well gifted, and must therefore rely more on the representations of their native officers, and being free from any local check on their public conduct, their regularity, attention to business, and other judicial habits, are not equal to the wishes of their employers, nor calculated to give general satisfaction.

21. Q. *Do they borrow money to any extent from the natives?*

A. Formerly they borrowed to a great amount; at present this practice is discouraged.

22. Q. *Why are the natives prevailed upon to lend to the judges, and other civilians, money to such an extent?*

A. Natives not having any hope of attaining direct consideration from the Government by their merits or exertions, are sometimes induced to accommodate the

civil servants with money, by the hope of securing their patronage for their friends and relatives, the judges and others having many situations directly or indirectly in their gift; sometimes by the hope of benefiting by their friendly disposition when the natives have estates under their jurisdiction; and sometimes to avoid incurring the hostility of the judge, who, by Regulation IX. of 1807, is empowered not only to imprison, but inflict corporal punishment, by his own authority under certain legal pretences on any native, whatever his respectability may be.

23. Q. *What is your opinion of the judical character and conduct of the Hindu and Mohammedan lawyers attached to the courts?*

A. Amongst the Mohammedan lawyers I have met with some honest men. The Hindu lawyers are in general not well spoken of, and they do not enjoy much of the confidence of the public.

24. Q. *What is your opinion of the official character and conduct of the subordinate native judical officers?*

A. Considering the trifling salaries which they enjoy, from 10, 20, 30, or 40 rupees to 100 Rupees a month, (the last being the allowance of the head native officer only,) and the expenses they must incur, in supporting some respectability of appearance, besides maintaining their families; (the keeping of a palankeen alone must cost the head man a sum of between 20 and 30 rupees per month,) and considering also the extent of the power which they must possess, from their situations and duties as above explained (Q. 15.). and the immense sums involved in the issue of causes pending in the courts, it is not to be expected that the native officers, having such trifling

salaries, at least many of them, should not avail themselves sometimes of their official influence, to promote their own interests.

25. Q. *What is your opinion of the professional character and conduct of the pleaders?*

A. Many pleaders of the Sudder Dewanee Adawlut are men of the highest respectability and legal knowledge, as the judges are very select in their appointment, and treat them in way which makes them feel that they have a character to support. Those of the provincial courts of appeal are also generally respectable, and competent to the discharge of their duties. In the Zillah courts some respectable pleaders may also be met with, but proper persons for that office are not always very carefully selected; and in general, I may observe, that the pleaders are held in a state of too much dependence by the judges, particularly in the inferior courts, which must incapacitate them from standing up firmly in support of the rules of the court.

26. Q. *Is bribery and corruption ever practised in the judicial department, and to what extent?*

A. I have already intimated my opinion in the answers to Questions 20 and 24.

27 and 28. Q. *Have the respectable and intelligent native inhabitants generally confidence in the purity of the Company's courts and the accuracy of their decisions; and have the native community confidence in the integrity of the subordinate judical officers?*

A. Whilst such evils exist as I have above noticed, in my reply to Queries 5, 6, and 7, as well as to Queries 20 and 24, the respectable and intelligent native in-

habitants cannot be expected to have confidence in the general operation of the judicial system.

29. Q. *Are the judges influenced in their decision by their native officers?*

A. Those who are not well versed in the native languages, and in the Regulations of government, must necessarily be very much dependent on their native officers, as well as those who dislike to undergo the fatigue and restraint of business, which to Europeans is still more irksome in the sultry climate of India.

30. Q. *Can you suggest any mode of removing the several defects you have pointed out in the judicial system?*

A. As European judges in India are not generally expected to discharge judicial duties satisfactorily, independent of native assistance, from not possessing a thorough knowledge of the languages, manners, customs, habits, and practices of the people, and as the natives who possess this knowledge have been long accustomed to subordination and indifferent treatment, and consequently have not the power of commanding respect from others, unless joined by Europeans, the only remedy which exists, is to combine the knowledge and experience of the native with the dignity and firmness of the European. This principle has been virtually acted upon and reduced to practice since 1793, though in an imperfect manner, in the constitution of the courts of circuit, in which the Mufti (native assessor) has a voice with the judge in the decision of every cause, having a seat with him on the bench. This arrangement has tolerably well answered the purpose of government, which has not been able to devise a better system in a matter of such importance as the decision of questions

of life and death, during the space of forty years, though it has been continually altering the systems in other branches. It is my humble opinion, therefore, that the appointment of such native assessors should be reduced to a regular system in the civil courts. They should be appointed by government for life, at the recommendation of the Sudder Dewanee Adawlut, which should select them carefully, with a view to their character and qualifications, and allow them to hold their situations during life and good behaviour, on a salary of from 300 to 400 rupees per mensem. They should be responsible to the government as well as to the public for their decisions, in the same manner as the European judges, and correspond directly with the judicial secretary. A casting voice should be allowed to the European judge, in appointing the native officers, in case of difference of opinion; the native assessor, however, having a right to record his dissent. These assessors should be selected out of those natives who have been already employed for a period of not less than five years as assessors (Mufti), lawyers (Zillah Court Maulavis), or as the head native officers in the judicial department.*

Par. 2. This measure would remove the evils pointed out in the answers to Q. 5 and to Q. 7. Nos, 1, 2 and 3. and also afford a partial remedy to the evils noticed in Nos. 5, 6 and 8 of Answer 7, as well as provide against the evils referred to in answer to Query 24.

Par. 3. In order however to render the administration of justice efficient and as perfect as human efforts

* The native judicial officers are gererally versed in Persian, and therefore the proceedings hitherto generally held in that language would be familar to them.

can make it, and to remove the possibility of any undue influence which a native assessor might attempt to exercise on the bench under a European judge of insufficient capacity, as well as to do away the vexatious delays and grievous suffering attending appeals, it is necessary to have recourse to trial by jury, as being the only effectual check against corruption, which, from the force of inveterate habit, and the contagion of example, has become so notoriously prevalent in India. This measure would be an additional remedy to the evils mentioned in the reply to Query 5 and 7, Nos. 1, 2, 3, and 5, 6, 8, and also in the replies to Query 4, Nos. 2 and 3, as well as in Query 24.

Par. 4. With a view to remove the evils arising from want of publicity of the Regulations, as noticed in No. 7 of Ansr. to the Query 7, two or three copied in each of the principal native languages used in that part of the country should be kept in a building in the populous quarter of the town, under the charge of a keeper on a small salary, and all persons should be freely admitted to read and copy them at leisure from sunrise to sunset. The expense of this would not amount to two pounds a month for each station, and the benefits of it would be incalculable.

Par. 5. In order to remedy the evils arising from the distance of the courts as noticed at Question 4th Ansr. No. 1, I beg to suggest as follows: The Sudder Aumeens, or superior commissioners for the decision of causes under 500 rupees, affecting moveable or immoveable property, are at present stationed at the same place where the zillah judge holds his court, and plaints are at first laid before the judge, who turns them over to

one of these commissioners at his own discretion ; consequently they afford no remedy for the great distance of the courts from many under their jurisdiction, as this often embraces a circle of 60 or 80 miles. I therefore propose that these Sudder Aumeens should be stationed at proportionate distances in different parts of the district, so that suitors may not have to travel far from their homes to file their bills and afterwards to seek and obtain justice ; and that one of the assistants of the judge should be stationed in a central position which might enable him (without any additional charge to government as I shall hereafter show) to visit and personally superintend these Aumeens, when the judge's station is on or near the border of his district. If it is otherwise siuated, one of the assistants of the judge may remain at the head station with the judge, and superintend the commissioners nearest to him, while another assistant being stationed at an appropriate distance, may superintend those who are more remotely situated from the first assistant. There will thus be as complete a check over them as under the present system, and justice will be brought home to the doors of a great majority of the inhabitants of each district, since causes under 500 rupees are exceedingly numerous in every Zillah or City Court.

Par. 6. These assistants may, at the same time, be very usefully employed in checking the dreadfully increasing crime of forgery, by which the course of justice is now so very much impeded in the judicial courts. Written documents of a diametrically opposite nature are, as is well known, constantly laid before these courts, and serve to confound justice and perplex a

conscientious bench. Therefore under the proposed system of assistant judges' courts in two different quarters of a district, I would recommend, as highly necessary and expedient to check materially the practice of forgery, that parties to any deed should be required, in order to render the same valid, to produce it in open court before the nearest assistant judge, within a certain number of days from the time of its execution. This rule should apply* to all sorts of deeds, contracts and agreements regarding property above 100 rupees in value, such as wills and bills of sale, &c. and money bonds for debts payable at a certain period beyond six months, and upon receiving a fee of from one to two rupees, according to its importance, the assistant judge, after ascertaining the indentity of the parties in open court, should immediately affix his signature as witness to the deed and retain a copy of the same in a book of record kept on purpose, duly authenticated and marked to prevent the possibility of interpolation, or any other species of fraud. The sum above allowed as a fee on registering, with a small fixed charge per page for retaining a copy, would be more than sufficient to remunerate any extra trouble attending the duty and the labour of transcribing. To induce the proprietors of land and other respectable persons to appear without reluctance in open court on such occasions, they should be invariably treated with the respect due to their rank. Further to encourage the public to have papers registered, and to satisfy the government that no improper delay takes place in registering them,

* By Regulation XXXVI. of 1793, the registering of deeds is authorised, but left in the option of the parties.

as well as to prevent the copyists from extorting perquisites, a book should be kept in which the party presenting a paper should in open court enter a memorandum of the day and hour on which he presented it for registration, and of the day and hour when it was produced and returned to him. This system would materially remedy the evil referred to in answer to Q. 7. No. 6.

Par. 7. The assistant judges should also receive appeals from the Sudder Aumeens, and try them in conjunction with a native assessor appointed by the Sudder Dewanee Adawlut, on a salary smaller than that of the judges' assessor, that is, perhaps not exceeding 200 rupees a month. In the event of difference of opinion between the assessor and the assistant judge on any case, it should be appealable to the Zillah judge, whose decision should be final; and as the Sudder Aumeens are now paid from the duties on the stamps used and the fees received on the papers filed, so the assistant judges' assessor may be paid in the same manner from the fees and stamps imposed on the appeal causes.

Par. 8. The assistant judge, though not empowered to interfere with the police officers of the interior in the discharge of their duties, should notwithstanding be authorised to receive written complaints of any abuse of their power from persons who feel themselves oppressed by the police, and to forward the same to the head magistrate of the district for his investigation; as very often the poor villagers or peasants are oppressed by the local police officers, but despair of any relief, from being unable to leave their homes and travel to a distance to the station to seek redress.

31. Q. *Is trial by jury (or any thing resembling it) resorted to at present in any case?*

A. The principle of juries under certain modifications has from the most remote periods been well understood in this country under the name of Punchayet.

32. Q. *What is the difference between the Jury system and the Punchayet?*

A. The Punchayet exists on a very defective plan at present, because the jurors (members of the Punchayet) are not regular in their meetings, have no power to compel the attendance of witnesses, unless by appealing to the court; they have no judge to preside at their meetings and direct their proceedings, and are not guarded in any manner from partiality or private influence. They are in fact at present only arbitrators appointed by the court with consent of the parties in a cause, each party nominating one arbitrator and the judge a third; and sometimes both parties agree to refer the decision of the case to one arbitrator.

33. Q. *Why and when was the Punchayet system discouraged?*

A. It has not been totally discouraged, but rather placed on a different footing. In former days it was much more important in its functions. It was resorted to by parties at their own option, or by the heads of tribes, who assumed the right of investigation and decission of differences; or by the government, which handed over causes to a Punchayet.

34. Q. *Do you really think the introduction of any system of Jury trial or Punchayet would be beneficial?*

A. Undoubtly, as shewn by the 3rd Par. of my answer to Question 30. Since a Punchayet composed of the

intelligent and respectable inhabitants, under the direction of a European judge to preserve order, and a native judge to guard against any private influence, is the only tribunal which can estimate properly the whole bearings of a case, with the validity of the documentary evidence, and the character of the witnesses, who could have little chance of imposing false testimony upon such a tribunal.

35. Q. *Do you think it would be acceptable to the inhabitants?*

A. As the Punchayet even in its present very imperfect form is still practised by the inhabitants, it would without doubt be much more so, were it reduced to a regular system, guarded by proper checks, and dignified by judicial forms, which would inspire the whole community with higher respect and confidence for this ancient institution. But whatever length its popularity may go, it is the only system by which the present abuses consisting of perjury, forgery, and corruption can be removed.

36. Q. *Will you explain, in detail, the modification of the Pnnchayet-jury system which you think best suited to the circumstances of the country.*

A. I am of opinion that the Punchayet system should be adopted in conjunction with the plan above stated. (Q. 30.) It would be easy to adapt it to the object in view, without imposing any heavy duty on the respectable portion of the native community. Three jurymen, or at most five, would, I conceive, answer the purpose as well as a greater number, and any zillah (district) could easily supply a list from which these might be taken without inconvenience. Three times the number required for sitting on a trial should be summoned, and the persons actually to serve should be taken by lot, so that neither

the judges nor the parties may be able to know beforehand what persons will sit on the trial of a cause. The general list of jurymen should be as numerous as the circumstances of the city or zillah (district) will admit. It should be prepared by the European judge at the station, and altered and amended by him from time to time as may seen proper and requisite. He may easily select well quaiified juries from respectable and intelligent natives known to be versed in judicial subjects, who reside in considerable numbers at every station. A necessary concomitant to the introduction of jurymen will be the sole use of the vernacular dialect of the place to the exclusion of the Persian language in proceedings. Publicity should be as much fostered as possible, and the jury should be kept apart and required to decide without separating,as in the English courts of law. In a trial thus conducted the resort to appeal will cease to be useful, and for the purposes of justice, need only be allowed where there is a difference of opinion betwixt the bench and the jury. For, where judge and jury are unanimous, an appeal would be more likely to produce injustice by vexatious expense and delay, than to rectify error on the part of the inferior court, and ought therefore to be prohibited.

37. Q. *Do you think the natives of the country qulified to discharge judical functions of this nature, and from what class would you select the jurors?*

A. They are assuredly qualified, as I observed before, in answer to Query 19, and the jurors at present may be judiciously selected from retired pleaders (wakils) and retired judicial officers, from agents employed by private individuals to attend the court (mukhtars) who are generally well qualified, and from the other intelligent

and respectable inhabitants as above observed (Answer to Q. 30 and 36.) To avoid any undue bias or partiality, both parties in a suit should have a right of objecting to any juryman, who can be shewn to have an interest in the cause, or particular connection with either party.

38. Q. *Do you think the natives competent and eligible to all judicial situations, or only subordinate ones?*

A. As many of them, even under the present manifold disadvantages. already discharge all the judicial functions, even the most arduous (see Q. 15.), it will not be very difficult, I think, with proper management, to find qualified persons amongst the natives for any duty that may be assigned to them. Many, however, as in other countries, are only fit for subordinate situations.

39. Q. *What advantage do you conceive this Puncayet-jury system would possess over the judicial system now established?*

A. First, from the thorough knowledge of the native character possessed by such a tribunal, and of the language of the parties and witnesses, it would not be so liable to error in its decisions. Secondly, the jury would be guarded from undue influence by the judge and his assessors. Thirdly, it would guard the assessor from the use of undue influence. Fourthly, it would secure the dispatch of business, and the prevention of delay, and of the need of appeals. The checking of perjury and forgery may also reasonably be hoped from it, besides many other advantages already pointed out.

40. Q. *Are the provincial courts of appeal conducted on the same principles as the district courts to which you have referred?*

A. As they are presided over by gentlemen of more

experience and longer residence in the country, these courts are generally conducted with greater regularity.

41. Q. *What is the nature of the difference existing between them?*

A. Under the Bengal Presidency, in causes above 10,000 rupees, the action must be laid in the provincial court of appeal, and may be decided by one judge. This court takes cognizance also of any case of inferior amount below 10,000 rupees, which may be carried to it by appeal from the decision of or proceedings held by, the judge of the city or district court, and from these provincial appeal courts, appeals can only be made to the Sudder Dewance Adawlut, the highest civil tribunal.

42. Q. *Can you point out any defects in the Sudder Dewance Adawlut, and their remedies?*

A. Government has always been very careful in its selection of judges for the Sudder Dewance Adawlut, both as regards their ability and integrity; and they are fully competent to remove any defects which may exist in the court over which they preside. It is, however, highly desirable that judges of the Sudder Dewanee Adawlut should have the power of issuing the writ of habeas corpus, on seeing sufficient grounds for the exercise of this peculiar power, according to the practice of the English courts. But when the person imprisoned is situated at a greater distance from the Sudder courts than fifty miles, the judges of this court, to save useless expense, might direct one of the circuit judges, on whom they could best rely, to investigate the case, and report to them.

43. Q. *What other duties are assigned to the judges of the provincial courts?*

A. They are a medium of communication between

the Sudder Dewanee Adawlut and the inferior courts, and were also judges of circuit.

44. Q. *How many provincial courts are there?*

A. There are six provincial courts in the provinces attached to the Bengal Presidency, viz. that of Calcutta, Dhacca, Moorshedabad, Patna, Benares, and Bareilly.

45. Q. *Are not the judges of the provinaial courts still judges of circuit?*

A. No: they were so formerly; but about two years ago the local government transferred the duties of judges of circuit from them to the revenue commissioners.

46. Q. *Does any inconvenience arise from making the revenue commissioners also judges of circuit?*

A. Such an union of offices is quite incompatible and injurious. The judge of circuit discharges duties of the highest importance, being invested with the power of life and death, and imprisonment during life in chains, the infliction of corporal punishment, and the confiscation of property. He is, besides, charged with the preservation of peace and good order in several extensive districts; and it is morally impossible, therefore, that he can fulfil the expectation of Government and the public, if his attention be at the same time engrossed and distracted by political, commercial, or revenue transactions. In criminal suits, moreover, he labours under a peculiar disadvantage, not being assisted by a bar composed of persons of liberal education, or by a body of honest, intelligent, and independent jurors. The former often proves of essential service to the bench in the king's courts, by able expositions of the law as applicable to every case, by great acuteness in cross-examining witnesses, and in the detection of false evidence;

while the importance of the jury is universally acknowledged.

Par. 2. Formerly, when the judges of the provincial courts of appeal did the duties of the circuit, one or two of them used to remain at the station, to attend to the necessary current business, while the others (one, or sometimes two,) were on circuit. But on the present system, the commissioner of revenue being also judge of circuit, when he goes on circuit, all references to him, by the collectors under his jurisdiction, often remain unanswered, and the most important matters in the revenue business are entirely suspended for months together. Although the former Mohammedan governments were subject to the charge of indifference about the administration of justice, they yet perceived the evils liable to arise from an union of revenue and judicial duties. No judge or judicial officer empowered to try capital crimes, (as Cazees or Muftis) was ever suffered to become a collector of revenue.

Par. 3. The separation of these two offices has also been established by long practice under the British government, being one of the leading principles of the system introduced by Lord Cornwallis. Accordingly those young civilians who attached themselves to the revenue line of the service, have advanced by successive steps in that line; while those again who preferred the judicial, have been in like manner continued and promoted through the different grades in that department of public duty. Therefore, by overturning this system, a gentleman may now be appointed to discharge the highest judicial duties, who never before tried the most trivial cause; and another to superintend the collectors of

revenue, to whose duties he has been all his life a stranger. Mr. E. R. Barwell, Revenue Commissioner and Judge of Circuit of the 24-Purgunnahs, Baraset, Jessore and Burrisal, is an example of the former case; and Mr. H. Braddon, Revenue Commissioner and Judge of Circuit of Burdwan, Jungul Muhal, and Hooghley is an instance of the latter.*

Par. 4. The remedy I beg to propose, without further expense attending the establishment, is to separate the duties between two distinct sets of officers, and double the jurisdiction of each. By this arrangement each gentleman discharging one class of duties would find them more easy and simple, though the field embraced was more extensive, and the expense would be the same as under the present system.

Par. 5. The duties of judges and magistrates are not so incompatible as those of the judges of circuit and the commissioners of revenue; but still separation of these duties is advisable on account of the great weight of the business in the Zillah and city courts. Therefore these two offices (the office of judge and that of magistrate) should be exercised by different individuals. However, the magistrates should assist the judges in the execution of their decrees or orders as they have hitherto done in those districts where the offices of judge and magistrate are separate.

47. Q. *What delay generally takes place in the decision of causes?*

A. In the Zillah courts a cause may be pending on an average about two or three years; in the courts of

* Vide the Directories containing the list of civil servants in

appeal four or five years; and in the Sudder Dewanee Adawlut the same period. But if the property in dispute amount to the value of about 50,000 rupees, so as to admit of an appeal to the king in council, the probable period of delay in the decision of such an appeal is better known to the authorities here than to myself.

48. Q. *What is the cause of such delay?*

A. It must be acknowledged that irregularity in attending the discharge of the judicial duties, and the want of proper discipline or control over the judicial officers are the main causes of obstruction in the dispatch of the judicial business; and these daily growing evils in every branch of the judicial establishment have, in a great measure, defeated the object which the government had in view in establishing it. For example, a bill of complaint written on stamp, the first paper in a suit, cannot easily be got on the file unless it be accompanied with some perquisite to the native recorder, whose duty it is to ascertain, first, whether the sum in dispute correspond with the value of the stamp, an act which may be accomplished in a minute or a week, just as it suits the inclination of the examiner. The case is the same with respect to the issuing of the summonses prepared by another native officer, to command the attendance of the person sued, either in person or by a pleader to put in his answer. Summonses, subpœnas, and the processes of the provincial courts are issued against individuals through the judge of the district in which they reside, and a certain period is always allowed for serving these processes; but neither are the Zillah judges, whose time is otherwise fully occupied, punctual in observing those subordinate duties, nor does the higher court, which

is occupied by other important business, take any early notice of the expiration of the time allowed for making the return. The parties are therefore obliged to cultivate a friendly understanding not only with the officers of the provincial court, but also with those of the Zillah or city court. Whether the defendant attends immediately or long after the time allowed him, or whether he files his answer within the regular prescribed period, or a year afterwards, is treated as if practically immaterial. But delay unintentionally allowed to the parties in filing the requisite papers and in producing their documents and withnesses, is the too frequent source of great abuses; as the opportunity thus afforded by delay is embraced to invent stories and forge documents in support of them, to procure false withnesses and to instruct them in the manner that appears best calculated to serve the purposes in view.

Par. 2. Moreover, some of the judges are very irregular in calling on causes, choosing any day and any time that suits their convenience to occupy the bench singly. The pleaders, being natives of the country, have little or no influence over the conduct of the judges to prevent such irregularities, and dare not hint dissatisfaction.

Par. 3. I would suugest, with a view to remove irregularities originating in a want of official control, without disregard to economy, that the head writer in each court be required to discharge this duty with some extra remuneration for the same, and be made strictly responsible under an adequate penalty, with proper sureties for his conduct, liable, jointly with him, for any fine he may incur, by want of punctuality proved against him by

either party, on complaint to the judge of the court, or of a superior court, or to the judicial secretary.

Par. 4. This superintendent or clerk of the papers should be required to place on the file in open court bills of complaint as well as answers and replies, &c. within the period prescribed in Regulation IV. of 1793. These should not be admitted to the records after the time allowed, unless the judge, on motion publicly made, find sufficient reason for prolonging the period, say a week or two in particular cases.

Par. 5. The clerk of the papers should vigilantly watch that no delay takes place in issuing summonses, subpœnas, and other process of the court; and that the day on which these are ordered to be issued, and the day on which their return is expected should be correctly registered in a separate book kept on purpose.

Par. 6. In case of neglect or wilful disobedience, the superintendent of the paper should immediately submit the circumstance to the notice of the judge. Should the neglect be on the part of the prosecutor, the judge ought immediately to pronounce nonsuit, and if on the part of the defendant, proceed *ex parte* without allowing the neglect to be remedied. Or if the judge do not attend to these rules, the clerk of the papers should be bound to report the circumstance to the superior court, or the judicial secretary on pain of forfeiting his situation. A separate register of the returns should also be kept, as well as a register shewing the time when the defendant's answer must be filed—say one month from the day when the summonses are served, as is the case with equity suits in Calcutta; also shewing the hours during which the judge may attend on public duty, and likewise

his occasional absence from court with the alleged cause thereof. The superintendent should transmit monthly a copy of each register, with his own remarks, to government through the secretary in the judicial department, for its particular attention to every breach of regularity therein mentioned.

Par. 7. With a view to the same end, every person who chooses should have a right to be present during the trial of causes in any court: the courts, as is generally the case at present, should be so constructed as to afford facilities for a considerable number of persons hearing and witnessing the whole proceedings: any one who chose should be entitled to make notes of the same and publish them, or cause them to be published, in any manner he may think proper for general information, subject to prosecution for intentional error or misreprentation that might be judicially proved against him before a competent tribunal, and to incur such penalty as it might award. This measure would tend to remove the evil pointed out in answer to Query 7, No. 4.

49. Q *What number of causes may be pending at one time, and undisposed of in the district courts and courts of appeal?*

A. This depends partly on the comparative degree of industry and attention to business bestowed by the judicial officiers, partly on the extent of the district, and and amount of business within the jurisdiction of the respective courts. However the average number of causes pending may be ascertained by a reference to the registers kept, which are not at present accessible to me. My impression is that in some districts they are very numerous. But to shew how much the vigilance and

activity of a public officer may accomplish, even in so extensive a district as Hooghley, I may mention that there, under Mr. D. C. Smith, every case is decided in the course of four, five or six months. In the courts of appeal the causes pending are very numerous. Conscientious and active as Mr. Smith is, he is often obliged, from the pressure of business, judicial and magisterial, to authorise his native judicial officers to take the depositions of witnesses in the civil suits.

50. *Q. Could the number of appeal cases be reduced without any disadvantage?*

A. Yes, certainly not only without disadvantage but with great positive advantage. 1st, By introducing a more regular system of filing papers and bringing on causes, as above suggested, in answer to Q. 48. 2nd, By the aid of a jury and joint native judge, as proposed in reply to Q. 30. 3rd, By allowing of no appeal unless when there is a difference of opinion in the zillah or city court in giving sentence, as noticed in reply to the Query 36. By these means the business would be at once conducted with more dispatch, and with more accuracy; so many litigious suits would not occur; and there would be very little need of appeals to revise the decisions.

51. Q. *Has the right of appeal to the King in Council proved beneficial or otherwise?*

A. Owing to the vast distance, the heavy expense, and the very great delay which an appeal to England necessarily involves, owing also to the inaccuracies in the translations of the papers prepared after decision and sent to this country, and to other causes, I think the right of appeal to the king in council is a great source of evil and must continue to be so, unless a specific court of appeal

be created here expressly for Indian appeal causes above 10,000*l.* At the same time to remove the inaccuracies above noticed, three qualified persons (a European, a Mussulman, and a Hindu) should be nominated joint translators, and the translations should be furnished within one year from the conclusion of the proceedings in India, and both parties should be allowed to examine the accuracy of the translations thus prepared.* But if the appellant neglect to pay the fees of translation within two months after the decision, the appeal should be quashed.

52. Q. *What is the nature of the duties assigned to the revenue commissioners?*

A. They exercise a general superintendence and control over the revenue collectors, with powers similar to those vested in the board at Calcutta, formerly called the board of revenue, and in the board of commissioners for the upper provinces. That board at Calcutta is now the superior authority to which an appeal may be made from the decisions of the present commissioners, (it is in consequence now generally termed the Sudder or supreme board), and thence to the government itself. In other words the office of commissioner is a subsitute for the board of revenue, but an appeal being allowed from the one to the other, of course there is abundance of appeals,

* In noticing this circumstance, I by no means intend to make the least insinuation to the prejudice of the present translators; but make the statement from my own observation of various translations, and my own experience of the great difficulty, or rather impracticability, of rendering accurately large masses of documents from an oriental tongue, and frequently a provincial dialect, into a European language, of which the idioms are so widely different, unless the translator be assisted by persons possessing peculiar vernacular knowledge of the various localities.

and a great part of the business is thus transacted twice or thrice over.

53. Q. *What is the nature of the duties assigned to them as judges of the circuit?*

A. As judges of circuit they exercise control over the magistrates and try the higher classes of criminal causes, which involve a question of life or death, or severe punishment; and an appeal lies from them to the Sudder Nizamut Adawlat, the highest criminal tribunal.

54. Q. *Does not the discharge of one class of duties interfere with the discharge of another class, which seems to be of a very different nature?*

A. As above noticed (Ans. to Q. 46), while they are engaged in the duties of their circuit court, the reports and references from the revenue collectors must remain for several months unanswered; and not only do the people suffer in consequence, but the public business stagnates, as already observed.

55 and 56. Q. *What is the nature of the functions of the judge of circuit, and his native law assessor? Do they afford each other reciprocal assistance in the discharge of their duties?*

A. Both take cognizance of the charges brought before the magistrates and sent to their court; both hear the evidence and examine the witnesses, and both give their voice in passing the decision, as I observed in Par. 1st, of my Ans. to Q. 30. In a vague sense the Mohammedan law assessor may be considered as analagous to the jury in English courts, while the European judicial officer is the judge.

57. Q. *Are the judges generally competent to the discharge of their duties?*

A. Some of them are highly qualified; but it is not expected that European judges should be generally competent to determine difficult questions of evidence among a people whose language, feelings, and habits of thinking and acting are so totally different from their own.

58. Q. *Are the native law assessors generally competent?*

A. They are generally so: some of the Muftis (Mussulman law assessors) are men of such high honour and integrity, that they may be entrusted with the power of a jury with perfect safety; and they are all of the most essential utility, and indeed the main instrument for expediting the business of the criminal courts. However highly or moderately qualified the European judges may have been, the business has been advantageously conducted through the assistance and co-operation of these Mohammedan assessors for a period of 40 years past.

59. Q. *If they should differ in opinion, what course is adopted?*

A. The case is then referred to the Nizamut Adawlat (the highest criminal tribunal).

60. Q. *What course do the judges of the Nizamut Adawlat adopt?*

A. If the judge of the supreme criminal court, before whom the referred case comes, should, after consulting with the Muftis of that court, concur in the opinion of the circuit judge, his decision is confirmed and carried into execution. But should the Sudder Nizamut

(supreme criminal) judge differ from the opinion of the circuit judge, the case is then submitted to a second, or if necessary, to a third Sudder Nizamut judge, and the opinion given by two Sudder judges against one, is final.

61. Q. *Are the judges of the supreme criminal court also judges of the highest civil court ?*

A. Yes; and very deservedly.

62. Q. *Are they generally competent to the discharge of their duties ?*

A. I have already observed (Q. 42.) that they are highly competent.

63. Q. *As it is of the highest importance that the courts of circuit should be above all corruption; can you suggest any means of improving them ?*

A. Courts which have the disposal of life and death are undoubtedly of very high importance; and I would therefore propose instead of only one law assessor (who stands in place of a jury) that three or five (at least three) law assessors should be attached to each court, while trials are going on.

64. Q. *From what class of men would you select the juries in the criminal courts ?*

A. The criminal law now established in India has been very judiciously founded on the Mohammedan criminal law. It has however been so greatly modified by the acts of government from time to time since 1793, that it, in fact, constitutes a new system of law, consisting partly of its original basis, and partly of the government regulations. But it has been made a regular study only by the respectable Mohammedans, who, when they attain a certain proficiency, are styled Maulavies, a term equivalent to Doctors of Law. Formerly two of these were

attached to each court of circuit, and one to each district court. Of late the office of Maulavi of circuit having been abolished, the Maulavi or Mufti of the Zillah (district) court has been ordered by government to officiate as Mufti of circuit, while the judge of circuit is engaged in the trial of the criminal causes of that district. Thus he alone, as assessor of the judge of circuit, is entrusted with the powers usually assigned to a jury in a British court; having the power of delivering his opinion on every case at the close of the trial.

Par. 2. With a view to lessen the abuse of the great power thus given, it is highly desirable that government should adopt the following precaution: The judge of circuit previous to his departure for any Zillah (district) or city to try criminal causes, should summon, through the magistrate, one or two additional Maulavis attached to the adjacent courts, with a few other learned, intelligent and respectable inhabitants of that district or city, to join him on his arrival with a moderate extra allowance for their services, and every morning before he takes his seat on the bench, the judge should, without previous intimation, direct three of them to sit with him during the whole trials that may come on for that day as his law assessors; and they should be required to deliver their opinions in each case in open court, immediately after the close of the proceedings, without previous opportunity of communicating with any one whatever, on the same principle as an English jury: and the judge should immediately inform the parties of the verdict, to put an end to all intrigues. The judge of circuit should also be required to keep a vigilant watch over the proceedings of the magistrates within his jurisdiction, and to institute

an investigation personally and on the spot, into any complaint preferred against them, whenever he sees sufficient ground for adopting this prompt measure; and the judge of circuit only should have the power of inflicting corporal punishment; not any magistrate as injudiciously authorised by Regulation IX. of 1807, Sec. 19th.

65 Q. *What would be their duty? precisely like that of a jury, or like that of the law assessors as hitherto employed?*

A. More resembling that of the law assessors as hitherto employed. The difference between them is not important, and the result would be the same.

66. Q. *Should not the jury be selected from persons of all religious sects and divisions?*

A. Since the criminal law has hitherto been administered by the Mohammedans; to conciliate this class, the assessors should still be selected from among them, until the other classes may have acquired the same qualifications, and the Mohammedans may become reconciled to co-operate with them.

67. Q. *Do you think any alteration necessary in the system of criminal law now established?*

A. As the criminal laws now established are already in general very familiar to the natives, I think they may better remain in their present state, until the government may be able to introduce a regular code.

68. Q. *In what manner do you think a code of criminal law could be framed suitable to the wants of the country?*

A. A code of criminal law for India should be founded as far as possible on those principles which are

common to, and acknowledged by all the different sects and tribes inhabiting the country. It ought to be simple in its principles, clear in its arrangement, and precise in its definitions; so that it may be established as a standard of criminal justice in itself, and not stand in need of explanation by a reference to any other books of authority, either Mohammedan or Christian. It is a subject of general complaint that persons of a certain high rank, however profligate some of them may be, are, from political considerations, exempted from the jurisdiction or control of the courts of the law. To remedy this inconvenience, in the proposed code, so as to give general satisfaction, without disregarding the political distinctions hitherto observed, it may perhaps be expedient for government to order such persons to be tried by a special commission, composed of three or more persons of the same rank. This very regulation, when once known to them, would, in all probability, deter them from committing any very gross act of tyranny or outrage upon their dependents or others.

69. Q. *Whae period of time would it take to frame such a code, and by whom could it be done satisfactorily?*

A. It must require at least a couple of years to do it justice; and it ought to be drawn up by persons, thoroughly acquainted with Mohammedan and Hindu law, as well as the general principles of British law.

70. Q. *Are the judges capable of regulating their proceedings by such a code of laws?*

A. At present they are not generally capable of performing their judicial duties independent of the aid of the assessors; but with a proper code, as above supposed, they might, most of them, in no great period, by making

it a regular study, become much more capable of administering justice by it than they are by the present system.

71, 72. Q. *Would not the detention of the young civilians in England to obtain a regular legal education be injurious by delaying their proceeding to India for several years, at that period of life, when they are best capable to acquire the native languages? Do you conceive that any disadvantages arise from civilians going out at an early age?*

A. This is a subject which merits the deepest consideration of the legislature. Young men sent out at an early age, before their principles are fixed, or their education fully matured, with the prospect of the highest power, authority, and influence before them, occupying already the first rank in society immediately on their arrival, and often without the presence of any parent, or near relative to advise, guide or check them, and surrounded by persons ready, in the hope of future favours and patronage, to flatter their vanity and supply money to almost any extent to their too easily excitable passions—are evidently placed in the situation calculated to plunge them into many errors, make them overstep the bounds of duty to their fellow creatures and fellow subjects, and to relax whatever principles of virtue may have been implanted in their yet inexperienced minds. The excuse made for so injudicious an arrangement, that it is favourable to the acquisition of the native languages, is of no weight; for it may be observed that the missionaries, who are usually sent out at the age of from 25 to 35 years, acquire generally in two or three years so thorough a knowledge of these languages as to be able to converse freely in them and even to address a native audience with fluency in their own tongue.

In fact the languages are easily acquired at a mature as well as at an immature age by free communication with the people. Moreover, by the system of native assessors, juries and other helps to the judges and magistrates, and by the gradual substitution of English for Persian, as above proposed, so extensive and minute a knowledge of the native languages would not be requisite. In short from the present system of sending out youths at so early an age, very serious evils arise to themselves, as well as to the Government, and to the public. 1st, With respect to themselves, they are too often seduced into habits which prove ruinous to their health and to their fortunes, becoming thereby involved in debts from which many of them are never afterwards able to extricate themselves without having recourse to improper means. 2ndly, These embarrassments interfere very seriously with their duty to Government and the public, as the persons to whom they are indebted generally surround them, and seize every opportunity of enriching themselves which their situation and influence put in their way. 3rdly, Their indiscreet choice of native officers from youthful partialities, and the thoughtless habits acquired in early days, amid power and influence, prove very injurous to the community. Therefore no civil servant should be sent to India under 24 or at least 22 years of age, and no candidate among them should be admitted into the judicial line of the service, unless he can produce a certificate from a professor of English law to prove that he possesses a competent knowledge of it. Because, though he is not to administer English law, his proficiency therein will be a proof of his capacity for legal studies and judicial duties, and a knowledge of the principles of jurisprudence as

developed in one system of law will enable him to acquire more readily any other system; just as the study of the ancient and dead languages improves our knowledge of modern tongues. This is so important, that no public authority should have the power of violating the rule, by admitting to the exercise of judicial functions any one who has not been brought up a lawyer.

73. Q. *How are the laws of inheritance regulated?*

A. The property of Mohammedans descends and is divided according to their own law of inheritance; and the property of Hindus according to theirs; and of other sects also agreeably to their respective laws of inheritance.

74. Q. *What books do the Hindu lawyers officially attached to the courts follow as law authorities?*

A. There are various books, but in Bengal they chiefly follow the Dāyabhāga, with occasional reference to other authorities; and in the western province, and a great part of the Dakhan they follow the Mitaksharā principally.

75. Q. *What books do the Mohommedan lawyers follow as authorities?*

A. The majority of the Mussulmans of Hindustan follow the doctrines of Abū Hanīfah and his disciples; consequently the Hidāya is their chief law authority; but they also refer to some other books of decision or cases such as the Fatāwae Ālamgīrī and others.[1]

76. Q. *Is there any mode by which the law authorities, now so voluminous and perplexing, might be simplified in such a manner as to prevent the native lawyers from misleading the courts, and confounding the rights of property?*

A. To effect this great and pre-eminently important object, a code of civil law should be formed on similar

principles to these already suggested for the criminal code, and this, as well as the former, should be accurately translated, and published under the authority of government. By printing off large impressions, and distributing them, at prime cost, in the current languages of the people, they might render the rights of property secure; since, these being clear and well known to the whole community, it would be impossible for any designing man to induce an intelligent person to enter upon litigious suits. The law of inheritance should, of course, remain as at present with modifications peculiar to the different sects, until by the diffusion of intelligence the whole community may be prepared to adopt one uniform system. At present when a new regulation, drawn up by any officer of government and submitted to it, is approved of, it immediately becomes law when promulgated, the same as an act of parliament in this country, when approved of, discussed, and sanctioned by king, lords and commons. From the want of sufficient local knowledge and experience on the part of the framers of such regulations, they are often found not to answer in practice, and the local government is thus frequently obliged to rescind the whole or part of them. I would therefore suggest that if any new regulation be thought necessary before the completion of the civil and criminal codes above proposed, great care and precaution should be observed in its enactment. With this view every such project of law before it is finally adopted by the government, should be printed and a copy sent directly from Government, not only to the judges of the sudder Dewanee Adawlat, and the members of the Board of Revenue &c., but also to the advocate-general on the part of the Honourable Company, to the principal

Zamindars, such as the Rajahs of Burdwan, Behar, Benares, &c., and to the highly respectable merchants such as Jaggat Set at Murshedabad, Baboo Bajnath at Patna, and the representatives of Baboo Manohar Dass at Benares, also to the Muftis of the Sudder Dewannee Adawlat, and the head native officers of the Boards of Revenue, for their opinion on each clause of the Regulation to be sent in writing within a certain period. Because these being the persons who are affected by the Regulations, they will be cautious of recommending any that is injurious.* It should still be optional, however, with government to be guided or not by their suggestions. But a copy of the minutes made by the different parties above named should accompany the Regulations, when these are to be transmitted to England for the consideration of the court of directors, and parliament; and there should be a standing committee of the House of Commons, to take the whole regulations and minutes into consideration, and report to the House from time to time on the subject, for their confirmation or amendment.

In such matters as those of war and peace, it may be necessary that the local government should act on its own discretion and responsibility according to existing circumstances, notwithstanding the opinion of the government in England. But as the affairs of India have been known to the authorities in Europe, for such a series of years, in matters of legislation, the local government should be bound to carry into effect any regulations or

* In the case of those parties who do not understand English, the draft regulations, when sent to them, should be accompained with a translation.

order in judicial and revenue matter sent out, formally enacted by the British government, or the Court of Directors under the express sanction of the Board of Commissioners for the control of the affairs of India, although the local Government might still remonstrate against them to the home authorities.

The attention thus shewn by the government at home and abroad, to the feelings and interests of the Zamindars, and merchants, as principal members of the community, though it would not confer upon them any political power, would give them an interest in the government, and inspire them with greater attachment to it, and also the whole community, as being under their influence, and in general receiving its opinions from them.

77. Q. *Should the civil servants, in the judicial and revenue departments, be educated expressly for the particular line of the service in which they are engaged, or is it advantageous to transfer them from one branch of it to another?*

A. It is found by experience that persons, by long habit in the performance of any particular duties, become not only more dexterous in but more reconciled and even attached to them, and find them less irksome than others to which they have not been accustomed. In my humble opinion, the duties of a judge are not inferior in difficulty to those of any other profession whatever, nor is the qualification requisite for them to be acquired with less experience. It has been alleged that the revenue officers, when converted into judicial officers, must be better judges of revenue causes. But on this principle, commercial officers ought to become judges for the sake of commercial causes, agriculturists for agricultural causes,

and mechanists for mechanical disputes. However, as matters of revenue, commerce, agriculture, &c. are decided on the general principles of law and justice, any such special preparation has never been found necessary: therefore these two classes of duties should be kept quite distinct, if it is wished that either of them be performed well.

78. Q. *Can you offer any other suggestions for the improvement of the Judicial Establishment?*

A. 1st. In order to keep the judicial officers above temptation, their salaries should not be reduced. 2ndly. With the additional aids and checks of joint native judges, assessors, and juries above proposed, (Ans. to Q. 30.) all civil courts of appeal may be dispensed with, except the supreme civil court (Sudder Dewanee Adawlat,) and thus a very considerable saving may be effected by the government. One tenth of this saving will suffice to support all the native assessors, juries &c. above recommended (Q. 30.) 3rdly, By gradually introducing the natives into the revenue departments under the superintendence of European officiers, (as I proposed in my Appendix A, on the revenue system,) and in the judicial department in co-operation with them, the natives may become attached to the present system of government, so that it may become consolidated, and maintain itself by the influence of the intelligent and respectable classes of the inhabitants, and by the general good will of the people, and not any longer stand isolated in the midst of its subjects, supporting itself merely by the exertion of superior force

Par. 2. Should the gradual introduction of the natives into places of authority and trust as proposed, be found

not to answer the expectations of Government, it would then have the power of stopping their farther advancement, or even of reversing what might have been already done in their favour. On the contrary, should the proposed plan of combining Native with European officers have the effect of improving the condition of the inhabitants and of stimulating them with an ambition to deserve the confidence of the government, it will then be enabled to form a judgment of the practicability and expedience of advancing natives of respectability and talent to still higher situations of trust and dignity in the state, either in conjunction with or separately from their British fellow subjects.

Par. 3. In conclusion, I deem it proper to state, that in preparing my replies to these queries, I have not been biassed by the opinions of any individual whatsoever; nor have I consulted with any person or even referred to any work which treats on the subject of India. I have for the facts consulted only my own recollections; and in regard to the opinions expressed, I have been guided only by my conscience, and by the impressions left on my mind by long experience and reflection. In the improvements which I have ventured to suggest, I have kept in view equally the interests of the governors and the governed; and without losing sight of a just regard to economy, I have been actuated by a desire to see the administration of justice in India placed on a solid and permanent foundation.

(Sd.) RAMMOHUN ROY.

LONDON,
Sep. 19th, 1831.

QUESTIONS AND ANSWERS.

ON THE

REVENUE SYSTEM OF INDIA.

—:o:—

1. *Question. By what tenure is land held in the provinces with which you are acquainted?*

Answer. In the provinces of Bengal, Behar, and part of Orissa (*Midnapoor*), land is now held by a class of persons called *Zamindars* (*i. e.* landholders), who are entitled to perpetual hereditary possession, on condition of paying to government a certain revenue, fixed on their respective lands. This is termed the *Zamindary* system. But in the ceded and conquered provinces belonging to the Presidency of Fort William, no fixed agreement has yet been made with the *Zamindars* as to the amount of assessment. Consequently their estates are not in their own hands, but under the immediate management of government, and subject to fresh assessments from time to time at its discretion.

In the Madras Presidency, the revenue is for the greater part, collected directly from the cultivators, (called Ryots) by the government revenue officers, according to the rate fixed on the different descriptions of land in various situations. These cultivators may retain possession as long as they pay the revenue demanded from them.

2. Q. *By what tenure was land held under the former government?*

A. Under the Mohammedan government, lands were held by hereditary right on the Zamindary system (though the revenue was sometimes arbitrarily increased); and

the Zamindars were considered as having a right to their respective estates, so long as they paid the public revenue. They were at the same time responsible for any breach of the peace committed within the limits of their estates. In this manner many estates, some of which can yet be referred to, such as Vishnupoor, Nuddea, &c., continued in the same family for several centuries.

3. Q. *Do persons of all religious sects hold by the same tenure?*

A. No religious or other distinctions were observed under the former government in regard to the holding of land; at present, Europeans are interdicted by law from becoming proprietors of land, except within the jurisdiction of the British courts of law at the three presidencies, Calcutta, Madras and Bombay.

4. Q. *Are the estates most usually large or small?*

A. In the Bengal presidency the estates are many of them considerable, and there are many others of various smaller dimensions; but in the Madras presidency, where the revenue is collected directly from the cultivators, the district is generally divided into small farms.

5. Q. *Do the proprietors cultivate their own estates, or let them to tenants?*

A. To the best of my knowledge, almost all the land in the Bengal presidency is let out by the proprietors in farms, on a larger or smaller scale.

6. Q. *On what terms are the farms rented?*

A. The farms are frequently rented by the *Zamindar* himself to cultivators, often on lease, for payment of a certain fixed rent, and frequently the *Zamindar* lets the whole, or a great part of his Zamindary to respectable individuals, who realize the rents from the cultivators

according to the contracts previously made with them by the Zamindars, or subsequently by these middlemen.

7. Q. *Does the ordinary rate of rent seem to press severely on the tenants?*

A. It is considered in theory that the cultivator pays half the produce to the landholder, out of which half, 10-11ths or 9-10ths constitute the revenue paid to government, and 1-10th or 1-11th the net rent of the landholder. This half of the produce is a very heavy demand upon the cultivator, after he has borne the whole expense of seed and labour; but in practice, under the permanent settlement since 1793, the landholders have adopted every measure to raise the rents by means of the power put into their hands.

8. Q. *Under the former government had the cultivator any right in the soil to cultivate in perpetuity on paying a fixed rent not subject to be increased?*

A. In former times *Khud-Kasht Ryots* (i. e. cultivators of the lands of their own village) were considered as having an absolute right to continue the possession of their lands in perpetuity on payment of a certain fixed rent, not liable to be increased. But under an arbitrary government, without any regular administration of justice, their acknowledged rights were often trampled upon. From a reference to the laws and the histories of the country, I believe that lands in India were individual property in ancient times. The right of property seems, however, to have been violated by the Mohammedan conquerors in practice; and when the British power succeeded that of the Mohammedans, the former naturally adopted and followed up the system which was found to be in force, and they established it both thin eory and practice.

9. Q. *Are the tenants now subjected to frequent increase of rent?*

A. At the time when the permanent settlement was fixed in Bengal (1793), government recognized the *Zamindars* (landholders) as having alone an unqualified proprietary right in the soil, but no such rights as belonging to the cultivators (*Ryots*). (Vide Reg. I & VIII. of 1793, the foundation of the perpetual settlement.) But by Art. 2. S. 60. of Reg. VIII. of 1793, government declare, that no one should cancel the *Pattahs* (i. e. the title deeds), fixing the rates of payment for the lands of the *Khud-Kasht Ryots* (peasants cultivating the lands of their own village), "except upon proof that they had been obtained by collusion," or "that the rents paid by them within the last three years had been below the *Nirkhbundee* (general rate) of the *Purgannah*," (particular part of the district where the land is situated) or "that they had obtained collusive deductions," or "upon a general measurement of the *Purgunnah* for the purpose of equalizing and correcting the assessment." In practice, however, under one or other of the preceding *four* conditions, the landholders (*Zamindars*), through their local influence and intrigues, easily succeeded in completely setting aside the rights, even of the *Khud-Kasht* cultivators, and increased their rents.

10. Q *In what manner was the revenue assessed by Government upon each estate, and upon what principle at the time of the permanent settlement?*

A. In the province of Bengal at the time of the permanent settlement, (in 1793) the amount of the revenue which had been paid on each estate, (*Zamindary*) in the preceding year was taken as a standard of assessment,

subject to certain modifications. Estates (*Taaluks*) which had paid a revenue directly to Government for the twelve years previous without fluctuation, were to be assessed at that rate, and the principle of that assessment was considered to be nearly one-half of the gross produce. In Behar and other places the gross amount of the rents arising from an estate was fixed upon as the rate of government assessment, allowing however a deduction of ten per cent. to the landholder (*Zamindar*), in the name of proprietor's dues (*Malikanah*), and also something for the expense of collecting the rents, &c. In the upper provinces attached to Bengal presidency, as before observed, no settlement has yet been concluded with the Zamindars (*landholder.*) The estates (*Zamindarys*) are sometimes let out by government to the highest bidder, to farmers of revenue on leases of a few years, and in other cases the rents are collected from the cultivators by the government officers.

11. Q. *On what principle do the proprietors of land regulate the rate of rent paid by the tenants?*

A. The different fields or plots of ground on an estate are classed into 1st, 2nd, 3rd, and 4th quality, and certain rates per *bigah* (a well-known land measure in India) are affixed to them respectively, agreeable to the established rates in the district. These rates are considered as a standard in setting the rent to be paid by the cultivators. But as the precise quantity of land is always liable to dispute, and fields may be classed in the first, second, third, or fourth quality according to the discretion of the Zamindars or government surveyors, and the measurement is also liable to variation through the ignorance, ill-will, or intentional errors of the measurers—there is *in practice*

no fixed standard to afford security to the cultivators for the rate or amount of rent demandable from them, although such a standard is laid down *in theory*.

12. Q. *Is the rent any specific proportion of the gross produce of the land?*

A. In theory the rent is estimated, as I before observed, at half the gross produce of the land; it is often increased however much beyond that amount by various means; but in places peculiarly subject to have the crops destroyed by sudden inundation, or any other casualty, villagers cultivate generally on condition of receiving half the gross produce and delivering the other half to the landlord (*Zamindar*).

13. Q. *Is the rent paid in money, in agricultural produce, or in labour?*

A. The rent is generally paid in money, except under peculiar circumstances, when the agreement is to pay half the gross produce as rent. And it is sometimes paid by labour, when some of the villagers enter the service of the landlord (*Zamindar*) on condition of holding certain lands in lieu of their services.

14. Q. *If in money or produce, at what period of the year, and in what proportion?*

A. The money rent is usually paid by monthly instalments, the heaviest payments being made when the harvest is realized: and the payment in produce is of course exclusively at that season.

15. Q. *Is the revenue in many instances collected by government directly from the cultivators, and not from the proprietors, or any set of middlemen?*

A. Yes; very commonly in the Madras presidency, and sometimes in the ceded and conquered upper

provinces, as above observed (Question 10.). Also when lands advertized for sale, in order to realize arrears of revenue, do not find purchasers, they may remain temporarily in the hands of government.

16. Q. *In the event of a proprietor or cultivator falling into arrear in his instalments of revenue, what means are adopted by the government for realizing it?*

A. Various modes have been adopted, but the usual mode now followed, with respect to landholders (*Zamindars*) is, that at the expiration of every third month of the revenue year, should any balance of revenue remain unpaid, the estate in arrear may be advertized for sale.

17. Q. *Is the person of the proprietor liable to be arrested for the revenue?*

A. Should the arrear of revenue due not be realized by the sale of the estate, the person of the proprietor may be seized.

18. Q. *What proportion of the revenue may fall into arrear in one year, or what proportion of the land may be subject to legal process by the public authorities for its recovery?*

A. Perhaps two-fifths, or one-half of the whole revenue are usually in arrear, on an average, taking the whole year round, and more than one-half of the estates are advertized for sale every year, but comparatively few are actually sold, as many of the proprietors contrive, when pressed by necessity, to raise the money by loan or otherwise.

19. Q. *In the event of the tenants falling into arrear with their rent, what means do the proprietors adopt for realizing it?*

A. They distrain their moveable property with some

exceptions by the assistance of the police officers, and get it sold by means of the judicial authorities.

20. Q. *Do the courts afford the same facilities to the proprietors for recovering their rents, as to the government for realizing its revenue?*

A. When the revenue of an estate falls into arrear, the government by its own authority sells the property. But the proprietor cannot sell the property of a cultivator, except by the means of the judicial authority, which however generally expedites the recovery of such balances.

21. Q. *In the event of a sale of land for revenue, what mode does the collector adopt in bringing it to sale?*

A. When, at the end of the revenue quarter or year as before explained, a balance remains due, a notice is put up in the collector's office (*Cutcherry*) announcing that the lands are to be sold, unless the balance of revenue be paid up within a certain period. On the expiration of this period the lands may be sold to the highest bidder at public auction by the collector, under the sanction of the Board of Revenue.

22. Q. *What period of indulgence is given to the defaulter before the sale takes place?*

A. A space of from one month to six weeks, and not less than the former period from the time of advertising is allowed for paying up the arrears before the sale can actually take place.

23. Q. *What previous warning is given to him to pay up his arrears, what length of notice of the intended sale is given to the public, and in what mode is the notice published?*

A. First the collector sends a written order to the defaulting landholder, demanding payment of the arrears

due. Failing this, a catalogue of the various estates for sale is inserted in the government gazettee, and the particulars of each are advertised in the office of the collector, and of the judicial court and the Board of Revenue.

24. Q. *What class of persons become the principal purchasers?*

A. Frequently other landlords become purchasers, and sometimes the proprietors themselves in the name of a trusty agent. Sometimes persons engaged in trade, and sometimes the native revenue officers in the name of their confidential friends.

25. Q. *What proportion of the land is purchased by the revenue officers?*

A. The proportion purchased by the revenue officers is now, comparatively very smal..

26. Q. *Do they conduct the sales fairly or turn their official influence to their own private advantage?*

A. As such publicity is not given to the notices of sales as the local circumstances require, native revenue officers have sometimes an opportunity, if they choose, of effecting purchases at a reduced price; since the respectable natives in general, living in the country, are not in the habit of reading the government gazette, or of attending the public offices; and in respect to estates of which the business is transacted by agents, by a collusion with them, the estates are sometimes sold at a very low price.

27. Q. *Can you suggest any plan for obviating abuses of this kind?*

A. 1st, The advertisements or notices of sale should first be regularly sent to the parties interested at their own residences, not merely delivered to their agents. 2ndly, They should be fixed up not only in the govern-

ment offices, but at the chief market places and ferries (ghats) of the district; also in those of the principal towns, such as Calcutta, Patna, Murshedabad, Benares, Cawnpore. 3dly, The police officers should be required to take care that the notices remain fixed up in all these situations from the first announcement till the period of sale. 4thly, The day and hour of sale being precisely fixed, the biddings for an estate should be allowed to go on for a specific period—not less than five minutes—that all intending purchasers may have an opportunity of making an offer; and the lapse of that period should be determined by a proper measure of time, as a sand-glass placed on the public table for general satisfaction.

28. Q. *When a cultivator fails to pay his rent, does the proprietor distrain or take possession of the tenant's moveables by his own power, or by applying to any legal authority?*

A. Already answered. (See Ques. 19.)

29. Q. *Does the legal authority seize upon both the moveable and immoveable property, and the person of the tenant for his rent?*

A. 1st, On a summary application to the police, the moveable property of the tenant, with some exceptions, is distrained by the help of the police officers; 2ndly, by the ordinary judicial process, the immoveable property of the tenant may be attached, and his person arrested for the recovery of the rest.

30. Q. *What is the condition of the cultivator under the present Zamindary system of Bengal, and Ryotwary system of the Madras Presidency?*

A. Under both systems the condition of the cultivators is very miserable; in the one, they are placed at the

mercy of the *Zamindars'* avarice and ambition; in the other, they are subjected to the extortions and intrigues of the surveyors and other government revenue officers. I deeply compassionate both; with this difference in regard to the agricultural peasantry of Bengal that there the landords have met with indulgence from government in the assessment of their revenue, while no part of this indulgence is extended towards the poor cultivators. In an abundant season, when the price of corn is low, the sale of their whole crops is required to meet the demands of the landholder, leaving little or nothing for seed or subsistence to the labourer or his family.

31. Q. *Can you propose any plan of improving the state of the cultivators and inhabitants at large?*

A. The new system acted upon during the last forty years, having enabled the landholders to ascertain the full measurement of the lands to their own satisfaction, and by successive exactions to raise the rents of the cultivators to the utmost possible extent, the very least I can propose and the least which government can do for bettering the condition of the peasantry, is absolutely to interdict any further increase of rent on any pretence whatsoever; particularly on no consideration to allow the present settled and recognized extent of the land to be disturbed by pretended remeasurements; as in forming the Permanent Settlement (Reg. 1. of 1793. Sec. 8. Art 1.), the government declared it to be its right and its duty to protect the cultivators as being from their situation most helpless," and "that the landlord should not be entitled to make any objection on this account." Even in the Regulation (VIII of 1793, Sec. 60. Art. 2.), the government plainly acknowledged the principle of the *Khud-Kasht* cultivators

having a perpetual right in the lands which they cultivated, and accordingly enacted, that they should not be dispossessed, or have their title deeds cancelled, except in certain specified cases applicable, of course, to that period of general settlement (1793), and not extending to a period of forty years afterwards. If government can succeed in raising a sufficient revenue otherwise by means of duties, &c., or by reducing their establishments particularly in the revenue department, they may then, in the districts where the rents are very high, reduce the rents payable by the cultivators to the landholders, by allowing to the latter a proportionate reduction. On this subject I beg to refer to a paper (Appendix A.) which I drew up some time before leaving Bengal, which, with some additional hints and quotations, is subjoined.

32. Q. *Are the Zamindars in the habit of farming out their estates to middlemen in order to receive their rents in an aggregate sum, authorizing the middlemen to collect the rent from under-tenants; and if so, how do the middlemen treat the cultivators;*

A. Such middlemen are frequently employed, and are much less merciful than the *Zamindars?*

33. Q. *When the cultivators are oppressed by the Zamindars or middlemen, are the present legal authorities competent to afford redress?*

A. The judicial authorities being few in number, and often situated at a great distance, and the landholders and and middlemen being in general possessed of great local influence and pecuniary means, while the cultivators are too poor and too timid to undertake the hazardous and expensive enterprize of seeking redress, I regret to say

that the legal protection of the cultivators is not at all such as could be desired.

34. Q. *Can you suggest any change in the revenue or judicial system which might secure justice and protection to the cultivators against the oppression of the Zamindars, middlemen, or officers of government?*

A. I have already suggested (see Q. 31.) that *no* further measurement or increase of rent on any pretence whatever should be allowed; 2ndly, Public notices in the current languages of the people, stating these two points, should be stuck up in every village, and the police officers should be required to take care that these notices remain fixed up at least twelve months; and to prevent any infringement thereof, on receiving information of any attempt at remeasurement on the part of any landholder (*Zamindar*), &c. 3rdly, Any native judicial commissioner for small debts (*Munsif*) who is authorized to sell distrained property for the recovery of rent, should be required not to proceed to sale unless fully satisfied that the demand of the *Zamindar* had not exceeded the rate paid in the preceding year; and if not satisfied of this, he should immediately release the property by application to the police. 4thly, That the judge or magistrate be required to hold a court one day in the week for cases of this kind, and, on finding any *Zamindar* guilty of demanding more than the rent of the preceding years, should subject such offender to a severe fine; and on discovering any police officer or native commissioner guilty of connivance or neglect, he should subject them to fine and dismissal from the service. 5thly, The judge or magistrate in each district should be directed to make a tour of the district once a year, in the cold season in order to see that the

above laws and regulations for the protection of the poor peasantry are properly carried into effect. 6th, and lastly, The collector should be required to prepare a general register of all the cultivators, containing their names, their respective portions of land, and respective rents as permanently fixed according to the system proposed.

35. Q. *Is the condition of the cultivators improved within your recollection of the country?*

A. According to the best of my recollection and belief, their condition has not been improving in any degree.

36. Q. *Has the condition of the proprietors of land improved under the present system of assessment?*

Undoubtedly: their condition has been much improved; because, being secured by the permanent settlement against further demands of revenue, in proportion to the improvement of their estates, they have in consequence brought the waste lands into cultivation, and raised the rents of their tenantry, and thus increased their own incomes, as well as the resources of the country.

37. Q. *Has the government sustained any loss by concluding the permanent settlement of 1793 in Bengal, Behar, and part of Orissa without taking more time to ascertain the net produce of the land, or waiting for further increase of revenue?*

A. The amount of assessment fixed on the lands of these provinces at the time of the permanent settlement (1793), was as high as had ever been assessed, and in many instances higher than had ever before been realized by the exertions of any government, Mohammedan or British. Therefore the government sacrificed nothing in concluding that settlement. If it had not been formed,

the landholders (*Zamindars*) would always have taken care to prevent the revenue from increasing by not bringing the waste lands into cultivation, and by collusive arrangements to elude further demands; while the state of the cultivators would not have been at all better than it is now. However, if the government had taken the whole estates of the country into its own hands, as in the ceded and conquered provinces and the Madras Presidency then, by allowing the landholders only ten per cent. on the rents (Málikánah), and securing all the rest to the government, it might no doubt have increased the revenue for a short time. But the whole of the landlords in the country would then have been reduced to the same wretched condition as they are at present in the ceded and conquered provinces of the Bengal Presidency, or rather annihilated, as in many parts of the Madras territory; and the whole population reduced to the same level of poverty. At the same time, the temporary increase of revenue to government under its own immediate management would also have soon fallen off, through the misconduct and negligence of the revenue officers, as shewn by innumerable instances in which the estates were kept *khás*; *i. e.* under the immediate management of government.

38. Q. *Why are lands so frequently sold for arrears of revenue, and transferred from one set of hands to another?*

A. For ten or twelve years after the introduction of the permanent settlement, the old *Zamindars*, from adhering to their ancient habits of managing their estates by agents, and neglecting their own affairs, very soon lost a great part of their lands and some the whole; the pur-

chasers, by their active exertions and outlay of capital, improved many of their estates, and increased their own fortune: but many of their heirs and successors again becoming less active and more extravagant, by rivalry with each other in nuptial entertainments, funeral rites, and other religious ceremonies, frequently ran into debt, and brought their estates again into the market.

39 *and* 40. Q. *Do the lands sold for arrears usually realize the reveuue claimed by government, and fetch their full value? If not, what is the cause of the depreciation?*

A. They generally realize the revenue due from them; not always, however, as they are sold sometimes even below the amount of arrears due by the proprietors, owing to the want of due publicity and consequent absence of competitors; or to collusive sales of the estates as before observed (see Ans. to Quest. 26).

41. Q. *After the sale of the lands, should the arrears not be realized, does the government seize upon the person of the proprietor?*

A. Yes: the government seizes his person, and any other property government may discover him to be possessed of, is sold.

42. Q. *If so, is there any limit to his confinement, except payment of the debt?*

A. There is no specified limit to the best of my recollection; but after government is satisfied that he has given up all his property, he may obtain his release from its humanity.

43. Q. *Have the cultivators any means of accumulating capital under the present system?*

A. Certainly not; very often when grain is abundant, and therefore cheap, they are obliged, as already observed,

to sell their whole produce to satisfy the demands of their landlords, and to subsist themselves by their own labour. In scarce and dear years they may be able to retain some portion of the crop to form a part of their subsistence, but by no means enough for the whole. In short, such is the melancholy condition of the agricultural labourers, that it always gives me the greatest pain to allude to it.

44. Q. *When the government makes an assessment on the fields of the cultivators by means of numerous subordinate officers, is there any effectual mode of preventing collusion, embezzlement or oppression in the valuing and measuring of the lands?*

I think it is almost impossible under that system, carried on, as it must be, by means of a vast number of individuals who are generally poor, and have no character to support. From their mismanagement not only the cultivators suffer, but ultimately the government itself, from the falling off in the revenue, under a system that at once presses down the people and exhausts the resources of the country. However, if the government would take the survey and assessment of one of the preceding years as a standard, and prevent any future measurement and assessment, it would relieve the cultivators, from the apprehension of further exactions, * and the collector or the register of the district should be authorized to grant reduction to any cultivator subjected

* Since writing the above, I happened to meet with a gentleman from Madras, of high talents and experience, who maintained that no further measurements or assessments are at all allowed in the provinces belonging to that presidency. I felt gratified at the intelligence, and shall feel still more so to find it confirmed by the Regulations of government.

to overmeasurement on being petitioned, and on personally ascertaining such to have occurred.

45. Q. *Are collectors generally competent to superintend personally the revenue affairs of the district?*

A. From the heat of the climate, and from the difficulty of transacting business in a language which is foreign to them, the collectors in general for the above reasons, must stand in need of aid from others, whom they employ as instruments in conducting the details. At the same time they have so little intercourse or acquaintance with the native inhabitants, that they must naturally depend chiefly on two or three persons who are around them, in whom they generally place confidence, and consequently these few who have no chance of bettering their condition from the trifling salaries allowed them, sometimes consult their own interests, rather than those of the government or the people.

46. Q. *Are the Collectors vested with sufficient power to perform effectually the duties attached to their office, or do they enjoy authority of an extent to be injurious to the public?*

A. Their powers are amply sufficient. The judicial authorities also are always required by the regulations of government to afford them promptly every necessary assistance in the discharge of their duties; and many collectors are even invested with the additional office and powers of magistrates; contrary to the judicious system established by Lord Cornwalis,* and to the common

* By Sec. 2 of Reg. II. of 1793 all judicial powers were transferred from the revenue courts to the civil courts; but by Reg. 4 of 1821 it was enacted that the offices of Collector and Magistrate could be held by the same person; and again by Reg. V. of 1825, the legality of a union of the powers of Judge

principles of justice, as they thus become at once parties and judges in their own case ; consequently such powers very often prove injurious to those who attempt to maintain their own right against the claims of government, whose agents the collectors are. I much regret such a wide deviation in principle from the system of Lord Cornwallis ; as I think that system, with such modifications and improvements as time may suggest, should be maintained as the basis of the revenue and judicial system of India.

47. Q. *Can you suggest any improvement which might secure the revenue to government and protection to the people ?*

A. The regulations already in force are fully adequate to secure the government revenue. But to secure the people against any unjust exactions on the part of the revenue officers, I would propose, first, that the collectors should not by any means be armed with magisterial powers. Secondly, that any charge against the revenue officers should be at once investigated by the judicial courts to which they are subject, without reference to number of cases on the file of the court, as has been the practice with regard to causes in which the collectors are prosecutors ; so that both parties may have an equal chance of legal redress. This, under existing circumstances, seems to be the best remedy that presents itself ;

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and collector in the same individual was declared, there being some doubt on the point under Reg. 4 of 1821. By Reg. VIII. of 1831, all powers to try summary suits for rent were transferred from the civil courts to the Collector. Reg. 8 of 1831 was repealed by Act X. of 1859, under which, however, rent suits still continued to be cognizable only by the Revenue courts. By Act 8 of 1869, the power to try rent suits was transferred to the civil courts as under Reg. II. of 1793.—Ed.

but with the present system, I must repeat my fears that redress will not always be attainable.

48. Q. *Would it be injurious or beneficial to allow Europeans of capital to purchase estates and settle on them?*

A. If Europeans of character and capital were allowed to settle in the country, with the permission of the India board, or the Court of Directors, or the local government, it would greatly improve the resources of the country, and also the condition of the native inhabitants, by shewing them superior methods of cultivation, and the proper mode of treating their labourers and dependants.

49. Q. *Would it be advantageous, or the reverse, to admit Europeans of all descriptions to become settlers?*

A. Such a measure could only be regarded as adopted for the purpose of entirely supplanting the native inhabitants, and expelling them from the country. Because it is obvious that there is no resemblance between the higher and educated classes of Europeans and the lower and uneducated classes. The difference in character, opinions and sentiments between Europeans and the Indian race, particularly in social and religious matters, is so great, that the two races could not peaceably exist together, as one community, in a country conquered by the former, unless they were gradually assimilated by constant intercourse, continued and increased for a long period of years, under a strong and vigorous system of police, in every village, large or small; an establishment so expensive, however, that the present revenues of India could not support it. Such assimilation has in some measure taken place at Calcutta, from the daily communication of

many of the respectable members of both communities. Yet even in that capital, though the seat of government, and numerous police officers are placed at almost every hundred yards, the common Europeans are often disposed to annoy the native inhabitants. By the above statement I do not mean to convey that there are not any honest and industrious persons among the European labourers. On the contrary I believe that amongst the very humblest class of society such characters are numerous. But even in justice to them, I deem it right to state that without capital, they could not, in a hot country, compete with the native labourers, who are accustomed to the climate, and from their very different habits of life with regard to food, clothes and lodging, can subsist on at least one sixth, if not one tenth of what is required by an European labourer. Consequently the latter would not find his situation at all improved, but the very reverse by emigrating to India.

50. Q. *Would the judicial system as at present established, be sufficient to control the European settlers in the interior of the country?*

A. At present British-born subjects are not amenable to the Company's courts, except as regards small debts under 500 rupees (about £50) and for petty cases of assault*.

* Up to the passing of Act 11 of 1836, better known as the Black Act, the Company's civil courts had practically no jurisdiction over European British subjects. By Sec. 9 of Reg. 3 of 1793, Europeans were prohibited from residing at a greater distance from Calcutta than 10 miles, unless they executed a bond, agreeably to the provisions of Reg. 28 of 1793, rendering themselves amenable to the civil courts of the Muffussil regarding all suits of amounts less than 500 Rs. By Sec. 107 of 53 Geo. 3. C. 155, British subjects were rendered amenable to the Muffussil civil courts, but it would appear from what Ram Mohun Roy says, that it was not in operation in the Muffussil, as was the case with 9 Geo. 4. C. 74. The Muffussil criminal courts also had no jurisdiction over British-born subjects until

Consequently under the present regulations, the courts, as now established, are by no means competent to exercise any adequate control over British-born subjects in the interior.

51. Q. *Would it be advisable to extend the jurisdiction of the king's courts already established at the presidencies, or to augment their number; or to give greater power to the Company's judges over the European settlers?*

A. If the expenses attending the king's courts could be reduced to a level with the costs of the Company's courts, it would be useful and desirable to increase the number of such courts to the same extent as that of the Company's courts of appeal at present; if Europeans of respectability are permitted freely to settle in the interior. But should such reduction of expense be impracticable, it seems necessary in that event to extend the power of the Company's courts under the judicial servants of the Company. In the latter case these judicial servants should be regularly educated as barristers in the principle of British law; or the British settlers must consent to be subject to the present description of judicial officers, under such rules and regulations as the local government of India has established for the rest of the inhabitants of the country. With regard to the extension of the jurisdiction of the king's courts already established at the presidencies, although in the courts justice is, I think, ably administered, yet it is at an expense so enormous to the parties, and to the community, that even so wealthy a

the year 1872, except in cases of assault, forcible entry &c., not being felony, for which by 53 Geo. 3. C. 155, British subjects were amenable to the Zillah Magistrates and could be punished with fine not exceeding 500 Rs. Even now the Muffussil courts cannot pass on a British-born subject a sentence of more than one year's imprisonment.—ED.

city as Calcutta is unable to support its exorbitant costs, to which two successive grand juries have called the attention of the judges without any effect.

52. Q. *How would the settlement on a large scale of Europeans of capital in the country improve its resources?*

A. As a large sum of money is now annually drawn from India by Europeans retiring from it with the fortunes realized there, a system which would encourage Europeans of capital to become permanent settlers with their families, would necessarily greatly improve the resources of the country.

53. Q. *Is there any portion of land in the provinces with which you are acquainted, free from public assessments?*

A. There is land of this description, and in some districts to considerable extent.

54. Q. *Have any measures been adopted by government to ascertain the validity of the title by which such lands are held free from asssessment, or have any of them been resumed, and under what circumstances?*

A. In Reg. XIX. of 1793, Lord Cornwallis, the Governor-General in Council, directed the revenue collectors to enquire into the validity of the titles of such land: and in case of there being any doubt as to their validity, to institute prosecutions so as to have them judicially investigated; and in the event of the parties in possession of the land failing to establish a valid title in the court, the lands might, by a decree of the court, be resumed by the collectors on behalf of government. But the government declared, in the preamble of that regulation, that no holder of such tax-free (*lakiraj*) lands should be deprived of them, or subjected to revenue, until his title

should be judicially investigated and "adjudged invalid by a final judicial decree." However, I feel bound to add, that in 1828, by Reg. III. of that year, the revenue collector in each district was authorized to dispossess the holders of such tax-free lands by his own authority, without reference to any judicial courts, if the collector should be of opinion, after such enquiry as might satisfy himself that the title of the proprietor was not valid. It is therein enacted (Sec. 4. Art. 1.) that "such decision of the collector shall have the force and effect of a decree." Also (Art. 2.,) that "it shall not be necessary for him to transmit his proceedings to the Board of Revenue," but "the party dispossessed might appeal;" and by Art. 3., whether an appeal be filed or not, "that it shall and may be lawful for the collector immediately to carry into effect his decision by attaching and assessing the lands." This regulation produced great alarm and distrust amongst the natives of Bengal, Behar, and Orissa, many of whom petitioned against the principle of one party, who lays claim to the land, dispossessing an actual possessor at his own discretion; and Lord William Bentinck, though he has not rescinded the regulation, has suspended the immediate execution of it for the present.*

(Signed
RAMMOHUN ROY.

LONDON.
August 19, 1831.

* The agitation against Reg. 3 of 1828 was led by Ram Mohun Roy. We publish in the Appendix to this volume the petition against it. The petition was ultimately rejected and Reg. 3 of 1828 is still in force.—ED.

PAPER

ON THE

REVENUE SYSTEM OF INDIA.

——:o:——

VARIOUS opinions are entertained by individuals with regard to the perpetual settlement of public revenue, concluded according to Regulation I. of 1793 with proprietors of land in the provinces of Bengal, Behar, and Orissa, and arguments resting on different principles have been adduced for and against this system; no room is therefore left for throwing any new light on the subject. We may, however, safely advance so far as to admit the settlement to be advantageous to both the contracting parties, though not perhaps in equal proportion.

2. To convince ourselves, in the first instance, of the accuracy of the opinion that the perpetual settlement has proved advantageous to government, a reference to the revenue records of the former and present rulers will, I think, suffice. No instance can be shewn in those records, in which the sum assessed and annually expected from these provinces was ever collected with equal advantage prior to the 1793. To avoid the demand of an increase of revenue on the part of government, proprietors in general used then wilfully to neglect the cultivation, which very often proved utterly ruinous to themselves, and excessively inconvenient to government, in managing, farming, or selling such estates for the purpose of realizing their revenues.

3. Such persons as have directed their attention to the revenue records of government, must have been struck

with the extreme difference existing between the rate of value at which estates usually sold prior to the year 1793, or even several years subsequent to that period, and the common price which the disposal of those estates now obtains to government or individuals at public or private sales; and it will not, I believe, be alleged that I am far wrong, when I say that this increase may in general be reckoned tenfold, and in some instances twenty. This enormous augmentation of the price of land is principally to be attributed to the extensive cultivation of waste lands, which has taken place in every part of the country, and to the rise of rents payable by the cultivators, and not to any other cause that I can trace.

4. It is true the common increase of wealth has an irresistible tendency to augment the price, without any improving change in the property; but when we reflect on the extent of overwhelming poverty throughout the country (towns and their vicinity excepted), we cannot admit that increase of wealth in general has been the cause of the actual rise in the value of landed estates. To those who have ever made a tour of the provinces, either on public duty or from motives of curiosity, it is well known that within a circle of a hundred miles in any part of the country there are to be found very few, if any (besides proprietors of land), that have the least pretension to wealth or independence, or even the common comforts of life.

5. It has been asserted, and perhaps justly, that much of the increased wealth of Bengal in late years is to be ascribed to the opening of the trade in 1814,* thereby

* The charter act of 1813 took away the monopoly of the East India Company and threw open the trade of India to the capital and ent

occasioning a greatly increased demand for the produce of lands. In as far, however, as this cause may have operated to increase of wealth, it is confined to landlords and dealers in commodities.

6. Besides, government appropriates to itself an enormous duty on the transit and exportation of the produce of the soil, which has, since the period of the perpetual settlement, increased to a great amount from the exertions of the proprietors in extending and improving cultivation, under the assurance that no demand of an increase of revenue would be made upon them on account of the progressive productiveness of their estates.

7. In the second place, that the perpetual settlement has been conducive to the interest of the proprietors of land is, in fact, acknowledged by all parties, and is fully evident on reference to the present and former revenue registers. The benefit which the proprietors enjoy is principally owing to two circumstances: First, The extended cultivation of waste lands which formerly yielded no rent: Secondly, Subsequent increase of rents, much beyond those rates paid by cultivators at the time of the perpetual settlement, in defiance of the rights of *Khud-kasht* Ryots—that is, such villagers as cultivate on lease the land that belongs to the village.*

8. None will, I think, hesitate to rejoice in the augmentation of the incomes of proprietors derived from the extension of cultivation, as every man is entitled by law and reason to enjoy the fruits of his honest labour and

* Land in India originally belonged to village communities, a fact little appreciated by the early Anglo-Indian administrators.—ED.

good management. But as to the policy of vesting in the proprietors themselves, exempted from any increase of tax, the power of augmenting rents due from their *Khud-kasht* tenants, I must confess it to be a subject that requires examination.

9. It is too true to be denied that there was no regular system of administering justice, even in theory, under the government of the former rulers, and that there were few instances in which such humble individuals as *Khud-kasht* Ryots succeeded in bringing complaints against proprietors to the notice of higher authorities; nevertheless their claims to the cultivation of particular soils at fixed rates, according to their respective qualities, were always admitted as their means of livelihood, and inducement to continue to reside in their native village, although proprietors very often oppressively extorted from them sums of money, in addition to their rents, under the name of *abwábs*, or subscriptions; while, on the other hand, the Ryots frequently obtained deductions through collusion with the managers acting in behalf of the proprietors.

10. The measure adopted for the protection of *Khud-kasht* tenants in Article 2nd, Sec. LX. Reg. VIII. of 1793, was conditional, and has been consequently subject to violation. Hence they have benefited very little, if at all, by its provisions.

11. The power of imposing new leases and rents, given to the proprietors by Reg. I. and VIII. of 1793, and subsequent Regulations, has considerably enriched comparatively a few individuals—the proprietors of land—to the extreme disadvantage, or rather ruin, of millions of their tenants; and it is productive of no advantage to the government.

12. During the former system of government, proprietors in these and other provinces, contrary to the tenure by which lands are held in England, were required to pay a considerable proportion of their rents to the ruler of the country, whose arbitrary will was alone sufficient to augment or reduce the rates of the revenue demandable from them, and who, by despotic power, might deprive them of their rights as proprietors when they failed to pay the revenue unjustly alleged to be due from them. Under these circumstances, the situation of the proprietors was not in any respect on a more favourable footing than that of the *Khud-kasht* tenant, and consequently their right was not in any way analogous to that of a landlord in England.

13. In short, there were three parties acknowledged to have had a fixed right in the soil :—1st, The Ryots to cultivate the land, and receive one half of the produce in return for the seed and labour. 2ndly, The government, in return for its general protection, to receive the other half, with the exception of one-tenth or eleventh. 3dly, The Zamindars, or landholders to receive the tenth or eleventh for their local protection, and for their intervention between the government and the peasantry.

14. With a view to facilitate the collection of revenue and to encourage proprietors to improve their estates, government liberally relieved them in the year 1793 from the distress and difficulties originating in the uncertainty of assessment, by concluding a perpetual settlement with them. But I am at a loss to conceive why this indulgence was not extended to their tenants, by requiring proprietors to follow the example of government, in fixing a definite rent to be received from each

cultivator, according to the average sum actually collected from him during a given term of years; or why the feeling of compassion excited by the miserable condition of the cultivators does not now induce the government to fix a *maximum* standard, corresponding with the sum of rent now paid by each cultivator in one year, and positively interdict any further increase.

15. Some, however, doubt whether government can now assume the power of bettering the condition of this immense portion of its subjects, without violating the long-standing practice of the country, and the principles laid down in their existing regulations, at least for the last forty years. But I am satisfied that an unjust precedent and practice, even of longer standing, cannot be considered as the standard of justice by an enlightened government.

16. With respect to the Regulations, however, there would be no real violation of them; as in Reg. I. of 1793, which is the basis of the permanent settlement, the government thus expressly declares, that "It being the duty of the ruling power to protect all classes of people, and more particularly those who from their situation are most helpless, the Governor-general in council will, whenever he may deem it proper, enact such regulations as he may think necessary, for the protection and welfare of the dependant *Talookdars*, *Ryots*, and other cultivators of the soil; and no *Zamindar*, independent *Talookdar*, or other actual proprietor of land, shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay."

17. And again in Reg. VIII. of 1793 (Sec. 60. Art.

2.), the government recognized the principle of the cultivators of the lands attached to their own village (*Khud-kasht Ryots*) having a permanent right to retain possession thereof at a fixed rent, and enacted that their title-deeds (*Pattahs*) should not be set aside, except in certain specified cases, applicable to that period of general settlement, and not extending to forty years afterwards.

18. I regret to say that in some parts of these provinces the rent is already raised so high, that even an interdict against further increase cannot afford the Ryots (cultivators) any relief or comfort; consequently, the government might endeavour to raise part of its revenue by taxes on luxuries, and such articles of use and consumption as are not necessaries of life, and make a proportionate deduction in the rents of the cultivators, and in the revenues of the *Zamindars* to whom their lands belong.

19. Failing this, the same desirable object may be accomplished by reducing the revenue establishment in the following manner:—Under the former government, the natives of the country, particularly Hindoos, were exclusively employed in the revenue department in all situations, and they are still so almost exclusively under the present system. The collectors being covenanted European servants of the Company, are employed as superintendents at a salary of a thousand or fifteen hundred rupees (100 to 150*l.*) per mensem. The duties, however, are chiefly performed by the native officers, as they are not of such importance or difficulty as the duties attached to the judicial department, in which one slip might at once destroy the life of the innocent, or

alter the just destination of property for a hundred generations.

20. The principal duties attached to the situation of Collector are as follows: 1st. The receipt of the revenue by instalments according to the assessment, and remitting the amount thus collected to the General Treasury; or to one of the commanding officers; or to the Commercial Resident, or Salt Agent, as directed by the Accountant General. 2nd. Advertising and selling the estates of defaulters to realize arrears. 3rd. Taking care of his own treasury (to prevent any mismanagement of it,) and the revenue records. 4th. Making partitions of estates, when joint sharers thereof apply to him for such division. 5th. Preparing a quinquennial register of the estates paying revenue within his collectorship. 6th. Ascertaining what tax-free land has been in the possession of individuals without a valid title. 7th. Furnishing the judicial authorities with official papers required by them, and executing their decrees concerning lands &c. 8th. Deciding cases which the judicial officer has it in his option to refer to the collector. 9th. Officiating as local post-master under the authority of the post-master-general. 10th. Assessing duties on the venders of liquors and drugs with the concurrence of the magistrate, and collecting the duties payable thereon (receiving five per cent on the amount of collection for his trouble). 11th. Giving out stampted papers to native venders, and he being responsible for the same, ten per cent., I think, on the sum realized is allowed him for his trouble and responsibility. (The two latter articles produce of the collector an additional monthly income of from not less than 200 to 1000 rupees a month, according to the greater or smaller sale in

different districts. 12th. Regulating the conduct of the native sub-collectors, assessors and surveyors, employed on the estates under the immediate management of government. 13th. Transmitting monthly and annual reports and accounts to the accountant-general and the civil auditor, and corresponding with the Board of Revenue on the various affiairs of his collectorship as well as obeying their instructions.

21. A native of respectability at a salary of about 300 or 400 rupees per month may be appointed in lieu of the European collector, and he should give sureties for his character and responsibility to such amount as government may deem adequate. The large sum that may thus be saved by dispensing with the collectors would not only enable government to give some relief to the unfortunate Ryots above referred to by reducing their rents, but also raise the character of the natives and render them attached to the existing government and active in the discharge of their public duties, knowing that under such a system the faithful and industrious native servant would receive the merit, and ultimately the full reward of his services; whereas under the present system the credit or discredit is attributed to the European head of the department; while the natives who are the real managers of the business are entirely overlooked and neglected, and consequently they seem most of them to be rendered quite indifferent to anything but their own temporary interest.

22. With respect to the expediency and advantage of appointing native revenue officers to the higher situations in the revenue department, I am strongly supported by the opinions of persons whose sentiments have great

weight with the governing party as well as with the party governed. I can safely quote the remarks of many distinguished servants of the Honourable East India Company, such as Sir Thomas Munro, Mr. Robert Richards, Mr. H. Ellis, and others.

23. The native collectors should be under the immediate and strict control of the Board of Revenue as the European collectors at present are, and should be made strictly responsible for every act performed in their official capacity. No one should be removed from his situation unless on proof of misconduct regularly established to the satisfaction of government on the report of the Board of Revenue.

24. For the present, perhaps, it would be proper to transfer the duty of selling the property of defaulting landholders to the registrars ; and the judges, instead of referring causes to the revenue officers, should submit them to the Sudder Ameens (or native commissioners already appointed to decide causes under a certain amount.)

25. In order to prevent the exercise of any undue influence or bribery in obtaining the situation of native collectors of revenue, it is requisite that all the present *Serishtadars* or head native officers attached to the different collectorships, should each be confirmed, at once, in the situation of collector, and in case of his death or removal, the next in rank should succeed him. In the same manner those under them should be each promoted regularly in succession according to his rank in the revenue department, unless incapaciated from being unable to produce the requisite security, or from other evident disqualification. And no one should be allowed to hold the situa-

tion of collector unless he had been at least ten years in the revenue service.

26. The present collectors may be transferred, if found qualified, to the judicial or some other department, or allowed to retire on suitable pensions. Besides the Board of Revenue, who should exercise a constant superintendance over the revenue branch, there should be six or eight European civil servants of the company, who stand high in the estimation of government, appointed under the denomination of circuit collectors, to examine personally, from time to time, the records kept, and the proceedings held by the native collectors.

27. At all events I must conclude with beseeching any and every authority to devise some mode of alleviating the present miseries of the agricultural peasantry of India and thus discharge their duty to their fellow-creatures and fellow-subjects.

LONDON,
August 19, 1831.

ADDITIONAL QUERIES

RESPECTING

THE CONDITION OF INDIA.

——:o:——

1. Question. *What is your opinion of the physical condition of the Indian peasantry?*

Answer. India is so extensive a country that no general statement on this subject will apply correctly to the people of the various parts of it. The Natives of the Southern and Eastern Provinces for example, are by no means equal in physical qualities to those of the Northern and Western Provinces. But as regards physical strength, they are upon the whole inferior to the Northern nations, an inferiority which may be traced, I think, to three principal causes: 1st, The heat of the climate of India, which relaxes and debilitates the constitution: 2dly, The simplicity of the food which they use, chiefly from religious prejudices: 3dly, The want of bodily exertion and industry to strengthen the corporeal frame, owing principally to the fertility of the soil, which does not render much exertion necessary for gaining a livelihood. Hence the Natives of Africa, and some parts of Arabia, though subject to the influence of the same, or perhaps a greater intensity of heat, yet from the necessity imposed upon them of toiling hard for sustenance, and from using animal food, they are able to cope with any Northern race in physical strength; therefore, if the people of India were to be induced to abandon their religious prejudices, and thereby become accustomed to the frequent and common use of a moderate proportion of animal

food, (a greater proportion of the land being gradually converted to the pasture of cattle,) the physical qualities of the people might be very much improved. For I have observed with respect to distant cousins, sprung from the same family, and living in the same district, when one branch of the family had been converted to Mussulmanism, that those of the Mohammedan branch living in a freer manner, were distinguished by greater bodily activity and capacity for exertion, than those of the other branch which had adhered to the Hindoo simple mode of life.

2. Q. *What is the moral condition of the people?*

A. A great variety of opinions on this subject has already been afloat in Europe for some centuries past, particularly in recent times, some favourable to the people of India and some against them. Those Europeans who, on their arrival in the country, happened to meet with persons whose conduct afforded them satisfaction, felt prepossessed in favour of the whole Native population, and respected them accordingly; others again who happened to meet with ill treatment and misfortunes, occasioned by the misconduct or opposition, social or or religious, of the persons with whom they chanced to have dealings or communication, represented the whole Indian race in a corresponding light; while some, even without being in the country at all, or seeing or conversing with any Natives of India, have formed an opinion of them at second hand founded on theory and conjecture. There is, however, a fourth class of persons, few indeed in number, who though they seem unprejudiced, yet have differed widely from each other, in many of their inferences from facts, equally within the

sphere of their observation, as generally happens with respect to matters not capable of rigid demonstration. I therefore feel great reluctance in offering an opinion on a subject on which I may unfortunately differ from a considerable number of those gentlemen. However, being called upon for an opinion, I feel bound to state my impression, although I may perhaps be mistaken.

From a careful survey and observation of the people and inhabitants of various parts of the country, and in every condition of life, I am of opinion that the peasants or villagers who *reside at a distance from large towns and head stations and courts of law*, are as innocent, temperate and moral in their conduct as the people of any country whatsoever; and the farther I proceed towards the North and West, the greater the honesty, simplicity and independence of character I meet with. The virtues of this class however rest at present chiefly on their primitive simplicity, and a strong religious feeling which leads them to expect reward or punishment for their good or bad conduct, not only in the next world, but like the ancient Jews, also in this: 2dly, The inhabitants of the cities, towns or stations who have much intercourse with persons employed about the courts of law, by Zamindars &c. and with foreigners and others in a different state of civilization, generally imbibe their habits and opinions. Hence their religious opinions are shaken without any other principles being implanted to supply their place. Consequently a great proportion of these are far inferior in point of character to the former class, and are very often even made tools of in the nefarious work of perjury and forgery: 3dly, A third class consists of persons who are in the employ of landholders (Zamindars) or

dependent for subsistence on the courts of law, as attorney's clerks, and who must rely for a livelihood on their shrewdness; not having generally sufficient means to enter into commerce or business. These are for the most part still worse than the second class; more especially when they have no prospect of bettering their condition by the savings of honest industry, and no hope is held out to them of rising to honor or affluence by superior merit. But I must confess that I have met a great number of the second class engaged in a respectable line of trade, who were men of real merit, worth and character. Even among the third class I have known many who had every disposition to act uprightly and some actually honest in their conduct. And if they saw by experience that their merits were appreciated, that they might hope to gain an independence by honest means, and that just and honourable conduct afforded the best prospect of their being ultimately rewarded by situations of trust and respectability, they would gradually begin to feel a high regard for character and rectitude of conduct; and from cherishing such feelings become more and more worthy of public confidence, while their example would powerfully operate on the second class above noticed, which is generally dependent on them and under their influence.

3. Q. *What is the rate of wages generally allowed to the peasantry and labourers?*

A. In Calcutta, artizans, such as blacksmiths and carpenters, if good workmen, get (if my memory be correct) from ten to twelve rupees a month (that is, about 20 to 24 shillings); common workmen who do inferior plain work 5 or 6 rupees (that is, about 10 or 12 shillings

sterlings money); masons from 5 to 7 (10 to 14 shillings) a month; common labourers about 3½ and some 4 rupees; gardeners or cultivators of land about 4 rupees a month, and palanquin bearers the same. In small towns the rates are something below this, in the country places still lower.

4. Q. *On what kind of provisions do they subsist?*

A. In Bengal they live most commonly on rice with a few vegetables, salt, hot spices and fish. I have however often observed the poorer classes living on rice and salt only. In the upper provinces they use wheaten flour instead of rice, and the poorer classes frequently use bajra (millet) &c.; the Mohamedans in all parts who can afford it add fowl and other animal food. A full grown person in Bengal consumes about 1lb. to 1½lb. of rice a day; in the upper provinces a larger quantity of wheaten flour, even though so much more nourishing. The Vaishya (persons of the third class) and the Brahmans of the Dakhan never eat flesh under any circumstances.

5. Q. *What sort of houses do they inhabit?*

A. In higher Bengal and the upper and Western Provinces they occupy mud huts; in the lower and Eastern parts of Bengal generally hovels composed of straw, mats and sticks; the higher classes only having houses built of brick and lime.

6. Q. *How are they clothed?*

A. The Hindus of the Upper Province wear a turban on the head, a piece of cotton cloth (called a *Chadar*) wrapped round the chest, and another piece girt closely about the loins and falling down towards the knee; besides, they have frequently under the *Chadar* a vest or waitecoat cut and fitted to the person. In the lower

provinces they generally go bareheaded; the lower garment is worn more open but falling down towards the ankle; and the poorer classes of labourers have merely a small strip of cloth girt round their loins for the sake of decency and are in other respects quite naked. The Mohammedans everywhere use the turban and are better clad. The respectable and wealthy classes of people, both Mussulmans and Hindus, are of course dressed in a more respectable and becoming manner.

7. Q. *Does the population increase rapidly?*

A. It does increase considerably, from the early marriages of the people and from the males so seldom leaving their families, and almost never going abroad. But there are occasional strong natural checks to this superabundance. The vast number carried off of late years by cholera morbus having greatly reduced the surplus population, the condition of the labourers has since been much improved, in comparison with what it was before the people were thinned by that melancholy scourge.

8. Q. *What is the state of industry among them?*

A. The Mohammedans are more active and capable of exertion than the Hindus, but the latter are also generally patient of labour, and diligent in their employments, and those of the Upper Province not inferior to the Mohammedans themselves in industry.

9. Q. *What capability of improvement do they possess?*

A. They have the same capability of improvement as any other civilized people.

10. Q. *What degree of intelligence exists among the native inhabitants?*

A. The country having been so long under subjection

to the arbitrary military government of the Mohammedan rulers, which showed little respect for Hindu learning, it has very much decayed and indeed almost disappeared, except among the Brahmans in some parts of the Dakhan (Deccan), and of the Eastern side of India, more distant from the chief seat of Mohammedan government. The Mussulmans, as well as the more respectable classes of Hindus chiefly, cultivated Persian literature, a great number of the former and a few of the latter also extending their studies likewise to Arabic. This practice has partially continued to the present time, and among those who enjoy this species of learning, as well as among those who cultivate Sanscrit literature, many well-informed and enlightened persons may be found, though from their ignorance of European literature, they are not naturally much esteemed by such Europeans as are not well versed in Arabic or Sanscrit.

11. Q. *How are the people in regard to education?*

A. Those about the courts of the native princes are not inferior in point of education and accomplishments to the respectable and well-bred classes in any other country. Indeed they rather carry their politeness and attention to courtesy to an inconvenient extent. Some seminaries of education (as at Benaras &c.) are still supported by the princes and other respectable and opulent native inhabitants, but often in a very irregular manner. With respect to the Hindu College in Calcutta, established under the auspices of government on a highly respectable and firm footing, many learned Christians object to the system therein followed of teaching literature and science without religion being united with them; because they consider this as having a

tendency to destroy the religious principles of the students (in which they were first brought up and which consequently were a check on their conduct), without substituting anything religious in their stead.

12. Q. *What influence has superstition over the conduct of the people ?*

A. I have already noticed this in reply to query 2nd.

13. Q. *What is the prevailing opinion of the Native inhabitants regarding the existing form of government and its administrators, Native and European ?*

A. The peasantry and villagers in the interior are quite ignorant of, and indifferent about either the former or present government, and attribute the protection they may enjoy or oppression they may suffer to the conduct of the public officers immediately presiding over them. But men of aspiring character and numbers of such ancient families as are very much reduced by the present system, consider it derogatory to accept of the trifling public situations which natives are allowed to hold under the British Goverment, and are decidedly disaffected to it. Many of those, however, who engage prosperously in commerce, and of those who are secured in the peaceful possession of their estates by she permanent settlement, and such as have sufficient intelligence to foresee the probability of future improvement which presents itself under the British rulers, are not only reconciled to it, but really view it as a blessing to the country.

But I have no hestation in stating, with referrence to the general feeling of the more intelligent part of the Native community, that the only course of policy which can ensure their attachment to any form of Government,

would be that of making them eligible to gradual promotion, according to their respective abilities and merits, to situations of trust and respectability in the state.

(Signed) RAMMOHUN ROY.

LONDON,
September 28, 1831.

NOTE.

In replying to Queries 2nd, 9th and 10th, I have felt great delicacy in offering to the British public, situated at the distance of so many thousand miles, my opinion of the character of my own countrymen, and of their intelligence and capability of improvement; lest I should be accused of partiality, or supposed to be prejudiced in their favor, I have, therefore, endevoured to convey my sentiments in very moderate language.

In replying to Query 11, I wish to be distinctly understood as referring to those Natives of India who have been brought up under the mixed system of Hindoo and Mahommedan education, which has hitherto existed in the country among the respectable classes. The present generation of youth, particularly at the Presidency, bred up in communication and intercourse more or less with Europeans, are progressively becoming imbued with their habits, manners, and ideas, and will, in the course of time, most probably approximate very nearly to them. My remarks are, therefore, not applicable to these, and may in a few years appear strange to those who do not consider and make allowance for these changes.

APPENDIX

I.

SINCE the foregoing evidence has been circulated, a gentleman of high literary repute, connected with India, has expressed doubts regarding the policy or expediency of the suggestions I made in reply to Queries 71, 72, on the Judicial System, in the following words:

"No civil servant should be sent to India under twenty-four or at least twenty-two years of age, and no candidate among them should be admitted into the judicial line of the service, unless he can produce a certificate from a professor of English law to prove that he possesses a competent knowledge of it." (*Vide p.* 47. *supra.*)

In addition to the reasons there advanced in support of this position, and also in reply to Query 77, (*vide p.* 52) I beg here to quote (with deference to that gentleman's extensive oriental acquirements), the authority of Sir William Blackstone, given in his introduction to the celebrated "Commentaries on the Laws of England," an authority which stands very high in the estimation of the British public.

"Should a judge in the most subordinate jurisdiction be deficient in the knowledge of the law, it will reflect *infinite contempt* on himself and *disgrace* upon those who employ him. And yet the consequence of his ignorance is *comparatively* very trifling and small: his judgment may be examined and his errors rectified by other courts. But how much more serious and affecting is the case of a superior judge, if without any skill in the laws he will

boldly venture to decide a question upon which the welfare and subsistence of whole families may depend, where the chance of his judging right or wrong is barely equal, and where if he chances to judge wrong, he does an injury of the most alarming nature, and injury without possibility of redress." Sec. 1. No. 12.

It should not be overlooked that the Company's District Judges and young Registrars who have the decision of minor causes, are afterwards made judges of the provincial courts of appeal, and also of the Sudder Dwanee and Nizamut Adawlut (the highest civil and criminal tribunals), whose decision is final in all criminal causes, as well as in civil causes under 50,000 rupees;* and that even in regard to causes above that sum, very few have the means of appealing to the king and council in England. The peculiar difficulties and discouragements attending such appeals have been already pointed out in my evidence, (Judicial System, Q. 51. page 36.)

No. II.

In my paper on the Revenue System I expressed an opinion that the permanent settlement has been beneficial to both the contracting parties, i. e. the government and the landholders. This position, which, as regards the former, was long much controverted, does not now rest upon theory; but can be proved by the results of about forty years' practice. To illustrate this, I subjoin the annexed statements, Nos, I. & II., shewing the failure of the whole amount of the public revenue at Madras under

* Under 21 Geo. 3. cap. 70 an appeal could be preferred to his Majesty only in civil suits of the value of 5000£ and upwards. The amount was afterwards reduced to 10,000 Rs. on 10th April 1838 by an order of the council made under Sec. 24 of 3 and 4 Wm. 4. cap. 41.—Ed.

the Ryotwary system as contrasted with the general increase of the revenue of Bengal under the Zumeendary permanent settlement; the latter diffusing prosperity into the other branches of revenue, whereas the former (or Ryotwary system), without effecting any material increase, in that particular branch, has, by its impoverishing influence, tended to dry up the other sources of Revenue: a fact which must stand valid and incontrovertible as a proof of the superiority of the latter, until a contrary fact of greater or at least equal weight can be adduced.

STATEMENT 1ST.—*Bengal, Behar and Orissa.*

By a comparative view of the Revenues of Bengal, Behar and Orissa, from the period of the Perpetual Settlement, it appears that, in the thirty-five years, from 1792-3 to 1827-28, there was a total increase on the whole amount of the Revenue of above 100 per cent. (101·71), and that this increase has been steady and progressive up to the present time; in the first seventeen years (from 1792-3 to 1839-10) it was about 42½ per cent.; in the next eighteen years (from 1809-10 to 1827-28) 43$\frac{8}{10}$ per cent., and in the last ten years of that period (from 1817-18 to 1827-28) it was nearly 30 per cent.

These result are extracted from The Second Report of the Select Committee on the Affairs of the East India Company in 1810, p. 80; The Second Report of 1830, p. 98. In 1815-16, the revenue of Cuttack was incorporated with that of Bengal, but in 1822 the revenue of this Province did not exceed 185,000*l.*

STATEMENT 2ND.—*Madras.*

By a comparative view of the revenue of the old British territory in Madras, it appears that during the

same period of thirty-five years (i.e. from 1793 to 1828, there was an increase of only about 40 per cent., (40·15.) on the total amount of the whole revenue. That the increase during the first seventeen years (from 1793 to 1810) was $43\frac{23}{100}$ per cent.; that in the next eight years the increase was only about $3\frac{1}{3}$ per cent.; and that in the last eighteen years, (i. e. from 1810 to 1828) there has been a decrease of $2\frac{15}{100}$ per cent.

These results are extracted from the Second Report of the Select Committee on the Affairs of the East India Company in 1810. (p. 88.); Second Report of 1830, (p. 98) and Minutes of Evidence, 1830-31.

No. III.

A doubt has been expressed with regard to the policy and advantage of acting on the principle suggested in my paper on the Revenue System (paragraph 14 to 17), in which I expressed my opinion as to the propriety (on grounds of justice and humanity) of fixing a maximum rent to be paid by each of the cultivators, that their rents, already raised to a ruinous extent, might not be subject to further increase. I shall therefore here offer a few additional remarks on that point, shewing the policy of such a measure.

Since the establishment of the permanent settlement in the lower provinces of the Bengal Presidency, the landholders (whose rents have been secured by it) are well-known to have been firmly attached to the existing government (as I noticed in reply to No. 13 of the Additional Queries). This cannot be said of the same class in the ceded and conquered provinces, whose estates have not been secured by a similar arrangement; and it is not the case with regard to the people of a large

proportion of the Madras Presidency, where no similar attachment can be reasonably expected. Hence we may be justified in inferring that if the benefit of a permanent settlement were also extended to the cultivators, the farmers and labourers in every part of the country, both in the upper and lower provinces (who form the largest portion of the population of India) would be equally attached to government, and ready to rise in defence of it, as a militia or in any other shape that might be required; so as to secure the British rule in a foreign and and remote empire, alike from internal intrigue and from external aggression, without the necessity of keeping on foot an immense standing army at an enormous cost. This consideration is of great importance in respect to the natives of the upper and western provinces, who are distinguished by their superior bravery, and form the greater part of the British Indian army. If this race of men, who are by no means deficient in feelings of personal honor and regard for family respectability, were assured that their rights in the soil were indefeasible so long as the British power should endure, they would from gratitude and self-interest at all times be ready to devote their lives and property in its defence. The saving that might be effected by this liberal and generous policy, through the substituting of a militia force for a great part of the present standing army, would be much greater than any gain that could be realized by any system of increasing land revenue that human ingenuity could devise. How applicable to this case is the following line of the Persian sage (Sadi). "Be on friendly terms with thy subjects, and rest easy about the warfare of thine enemies; for to an upright prince his people is an army."

Bā rayat sulh kun wa'z jang i khasm aiman nishīn
Z'ānki shāhinshāh i ādil rā rayat lashkar ast.

On the other hand the same confidence could not be produced by any periodical settlement (be it quinquennial, decennial or even centennial) formed on the narrow policy of securing a temporary advantage or remote problematical gain to the government; since the love of offspring and the desire of continuing name and lineage in connection with the place of nativity and of residence, and with hereditary property, are the same in a peasant as in a prince.

No. IV.

An idea has gone abroad that the permanent or Zamindary system, though undeniably beneficial to Government, has proved too advantageous to the landholders; and the vast wealth which they are supposed to have derived from it has excited an anxiety in the minds of some to devise a plea for overturning it. The fact, however, is, that even the greatest landholder in the country, such as the Rajah of Burdwan, who pays a landtax of between 30 and 40 lakhs of rupees to Government, does not receive more than six or eight lakhs, about 20 per cent. on the amount collected, for his own share as proprietor. For this sum they incur an immense responsibility to the Government; they are punishable for thefts and robberies committed within their estates, when suspected even of negligence in preventing or detecting such offences, and subject to loss by inundations and failure of crops. Some may have about an equal sum with that payable to government, and a very few double; these almost exclusively in the eastern parts of Bengal. But the generality are by no means so favour-

ably situated as is generally supposed; a fact clearly proved by the estates which come into the immediate management of Government in the Court of Wards, and which may be easily inferred from the frequent sales of estates for arrears of revenue.

Supposing these landholders of Bengal to stand in the place of the farmers in England, who are considered to pay about one-third of the produce of their farms as rent; is there anything so unreasonable, if the Zamindars receive 15 or 20 per cent.; a very few 30 per cent. of the produce of their estates? If the persons above alluded to, who suppose the Zamindars too well off, will only wait a little, as the law of primogeniture is not established or observed, the effect of hereditary succession will soon so subdivide the estates, and reduce the incomes of the landholders, that very few, if any, rich Zamindars can be found in the country.

No. V.

In illustration of the statement made in my reply to Query 52, on the Revenue System, that as a sum of money is drawn from India by Europeans retiring from it with fortunes realized there, a different system, calculated to encourage Europeans of capital to become permanent settlers with their families, would necessarily greatly improve the resources of the country; I here subjoin some tables showing the amount paid to the principal European Civil Officers of the Government in the General, Judicial and Revenue Departments in India in 1826-7. The Military Establishment, of course, is not included. Besides, such Europeans as are barristers, solicitors, and law officers paid by fees, merchants, agents, and planters also, not being permitted to settle in

the country, retire from it with their fortunes; and these, likewise, are not included in the statement. Moreover, many miscellaneous and minor officers are not enumerated in the subjoined list; I also annex a note shewing the amount of the Revenues of India expended in England.

BENGAL CIVIL OFFICES.

1. General Branch.

	Per. Annum. Indian Money.	Sterling.
Governor General's Salary ... Rupees	2,44,181	£24,418
3 Members of Council, in all ...	2,93,077	29,301
6 Secretaries to Government ...	2,74,000	27,400
3 Judges of the King's Supreme Court	1,95,344	19,534
Lord Bishop of Calcutta	50,303	5,030
Archdeacon and 31 Chaplains ...	3,00,222	30,022
Advocate-General, Company's Attorney, and Standing Council	80,581	8,058
7 Residents at Native Courts, (Delhi, Lucknow, Gwalior, Nagpoor, Hyderabad, Indore, Nepaul)	6,81,509	68,150
9 Local (Political) Agents, with 6 Assistants and 6 Surgeons	2,37,573	23,757
5 Do. Do. (at Joypore, Harowtee, for Sikh and Hill Affairs—Serowhee, Mhairwarra)	95,241	9,524
18 Assistants	1,29,000	12,900
11 Surgeons and Assistants Do. ...	86,640	8,664
Postmaster-General	60,635	6,063
Accountant-General	44,400	4,440
Sub Treasurer	36,000	3,600
4 Mint Masters	60,993	6,099
4 Assay Masters	60,600	6,060

II. Judicial Branch.

		Per Annum. Indian Money.	Sterling.
	Supreme Civil and Criminal Courts (Sudder Dewanee and Nizamut Adawluts.		
5	Judges	Rs. 2,80.000	£28,000
1	Registarar and Deputy	39,600	3,960
4	Assistants	27,683	2,768
2	Translators	9,600	960
	Four Provincial Courts of Appeal and Circuit, viz. Calcutta, Dacca, Moorshedabad, and Patna.		
17	Judges	6,55,000	£65,500
6	Surgeons at 4,800	28,800	2,880
	Two additional Provincial Courts of Appeal and Circuit of Benares and Bareilly, 9 Judges; also Benares City Audawlut, Gazeepore, Juanpore, and Mirzapoor, 4 Judges and Magistrates.		
13	Judges	Rs. 4,71,196	£47,119
5	Registrars, and Registrars and Joint Magistrates	51,082	5,108
8	Surgeons and Assistant Surgeons ...	38,400	3,840
	Three City Adawluts—Dacca, Moorshedabad, Patna.		
3	Judges with Magisterial power S. Rs.	84,000	£ 8,400
5	Registrars	37,200	3,720
	Forty Zillah Adawluts.		
49	Judges, Magistrates and Assistant Do.	12,13,762	121,376
57	Registrars (or Registrars and Joint Magistrates) ... ... S. Rs.	4,39,893	£43,989
49	Surgeons and Assistant Surgeons ...	2,26,393	22,693
	Superintendents and Assistant Do. ...	138,120	11,812
5	Commissioners and Assistant Do....	118,510	11,851

III. Revenue Branch.

Lower Provinces.

	Per Annum. Indian Money.	Sterling.
Board of Revenue, 3 Members ...	1,40,000	14,000
Secretary	26,784	2,678
Subsecretary and 2 Assistants ...	20,400	2,040
3 Commercial (or Opium) Agents in Behar, Benares, Malwa	1,56,091	15,609
Board of Customs, Salt and Opium 2 Members	1,05,000	10,500
Secretary	29,449	2,944
8 Salt Agents	2,89,354	28,935
20 Collectors of Custom and Duties ...	4,30,695	43,069
5 Superintendents of Stamps and of Salt	1,22,099	12,209
28 Collectors in the Lower Provinces ...	6,06,288	60,628
Commissioner in the Sunderbunds ...	22,800	2,280
10 Revenue Officers for Calcutta, Hooghley, Jungal Mehals, N. E. of Rungpore, Kumaoon, Cuttack, Balasore, Kherdah	1,99,424	19.942
Secretary of Presidency Committee of Records and Registrar	10,800	1,080

Western Provinces.

Board of Commissioners. 3 Members ...	1,44,487	14,448
Secretary, Sub ditto, and Assistant ...	42,744	4,274
12 Collectors, 2 Deputy-Collectors, and 1 Sub-Collector	4,14,792	41,479

Central Provinces.

	Per Annum. Indian Money.	Sterling.
Board of Revenue, 3 Members ...	1,45,000	14,500
Secretary and 5 Assistants	58,179	5,817
16 Collectors and Sub-Collectors ...	3,53,129	35,312
Agent to Governor-General in Sauger and Nerbuddah	50,000	5,000
9 Assistants in charge of Districts ...	1,23,765	12,376

The allowances of the Civil Officers in the Presidencies of Madras and Bombay, are similar to those of Bengal; the chief difference exists between the salaries of the Governors and Members of Council in these Presidencies, and those of the Governor-General in Bengal and the Members of his Council. I shall therefore only subjoin an Abstract of the Total Amount of the Civil Service of the Three Presidencies.

ABSTRACT of the Total Number of Covenanted Assistants, and Military and Medical Officers employed in the Civil Department of Bengal, Madras and Bombay, distinguishing the different Branches and total Expense of the same in the year 1827. (Extracted from Official Returns, ordered to be printed, 25th Feb. 1830.)

1827.	BENGAL		MADRAS		BOMBAY		TOTAL	
BRANCHES.	NOS.	ALLOWANCES.	NOS.	ALLOWANCES.	NOS.	ALLOWANCES.	NOS.	ALLOWANCES.
		Rs.		Rs.		Rs.		Rs.
General	302	42,47,914	124	14,25,735	18	13,34,391	507	70,08,040
Judicial	236	40,48,268	101	16,53,975	66	9,68,733	403	66,70,976
Revenue	177	37,11,206	85	13,95,052	65	7,82,370	327	58,88,631
Marine	16	1,42,740	22	78,078	20	1,60,596	58	3,81,414
Commercial		.....	6	1,25,978	5	1,04,981	11	2,30,959
Totals ...	731	1,21,50,131	338	46,78,818	237	33,51,071	1306	2,01,80,020

Total number of persons, One thousand, three hundred and six.

Total amount of money, Two crores, one lakh, eighty thousand and twenty Rupees: nearly two millions English money.

Note.—In the above Statement the Rupee is taken at two shillings for the convenience of calculation; the real rate of exchange, however, has varied considerably, and of late years may be taken at an average, perhaps, of 1*s.* 10*d.* consequently 10 or 11 Rupees will constitute a Pound Sterling.

N. B.—By the evidence of Messrs. Lloyd and Melville (the former the Accountant-general, and the latter the Auditor-general of the East India Company,) recorded in the Minutes of Evidence taken before the Select Committee of the House of Lords, 23rd February 1830, it appears that the proportion of the Indian revenues *expended in England* on the territorial account amounts, on an average, to 3,000,000*l.* sterling annually. It includes the expenses at the Board of Control and India House, pay, absentee allowances, and pensions to Civil and Military Officers in Europe for services in India, with interest of money realized there, &c. &c. besides 453,588*l.* for territorial stores consigned to India.

In a letter of the Court of Directors to the Government of Bengal, dated the 20th of June 1810, and quoted in the work "On Colonial Policy as applicable to the Government of India," by a very able servant of the Company, holding a responsible situation in Bengal, the Directors state that "it is no extravagant assertion to advance, that the annual remittances to London on account of individuals, have been at the rate of nearly 2,000,000*l.* per annum *for a series of years past.*" (p. 70.) From these and other authentic documents the author calculates the amount of capital, or "the aggregate of tribute, public and private, so withdrawn from India from 1765 to 1820, at 110,000,000*l.*" (p. 65.)

REMARKS

ON SETTLEMENT IN INDIA BY EUROPEANS.

REMARKS

ON SETTLEMENT IN INDIA BY EUROPEANS. *

MUCH has been said and written by persons in the employ of the Hon. East Indian Company and others on the subject of the settlement of Europeans in India, and many various opinions have been expressed as to the advantages and disadvantages which might attend such a political measure. I shall here briefly and candidly state the principal effects which, in my humble opinion, may be expected to result from this measure.

2. I notice, first, some of the advantages that might be derived from such a change.

ADVANTAGES.

First.—European settlers in India will introduce the knowledge they possess of superior modes of cultivating the soil and improving its products (in the article of sugar, for example), as has already happened with respect to indigo, and improvements in the mechanical arts, and in the agricultural and commercial systems generally, by which the natives would of course benefit.

* This is reprinted from the General Appendix to the report from the Select Committee of the House of Commons on the affairs of the East India Company 1832, pp. 341—343. Up to 1813 the East India Company had been able to preserve their monopoly of the trade of the East Indies intact, and Europeans in general were prohibited from settling or trading in India. The Charter Act of 1813 had permitted the free resort of Europeans in India, but excluded them from forming any settlements in it by the purchase or lease of lands. By the passing of the Charter Act of 1833 all such restrictions were taken away, and Europeans were permitted to settle in India. During the enquiry by the Select Committee of the House of Commons the opinion of Ram Mohun Roy on the point was sought, and it, to some extent, strengthened the hands of the supporters of the change.—Ed.

Secondly—By a free and extensive communication with the various classes of the native inhabitants the European settlers would gradually deliver their minds from the superstitions and prejudices, which have subjected the great body of the Indian people to social and domestic inconvenience, and disqualified them from useful exertions.

Thirdly.—The European settlers being more on a par with the rulers of the country, and aware of the rights belonging to the subjects of a liberal Government, and the proper mode of administering justice, would obtain from the local Governments, or from the Legislature in England, the introduction of many necessary improvements in the laws and judicial system; the benefit of which would of course extend to the inhabitants generally, whose condition would thus be raised.

Fourthly.—The presence, countenance and support of the European settlers would not only afford to the natives protection against the impositions and oppression of their landlords and other superiors, but also against any abuse of power on the part of those in authority.

Fifthly.—The European settlers, from motives of benevolence, public spirit and fellow-feeling towards their native neighbours, would establish schools and other seminaries of education for the cultivation of the English language throughout the country, and for the diffusion of a knowledge of European arts and sciences; whereas at present the bulk of the natives (those residing at the Presidencies and some large towns excepted) have no more opportunities of acquiring this means of national improvement than if the country had never had any intercourse or connection whatever with Europe.

Sixthly.—As the intercourse between the settlers and their friends and connection in Europe would greatly multiply the channels of communication with this country, the public and the Government here would become much more correctly informed, and consequently much better qualified to legislate on Indian matters than at present, when, for any authentic information, the country is at the mercy of the representations of comparatively a few individuals, and those chiefly the parties who have the management of public affairs in their hands, and who can hardly fail therefore to regard the result of their own labours with a favourable eye.

Seventhly.—In the event of an invasion from any quarter, east or west, Government would be better able to resist it, if, in addition to the native population, it were supported by a large body of European inhabitants, closely connected by national sympathies with the ruling power, and dependent on its stability for the continued enjoyment of their civil and political rights.

Eighthly.—The same cause would operate to continue the connection between Great Britain and India on a solid and permanent footing; provided only the latter country be governed in a liberal manner, by means of Parliamentary superintendence, and such other legislative checks in this country as may be devised and established. India may thus, for an unlimited period, enjoy union with England, and the advantage of her enlightened Government; and in return contribute to support the greatness of this country.

Ninthly.—If, however, events should occur to effect a separation between the two countries, then still the existence of a large body of respectable settlers (consisting

of Europeans and their descendants, professing Christianity, and speaking the English language in common with the bulk of the people, as well as possessed of superior knowledge, scientific, mechanical, and political) would bring that vast Empire in the East to a level with other large Christian countries in Europe, and by means of its immense riches and extensive population, and by the help which may be reasonably expected from Europe, they (the settlers and their descendants) may succeed sooner or later in enlightening and civilizing the surrounding nations of Asia.

3. I now proceed to state some of the principal disadvantages which may be apprehended, with the remedies which I think calculated to prevent them, or at any rate their frequent occurrence.

DISADVANTAGES.

First.—The European settlers being a distinct race, belonging to the class of the rulers of the country, may be apt to assume an ascendancy over the aboriginal inhabitants, and aim at enjoying exclusive rights and privileges, to the depression of the larger, but less favoured class; and the former being also of another religion, may be disposed to wound the feelings of the natives, and subject them to humiliations on account of their being of a different creed, colour and habits.

As a remedy or preventive of such a result, I would suggest, 1st. That as the higher and better educated classes of Europeans are known from experience to be less disposed to annoy and insult the natives than persons of a lower class, the European settlers, for the first twenty years at least, should be from among educated persons of character and capital, since such persons are

very seldom, if ever, found guilty of intruding upon the religions or national prejudices of persons of uncultivated minds; 2nd. The enactment of equal laws, placing all classes on the same footing as to civil rights, and the establishment of trial by jury (the jury being composed impartially of both classes), would be felt as a strong check on any turbulent or overbearing characters amongst Europeans.

The second probable disadvantage is as follows: the Europeans possess an undue advantage over the natives, from having readier access to persons in authority, these being their own countrymen, as proved by long experience in numerous instances; therefore, a large increase of such a priviliged population must subject the natives to many sacrifices from this very circumstance.

I would therefore propose as a remedy, that in addition to the native vakeels, European pleaders should be appointed in the country courts in the same manner as they are in the King's courts at the Presidencies, where the evil referred to is consequently not felt, because the counsel and attornies for both parties, whether for a native or a European, have the same access to the judge, and are in all respects on an equal footing in pleading or defending the cause of their clients.

The third disadvantage in contemplation is, that at present the natives of the interior of India have little or no opportunity of seeing any Europeans except persons of rank holding public offices in the country, and officers and troops stationed in or passing through it under the restraint of military discipline, and consequently those natives entertain a notion of European superiority, and feel less reluctance in submission; but should Europeans

of all ranks and classes be allowed to settle in the country, the natives who come in contact with them will materially alter the estimate now formed of the European character, and frequent collisions of interests and conflicting prejudices may gradually lead to a struggle between the foreign and native race till either one or the other obtain a complete ascendancy, and render the situation of their opponents so uncomfortable that no government could mediate between them with effect, or ensure the public peace and tranquillity of the country. Though this may not happen in the interior of Bengal, yet it must be kept in mind, that no inference drawn from the conduct of the Bengalese (whose submissive disposition and want of energy are notorious) can be applied with justice to the natives of the Upper Provinces, whose temper of mind is directly the reverse. Among this spirited race the jarrings alluded to must be expected, if they be subjected to insult and intrusion—a state of things which would ultimately weaken, if not entirely undermine, the power in India, or at least occasion much bloodshed from time to time to keep the natives in subordination.

The remedy already pointed out (para. 3rd, art. 1st. remedy 1st.) will, however, also apply to this case, that is, the restriction of the European settler to the respectable intelligent class already described, who in general may be expected not only to raise the European character still higher, but also to emancipate their native neighbours from the long standing bondage of ignorance and superstition, and hereby secure their affection, and attach them to the government under which they may enjoy the liberty and privileges so dear to persons of enlightened minds.

Some apprehend, as *the fourth probable danger*, that if the population of India were raised to wealth, intelligence, and public spirit, by the accession and by the example of numerous respectable European settlers, the mixed community so formed would revolt (as the United States of America formerly did) against the power of Great Britain, and would ultimately establish independence. In reference to this, however, it must be observed that the Americans were driven to rebellion by misgovernment, otherwise they would not have revolted and separated themselves from England. Canada is a standing proof that an anxiety to effect a separation from the mother country is not the natural wish of a people, even tolerably well-ruled. The mixed community of India, in like manner, so long as they are treated liberally, and governed in an enlightened manner, will feel no disposition to cut off its connection with England, which may be preserved with so much mutual benefit to both countries. Yet, as before observed, if events should occur to effect a separation, (which may arise from many accidental causes, about which it is vain to speculate or make predictions), still a friendly and highly advantageous commercial intercourse may be kept up between two free and Christian countries, united as they will then be by resemblance of language, religion, and manners.

The fifth obstacle in the way of settlement in India by Europeans is, that the climate in many parts of India may be found destructive, or at least very pernicious to European constitutions, which might oblige European families who may be in possession of the means to retire to Europe to dispose of their property to disadvantage, or leave it to ruin, and that they would impoverish

themselves instead of enriching India. As a remedy I would suggest that many cool and healthy spots could be selected and fixed upon as the head-quarters of the settlers (where they and their respective families might reside and superintend the affairs of their estates in the favourable season, and occasionally visit them during the hot months, if their presence be absolutely required on their estates), such as the Suppatoo, the Nielgherry Hills, and other similar places, which are by no means pernicious to European constitutions. At all events, it will be borne in mind that the emigration of the settlers to India is not compulsory, but entirely optional with themselves.

To these might be added some minor disadvantages though not so important. These (as well as the above circumstances) deserve fair consideration and impartial reflection. At all events, no one will, I trust, oppose me when I say, that the settlement in India by Europeans should at least be undertaken experimentally, so that its effects may be ascertained by actual observation on a moderate scale. If the result be such as to satisfy all parties, whether friendly or opposed to it, the measure may then be carried on to a greater extent, till at last it may seem safe and expedeint to throw the country open to persons of all classes.

On mature consideration, therefore, I think I may safely recommend that educated persons of character and capital should now be permitted and encouraged to settle in India, without any restriction of locality or any liability to banishment, at the discretion of the government; and the result of this experiment may serve as a guide in any future legislation on this subject. (Sd.) RAMMOHUN ROY.

LONDON,

July 14th, 1832.

TRANSLATION

OF

A

CONFERENCE

BETWEEN

AN ADVOCATE FOR,

AND

AN OPPONENT OF, THE PRACTICE

OF

BURNING WIDOWS ALIVE;

FROM

THE ORIGINAL BUNGLA.

CALCUTTA:

1818.

ADVERTISEMENT.

THE little tract, of which the following is a literal translation, originally written in Bungla, has been for several weeks past in extensive circulation in those parts of the country where the practice of widows burning themselves on the pile of their husbands is most prevalent. An idea that the arguments it contains might tend to alter the notions that some European gentlemen entertain on this subject, has induced the writer to lay it before the british public also in its present dress.

November 30, 1818.

CONFERENCE

BETWEEN

AN ADVOCATE FOR,

AND

AN OPPONENT OF THE PRACTICE

OF

BURNING WIDOWS ALIVE.

Advocate. I AM surprised that you endeavour to oppose the practice of Concremation and Postcremation of widows,* as long observed in this country.

Opponent. Those who have no reliance on the Shastru, and those who take delight in the self-destruction of women, may well wonder that we should oppose that suicide which is forbidden by all the Shastrus, and by every race of men.

Advocate. You have made an improper assertion in alleging that Concremation and Postcremation are forbidden by the Shastrus. Hear what Ungira and other saints have said on this subject:

"That woman who, on the death of her husband, ascends the burning pile with him, is exalted to heaven, as equal to Uroondhooti. (1)

* When a widow is absent from her husband at the time of his death, she may in certain cases burn herself along with some relic representing the deceased. This practice is called Unoomurun or Postcremation.

(1) मृते भर्त्तरि या नारी समारोहेद्धुताशनं ।
सारुन्धतीसमाचारा स्वर्गलोके महीयते ॥

"She who follows her husband to another world, shall dwell in a region of joy for so many years as there are hairs in the human body, or thirty-five millions. (2)

"As a serpent-catcher forcibly draws a snake from his hole, thus raising her husband by her power, she enjoys delight along with him. (3)

"The woman who follows her husband expiates the sins of three races; her father's line, her mother's line, and the family of him to whom she was given a virgin. (4)

"There possessing her husband as her chiefest good, herself the best of women, enjoying the highest delights, she partakes of bliss with her husband as long as fourteen Indrus reign. (5)

"Even though the man had slain a Brahmun, or returned evil for good, or killed an intimate friend, the woman expiates those crimes. (6)

"There is no other way known for a virtuous woman except ascending the pile of her husband. It should be

(2) तिस्रः कोट्यर्द्धकोटी च यानि लोमानि मानवे।
तावत्यब्दानि सा स्वर्गे भर्त्तारं यानुगच्छति॥

(3) व्यालग्राही यथा व्यालं बलादुद्धरते बिलात्।
तद्वत् भर्त्तारमादाय तेनैव सह मोदते॥

(4) मातृकं पैतृकञ्चैव यत्र कन्या प्रदीयते।
पुनाति त्रिकुलं साध्वी भर्त्तारं यानुगच्छति॥

(5) तत्र सा भर्तुः परमा परा परमलालसा।
क्रीड़ते पतिना सार्द्धं यावदिन्द्राश्चतुर्दश॥

(6) ब्रह्मघ्नीवा कृतघ्नीवा मित्रघ्नीवापि मानवः।
तं वै पुनाति सा नारी स्वर्यद्भिरसभाषितं॥

understood that there is no other duty whatever after the death of her husband." (7)

Hear also what Vyas has written in the parable of the pigeon:

"A pigeon, devoted to her husband, after his death entered the flames, and ascending to heaven, she there found her husband." (8)

And hear Hareet's words:

"As long as a woman shall not burn herself after her husband's death, she shall be subject to transmigration in a female form." (9)

Hear too what Vishnoo the saint says:

"After the death of her husband a wife must live as an ascetic, or ascend his pile." (10)

Now hear the words of the Bruhmu Pooran on the subject of Postcremation:

"If her lord die in another country, let the faithful wife place his sandals on her breast, and pure enter the fire." (11)

The faithful widow is declared no suicide by this text

(7) साध्वीनामेव नारीणामग्निप्रपतनादृते ।
नान्योहि धर्म्मो विज्ञेयो मृते भर्त्तरि कर्हिचित् ॥

(8) पतिव्रता सम्प्रदीप्तं प्रविवेश हुताशनं ।
तत्र चिताङ्गदधरं भर्त्तारं सान्वपद्यत ॥

(9) यावद्वह्नौ मृते पत्यौ स्त्री नात्मानं प्रदाहयेत् ।
तावन्न मुच्यते सा हि स्त्रीशरीरात् कथञ्चन ॥

(10) मृते भर्त्तरि ब्रह्मचर्य्यं तदन्वारोहणम्वा ।

(11) देशान्तरमृते पत्यौ साध्वी तत्पादुकार्पणं ।
निधायोरसि संयुक्ता प्रविशेज्जातवेदसं ॥

of the Rig Ved: "When three days of impurity are gone she obtained obsequies." (12)

Gotum says:

"To a Brahmunee after the death of her husband, Postcremation is not permitted. But to women of the other classes it is esteemed a chief duty." (13)

"Living let her benefit her husband; dying she commits suicide." (14)

"The woman of the Brahmun tribe that follows her dead husband cannot, on account of her self-destruction, convey either herself or her husband to heaven." (15)

Concremation and Postcremation being thus established by the words of many sacred lawgivers, how can you say they are forbidden by the Shastrus, and desire to prevent their practice?

Opponent. All those passages you have quoted are indeed sacred law; and it is clear from those authorities, that if women perform Concremation or Postcremation, they will enjoy heaven for a considerable time. But attend to what Munoo and others say respecting the duty of widows: "Let her emaciate her body, by living voluntarily on pure flowers, roots, and fruits, but let her not, when her lord is deceased, even pronounce the name of

(12) ऋग्वेदवादात् साध्वी स्त्री न भवेदात्मघातिनी।
ब्राह्मणीचे निह्नते तु श्राद्धं पाप्नोति शाश्वतम्॥

(13) मृतानुमरणं नास्ति ब्राह्मण्या ब्रह्मशासनात्।
इतरेषु तु वर्णेषु तपः परमुच्यते॥

(14) जीवन्ती तद्धितं कुर्य्यान्मरणादात्मघातिनी॥

(15) या स्त्री ब्राह्मणजातीया मृतं पतिमनुव्रजेत्।
सा स्वर्गमात्मघातेन नात्मानं न पतिं नयेत्॥

another man. Let her continue till death forgiving all injuries, performing harsh duties, avoiding every sensual pleasure, and cheerfully practising the incomparable rules of virtue which have been followed by such women as were devoted to one only husband." (16)

Here Munoo directs, that after the death of her husband, the widow should pass her whole life as an ascetic. Therefore, the laws given by Ungira and others whom you have quoted, being contrary to the law of Munoo, cannot be accepted; because the Ved declares, "Whatever Munoo has said is Wholesome;" (17) and Vrihusputi, "Whatever law is contrary to the law of Munoo is not commendable." (18) The Ved especially declares, "By living in the practice of regular and occasional duties the mind may be purified. Thereafter by hearing, reflecting, and constantly meditating on the Supreme Being, absorption in Bruhmu may be attained. Therefore from a desire during life of future fruition, life ought not to be destroyed." (19) Munoo, Yagnyuvulkyu, and others, have then, in their respective codes of laws, prescribed to widows the duties of ascetics only. By this passage of the Ved, therefore, and the authority of Munoo and others, the words you have quoted from Ungira and the rest are set aside; for by the express declaration of the former,

(16) कामन्तु क्षपयेद्देहं पुष्पमूलफलैः शुभैः। न तु नामापि गृह्णीयात् पत्यौ प्रेते परस्य तु। आसीतामरणात् क्षान्ता नियता ब्रह्मचारिणी। यो धर्म्म एकपत्नीनां काङ्क्षन्ती तमनुत्तमं॥

(17) यत् किञ्चिन्मनुरवदत्तद्वै भेषजं।

(18) मन्वर्थविपरीता या सा स्मृतिर्न प्रशस्यते॥

(19) तस्माद्दृष्ट्वा न पुरायुषः क्षयःकामी प्रेयादिति॥

widows after the death of their husbands may, by living as ascetics, obtain absorption.

Advocate. What you have said respecting the laws of Ungira and others, that recommended the practice of Concremation and Postcremation we do not admit: because, though a practice has not been recommended by Munoo, yet, if directed by other lawgivers, it should not on that account be considered as contrary to the law of Munoo. For instance, Munoo directs the performance of Sundhya, but says nothing of calling aloud on the name of Huri; yet Vyas prescribes calling on the name of Huri. The words of Vyas do not contradict those of Munoo. The same should be understood in the present instance. Munoo has commended widows to live as ascetics; Vishnoo and other saints direct that they should either live as ascetics or follow their husbands. Therefore the law of Munoo may be considered to be applicable as an alternative.

Opponent. The analogy you have drawn betwixt the practice of Sundhya and invoking Huri, and that of Concremation and Postcremation does not hold. For, in the course of the day the performance of Sundhya, at the prescribed time, does not prevent one from invoking Huri at another period; and, on the other hand, the invocation of Huri need not interfere with the performance of Sundhya. In this case, the direction of one practice is not inconsistent with that of the other. But in the case of living as an ascetic or undergoing Concremation, the performance of the one is incompatible with the observance of the other. *Scil.* Spending one's whole life as an ascetic after the death of a husband, is incompatible with immediate Concremation as directed

by Ungira and others; and, *vice versa*, Concremation, as directed by Ungira and others, is inconsistent with living as an ascetic, in order to attain absorption. Therefore those two authorities are obviously contradictory of each other. More especially as Ungira, by declaring that "there is no other way known for a virtuous woman except ascending the pile of her husband," has made Concremation an indispensable duty. And Hareet also, in his code, by denouncing evil consequences, in his declaration, that "as long as a woman shall not burn herself after the death of her husband, she shall be subject to transmigration in a female form," has made this duty absolute. Therefore all those passages are in every respect contradictory to the law of Munoo and others.

Advocate. When Ungira says that there is no other way for a widow except Concremation, and when Hareet says that the omission of it is a fault, we reconcile their words with those of Munoo, by considering them as used merely for the purpose of exalting the merit of Concremation, but not as prescribing this as an indispesable duty. All these expressions, moreover, convey a promise of reward for Concremation, and thence it appears that Concremation is only optional.

Opponent. If, in order to reconcile them with the text of Munoo, you set down the words of Ungira and Hareet, that make the duty incumbent, as meant only to convey an exaggerated praise of Concremation, why do you not also reconcile the rest of the words of Ungira, Hareet, and others, with those in which Munoo prescribes to the widow the practice of living as an ascetic as her absolute duty? And why do you not keep aloof from witnessing the destruction of females, instead of tempting

them with the inducement of future fruition? Moreover, in the text already quoted, self-destruction with the view of reward is expressly prohibited.

Advocate. What you have quoted from Munoo and Yagnyavulkyu and the tex of the Ved is admitted. But how can you set aside the following text of the Rig Ved on the subject of Concremation? "O fire! let these women, with bodies anointed with clarified butter, eyes coloured with collyrium, and void of tears, enter thee, the parent of water, that they may not be separated from their husbands, but may be, in unison with excellent husbands, themselves sinless and jewels amongst women." (20)

Opponent. This text of the Ved, and the former passages from Hareet and the rest whom you have quoted, all praise the practice of Concremation as leading the fruition, and are addressed to those who are occupied by sensual desires; and you cannot but admit that to follow these practices is only optional. In repeating the Sun-kulpyu of Concremation, the desire of future fruition is declared as the object. The text therefore of the Ved which we have quoted, offering no gratifications, supersedes, in every respect, that which you have adduced, as well as all the words of Ungira and the rest. In proof we quote the tex of the Kuthopunishud: "Faith in God which leads to absorption is one thing; and rites which have future fruition for their object, another. Each of these, producing different consequences, hold out to man inducements to follow it. The man, who of these two chooses faith, is blessed: and he, who for the sake of

(20) इमा नारीरविधवाः सुपत्नीराञ्जनेन सर्पिषा सविशन्त्वनश्रवो
अनमीवा सुरत्ना आरोहन्तु जनयो योनिमग्रे ॥

reward practices rites, is dashed away from the enjoyment of enternal beatitude." (21) Also the Moonduk Opunishud: "Rites, of which there are eighteen members, are all perishable: he who considers them as the source of blessing shall undergo repeated transmigrations; and all those fools who, immersed in the foolish practice of rites, consider themselves to be wise and learned, are repeatedly subjected to birth, disease, death, and other pains. When one blind man is guided by another, both subject themselves on their way to all kinds of distress." (22)

It is asserted in the Bhugvut Geeta, the essence of all the Smritis, Poorans, and Itihases, that, "all those ignorant persons who attach themselves to the words of the Veds that convey promises of fruition, consider those falsely alluring passages as leading to real happiness, and say, that besides them there is no other reality. Agitated in their minds by these desires, they believe the abodes of the celestial gods to be the chief object; and they devote themselves to those texts which treat of ceremonies and their fruits, and entice by promises of employmemt. Such people can have no real confidence in the Supreme Being." (23) Thus also do the Moonduk

(21) अन्यच्छ्रेयोऽन्यदुतैव प्रेयस्ते उभे नानार्थे पुरुषं सिनीतः। तयोः श्रेय आददानस्य साधु भवति हीयतेऽर्थाद्य उ प्रेयो वृणीते ॥

(22) प्लवाह्येते अदृढा यज्ञरूपा अष्टादशोक्तमवरं येषु कर्म। एतच्छ्रेयो येऽभिनन्दन्ति मूढा जरामृत्युं ते पुनरेवापियन्ति ॥ अविद्यायामन्तरे वर्त्तमानाः स्वयं धीराः पण्डितं मन्यमानाः। जङ्घन्यमानाः परियन्ति मूढा अन्धेनैव नीयमाना यथान्धाः ॥

(23) यामिमां पुष्पितां वाचं प्रवदन्त्यविपश्चितः। वेदवादरताः पार्थ नान्यदस्तीति वादिनः ॥ कामात्मानः स्वर्गपरा जन्मकर्मफलप्रदां। क्रिया-

Opunishud and the Geeta state that, "the science by which a knowledge of God is attained is superior to all other knowledge." (24) Therefore it is clear, from those passages of the Ved and of the Geeta, that the words of the Ved which promise fruition, are set aside by the texts of a contrary import. Moreover, the ancient saints and holy teachers, and their commentators, and yourselves, as well as we and all others, agree that Munoo is better acquainted than any other lawgiver with the spirit of the Ved. And he, understanding the meaning of those different texts, admitting the inferiority of that which promised fruition, and following that which conveyed no promise of gratifications, has directed widows to spend their lives as ascetics. He has also defined in his 12th chapter, what acts are observed merely for the sake of gratifications, and what are not. "Whatever act is performed for the sake of gratifications in this world or the next is called Pruburttuk, and those which are performed according to the knowledge respecting God, are called Niburtuk. All those who perform acts to procure gratifications, may enjoy heaven like the gods; and he who performs acts free from desires, procures release from the five elements of this body, that is, obtains absorption." (25)

Advocate. What you have said is indeed consistent with the Veds, with Munoo, and with the Bhuguvut Geeta. But from this I fear, that the passages of the Veds

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विशेषबहुलां भोगैश्वर्यगतिं प्रति ॥ भोगैश्वर्यप्रसक्तानां तयापहृतचेतसां । व्यवसायात्मिका बुद्धिः समाधौ न विधीयते ॥

(24) "यया तदक्षरमधिगम्यते इत्यादि ।" "अध्यात्मविद्या विद्यानां ।"

(25) इह वामुत्र वा काम्यं प्रवृत्तं कर्म कीर्त्यते । निष्कामं ज्ञानपूर्वन्तु निवृत्तमुपदिश्यते ॥ प्रवृत्तं कर्म संसेव्य देवानामेति साधिताम् । निवृत्तं सेवमानस्तु भूतान्यत्येति पञ्चवै ॥

and other Shastrus, that prescribe Concremation and Postcremation as the means of attaining heavenly enjoyments, must be considered as only meant to deceive.

Opponent. There is no deception. The object of those passages is declared. As men have various dispositions, those whose minds are enveloped in desire, passion and cupidity, have no inclination for the disinterested worship of the Supreme Being. If they had no Shastrus of rewards, they would at once throw aside all Shastrus, and would follow their several inclinations, like elephants unguided by the hook. In order to restrain such persons from being laid only by their inclinations, the Shastru prescribes various ceremonies, as Shyenjag for one desirous of the destruction of the enemy, Pootreshti for one desiring a son, and Jyotishtom for one desiring gratifications in heaven, &c.; but again reprobates such as are actuated by those desires, and at the same moment expresses contempt for such gratifications. Had the Shastru not repeatedly reprobrated both those actuated by desire and the fruits desired by them, all those texts might be considered as deceitful. In proof of what I have advanced I cite the following text of the Opunishud, "Knowledge and rites together offer themselves to every man. The wise man considers which of these two is the better and which the worse. By reflecting, he becomes convinced of the superiority of the former, despises rites, and takes refuge in knowledge. And the unlearned, for the sake of bodily gratifications, has recourse to the performance of rites." (26) The Bhuguvut Geeta: "The

(26) श्रेयश्च प्रेयश्च मनुष्यमेतस्तौ सम्परीत्य विविनक्ति धीरः। श्रेयो हि धीरोऽभिप्रेयसो वृणीते प्रेयो मन्दो योगक्षेमाद्वृणीते॥

Veds that treat of rites are for the sake of those who are possessed of desire; therefore, O Urjoon! do thou abstain from desires." (27)

Hear also the text of the Ved reprobating the fruits of rites: "As in this world the fruits obtained from cultivation and labour perish, so in the next world fruits derived from rites are perishable." (28) Also the Bhuguvut Geeta: "Also those who observe the rites prescribed by the three Veds, and through those ceremonies worship me and seek for heaven, having become sinless from eating the remains of offerings, ascending to heaven, and enjoying the pleasures of the gods, after the completion of their rewards, again return to earth. Therefore, the observers of rites for the sake of rewards, repeatedly, ascend to heaven, and return to the world, and cannot obtain absorption." (29)

Advocate. Though what you have advanced from the Ved and sacred codes against the practice of Concremation and Postcremation, is not to be set aside, yet we have had the practice prescribed by Hareet and others handed down to us.

Opponent. Such an argument is highly inconsistent with justice. It is every way improper to persuade to

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(27) त्रैगुण्यविषया वेदा निस्त्रैगुण्यो भवार्ज्जुन ॥

(28) इह कर्म्मचितो लोकः क्षीयते एवमेवामुत्र पुण्यचितो लोकः क्षीयते।

(29) त्रैविद्या मां सोमपाः पूतपापा यज्ञैरिष्ट्वा स्वर्गतिं प्रार्थयन्ते। ते पुण्यमासाद्य सुरेन्द्रलोकमश्नन्ति दिव्यान् दिवि दैवभोगान्॥ ते तं भुक्त्वा स्वर्गलोकं विशालं क्षीणे पुण्ये मर्त्तलोकं विशन्ति। एवं त्रयीधर्म्ममनुप्रपन्ना गतागतं कामकामा लभन्ते ॥

self-destruction by citing passages of inadmissible authority. In the second place, it is evident from your own authorities, and the Sunkulpu recited in conformity with them, that the widow should voluntarily quit life, ascending the flaming pile of her husband. But, on the contrary, you first bind down the widow along with the corpse of her husband, and then heap over her such a quantity of wood that she cannot rise. At the time too of setting fire to the pile, you press her down with large bamboos. In what passage of Hareet or the rest do you find authority for thus binding the woman according to your practice? This then is, in fact, deliberate female murder.

Advocate. Though Hareet and the rest do not indeed authorize this practice of binding, &c., yet were a woman after having recited the Sunkulpu not to perform Concremation, it would be sinful, and considered disgraceful by others. It is on this account that we have adopted the custom.

Opponent. Respecting the sinfulness of such an act, that is mere talk: for in the same codes it is laid down, that the performance of a penance will obliterate the sin of quitting the pile. (30) Or in case of inability to undergo the regular penance, absolution may be obtained by bestowing the value of a cow, or three kahuns of cowries. Therefore the sin is no cause of alarm. The disgrace in the opinion of others is also nothing: for good men regard not the blame or reproach of persons who can reprobate those who abstain from the sinful murder of women. And do you not consider how great is the sin

(30) चितिभ्रष्टा च या नारी मोहाद्विचलिता भवेत्। प्राजापत्येन शुध्येत्तु तस्माद्धि पापकर्म्मणः॥

to kill a woman; therein forsaking the fear of God, the fear of conscience, and the fear of the Shastrus, merely from a dread of the reproch of those who delight in female murder?

Advocate. Though tying down in this manner be not authorized by the Shastrus, yet we practise it as being a custom that has been observed throughout Hindoosthan.

Opponent. It never was the case that the practice of fastening down widows on the pile was prevalent throughout Hindoosthan: for it is but of late years that this mode has been followed, and that only in Bengal, which is but a small part of Hindoosthan. No one besides who has the fear of God and man before him, will assert that male or female murder, theft, &c., from having been long practised, cease to be vices. If, according to your argument, custom ought to set aside the precepts of the Shastrus, the inhabitants of the forests and mountains who have been in the habits of plunder, must be considered as guiltless of sin, and it would be improper to endeavour to restrain their habits. The Shastrus, and the reasonings connected with them, enable us to discriminate right and wrong. In those Shastrus such female murder is altogether forbidden. And reason also declares, that to bind down a woman for her destruction, holding out to her the inducement of heavenly rewards, is a most sinful act.

Advocate. This practice may be sinful or any thing else, but we will not refrain from observing it. Should it cease, people would generally apprehend that if women did not perform Concremation on the death of their husbands, they might go astray; but if the they burn themselves this fear is done away. Their family and relations

are freed from ~~appension~~. And if the husband could be assured during his life that his wife would follow him on the pile, his mind would be at ease from apprehensions of her misconduct.

Opponent. What can be done, if, merely to avoid the possible danger of disgrace, you are unmercifully resolved to commit the sin of female murder. But is there not also a danger of a woman's going astray during the life-time of her husband, particularly when he resides for a long time in a distant country? What remedy then have you got against this cause of alarm?

Advocate. There is a great difference betwixt the case of the husband's being alive, and of his death; for while a husband is alive, whether he resides near or at a distance, a wife is under his control; she must stand in awe of him. But after his death that authority ceases, and she of course is divested of fear.

Opponent. The Shastrus which command that a wife should live under the control of her husband during his life, direct that on his death she shall live under the authority of her husband's faimily, or else under that of her parental relations; and the Shastrus have authorized the ruler of the country to maintain the observance of this law. Therefore, the possibility of a woman's going astray cannot be more guarded against during the husband's life than it is after his death. For you daily see, that even while the husband is alive, he gives up his authority, and the life separates from him. Control alone cannot restrain from evil thoughts, words, and actions; but the suggestions of wisdom and the fear of God may cause both man and woman to obstain from sin. Both the Shastrus and experience show this.

Advocate. You have repeatedly asserted, that from want of feeling we promote female destruction. This is incorrect, for it is declared in our Ved and codes of law, that mercy is the root of virtue, and from our practice of hospitality, &c. our compassionate dispositions are well known.

Opponent. That in other cases you shew charitable dispositions is acknowledged. But by witnessing from your youth the voluntary burning of women amongst your elder relatives, your neighbours and the inhabitants of the surrounding villages, and by observing the indifference manifested at the time when the women are writhing under the torture of the flames, habits of insensibility are produced. For the same reason, when men or women are suffering the pains of death, you feel for them no sense of compassion, like the worshippers of the female deities who, witnessing from their infancy the slaughter of kids and buffaloes, feel no compassion for them in the time of their suffering death, while followers of Vishnoo are touched with strong feelings of pity.

Advocate. What you have said I shall carefully consider.

Opponent. It is to me a source of great satisfaction, that you are now ready to take this matter into your consideration. By forsaking prejudice and reflecting on the Shastru, what is really conformable to its precepts may be perceived, and the evils and disgrace brought on this country by the crime of female murder will cease.

In this treatise the Sanskrit texts were not given by the author as they were in the following two treatises. We have thought fit to supply the Sanskrit texts in this also as we find them in the original Bengali —Ed.

A

SECOND CONFERENCE

BETWEEN

AN ADVOCATE FOR,

AND

AN OPPONENT

OF

THE PRACTICE

OF

BURNING WIDOWS ALIVE.

CALCUTTA:

1220.

TO

THE MOST NOBLE

THE MARCHIONESS OF HASTINGS,

COUNTESS OF LOUDOUN, &c. &c.

THE following tract, being a translation of a Bengalee Essay, published some time ago, as an appeal to reason in behalf of humanity, I take the liberty to dedicate to YOUR LADYSHIP; for to whose protection can any attempt to promote a benevolent purpose be with so much propriety committed?

I have the honour to remain, with the greatest respect,

YOUR LADYSHIP'S

Most obedient servant,

THE AUTHOR.

February 26, 1820.

ON CONCREMATION;

A SECOND CONFERENCE BETWEEN AN ADVOCATE AND AN OPPONENT OF THAT PRACTICE.

Advocate. UNDER the title of Vidhayuk,* or Preceptor, I have offered an answer to your former arguments. That, no doubt, you have attentively perused. I now except your reply.

Opponent. I have well considered the answer that, after the lapse of nearly twelve months, you have offered. Such parts of your answer as consist merely of a repetition of passages already quoted by us, require no further observations now. But as to what you have advanced in opposition to our arguments and to the Shatrus, you will be pleased to attend to my reply.

In the first place, at the bottom of your 4th page you have given a particular interpretation to the following words of Vishnoo, the lawgiver:—

"Mrite bhurturi bruhmuchuryum tudunwarohunum va"† meaning "after the death of her husband a woman shall become an ascetic, or ascend the funeral pile," and implying that either alternative is optional. To this, you say, eight objections are found in the Shastrus, therefore one of the alternatives must be preferred: that is to say, the woman who is unable to ascend the flaming pile

* This refers to a pamphlet published by the advocates of the *Suttee* under the title of "Dialogue between Bidhaok and Nissdhok".—DE.

† मृते भर्त्तरि ब्रह्मचर्यं तदन्वारोहणं वा ।

shall live as an ascetic. This you maintain is the true interpretation; and in proof you have cited the words of the Skundu Pooran and of Ungira, I answer. In every country all persons observe this rule that meanings are to be inferred from the words used. In this instance the text of Vishnoo is comprised in five words: 1st, Mrite, "on death," 2nd, bhurturi, "of a husband," 3rd, bruhmuchuryum, "asceticism," 4th, tudunwarohunum, "ascending his pile," 5th, va, "or." That is, "on the death of a husband, *his widow should* become an ascetic, or ascend his pile." It appears, therefore, from asceticism being mentioned first in order, that this is the most pious coduct for a widow to follow. But your interpretation, that this alternative is only left for widows who are unable to ascend the flaming pile, can by no means be deduced from the words of the text; nor have any of the expounders of the Shastrus so expressed themselves.

For instance, the author of the Mitakshura, whose authority is always to be revered, and whose words you have yourself quoted as authority in p. 27, has thus decided on the subject of Concremation:—"The widow who is not desirous of final beautitude, but who wishes only for a limited term of a small degree of future fruition, is authorized to accompany her husband."*

The Smartu Bhuttacharjyu (Rughoo Nundun, the modern law commentator of Bengal) limited the words of Ungria, that "besides Concremation there is no other pious course for a widow," by the authority of the

* अतश्च मोक्षमनिच्छन्त्या अनित्याल्पसुखरूपस्वर्गार्थिन्या,
अनुगमनं युक्तमितरकाम्यानुष्ठानवदिति सर्व्वमनवद्यं ।

foregoing text of Vishnoo; and authorized the alternative of a widow living as an ascetic, or dying with her husband, explaining the words of Ungira as conveying merely the exaggerated praise of Concremation.

Secondly. From the time that Shastrus have been written in Sungskrit, no author or man of learning has ever asserted, as you have done, that the person who, desirous of the enjoyments of heaven, is unable to perform the rites leading to fruition, may devote himself to the attainment of final beatitude. On the contrary, the Shastrus uniformly declare that those who are unable to pursue final beatitude, may perform rites, but without desire; and persons of the basest minds, who do not desire eternal beatitude, may even perform rites for the sake of their fruits.

As Vusishthu declares:—

"The person who does not exert himself to acquire that knowledge of God which leads to final absorption, may perform ceremonies without expectation of reward."*

"To encourage and improve those ignorant persons, who, looking only to pleasure, cannot distinguish betwixt what is God and not God, the Srooti has promised rewards."†

Bhuguvud Geeta.

"If you are unable to acquire by degrees divine knowledge, be diligent in performing works with a view

* यद्यैं न रोचते ज्ञानं अध्यात्मं मोक्षसाधनं।
ईश्वरार्पितेन चित्तेन यजन्निष्कामकर्म्मणा॥

† मूढ़ानां भोगदृष्टीनां आत्मानात्माविवेकिनां।
कर्म्मणे चाधिकाराय विदधाति फलं श्रुतिः॥

to please me, that by such works you may acquire a better state. If you are unable even to perform rites solely for my sake, then, controlling your senses, endeavour to perform rites without the desire of fruition."*

Therefore, to give the preference to self-immolation, or to the destruction of others, for the sake of future reward, over asceticism, which gives a prospect of eternal beatitude, is to treat with contempt the authorities of the Veds, the Vedant, and other Durshuns, as well as of the Bhuguvud Geeta and many others. As the Ved says:—

"Knowledge and rites both offer themselves to man; but he who is possessed of wisdom, taking their respective natures into serious consideration, distinguishes one from the other, and chooses faith, despising fruition; while a fool, for the sake of advantage and enjoyment, accepts the offer of rites."†

Without entirely rejecting the authority of the Geeta, the essence of all Shastrus, no one can praise rites performed for the sake of fruition, nor recommend them to others; for nearly half of the Bhuguvud Geeta is filled with the dispraise of such works, and with the praise of works performed without desire of fruition. A few of those passages have been quoted in the former conference, and a few others are here given.

* अभ्यासेऽप्यसमर्थोसि मत्कर्म्मपरमो भव।
मदर्थमपि कर्म्माणि कुर्व्वन् सिद्धि मवाप्स्यसि॥
अथैतदप्यशक्तोसि कर्त्तुं मद्योगमाश्रितः।
सर्व्वकर्म्मफलत्यागं ततः कुरु यतात्मवान्॥

† श्रेयश्च प्रेयश्च मनुष्यमेतस्तौ सम्परीत्य विविनक्ति धीरः।
श्रेयोहि धीरोऽभिप्रेयसो वृणीते प्रेयो मन्दो योगक्षेमाद्वृणीते॥

"Works performed, except for the sake of God, only entangle the soul. Therefore, O Urjoon, forsaking desire, perform works with the view to please God."*

"The person who performs works without desire of fruition, directing his mind to God, obtains eternal rest. And the person who is devoted to fruition, and performs works with desire, he is indeed inextricably involved."†

"Oh, Urjoon, rites performed for the sake of fruition are degraded far below works done without desire, which lead to the acquisition of the knowledge of God. Therefore perform thou works without desire of fruition, with the view of acquiring divine knowledge. Those who perform works for the sake of fruition are most debased."‡

"It is my firm opinion, that works are to be performed forsaking their consequences, and the prospect of their fruits." §

The Geeta is not a rare work, and you are not unacquainted with it. Why then do you constantly mislead women, unacquainted with the Shastrus, to follow a debased path, by holding out to them as temptations the pleasures of futurity, in defiance of all the Shastrus, and merely to please the ignorant?

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* यज्ञार्थात् कर्म्मणोऽन्यत्र लोकोऽयं कर्म्मबन्धनः ।
तदर्थं कर्म्म कौन्तेय मुक्तसङ्गः समाचर ॥

† युक्तः कर्म्मफलं त्यक्त्वा शान्तिमाप्नोति नैष्ठिकीं ।
अयुक्तः कामकारेण फले सक्तो निबध्यते ॥

‡ दूरेणह्यवरं कर्म्म बुद्धियोगाद्धनञ्जय ।
बुद्धौ शरणमन्विच्छ कृपणाः फलहेतवः ॥

§ एतान्यपितु कर्म्माणि सङ्गं त्यक्त्वा फलानि च ।
कर्त्तव्यानीति मे पार्थ निश्चितं मतमुत्तमं ॥

You have said, that eight objections are to be found in Shastrus to the optional alternative deduced from the works of Vishnoo. To this I reply.

First. To remove an imaginary difficulty, a violation of the obvious interpretation of words, whose meaning is direct and consistent, is altogether inadmissible.

Secondly. Former commentators, finding no such objection to the interpretation given to the words of Vishnoo, as allowing the optional alternative of asceticism or Concremation, have given the preference to asceticism. The author of the Mitakshura, quoting this text of Vishnoo in treating of Concremation, makes no allusion to such an objection, but finally declares in favour of asceticism.

Thirdly. Even allowing an optional alternative to be liable to the eight objections, former authors have on many occasions admitted such an alternative. For example :—

Srooti. "Oblations are to be made of wheat or of barley."* But the meaning of this is not, according to your mode of interpreation, "That if it cannot be made of barley, an offering is to be made of wheat."

"Burnt offering is to be made at sunrise or before sunrise."† In this instance your mode of explanation may be applied; but no authors have ever given such an interpretation, but all have admitted the alternative to be optional.

उपासीत जगन्नाथं शिवम्वा जगतां पतिं ।

Here also, according to your opinion, the meaning would be, that if you cannot worship Shivu you should

* व्रीहिभिर्यजेत यवैर्यजेत ।

† उदिते जुहोति अनुदिते जुहोति ॥

worship Vishnoo. But no authors have ever given such an interpretation to those words, and to give more or less worship to Shivu than to Vishnoo is quite contrary to the decision of all the Shastrus.

Fourthly. The following text has also been quoted by you in opposion to the optional alternative in question, taken as you assert from the Skundu Pooran :—

"On the death of her husband, if by chance a woman is unable to perform Concremation, nevertheless she should preserve the virtue required of widows. If she cannot preserve that virtue, she must descend to hell."* To confirm this text you have quoted the words of Ungira :—"There is no other pious course for a widow besides Concremation ;"† which you have interpreted, that "for a widow there is no other course so pious."

I answer, the wor ls of Ungira are express, that there is no other pious course for a widow than Concremation. And the Smartu commentator, having thus interpreted the text in reconciling it whith the words of Vishnoo already quoted, declares, that it conveys merely exaggerated praise of Concremation.

But you, in opposition to the true meaning of the expression and to the interpretation given by the Smartu commentator, have explained those words to suit your own argument, that there is no other course more pious than that of Concremation. Perverting thus the meaning of the Shastrus, what benefit do you propose by promot-

* अनुयाति न भर्त्तारं यदि दैवात् कथञ्चन ।
तथापि शीलं संरक्ष्यं शीलभङ्गात् पतत्यधः ॥

† नान्यो हि धर्म्मोविज्ञेयो मृते भर्त्तरि कर्हिचित् ।

ing the destruction of feeble woman, by holding up the temptation of enjoyments in a future state? This I am at a loss to understand.

If the passage you have quoted from the Skundu Pooran really exist, the mode in which the Smartu commentator has explained the words of Ungira ("there is no other virtuous course,") must be applied to those of the Skundu Pooran, *viz.* that the text of the Skundu Pooran which contradicts Munoo, Vishnoo, and others, is to be understood as merely conveying exaggerated praise; because, to exalt Concremation, which leads to future enjoyments that are treated as despicable by the Opunishuds of the Veds and Smriti, and by the Bhguvud Geeta, above asceticism, in which the mind may be purified by the performance of works, without desire that may lead to eternal beatitude, is every way inadmissible, and in direct opposition to the opinions maintained by ancient authors and commentators.

Section II.

In the latter end of the 7th page you have admitted, that the sayings of Ungira, Vishnoo, and Hareet, on the subject of Concremation, are certainly at variance with those of Munoo; but assert, that any law given by Munoo, when contradicted by several other lawgivers, is to be considered annulled:—therefore, his authority in treating of the duties of widows is not admissible, on account of the discord existing between it and passages of Hareet, and Vishnoo, and others. With a view to establish this position you have advanced three arguments. The first of them is, that Vrihusputi says, "whatever law is contrary

to the law of Munoo, is not commendable,"* in which the nominative case, "whatever law," as being used in the singular number, signifies, that in case laws, given by a single person, stand in opposition to those of Munoo they are not worthy of reverence, but if several persons differ from Munoo in any certain point, his authority must be set aside. I reply. It has been the invariable practice of ancient and modern authors, to explain all texts of law so as to make them coincide with the law of Munoo. They in no instance declare that the authority of Munoo is to be set aside, in order to admit that of any other lawgiver. But you have, on the contrary, set aside the authority of Munoo, on the ground of inconsistence with the words of two or three other authors. In this you not only act contrary to the practice of all commentators, but moreover in direct opposition to the authority of the Ved, for the Ved declares, whatever Munoo lays down, that is commendable,"† which text you have yourself quoted in p. 7. And as to what you have said respecting the words of Vrihusputi as being in the singular number, and therefore only applicable to a case in which Munoo is opposed by only one lawgiver, it is obvious that the word "whatever," being a general term, includes every particular case falling under it; and therefore his law must be followed, whatever number of authors there may be who lay down a different direction. And the reason of this is expressed in the former part of the verse of Vrihusputi, that "Munoo has in his work collected the meaning of the Veds." From this it

* मन्वर्थविपरीता या सा स्मृति र्न प्रशस्यते ।

† यत् किञ्चिन्मनुरवदत्तद्वै भेषजं । श्रुतिः ।

follows, that whatever law is inconsistent with the code of Munoo, which is the substance of the Ved, is really inconsistent with the Ved itself, and therefore inadmissible. Admitting the justice of your explanation of Vrihusputi's text, that the authority of any individual lawgiver, who inconsistent with Munoo, must be set aside, but that when several authorities coincide in laying down any rule inconsistent with his law, they are to be followed, one might on the same principle give a new explanation to the following text :—

"The person who attempts to strike a Brahmun goes to the hell called Sutnuyat, or of a punishments ; and he who actually strikes a Brahmun, goes to the hell of Suhusruyat, or a thousand punishments."*

Here, also, the noun in the nominative case, and that in the accusative case also, are both in the singular number ; therefore, according to your exposition, where two or three persons concur in beating a Brahmun, or where a man beats two or three Brahmuns, there is no crime committed. There are many similar instances of laws, the force of which would be entirely frustrated by your mode of interpretation.

You have argued in the second place that the practice of Concremation is authorized by a text of the Rig Ved, and consequently the authority of Munoo is superseded by a higher authority. I reply. In the 12th line of the 9th page of your tract, you have quoted and interpreted a text of the Veds, expressing "that the mind may be purified so as to seek a knowledge of God from which absorption may accrue, by the performance of the daily

* यो ब्राह्मणा यावगुरेत्तं प्रतेन यातयात् योनिहन्यात् तं सहस्रेण । श्रुतिः

and occasional ceremonies, without the desire of fruition; therefore, while life may be preserved, it ought not to be destroyed." With this then and all similar texts, there is the most evident concord with the words of Munoo. Notwithstanding your admission to this effect, you assert that the authority of the Veds contradicts the declaration of Munoo. From the text already quoted, "that whatever Munoo has declared is to be accepted," it follows that there can be no discrepancy between Munoo and the Ved. But there is certainly an apparent inconsistency btween the text quoted from the ceremonial part of the Rig Ved authorizing Concermaiton. and that above quoted from the spiritual parts of the Ved, to which the celebrated Munoo has given the preference, well aware that such parts of the Ved are of more authority than the passages relating to debased ceremonies. He has accordingly directed widows to live, practising austerities. The text of the Rig Ved, of course, remains of force to those ignorant wretches who are fettered with the desire of fruition, which debars them from the hope of final beatitude. This too has been acknowledged by yourself, in p. 11, l. 17, and was also fully considered in the first Conference, p. 13, line 18. You cannot but be aware too, that when there is doubt respecting the meaning of any text of the Ved, that interpretation which has been adopted by Munoo, is followed by both ancient and modern authors. In the Bhuvishyu Pooran, Muhadev gave instructions for the performance of a penance for wilfully slaying a Brahmun; but observing that this was at variance with the words of Munoo, which declare that there is no expiation for wilfully killing a Brahmun, he does not set aside the text of

Munoo founded on the Veds by his own authority, but explains the sense in which it is to be accepted :—"The object of the declaration of Munoo, that there is no expiation for the wilful murder of a Brhmun, was the more absolute prohibition of the crime; or it may be considered as applicable to Kshutrees, and the other tribes."* The great Muhadev, then, did not venture to set aside the words of Munoo, but you have proposed to set up the texts of Hareet and Ungira as of superior authority.

Thirdly. You have quoted, with the view of doing away with the authority of Munoo, the text of Jymini, signifying that if there be a difference of opinion respecting a subject, then the decision of the greater number must be adopted; and therefore, as the authority of Munoo, in the present instance, is at variance with several writers, it must yield to theirs. I reply. It is apparent that this text, as well as common sense, only dictates, that where those who differ in opinion are equal in point of authority, the majority ought to be followed; but if otherwise, this text is not applicable to the case. Thus the authority of the Ved, though single, cannot be set aside by the concurrent authorities of a hundred law-givers; and in like manner the authority of Munoo, which is derived immediately from the Ved, cannot be set aside by the contradicting authorities of the others either singly or collectively. Moreover, if Ungira, Hareet, Vishnoo, and Vyas, authorized widows to choose

* कामतो ब्राह्मणवधे यदेतन्मनुनोदितम्।
एकान्ततो विप्रवधवर्ज्जनार्थमुदीरितम्।
यद्वा चचादिविषयमेतद्वै वचनं विदुः॥

the alternative of Concremation, or of living as ascetics, on the other hand, besides Munoo, Yagnyuvulkyu, Vusishthu, and several other lawgivers have prescribed asceticism only. Why, therefore, despising the authorities of Munoo and others, do you persist in encouraging the weak women to submit to murder, by holding out to them the temptations of future pleasures in heaven ?

SECTION III.

THE quotation from the Moonduk Opunishud and Bhuguvud Geeta, which we quoted in our first Conference, to shew the light in which rites should be held, you have repeated; and have also quoted some texts of the Veds directing the performance of certain rites, such as, "He who desires heavenly fruition shall perform the sacrifice of horse."*

In page 17 you have given your final conclusion on the subject to this effect: "That rites are not prohibited, but that pious works performed without desire are preferable to works performed for the sake of fruition; and he also who performs those works without desire, is superior to him who performs works for the sake of fruition." If then works without desire are acknowledged by you to be superior to works with desire of fruition, why do you persuade widows to perform work for the sake of fruition, and do not recommend to them rather to follow ascetism, by which they may acquire eternal beatitude? And with respect to your assertion, that "rites are not prohibited," this is inconsistent with the Shastrus; for if all the texts of the Veds and lawgivers,

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* स्वर्गकामोऽश्वमेधेन यजेत ।

prohibiting rites, were to be quoted, they would fill a large volume; (of these a few have been already quoted by me in pp. 5 and 6.) There are indeed Shastrus directing the performance of rites for the sake of fruition, but these are acknowledged to be of less authority than those which prohibit such rites; as is proved by the following text from the Moonduk Opunishud: "Shastrus are of two sorts, superior and inferior; of these the superior are those by which the Eternal God is approached."*

In the Bhuguvud Geeta Krishnu says: "Amongst Shastrus, I am those which treat of God "†

In the Sree Bhaguvut is the following text: "Illminded persons, not pereeving that the object of the Ved is to direct us to absorption, call the superficially tempting promises of rewards their principal fruit; but such as know the Veds thoroughly do not hold this opinion."‡

The passages directing works for the sake of fruition are therefore adapted only for the most ignorant. Learned men should endeavour to withdraw all those ignorant persons from works performed with desire, but should never, for the sake of profit, attempt to drown them in the abyss of passion. Rughoo Nundun quotes and adopts the following words: "Learned men should not persuade the ignorant to perform rites for the sake of fruition, for

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* द्वे विद्ये वेदितव्ये परा चैवापरा च
अथ परा यया तदक्षरमधिगम्यते ।

† अध्यात्मविद्या विद्यानां ।

‡ एवं व्यवसितं केचिदविज्ञाय कुबुद्धयः ।
वेदवादरतिं कुरुमितां न वेदज्ञा वदन्ति हि ॥

it is written in the Pooran, that he who knows the path to enternal happiness will not direct the ignorant to perform works with desire, as the good physician refuses to yield to the appetite of his patient for injurious food."*

Section IV.

In p. 17, l. 13, of your treatise, you have said, that the Shastru does not admit that widows, in giving up the use of oil, and betel and sexual pleasures, &c. as asceties, perform works without desire, and acquire absorption. And for this you advance two proofs: the first, that it appears that Munoo directs that a widow should continue till death as an ascetic, *aiming* to practise the incomparable rules of virtue that have been followed by such women as were devoted to only one husband. From the word *aiming*, it follows, that the duties of an ascetic, to be practised by widows, are of the nature of those performed with desire. Secondly. From the subsequent words of Munoo it appears, that those widows who live austere lives ascend to heaven like ascetics from their youth; therefore, from the words ascending to heaven, it is obvious that the austerities that may be performed by them are for reward. I reply. I am surprised at your assertion, that austerities practised by widows cannot be considered as performed without desire, and leading to absorption; for whether austerities or any other kind of act be performed with desire or without desire, must depend on the

* पण्डितनापि मूर्खः काम्यकर्म्मणि न प्रवर्त्तयितव्यः, भागवते,
स्वयं निःश्रेयसं विद्वान् न वक्त्यज्ञाय कर्म्म हि ।
न राति रोगिणे पथ्यं वाञ्छतेपि भिषक्तमः ॥

mind of the agent. Some may follow asceticism or other practices for the sake of heavenly enjoyments, while others, forsaking desire of fruition, may perform them, and at length acquire final beatitude. Therefore, if a widow practise austerities without the desire of fruition, and yet her acts are asserted to be with desire of fruition, this amounts to a setting at defiance both experience and the Shasturs, in a manner unworthy of a man of learning like yourself. As to what you have observed respecting the word *aiming* in the text of Munoo, it never can be inferred from the use of that word, that the asceticism of widows must necessarily be with desire; for with the object of final beatitude, we practise the acquisition of the knowledge of God, which no Shastru nor any of the learned has ever classed amongst works performed with desire of fruition. For no man possessed of understanding performs any movement of mind or body without an object. It is those works only, therefore, that are performed for the sake of corporeal enjoyment, either in the present or in a future state of existence, that are said to be with desire, and that are, as such, prohibited, as Munoo defines: "Whatever act is performed for the sake of gratifications in this world or the next is called Pruburttuk; and those which are performed according to the knowledge of God, are called Niburttuk."*

As to your second argument, that widows leading an ascetic life are rewarded by a mansion in heaven, I reply; that from these words it does not appear that austerities should necessarily be reckoned amongst works performed

* इह वामुत्र वा काम्यं प्रवृत्तं कर्म्म कीर्त्यते।
निष्कामं ज्ञानपूर्व्वन्तु निवृत्तमुपदिश्यते॥

for reward; for a mansion in heaven is not granted to those alone who perform works with desire, but also to those who endeavour to acquire a knowledge of God, but come short of attaining it in this life. They must after death remain for a long time in the heaven called the Brumhulok, and again assume a human form, until they have, by perfecting themselves in divine knowledge, at length obtained absorption. The Bhuguvud Geeta says distinctly:

"A man whose devotions have been broken off by death, having enjoyed for an immensity of years the rewards of his virtues in the regions above, at length is born again in some holy and respectable family."*

Koollook Bhuttu, the commentator on Munoo, says expressly in his observations on the text of his author, that those ascetic widows ascend to heaven like Sunuk, Balukhilyu and other devotees from their youth. By this, it is clearly shewn, that, those widows ascend to heaven in the same way as those pious devotees who have already acquired final beatitude, which can only be attained by works performed without desire. And hence the austerities of widows must be reckoned amongst works without desire.

SECTION V.

IN page 18, you have asserted that a widow who undergoes Concremation has a higher reward than she who lives as a devotee; for the husband of the woman who performs Concremation, though guilty of the murder of

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* प्राप्य पुण्यकृतां लोकानुषित्वा शाश्वतीः समाः।
शुचीनां श्रीमतां गेहे योगभ्रष्टोऽभिजायते॥

a Brahmun, or of ingratitude or treachery towards a friend has his sins, by her act, expiated, and is saved from hell, and her husband's, her father's, and her mother's progenitors, are all beatified, and she herself is delivered from female form. I reply. You have stated in page 27, commencing at the 3rd line, that works without desire are preferable to those performed for the sake of fruition; while here again you say, that Concremation is preferable to asceticsm. You have, however, assigned as a reason for your new doctrine, that Concremation saves progenitors as well as the husband. I have already shewn, that such promises of reward are merely held out to the most ignorant, in order to induce them to follow some kind of religious observance, and to withdraw from evil conduct. Therefore, to prefer works performed a desire of fruition, to works without desire, merely on the ground of such exaggerated promises, is contrary to all the Shastrus. If, in defiance of all the Shastrus, you maintain that such promises of reward are to be understood literally, and not merely as incitements, still there can be no occasion for so harsh a sacrifice, so painful to mind and body, as burning a person to death in order to save their lines of Progenitors; for by making an offering of one ripe plantain to Shivu, or a single flower of Kurubeer, either to Shivu or to Vishnoo, thirty millions of lines or progenitors may be saved.

"He, who maketh an oblation of a single ripe plantain to Shivu, shall with thirty millions of races of progenitors ascend to the heaven of Shivu."*

* एकं मीचाफलं पक्वं यः शिवाय निवेदयेत् ।
त्रिकोटिकुलसंयुक्तः शिवलोके महीयते ॥

"By presenting a single Kurubeer, white or not white, to Vishnoo or Shivu, thirty millions of races of progenitors are exalted to heaven."*

Nor is there any want of promise of reward to those who perform works without desire. In fact, rather more abundant rewards are held out for such works than those you can quote for the opposite practice. "Those who have acquired knowledge in the prescribed mode can, by mere volition, save any number of progenitors; and all the gods offer worship to the devotees of the Supreme Being."†

A volume filled with texts of this kind might be easily written. Moreover, should even the least part of any ceremony performed for reward be omitted or mistaken, the fruits are destroyed, and evil is produced. But there is no bad consequence from a failure in works performed without desire, for the completion of these, even in part, is advantageous. In proof I quote the Bhuguvud Geeta: "Works without desire, if only commenced, are never without advantage; and if any member be defective, evil consequences do not ensue, as in works performed with desire. And the performance of even a small portion of a work without desire brings safety."‡

There is evidently a possibility of a failure in some portion of the rites of Concremation or Postcremation,

* एकेन करवीरेण सितेनाप्यसितेन वा ।
हरिं वा हरमभ्यर्च्य त्रिकोटिकुलमुद्धरेत् ॥

† सङ्कल्पादेवास्य पितरः समुत्तिष्ठन्ति,
सर्व्वे देवा अस्मै बलिमाहरन्ति ।

‡ नेहातिक्रमनाशोऽस्ति प्रत्यवायो न विद्यते ।
स्वल्पमप्यस्य धर्म्मस्य त्रायते महतो भयात् ॥

particularly in the mode in which you perform the ceremony contrary to the directions of the Shastrus. What connection is there betwixt that mode and the enjoyment of temporary heavenly gratifications—a mode which only subjects the widow to the consequences of a violentdeath ?

SECTION VI.

Again in p. 17, l. 3, you admit it to be more commendable for a widow to attend to the acquisition of knowledge than to die by Concremation; but afterwards, in order to persuade them to the practice of Concremation, and to prevent them from pursuing the acquisition of knowledge, you observe, that women are naturally prone to pleasure, are extremely devoted to works productive of fruits, and are always subject to their passions. To persuade such persons to forsake Concremation, in order to attempt the acquisition of knowledge is to destroy their hopes in both ways. In support of your opinion you have quoted the Geeta: "Those ignorant persons who are devoted to works ought not to be dissuaded from performing them."*

I reply. Your object in persuading women to burn themselves may now be distinctly perceived; you consider women, even of respectable classes, as prone to pleasure, and always subject to their passions; and therefore you are apprehensive lest they should lose both prospects of hope, by giving up Concremation, and attempting to acquire knowledge. For this reason you lead them to the destruction of their lives, by holding out to them the temptation of future rewards. It is very certain that all mankind, whether male or female, are endowed with a

* न बुद्धिभेदं जनयेदज्ञानां कर्म्मसङ्गिनां।

mixture of passions; but by study of the Shastrus, and frequenting the society of respectable persons, those passions may be gradually subdued and the capability of enjoying an exalted state may be attained. We ought, therefore, to endeavour to withdraw both men and women from debased sensual pleasures, and not to persuade them to die with the hope of thereby obtaining sensual enjoyments, by which after a certain period of gratification, they are again immersed in the pollutions of the womb, and subjected to affliction. The Shastrus have directed those men or women, who seek after a knowledge of God, to hear and reflect upon his doctrine, that they may escape from the grievous pain of this world; and they have also prescribed daily and occasional rites to be performed without the hope of reward by those who do not seekafter divine knowledge in order that their minds may be purified, and prepared to receive that knowledge. We, therefore, in conformity with the Shastru, make it our endeavour to dissuade widows from desiring future base and fleeting enjoyments, and encourage them to the acquisition of that divine knowledge which leads to final beatitude. Widows, therefore, by leading an ascetic life in the performance of duties without desire, may purify their minds and acquire divine knowledge, which may procure for them final beatitude. And consequently there is no reason why they should lose both objects of future hope by forsaking Concremation.

"Oh, Urjoon, by placing their reliance on me, women and those of the lower classes of Vyshyu and Soodru may obtain the highest exaltation."*

* मां हि पार्थ व्यपाश्रित्य येऽपि स्युः पापयोनयः।
स्त्रियो वैश्यास्तथा शूद्रास्तेऽपि यान्ति परां गतिम्॥

You, however, considering women devoted to their passions and consequently incapable of acquiring divine knowledge, direct them to perform Concremation; and maintain that, if any amongst them should not burn with their husbands, according to your final decision from the Shastrus, they must lose the hopes that belong to both practices; because according to your opinion, they are entirely incapable of acquiring divine knowledge, and by not adopting Concremation, they give up the prospect of future gratifications. As to your quotation from the Geeta, to show that persons devoted to works ought not to be dissuaded from the performance of them, it may be observed that this text applies only to rites offered without desire of rewards, though applied by you to works performed for the sake of future enjoyment, in direct inconsistency with the authority of the Geeta. The object of this, as well as of all texts of the Geeta, is to dissuade men from works performed with desire. The Geeta and its Commentaries are both accessible to all. Let the learned decide the point.

You have quoted the following text of Vusishthu: "He who being devoted to worldly pleasures, boasts, saying, 'I am a knower of God,' can neither obtain the consequences procurable from works, nor attain final beatitude, the fruit of divine knowledge."*

I admit the force of this text. For whether a man be devoted to worldly pleasures or not, if he be a boaster, either of divine knowledge or of any other acquirement, he is indeed most despicable; but I am unable to see

* सांसारिकसुखासक्तं ब्रह्मज्ञोऽस्मीतिवादिनं ।
कर्म ब्रह्मीभयभ्रष्टं इत्यादि ।

how this text, which forbids vain glory, is applicable to the question before us, which relates to the Concremation of widows.

Section VII.

In your 20th page, you have stated for us, that we do not object to the practice of Concremation, but to the tying down of the widow to the pile before setting it on fire. I reply. This is very incorrect, for it is a gross misrepresentation of our argument; because Concremation or Postcrematon is a work performed for the sake of future reward, which the Oopunishud and the Geeta, and other Shastrus, have declared to be most contemptible. Consequently, replying on those Shastrus, it has been always our object to dissuade widows from the act of Concremation or Postcremation, that they might not, for the sake of the debased enjoyment of corporeal pleasures, renounce the attainment of divine knowledge. As to the mode in which you murder widows by tying them to the pile, we do exert ourselves to prevent such deeds, for those who are witnesses to an act of murder, and neglect to do any thing towards its prevention, are accomplices in the crime.

In justification of the crime of burniug widows by force, you have stated, towards the foot of the same page, that in those countries where it is the custom for widows to ascend the flaming pile, there cannot be any dispute as to the propriety of following that mode; but where that is not the mode followed, and it is the practice for those that burn the corpse to place a portion of fire contiguous to the pile, so that it may gradually make its way to the

pile, and at that time the widow, according to the prescribed form, ascends the pile, in this mode also there is nothing contrary to the Shastrus. You have at the same time quoted two or three authorities to shew, that rites should be performed according to the custom of the country. I reply. Female murder, murder of a Brahmun, parricide, and similar heinous crimes, cannot be reckoned amongst pious acts by alleging the custom of a country in their behalf; by such customs rather the country in which they exist is itself condemned. I shall write more at large to this purpose in the conclusion. The practice, therefore, of forcibly tying down women to the pile, and burning them to death, is inconsistent with the Shastrus, and highly sinful. It is of no consequence to affirm, that this is customary in any particular country—if it were universally practised, the murders would still be criminal. The pretence that many are united in the commission of such murder will not secure them from divine vengeance. The customs of a country or of a race may be followed in matters where no particular rules are prescribed in the Shastrus; but the wilful murder of widows, prohibited by all Shastrus, is not to be justified by the practice of a few. From the Skundu Pooran: "In those matters in which neither the Veds nor law-givers give either direct sanction or prohibition, the customs of a country or of a race may be observed."*

If you insist that the practice of a country or of a race, though directly contrary to the directions of the Shastrus, is still proper to be observed, and to be reckoned amongst

* न यत्र साक्षाद्विधयो न निषेधाः श्रुतौ स्मृतौ ।
देशाचारकुलाचारैस्तत्र धर्मो निरूप्यते ॥

lawful acts, I reply, that in Shivukanchee and Vishnoo-kanchee it is the custom of the people of all classes of one of those places, wheather learned or ignorant, mutually, to revile the god peculiarly worshipped by the people of the other—those of Vishnookanchee despising Shivu, and of Shivukanchee in the same manner holding Vishnoo in contempt. Are the inhabitants of those places, whose custom it is thus to revile Shivu and Vishnoo not guilty of sin? For each of those tribes may assert, in their own defence, that it is the practice of their country and race to revile the god of the other. But no learned Hindoo will pretend to say, that this excuse saves them from sin. The Rajpoots, also, in the neighbourhood of the Dooab, are accustomed to destroy their infant daughters; they also must not be considered guilty of the crime of childmurder, as they act accordtng to the custom of their country and race. There are many instances of the same kind. No Pundits, then, would consider a heinous crime, directly contrary to the Shastrus, as righteous, by the whatever length of practice it may appear to be sanctioned.

You have at first alleged, that to burn a widow after tying her down on the pile, is one of the acts of piety, and have then quoted our argument for the opposite opinion, that "the inhabitants of forests and mountains are accnstomed to robbery and murder: but must these be considered as faultless, because they follow only the custom of their country?" To this you have again replied, that respectable people are not to be guided by the example of mountaineers and foresters. But the custom of burning widows, you say, "has been sanctioned by the most examplary Pundits for a length of time. It is the custom then, of respectable people that is to be

followed, and not that of men of no principles." I answer. Respectability, and want of respectability, depend upon the acts of men. If the people of this province, who have been constantly guilty of the wilful murder of women by tying them to the pile in which they are burnt, are to be reckoned amongst the respectable, then why should not the inhabitants of mountains and forests be also reckoned good, who perpetrate murder for the sake of their livelihood, or to propitiate their cruel deities? To shew that the custom of a country should be followed, you have quoted a text of the Ved, signifying that the example of Brahmuns well versed in the Shastrus, of good understanding, and whose practice is in conformity with reason and the Shastrus, not subject to passion, and accustomed to perform good works, should be followed. And you have also quoted the words of Vyas, signifying that the authorities of the Veds and Shastrus, as well as of reason, being various, the practice pointed out by illustrious men should be adopted. I reply, You have shewn that the example of men versed in the Shastrus, and who act in conformity with reason and the Shastrus, should be followed; but can you call those who, in defiance of the Shastrus, wilfully put women to death by tying them down to the pile on which they are burnt, illustrious, acquainted with the Veds, and devoted to acts prescribed by the Shastrus and by reason? If not, their example is to be disregarded. If you can call those, who wilfully tie down women to put them to death, righteous and illustrious, then there is no instance of unrighteousness and depravity, I have already said, that when any act is neither directly authorized nor prohibited by the Shastrus, the custom of the

country or of the race, should be the rule of conduct; but in the present case, the words are express in prescribing that the widow shall *enter* the flaming pile. But those who, in direct defiance of the authority of the Shastrus, act the part of woman-murderers, in tying down the widow to the pile, and, subsequently applying the flame, burn her to death, can never exculpate themselves from the sin of woman-murder. As to the words you have quoted from the Skundu Pooran, signifying that the arguments of one who has no faith in Shivu and Vishnoo can have no weight in the discussion of the legality of facts, I reply, this, text is applicable to those who worship images. Those who worship forms under any name, and have no faith in Shivu and Vishnoo, their worship is vain, and their words to be disregarded. In the same way the words of the Koolarnuv: "He whose mouth does not give out the smell of wine and flesh, should perform a penance and be avoided, and is as an inferior animal. This is undoubted." * These words are applicable only to those who follow the Tuntrus; and if all such texts are considered otherwise applicable than in relation to the sects to whom they are directed, there is no possibility of reconciling the variances betwixt the different Shastrus. The Shastru, treating of God, contains the following words: "Acts and rites that originate in movements of the hands, and other members of the body, being perishable, cannot effect beatitude that is eternal." †

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* आमिषासवसौरभ्यहीनं यस्य मुखं भवेत् ।
प्रायश्चित्ती स वर्ज्यश्च पशुरेव न संशयः ॥

† न ह्यध्रुवैः प्राप्यते हि ध्रुवं तत । कठश्रुति ।

"Those that worship forms under appellations, continue subject to form and appellation; for no perishable means can effect the acquisition of an imperishable end."*

"That man who considers the Being that is infinite, incomprehensible, pure, extending as far as space and time and vacuity, to be finite, perceptible by the senses, limited by time and place, subject to passion and anger, what crime is such a robber of Divine majesty not guilty of?" † That is, he is guilty of those sins which are considered as the most heinous, as well as of those that are considered ordinary sins. Therefore the words of so sinful a person can have no weight in the discussion of the legality of rites.

Section VIII.

You have stated in p. 2, that in the same manner as when part of a village or of a piece of cloth has been burnt, the village or piece of cloth is said to be burnt, so if a portion of the pile is inflamed, the whole pile may be said to be flaming. Therefore, it may with propriety be affirmed, that widows do in this country ascend the flaming pile.

I reply. You may afford gratification to those who take delight in woman-murder by such a quibble, but how can you avoid divine punishment by thus playing upon words?—for we find in the text of Hareet and of Vish-

* ध्यायन्तो नामरूपाणि यान्ति तन्मयतां जनाः ।
अभ्रवाहस्तु जातात्रि ध्रुवं नैवोपजायते ॥ स्मृतिः ।

† योऽन्यथा सन्तमात्मानं मन्यथा प्रतिपद्यते ।
किन्तेन न कृतं पापं चौरेणात्मापहारिणा ॥ स्मृतिः ।

noo, the phrase "Pruvivesh hootasunum," which means *entering into flames*, and the term "Sumaroheddhootasunum," signifying *ascending the flames*. You have intepreted these directions in this way;—that, a considerable distance from the pile, fire may be placed, and a piece of grass or rope may connect the fire with the pile; and that thus, by ascending the pile, which has not been in the smallest degree affected by the fire, the widow may fulfil the direction of ascending and entering the flaming pile. But I beg to remark, that both in vulgar dialect and in Sunskrit, the word "Pruvesh" expresses only the introgression of one substance into another; as for example, "Grihu pruvesh koriachhilam," *I entered the house*; the word entered cannot be used unless I actually passed into the house. If a long bamboo be attached to the house and a rope be fastened to that bamboo, no one can in any language say, that in merely touching that rope or bamboo he has entered that house. If a single billet of wood belonging to the pile were indeed inflamed, then you might say, according to your quibble regarding the burning of the cloth and of the village, that the pile was inflamed, and the flaming pile entered; but even this is by no means the case, in the mode in which your pile is used. Unless, however, the pile is so completely in fire that the flames may surround the whole of her body, the woman cannot be said to enter into flame. You must then, before you can justify your murder of helpless women, prepare a new dictionary; but there is no great probability of its interpretations being adopted by men of knowledge.

Towards the end of the 28th page you assert, that those who tie down the woman to the pile according to

the custom of the country, are not guilty of violation of the Shastrus: for it is to be understood from the words of Hareet before quoted, that until her body be burnt, the widow cannot be delivered from female form, which implies that her body ought to be completely consumed; and that it is on this account that those who burn her make her fast to the pile, lest by accident any part of the dead body should fall out of the pile, and fail of being consumed, and in that case the burning be incomplete. This practice of tying down, therefore, is also conformable to the Shastru; and those who, in burning the woman, make her fast to the pile, are not therein guilty of any sin, but rather perform a pious act. In support of this assertion you have quoted the words of Apustumbu, signifying that he who performs an act prescribed by the Shastrus, or he who persuades or permits another to perform a prescribed act, ascends to heaven; and he who commits an act forbidden by the Shastru, or who persuades or permits another to perform a prohibited action, sinks to hell.

I reply. You mean to say, that it is not in order to avoid the danger of the widow's flying from the pile from fear of the flames, or from pain, that she is made fast—but merely, lest any fragments of the body should fall from the pile unburnt, that she is tied down to the pile while alive. I ask, is it with an iron chain that the woman is made fast, or with a common rope? For by securing the body by means of iron, the danger of portions of it being scattered from the pile may undoubtedly be avoided. But if, on the contrary, the body is bound with a common rope, the rope will be consumed before life has altogether quitted the body and the rope,

when so burned, can be of no use in retaining within the pile, the members of the body. So far have Pundits been infatuated, in attempting to give the appearance of of propriety to improper actions, that they have even attempted to make people believe, that a rope may remain unconsumed amidst a flaming fire, and prevent the members of a body from benig dispersed from the pile. Men of sense may now judge of the truth of the reason to which you ascribe the practice of tying down widows. All people in the world are not blind, and those who will go and behold the mode in which you tie down women to the pile, will readily perceive the truth or falsehood of the motives you assign for the practice. A little reflection ought to have convinced you of the light in which such an argument must be viewed, even by those of your friends who have the smallest regard for truth. As for the text you have quoted from Apustumbu, it might have, with more propriety been cited by us because it is established by that passage, that those who commit, persuade to, or permit an improper action, descend to hell; for those that are guilty of wilful woman-murder, by tying women down with ropes, and burning them to death, a practice unauthorized by the Shastrus, and considered as most heinous, and those who persuade or permit others to do so, are certainly obnoxious to the denunciation of Apustumbu. The pretex of custom of the country, or of the object of preventing portions of the body from being scattered, will not exculpate them.

You have written, in page 29, that those who, by the permission of the widow, increase the flames by throwing wood or straw on the pile, are meritorious: for he who without reward assists another in a pious act, is to be

esteemed most meritorious. In confirmation, you have quoted an anecdote of the Mutshyu Pooran, that a goldsmith, by affording his gratuitous assistance in a pious act, obtained a great reward. To this I have already replied: for if those who voluntarily commit woman-murder, by tying down a widow to the pile, and holding her down with bamboos to be burnt to death, are to be reckoned as performers of a pious act, those who assist them in so doing must be esteemed meritorious; but if this be a most heinous and debased crime, the promoters of it must certainly reap the fruits of woman-murder.

In your concluding paragraph you have quoted three texts, to prove the continual observance of this practice during all ages. The first recounting, that a dove entered into the flaming pile of her deceased husband. The second, that when Dhriturashtru was burning in the flames of his hermitage, his wife, Gandharee, threw herself into the fire. The wives of Busoodev (the father of Krishnu), of Buluram, of Prudyoomnu, and of others, entered the flaming piles of their respective husbands. These three instances occurred, as narrated by the Pooran writers, within intervals of a few years towards the close of the Dwapur Yoog. You ought then to have quoted other instances, to shew the continual observance of this practice throughout all ages. Let that be as it may, you yourself cannot fail to know, that in former ages there were, as in later times, some who devoted themselves to the attainment of final beatitude, and others to the acquisition of future pleasure. Some too were virtuous, and some sinful; some believers, some scepties. Amongst those, both men and women, who performed rites for reward, after enjoying pleasures in heaven, have

again fallen to earth. Those Shastrus themselves declare this fact; but in the Shastrus that teach the path to final beatitude, the performance of rites for the sake of reward is positively forbidden. According to these Shastrus, numberless women, in all ages, who were desirous of final beatitude, living as ascetics, attained their object. Evidence of this is to be found in the Muhabharut and other works: "The widows of the heroic *Kooroos*, who fell valiantly with their faces to the foe, and were translated to the heaven of Bruhma, performed only the prescribed ceremonies with water,"* and did not burn themselves on the piles of their husbands. I have moreover to request your attention to the fact, that in the three instances you have quoted, the very words "entered into fire" are used. In those three cases, then, it appears that the widows actually entered the flames, and therefore whatever widow in the present time does not enter the fire, but is burnt to death by others tying her down to the pile, has not performed the ceremony according to the ancient practice you have instanced; and from rites so performed she cannot even be entitled to the temporary enjoyment of heavenly pleasures: and those who tie her down, and, pressing on her with bamboos, kill her, must, according to all Shastrus, be considered guilty of the heinous crime of woman-murder.

Section IX.

Advocate. I alluded, in P. 18, l. 18, to the real reason for our anxiety to persuade widows to follow their husbands, and for our endeavours to burn them, pressed

* उदके क्रियमाणे तु वीराणां वीरपत्नीभिः। इत्यादि।

down with ropes: *viz.* that women are by nature of inferior understanding, without resolution, unworthy of trust, subject to passions, and void of virtuous knowledge; they according to the precepts of the Shastru. are not allowed to marry again after the demise of their husbands, and consequently despair at once of all worldly pleasure; hence it is evident, that death to these unfortunate widows is preferable to existence; for the great difficulty which a widow may experience by living a purely ascetic life, as prescribed by the Shastrus, is obvious; therefore, if she do not perform Concremation, it is probable that she may be guilty of such acts as may bring disgrace upon her paternal and maternal relations, and those that may be connected with her husband. Under these circumstances, we instruct them from their early life in the idea of Concremation, holding out tothem heavenly enjoyments in company with theirhusbands, as well as the beatitude of their relations, both by birth and marriage, and their reputation in this world. From this many of them, on the death of their husbands, become desirous of accompanying them; but to remove every chance of their trying to escape from the blazing fire, in burning them we first tie them down to the pile.

Opponent. The reason you have now assigned for burning widows alive is indeed your true motive, as we are well aware; but the faults which you have imputed to women are not planted in their constitution by nature; it would be, therefore, grossly criminal to condemn that sex to death merely from precaution. By ascribing to them all sorts of improper conduct, you have indeed successfully persuaded the Hindoo community to look down upon them as contemptible and mischievous

creatures, whence they have been subjected to constant miseries. I have, therefore, to offer a few remarks on this head.

Women are in general inferior to men in bodily strength and energy; consequently the male part of the community, taking advantage of their corporeal weakness, have denied to them those excellent merits that they are entitled to by nature, and afterwards they are apt to say that women are naturally incapable of acquiring those merits. But if we give the subject consideration, we may easily ascertain whether or not your accusation against them is consistent with justice. As to their inferiority in point of understanding, when did you ever afford them a fair opportunity of exhibiting their natural capacity? How then can you accuse them of want of understanding? If, after instruction in knowledge and wisdom, a person cannot comprehend or retain what has been taught him, we may consider him as deficient; but as you keep women generally void of education and acquirements, you cannot, therefore, in justice pronounce on their inferiority. On the contrary, Leelavutee, Bhanoomutee, the wife of the prince of Kurnat, and that of Kalidas, are celebrated for their thorough knowledge of all the Shastrus: moreover in the Vrihudarunyuk Opunishud of the Ujoor Ved it is clearly stated, that Yagnuvulkyu imparted divine knowledge of the most difficult nature to his wife Muitreyee, who was able to follow and completely attain it!

Secondly. You charge them with want of resolution, at which I feel exceedingly surprised: for we constantly perceive, in a country where the name of death makes the male shudder, that the female, from her firmness of

mind, offers to burn with the corpse of her deceased husband; and yet you accuse those women of deficiency in point of resolution.

Thirdly. With regard to their trustworthiness, let us look minutely into the conduct of both sexes, and we may be enabled to ascertain which of them is the most frequently guilty of betraying friends. If we enumerate such women in each village or town as have been deceived by men, and such men as have been betrayed by women, I presume that the number of the deceived women would be found ten times greater than that of the betrayed men. Men are, in general, able to read and write, and manage public affairs, by which means they easily promulgate such faults as women occasionally commit, but never consider as criminal the misconduct of men towards women. One fault they have, it must be acknowledged; which is, by considering others equally void of duplicity as themselves, to give their confidence too readily, from which they suffer much misery, even so far that some of them are misled to suffer themselves to be burnt to death.

In the fourth place, with respect to their subjection to the passions, this may be judged of by the custom of marriage as to the respective sexes; for one man may marry two or three, sometimes even ten wives and upwards; while a woman, who marries but one husband, deires at his death to follow him, forsaking all worldly enjoyments, or to remain leading the austere life of an ascetic.

Fifthly. The accusation of their want of virtuous knowledge is an injustice. Observe what pain, what slighting, what contempt, and what afflictions their virtue

enables them to support! How many Kooleen Brahmuns are there who marry ten or fifteen wives for the sake of money, that never see the greater number of them after the day of marriage, and visit others only three or four times in the course of their life. Still amongst those women, most, even without seeing or receiving any support from their husbands, living dependent on their fathers or brothers, and suffering much distress, continue to preserve their virtue; and when Brahmuns, or those of other tribes, bring their wives to live with them, what misery do the women not suffer? At marriage the wife is recognized as half of her husband, but in after-conduct they are treated worse than inferior animals. For the woman is employed to do the work of a slave in the house, such as, in her turn, to clean the place very early in the morning, whether cold or wet, to scour the dishes, to wash the floor, to cook night and day, to prepare and serve food for her husband, father, and mother-in-law, sisters-in-law, brothers-in-law, and friends and connections! (for amongst Hindoos more than in other tribes relations long reside together, and on this account quarrels are more common amongst brothers respecting their worldly affairs.) If in the preparation or serving up of the victuals they commit the smallest fault, what insult do they not receive from their husband, their monher-in-law, and the younger brothers of their husband? After all the male part of the family have satisfied themselves, the women content themselves with what may be left, wheather sufficient in quantity or not. Where Brahmuns or Kayustus are not wealthy, their women are obliged to attend to to their cows, and to prepare the cow-dung for firing. In the afternoon they fetch water from the river or tank, and

at night perform the office of menial servants in making the beds. In case of any fault or omission in the performance of those labours they receive injurious treatment. Should the husband acquire wealth, he indulges in criminal amours to her perfect knowledge and almost under her eyes, and does not see her perhaps once a month. As long as the husband is poor, she suffers every kind of trouble, and when he becomes rich she is altogether heart-broken. All this pain and affliction their virtue alone enables them to support. Where a husband takes two or three wives to live with him, they are subjected to mental miseries and constant quarrels. Even this distressed situation they virtuously endure. Sometimes it happens that the husband, from a preference for one of his wives, behaves cruelly to another. Amongst the lower classes, and those even of the better class who have not associated with good company, the wife, on the slightest fault, or even on bare suspicion of her misconduct, is chastised as a thief. Respect to virtue and their reputation generally makes them forgive even this treatment. If unable to bear such cruel usage, a wife leaves her husband's house to live separately from him, then the influence of the husband with the magisterial authority is generally sufficient to place her again in his hands; when, in revenge for her quitting him, he seizes every pretext to torment her in various ways, and sometimes even puts her privately to death. These are facts occurring every day, and not to be denied. What I lament is, that, seeing the women thus dependent and exposed to every misery, you feel for them no compassion, that might exempt them from being tied down and burnt to death.

ABSTRACT

OF

THE ARGUMENTS

REGARDING

THE BURNING OF WIDOWS,

CONSIDERED AS A RELIGIOUS RITE.

CALCUTTA :

1830.

ABSTRACT
OF
THE ARGUMENTS, &c.

SEVERAL ESSAYS, Tracts, and Letters, written in defence of or against the practice of burning Hindoo widows alive, have for some years past attracted the attention of the public. The arguments therein adduced by the parties being necessarily scattered, a complete view of the question cannot be easily attained by such readers as are precluded by their immediate avocations from bestowing much labour in acquiring information on the subject. Although the practice itself has now happily ceased to exist under the Government of Bengal,* nevertheless, it seems still desirable that the substance of those publications should be condensed in a concise but comprehensive manner, so that enquirers may, with little difficulty, be able to form a just conclusion, as to the true light in which this practice is viewed in the religion of Hindoos. I have, therefore, made an attempt to accomplish this object, hoping that the plan pursued may be found to answer this end.

The first point to be ascertained is, whether or not the practice of burning widows alive on the pile and with the corpse of their husbands, is imperatively enjoyed by the Hindoo religion? To this question even the staunch advocates for Concremation must reluctantly give a

* The administration to which this distinguished merit is due, consisted of Lord W. C. Bentinck, Governor General, Viscount Combermere, Commander in Chief, W. B. Bayley, Esq., and Sir C. T. Metcalfe, Members of Council.

negative reply, and unavoidably concede the practice to the option of widows. This admission on their part is owing to two principal considerations, which it is now too late for them to feign to overlook. First, because Munoo in plain terms enjoins a widow to "*continue till death* forgiving all injuries, performing austere duties, avoiding every sensual pleasure, and cheerfully practising the incomparable rules of virtue which have been followed by such women as were devoted to one only husband." (ch. v. *v.* 158.)* So Yagnuvulkyu inculcates the same doctrine: "A widow shall live under care of her father, mother, son, brother, mother-in-law, father-in-law, or uncle; since, on the contrary, she shall be liable to reproach." (Vide Mitakshura, ch. i.)† Secondly, because an attempt on the part of the advocates for Coneremation to hold out the act as an incumbent duty on widows, would necessarily bring a stigma upon the character of the living widows, who have preferred a virtuous life to Concremation, as charging them with a violation of the duty said to be indispensible. These advocates, therefore, feel deterred from giving undue praise to a few widows, choosing death on the pile, to the disgrace of a vast majority of that class preferring a virtuous life. And in consideration of these obvious circumstances, the celebrated Smarttu Rughoonundun, the latest commentator on Hindoo Law in Bengal, found himself compelled to expound the following passage of Ungira, "there is no other

* आसीतामरणात् क्षान्ता नियता ब्रह्मचारिणी।
यो धर्म्म एकपत्नीनां काङ्क्षन्ती तमनुत्तमं ॥

† पितृभ्रातृसुतभ्रातृश्वश्रूश्वशुरमातुलैः।
हीना न स्यात् विना भर्त्रा गर्हणीयान्यथा भवेत् ॥

course for a widow beside Concremation,"* as "conveying exaggerated praise of the adoption of that course."†

The second point is, that in case the alternative be admitted, that a widow may either live a virtuous life, or burn herself on the pile of her husband, it should next be determined whether both practices are esteemed equally meritorious, or one be declared preferable to the other. To satisfy ourselves on this question, we should first refer to the Veds, whose authority is considered paramount, and we find in them a passage most pointed and decisive against Concremation, declaring that "From a desire, during life, of future fruition, life ought not to be destroyed." (Vide Mitakshura, ch. i.)‡ While the advocates of Concremation quote a passage from the Veds, of a very abstruse nature, in the support of their position, which is as follows: "O fire, let these women, with bodies anointed with clarified butter, eyes coloured with collyrium and void of tears, enter thee, the parent of water,§ that they may not be separated from their husbands, themselves sinless, and jewels amongst women."‖ This passage (if genuine) does not, in the first place, enjoin widows to offer themselves as sacrifices; secondly, no allusion whatever is made in it to voluntary death by a widow *with the corpse of her husband*; thirdly, the phrase "these women" in the passage, literally

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* नान्यो हि धर्म्मो विज्ञेयो मृते भर्त्तरि कर्हिचित्।

† नान्यो हि धर्म्म इति तु सहमरणस्तुत्यर्थं।

‡ तस्मादुह न पुरायुषः स्वःकामी प्रेयात्।

§ In Sunskrit writings, water is represented as originating in fire.

‖ इमा नारीरविधवाः सुपत्नीराञ्जनेन सर्पिषा संविशन्त्वनश्रवा अनमीवा सुरत्ना आरोहन्तु जनयो योनिमग्रे:।

implies women then present; fourthly, some commentators consider the passage as conveying an allegorical allusion to the constellations of the moon's path, which are invariably spoken of in Sunskrit in the feminine gender:—butter implying the milky path, collyrium meaning unoccupied space between one star and another, husbands signifying the more splendid of the heavenly bodies, and entering the fire, or, properly speaking, ascending it, indicating the rise of the constellations through the south-east horizon, considered as the abode of fire. What ever may be the real purport of this passage, no one ever ventured to give it an interpretation as *commanding* widows to burn themselves on the pile and with the corpse of their husbands.

We next direct attention to the Smritee, as next in authority to the Veds. Munoo, whose authority supersedes that of other lawgivers, enjoins widows to live a virtuous life, as already quoted. Yagnuvulkyu and some others have adopted the same mode of exhortation. On the other hand, Ungira recommends the practice of Concremation, saying, "That a woman who, on the death of her husband, *ascends the burning pile* with him, is exalted to heaven as equal to Uroondhuti."* So Vyas says, "A pigeon devoted to her husband, after his death, *entered the flames*, and, ascending to heaven, she there found her husband."† "She who follows her husband to another world, shall dwell in a region of glory for so many years as there are hairs in the human body, or

* मृते भर्त्तरि या नारी समारोहेद्धुताशनम्।
सारुन्धतीसमाचारा स्वर्गलोके महीयते॥
† पतिव्रता सप्रदीप्तं प्रविवेश हुताशनम्।
तत्र चिताङ्गदधरं भर्त्तारं साम्वपद्यत॥

thirty-five millions."* Vishnoo, the saint, lays down this rule, "After the death of her husbnd, a wife should live as an ascetic or ascend his pile."† Hareet and others have followed Ungira in recommending Concremation.

The above quoted passages, from Ungira and others, recommend Concremation on the part of widows, as means to obtain future carnal fruition; and, accordingly, previous to their ascent on the pile, all widows invariably and solemnly declare future fruition as their object in Concremation. But the Bhugvudgeeta, whose authority is considered the most sacred by Hindoos of all persuasions, repeadedly condemns rites performed for fruition. I here quote a few passages of that book. "All those ignorant persons who attach themselves to the works of of the Shastrus that convey promises of fruition, consider those extravagant and alluring passages as leading to real happiness, and say, besides them there is no other reality. Agitated in their minds by these desires, they believe the abodes of the celestial gods to be the chief object, and they devote themselves to these texts which treat of ceremonies and their fruits, and entice by promises of enjoyment. Such people can have no real confidence in the Supreme Being."‡ "Observers of

* तिस्रः कोट्यर्द्धकोटी च यानि लोमानि मानवे।
तावत्यब्दानि सा स्वर्गे भर्त्तारं यानुगच्छति॥

† मृते भर्त्तरि ब्रह्मचर्य्यं तदन्वारोहणं वा।

‡ यामिमां पुष्पितां वाचं प्रवदन्त्यविपश्चितः।
वेदवादरताः पार्थ नान्यदस्तीतिवादिनः॥
कामात्मानः स्वर्गपरा जन्मकर्म्मफलप्रदाम्।
क्रियाविशेषबहुलां भोगैश्वर्य्यगतिं प्रति॥
भोगैश्वर्य्यप्रसक्तानां तयापहृतचेतसाम्।
व्यवसायात्मिका बुद्धिः समाधौ न विधीयते॥

rites, after the completion of their rewards, return to earth. Therefore they, for the sake of rewards, repeatedly ascend to heaven and return to the world, and cannot obtain eternal bliss."* (1)

* तं तं भुक्त्वा स्वर्गलोकं विशालं क्षीणे पुण्ये मर्त्यलोकं विशन्ति ।
एवं त्रयीधर्ममनुप्रपन्ना गतागतं कामकामा लभन्ते ॥

(1) We give below the text of Rughoonundun describing how the ceremony of Concremation should be performed, with the 'solemn declaration' referred to above, which the widow had to make before ascending the pyre :—

पुत्रादिना स्वगृह्योक्तविधिना अग्नौ दत्ते ज्वलितायां भर्तृचितायां सहगन्त्री साध्वी स्नाता परिहितधौतवासोयुगा कुशहस्ता प्राङ्मुखी उदङ्मुखी वा दैवतीर्थेनाचान्ता तिलजलकुशव्रतमादाय ओम् तत्सदिति ब्राह्मणैरुच्चारिते नारायणं संस्मृत्य नमोऽन्तामुके मासि अमुके पक्षेऽमुकतिथौ अमुकगोत्रा श्रीमती अमुकी देवी अरुन्धतीसमाचारत्वपूर्व्वक स्वर्गलोकमहीयमानत्व-मानवाधिकरणक-लोमसम-संख्याव्यवच्छिन्न-स्वर्गवासभर्तृसहित-मोदमानत्व-मातृपितृश्वशुरकुलत्रय-पूतत्व-चतुर्दशेन्द्रावच्छिन्नकालाधिकरणकाप्सरोगणलूय-मानत्वपतिसहितक्रीड़मानत्व ब्रह्मघ्न-कृतघ्न-मित्रघ्नपतिपूतत्वकामा भर्तृज्वल-ज्वितारोहणमहं करिष्ये इति अनुमरणे तु भर्तृज्वलज्वितारोहण मित्यत्र ज्वलज्विताप्रवेशेन भर्तृनुमरण मिति सङ्कल्प्य अष्टौ लोकपाला आदित्यचन्द्रा-निलाग्न्याकाशभूमिजल-हृदयावस्थितान्तर्य्यामि-पुरुषयमदिनरात्रिसन्ध्याधर्म्मा यूयं साक्षिणो भवत ज्वलज्वितारोहणेन भर्तृशरीरानुगमनमहं करोमीति अनुमरणे तु भर्तृशरीरानुगमन मित्यत्र भर्तृनुमरणमित्युच्चार्य्य ज्वलज्विताग्निं विःप्रदक्षिणीकृत्य ओम् इमा नारीरविधवाः सुपत्नीराञ्जनेन सर्पिषा सन्सृशन्तां अनश्रवो अनमीवाः सुरत्ना आरोहन्तु जनयो योनिमग्रे इति ऋग्वेदोक्तमन्त्रे ओम् इमाः पतिव्रताः पुण्याः स्त्रियो या याः सुशोभनाः सहभर्तृशरीरेण संविशन्तु विभावसुम् इति पौराणिके मन्त्रेच ब्राह्मणेन पठिते नमोनम इत्युच्चार्य्य ज्वलज्वितां समारोहेत् ।

मुद्रितत्वम्

Munoo repeats the same. "Whatever act is performed for the sake of gratification in this world or the next, is called Pruvurtuk, as leading to the temporary enjoyment of the mansions of gods; and those which are performed according to the knowledge respecting God are called Nivurtuk, as means to procure release from the five elements of this body; that is, they obtain eternal bliss."*

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* इह वामुत्र वा काम्यं प्रवृत्तं कर्म कीर्त्यते ।
निष्कामं ज्ञानपूर्व्वन्तु निवृत्तमुपदिश्यते ॥
प्रवृत्तं कर्म संसेव्य देवानामेति साम्यताम् ।
निवृत्तं सेवमानस्तु भूतान्यत्येति पञ्च वै ॥

Fire having been applied by the son or other relation according to the rules laid down in the *Grihya* rituals followed by the family, and the funeral pyre having blazed forth, the virtuous widow, wishing to accompany her husband, having bathed, and having put on a pair of cloths washed clean, with the *kusa* grass in her hand, having sipped water by the tips of her fingers with her face turned towards the east or the north, and having taken in her hand the *tila* seed, water and three *kusa* grass, when the Brahmins have pronounced *Om Tat Sat*, meditating on *Narayana*, should say, '*Namo*: to-day, this month, this day of full or new moon, I, of such a *gotra*, of this name, desiring to attain the glory of the heavens to be obtained by acting like *Aroondhatee*, to dwell in the regions of bliss, rejoicing with my husband as many years as there are hairs in the human body, to purify three families of my mother, father, and father-in-law, to be glorified by the *Apsaras* as long as fourteen Indras last, to enjoy the company of my husband and to purify my husband from the sins of Brahmin-murder, ingratitude and betrayal of friends, do ascend the flaming funeral pyre of my husband: (in the case of postcremation instead of 'I ascend the flaming funeral pyre of my husband' the widow should say 'I follow my husband in death by entering the flaming pyre':) With this solemn declaration she should then make the following invocation, "O ye eight Lokapalas! O thou the sun, the moon, the air, the fire, the atmosphere, the earth, the water, the Being who resides in the heart and knows it, the death, the day, the night, the twilights both evening and morning, and the religion! be ye witness, I follow the body of my husband by ascending the flaming funeral pyre," (in the case of postcremation, instead of 'I follow

The author of the Mitakshura, a work which is considered as a standard of Hindoo Law through Hindoostan, referring on one hand to the authority of Munoo, Yagnuvulkyu, the Bhugvudgeeta, and similar sacred writings, and to the passages of Ungira, Hureet and Vyas on the other hand, and after having weighed both sides of the question, declares that "The widow who is not desirous of eternal beatitude, but who wishes only for a perishable and small degree of future fruition, is authorized to accompany her husband." * So that the Smarttu Rughoonundun, the modern expounder of law in Bengal, classes Concremation among the rites holding out promises of fruition; and this author thus inculcates: "Learned men should not endeavour to persuade the ignorant to perform rites holding out promises of fruition."† Hence, Concremation, in their opinion, is the least virtuous act that a widow can perform. ‡

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the body of my husband' the widow should say 'I follow my husband in death,') and go three times round the fire of the flaming pyre, and then, while the Brahmins recite the following *mantra* of the Rig Veda -" Let these women, not widowed, having good husbands, having applied clarified butter in the eyes for collyrium, without tears on their eyes, without any disease fit for all attentions, being wives, ascend, after this, their proper place," and also the following *mantra* from the Pooran, -" Let these women who are pious, devoted to their husbands, and handsome, enter the fire with the body of their husbands," she uttering yea yea (to these recitations) should ascend the flaming funeral pyre.

—Ed.

* अतश्च मोक्षमनिच्छत्या अनित्याल्पसुखरूपस्वर्गार्थिन्याः सहमरणानुमरणयोरधिकार इतरकाम्यानुष्ठानवत ।

† पण्डितेनापि मूर्खः काम्ये कर्मणि न प्रवर्त्तयितव्यः ।

‡ Hindoos are persuaded to believe that Vyas, considered as an inspired writer among the ancients, composed and left behind him numerous and voluminous works under different titles, as Muha-poorans, Itihashes, Sunhitas, Smriti, &c. &c. to an extent

The third and the last point to be ascertained is whether or not *the mode* of Concremation prescribed by Hareet and others was ever duly observed. The passages recommending Concremation, as quoted by these expounders of law, require that a widow, resolving to die after the demise of her husband, should *voluntarily ascend* and enter the flames† to destroy her existence*; allowing her, at the same time, an opportunity of retracting her resolution, should her courage fail from the alarming sight or effect of the flames, and of returning to

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that no man, during the ordinary course of life, could prepare. These, however, with a few exceptions, exist merely in name, and those that are genuine bear the commentaries of celebrated authors. So the Tuntrus, or works ascribed to Shivu as their author, are esteemed as consisting of innumerable millions of volumes, though only a very few, comparatively, are to be found. Debased characters among this unhappy people, taking advantage of this circumstance, have secretly composed forged works and passages, and published them as if they were genuine, with the view of introducing new doctrines, new rites, or new prescripts of secular law. Although they have frequently succeeded by these means in working on the minds of the ignorant, yet the learned have never admitted the authority of any passage or work alleged to be sacred, unless it has been quoted or expounded by one of the acknowledged and authoritative commentators. It is now unhappily reported, that some advocates for the destruction of widows, finding their cause unsupported by the passages cited by the author of the Mitakshura, by the Smarttu Rughoonundun, or by other expounders of Hindoo law, have disgracefully adopted the trick of coining passages in the name of the Poorans or Tuntrus, conveying doctrines not only directly opposed to the decisive expositions of these celebrated teachers of law, but also evidently at variance with the purport of the genuine sacred passages which they have quoted. The passages thus forged are said to be calculated to give a preferance to Concremation over virtuous life. I regret to understand that some persons belonging to the party opposing this practice, are reported to have had recourse to the same unworthy artifice, under the erroneous plea that stratagem justifies stratagem.

* समारोहेद्धुताशनम्। Ungira.

† पतिव्रता सम्प्रदीप्तं प्रविवेश हुताशनम्। Vyas.

her relatives, performing a penance for abandoning the the sacrifice,* or bestowing the value of a cow on a Brahmins.† Hence, as *voluntarily ascending* upon and *entering into the flames* are described as indispensably necessary for a widow in the performance of this rite, the violation of one these provisions renders the act mere suicide, and implicates, in the guilt of female murder, those that assist in its perpetration, even according to the above quoted authorities, which are themselves of an inferior order. But no one will venture to assert, that the provisions, prescribed in the passages adduced, have ever been observed; that is, no widow ever voluntarily *ascended* on and *entered* into the *flames* in the fulfilment of this rite. The advocates for Concremation have been consequently driven to the necessity of taking refuge in *usage*, as justifying both suicide and female murder, the most heinious of crimes.

We should not omit the present opportunity of offer-up thanks to Heaven, whose protecting arm has rescued our weaker sex from cruel murder, under the cloak of religion, an our character, as a people, from the contempt and pity with which it has been regarded, on account of this custom, by all civilized nations on the surface of the globe.

* चितिभ्रष्टा तु या नारी मोहादिचलिता भवेत् ।
प्राजापत्येन शुद्ध्येत्तु तस्माद्धि पापकर्मणः ॥

† प्राजापत्यव्रताशक्तौ धेनुं दद्यात् पयस्विनीम् ।
धेनोरभावे दातव्यं तुल्यं मूल्यं न संशयः ॥

BRIEF REMARKS

REGARDING

MODERN ENCROACHMENTS

ON THE

ANCIENT RIGHTS OF FEMALES,

ACCORDING TO THE

HINDOO LAW OF INHERITANCE.

CALCUTTA:

1822.

In 1856 Babu Rumaprusad Roy, son of the illustrious author, reprinted this treatise with the following introduction :—

"At this moment, when thousands of my countrymen have openly come forward to invoke the assistance of the Legislature to suppress the abominations of Kulin Polygamy, I have deemed it proper to re-print the following small Tract, published by the late Rajah Rammohun Roy in 1822. Those, who have joined in the application to the Legislative body, will have the satisfaction to see that my revered father, so far back as 1822, entertained sentiments on the subject of Kulin Polygamy similar to those which have now moved them to act in a way so independent of their prejudices, and so well fitted to confer incalculable benefits on the Hindu Community.

CALCUTTA,
July 12, 1856.

RUMAPRUSAD ROY."

BRIEF REMARKS

REGARDING

MODERN ENCROACHMENTS

ON THE

ANCIENT RIGHTS OF FEMALES.

—o—

WITH a view to enable the public to form an idea of the state of civilization throughout the greater part of the empire of Hindoostan in ancient days,* and of the subsequent gradual degradation introduced into its social and

* At an early age of civilization, when the division into castes was first introduced among the inhabitants of India, the second tribe, who were appointed to defend and rule the country, having adopted arbitrary and despotic practices, the others revolted against them ; and under the personal command of the celebrated Purusooram, defeated the Royalists in several battles, and put cruelly to death almost all the males of that tribe. It was at last resolved that the legislative authority should be confined to the first class who could have no share in the actual government of the state, or in managing the revenue of the country under any pretence ; while the second tribe should exercise the executive authority. The consequence was, that India enjoyed peace and harmony for a great many centuries. The Brahmuns having no expectation of holding an office, or of partaking of any kind of political promotion, devoted their time to scientific pursuits and religious austerity, and lived in poverty. Freely associating with all the other tribes they were thus able to know their sentiments, and to appreciate the justness of their complaints, and thereby to lay down such rules as were required, which often induced them to rectify the abuses that were practised by the second tribe. But after the expiration of more than two thousand years, an absolute form of government came gradually again to prevail. The first class having been induced to accept employments in political departments, became entirely dependent on the second tribe, and so unimportant in themselves, that they were obliged to explain away the laws enacted by their fore-fathers, and to institute new rules according to the dictates of their contemporary princes. They were considered as merely

political constitution by arbitrary authorities, I am induced to give as an instance, the interest and care which our ancient legislators took in the promotion of the comfort of the female part of the community; and to compare the laws of female inheritance which they enacted, and which afforded that sex the opportunity of enjoyment of life, with that which moderns and our cotemporaries have gradually introduced and establshed, to their complete privation, directly or indirectly, of most of those objects that render life agreeable.

All the ancient lawgivers unanimously award to a mother an equal share with her son in the property left by her deceased husband, in order that she may spend her remaining days independently of her children, as is evident from the following passages:

YAGNUVULKYU. "After the death of a father, let a mother also inherit an equal share with her sons in the division of the property *left by their father.*"*

nominal legislators, and the whole power, wheather legislative or executive, was in fact exercised by the Rajpoots. This tribe exercised tyranny and oppression for a period of about a thousand years, when Moosulmans from Ghuznee and Ghore, invaded the country, and finding it divided among hundreds of petty princes, detested by their respective subjects, conquered them all successively, and introduced their own tyrannical system of government, destroying temples, universities and all other sacred and literary establishments. At present the whole empire (with the exception of a few provinces) has been placed under the British power, and some advantages have already been derived from the prudent management of its rulers, from whose general character a hope of future quiet and happiness is justly entertained. The succeeding generation will, however, be more adequate to pronounce on the real advantages of this government.

* पितुर्द्रव्यं विभजतां माताप्यंशं समं हरेत्।

KATYAYUNU. "The father being dead, the mother should inherit an equal share with the son."*

NARUDU. "After the death of husband, a mother should receive a share equel to that of each of his sons."†

VISHNOO THE LEGISLATOR. "Mothers should be receivers of shares according to the portion allowed to the sons."‡

VRIHUSPUTI. "After his (the father's) death a mother, the parent of his sons, should be entitled to an equel share with his sons; their step-mothers also to equel shares: but daughters to a fourth part of the shares of the sons."§

VYAS. "The wives of a father by whom he has no male issue, are considerd as entitled to equal shares with his sons, and all the grand-mothers (*including the mothers and step-mothers of the father*), are said to be entitled as mothers.‖

This Mooni seems to have made this express declaration of rights of step-mothers, omitting those of mothers, under the idea that the latter were already sufficiently established by the direct authority of preceding lawgivers.

We come to the moderns.

The author of the Dayubhagu and the writer of the Dayututtwu, the modern expounders of Hindoo law

* माता च पितरि प्रेते पुत्रतुल्यांशहारिणी ।

† समांशहारिणी माता पुत्राणां स्यान्मृते पतौ ।

‡ मातरः पुत्रभागानुसारभागहारिण्यः ।

§ तदभावे तु जननी तनयांशसमांशिनी ।
समांशा मातरस्त्वेषां तुरीयांशास्तु कन्यकाः ॥

‖ असुतास्तु पितुः पत्न्यः समानांशाः प्रकीर्त्तिताः ।
पितामह्यश्च ताः सर्व्वा मातृतुल्याः प्रकीर्त्तिताः ॥

(whose opinions are considered by the natives of Bengal as standard authority in the division of property among heirs) have thus limited the rights allowed to widows by the above ancient legislators. When a person is willing to divide his property among his heirs during his life-time, he should entitle only those wives by whom he has no issue, to an equal share with his sons; but if he omit such a division, those wives can have no claim to the property he leaves. These two modern expounders lay stress upon a passage of Yagnuvulkyu, which requires a further to allot equal shares to his wives, in case he divides his property during his life, whereby they connect the term "of a father," in the above quoted passage of Vyas, *viz.*, "the wives of a father, &c." with the term "division" understood, that is, the wives by whom he has no son, are considered in the division made by a father, as entitled to equal shares with his sons; and that when sons may divide property among themselves after the demise of their father, they should give an equal share to their mother only, neglecting step-mothers in the division. Here the expounders did not take into their consideration any proper provision for step-mothers, who have naturally less hope of support from their step-sons than mothers can except from their own children.

In the opinion of these expounders even a mother of a single son should not be entitled to any share. The whole property should, in that case, devolve on the son; and in case that son should die after the succession to the property, his son or wife should inherit it. The mother in that case should be left totally dependent on her son or on her son's wife. Besides, according to the opinion of these expounders, if more than one son

should survive, they can deprive their mother of her title, by continuing to live as a joint family (which has been often the case,) as the right of a mother depends, as they say, on division, which depends on the will of the sons.

Some of our contemporaries, (whose opinion is received as a verdict by Judicial Courts,) have still further reduced the right of a mother to almost nothing, declaring, as I understand, that if a person die, leaving a widow and a son or sons, and also one or more grandsons, whose father is not alive, the property so left is to be divided among his sons and his grand-sons, his widow in this case being entitled to no share in the property, though she might have claimed an equal share, had a division taken place among those surviving sons and the father of the grand-son while he was alive.* They are said to have founded their opinion on the above passage, entitling a widow to a share when property is to be divided among *sons*.

In short, a widow, according to the expositions of the law, can receive nothing when her husband has no issue by her; and in case he dies leaving only one son by his wife, or having had more sons, one of whom happened to die leaving issue, she shall, in these cases, also have no claim to the property; and again, should any one leave more than one surviving son, and they, being unwilling to allow a share to the widow, keep the property undivided, the mother can claim nothing in this instance also. But when a person dies, leaving two or

* This exposition has been (I am told) set aside by the Supreme Court, in consequence of the Judges having prudently applied for the opinions of other Pundits, which turned out to be at variance with those of the majority of the regular advisers of the Court in points of Hindoo law.

more sons, and all of them survive and be inclined to allot a share to their mother, her right is in this case only valid. Under these expositions, and with such limitations, both step-mothers and mothers have, in reality, been left destitute in the division of their husband's property, and the right of a widow exists in theory only among the learned, but unknown to the populace.

The consequence is, that a woman who is looked up to as the sole mistress by the rest of a family one day, on the next, becomes dependent on her sons, and subject to the slights of her daughters-in-law. She is not authorized to expend the most trifling sum or dispose of an article of the least value, without the consent of her son or daughter-in-law, who were all subject to her authority but the day before. Cruel sons often wound the feelings of their dependent mothers, deciding in favour of their own wives, when family disputes take place between their mothers and wives. Step-mothers, who often are numerous on account of polygamy being allowed in these countries, are still more shamefully neglected in general by their step-sons, and sometimes dreadfully treated by their sisters-in-law who have fortunately a son or sons by their husband.

It is not from religious prejudices and early impressions only, that Hindoo widows burn themselves on the piles of their deceased husbands, but also from their witnessing the distress in which widows of the same rank in life are involved, and the insults and slights to which they are daily subjected, that they become in a great measure regardless of their existence after the death of their husbands: and this indifference, accompanied with the hope of future reward held out to them, leads them

to the horrible act of suicide. These restraints on female inheritance encourage, in a great degree, polygamy, frequent source of the greatest misery in native families; a grand object of Hindoos being to secure a provision for their male offspring, the law, which relieves them from the necessity of giving an equal portion to their wives, removes a principal restraint on the indulgence of their inclinations in respect to the number they marry. Some of them, especially Brahmuns of higher birth, marry ten, twenty, or thirty women,* either for some small consideration, or merely to gratify their brutal inclinations, leaving a great many of them, both during their life-time and after their death, to the mercy of their own paternal relations. The evil consequences arising from such polygamy, the public may easily guess, from the nature of the fact itself, without my being reduced to the mortification of particularising those which are known by the native public to be of daily occurrence.

To these women there are left only three modes of conduct to pursue after the death of their husbands. 1st. To live a miserable life as entire slaves to others, without indulging any hope of support from another husband. 2ndly. To walk in the paths of unrighteousness for their maintenance and independence. 3rdly. To die on the funeral pile of their husbands, loaded with the applause and honour of their neighbours. It cannot pass unnoticed by those who are acquainted with the state of society in India, that the number of female suicides in the single province of Bengal, when compared with those

* The horror of this practice is so painful to the natural feelings of man that even Madhub Singh, the late Rajah of Tirhoot, (though a Brahmun himself), through compassion, took upon himself (I am told) within the last half century, to limit Brahmuns of his estate to four wives only.

of any other British provinces, is almost ten to one: we may safely attribute this disproportion chiefly to the greater frequency of a plurality of wives among the natives of Bengal, and to their total neglect in providing for the maintenance of their females.

This horrible polygamy among Brahmuns is directly contrary to the law given by ancient authors; for Yagnuvulkyu authorizes second marriges, while the first wife is alive, only under eight circumstances: 1st. The vice of drinking spirituous liquors. *2ndly.* Incurable sickness. *3rdly.* Deception. *4thly.* Barrenness. *5thly.* Extravagance. *6thly.* The frequent use of offensive language. *7thly.* Producing only female offsprings. Or, *8thly.* Manifestation of hatred towards her husband.*

Munoo, ch. 9th, v. 80th. "A wife who drinks any spirituous liquors, who acts immorally, who shows hatred *to her lord*, who is *incurably diseased*, who is mischievous, who wastes his property, may at all times be superseded by another wife."†

81st. "A barren wife may be superseded by another in the eighth year; she, whose children are all dead, in the tenth; she, who is brings forth *only* daughters, in the eleventh; she, who is accustomed to speak unkindly, without delay."‡

* सुरापी व्याधिता धूर्त्ता वन्ध्यार्थघ्न्यप्रियंवदा।
स्त्रीप्रसूत्याधिवेत्तव्या पुरुषद्वेषिणी तथा॥

† मद्यपासाधुवृत्ता च प्रतिकूला च या भवेत्।
व्याधिता वाधिवेत्तव्या हिंस्रार्थघ्नी च सर्व्वदा॥

‡ वन्ध्याष्टमेऽधिवेद्याब्दे दशमे तु मृतप्रजा।
एकादशे स्त्रीजननी सद्यस्त्वप्रियवादिनी॥

82nd. "But she, who, though afflicted with illness, is beloved and virtuous, must never be disgraced, though she may be superseded by another wife with her own consent."*

Had a Magistrate or other public officer been authorized by the rulers of the empire to receive applications for his sanction to a second marriage during the life of a first wife, and to grant his consent only on such accusations as the foregoing being substantiated, the above Law might have been rendered effectual, and the distress of the female sex in Bengal, and the number of suicides, would have been necessarily very much reduced.

According to the following ancient authorities a daughter is eutitled to one-fourth part of the portion which a son can inherit.

VRIHUSPUTI. "The daughters should have the fourth part of the portion to *which the sons are entitled.*"†

VISHNOO. "The rights of unmarried daughters shall be proportioned according to the shares allotted to the sons."‡

MUNOO, ch. *9th*, v. 118. "To the unmarried daughters let their brothers give portions out of their own allotments respectively. Let each give a fourth part of his own distinct share, and they who feel disinclined to give this shall be condemned."§

* या रोगिणी स्यात्तु हिता सम्पन्ना चैव शीलतः।
सानुज्ञाप्याधिवेत्तव्या नावमान्या च कर्हिचित् ॥

† तुरीयांशास्तु कन्यकाः।

‡ अनूढाश्च दुहितरः पुत्रभागानुसारतः।

§ स्वेभ्योऽंशेभ्यस्तु कन्याभ्यः प्रदद्युर्भ्रातरः पृथक्।
स्वात् स्वादंशाच्चतुर्भागं पतिताः खुरदित्सवः ॥

YAGNUVULKYU. "Let such brothers as are already purified by the essential rites of life, purify by the performance of those rites the brothers that are left *by their late father* unpurified; let them also purify the sisters by giving them a fourth part of their own portion."*

KATYAUNU. † "A fourth part is declared to be the share of unmarried daughters, and three-fourths of the sons; if the fourth part of the property is *so* small *as to be inadequate to defray the expenses attending their marriage the sons have an exclusive* right to the property, *but shall defray the marriage ceremony of the sisters.* But the commentator on the Dayubhagu sets aside the right of the daughters, declaring that they are not entitled to any share in the property left by their fathers, but that the expenses attending their marriage should be defrayed by the brothers. He founds his opinion on the foregoing passage of Munoo and that of Yagnuvulkyu, which as he thinks, imply mere donation on the part of the brothers from their own portions for the discharge of the expenses of marriage.

In the practice of our contemporaries a daughter or a sister is often a source of emolument to the Brahmuns of less respectable caste, (who are most numerous in Bengal) and to the Kayusths of high caste. These so far from spending money on the marriage of their daughters or sisters, receive frequently considerable sums, and

* चमंस्कृतास्तु संस्कार्य्या भ्रातृभिः पूर्व्वसंस्कृतैः ।
भगिन्यश्च निजादंशाद्दत्वांशन्तु तुरीयकम् ॥

† कन्यकाना मदत्तानां चतुर्थीभाग उच्यते ।
पुत्राणाञ्च त्रयो भागाः स्वाम्य स्वल्पधने स्मृतम् ॥

generally bestow them in marriage on those who can pay most.* Such Brahmuns and Kayusths, I regret to say, frequently marry their female relations to men having natural defects or worn-out by old age or disease, merely from pecuniary considerations, whereby they either bring widowhood upon them soon after marriage or render their lives miserable. They not only degrade themselves by such cruel and unmanly conduct, but violate entirely express authorities of Munoo and all other ancient law-givers, a few of which I here quote.

Munoo, ch. 3rd, v. 51. "Let no father, who knows the law, receive a gratuity, however small, for giving his daughter in marriage; since the man, who, through avarice, takes a gratuity *for that purpose*, is a seller of his offpring."†

Ch. 9th, v. 98. "But even a man of the servile class ought not to receive a gratuity when he gives his daughter in marriage, since a father who takes a fee *on that occasion*, tacitly sells his daughter."‡

V. 100. "Nor, even in former births, have we heard the *virtuous approve* the tacit sale of a daughter for a price, under the name of nuptial gratuity."§

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* Rajah Krissenchundru, the great-grandfather of the present ex. Rajah of Nudia, prevented this cruel practice of the sale of daughters and sisters throughout his estate.

† न कन्याया: पिता विद्वान् गृह्णीयात् शुल्कमण्वपि ।
गृह्णन् हि शुल्कं लोभेन स्यान्नरोऽपत्यविक्रयी ॥

‡ आददीत न शूद्रोपि शुल्कं दुहितरं ददत् ।
शुल्कं हि गृह्णन् कुरुते छद्म दुहितृविक्रयं ॥

§ नानुशुश्रुम जात्वेतत् पूर्व्वेष्वपि हि जन्मसु ।
शुल्कसंज्ञेन मूल्येन छद्म दुहितृविक्रयं ॥

KASHYUPU. "Those who, infatuated by avarice, give their own daughters in marriage, for the sake of a gratuity, are the sellers of their daughters, the images of sin, and the perpetrators of a heinous iniquity."*

Both common sense, and the law of the land designate such a practice as an actual sale of females; and the humane and liberal among Hindoos, lament its existence, as well as the annihilation of female rights in respect of inheritence introduced by modern expounders. They, however, trust, that the humane attention of Government will be directed to those evils which are chief sources of vice and misery and even of suicide among women; and to this they are encouraged to look forward by what has already been done in modifying, in criminal cases, some parts of the law enacted by Mohummudan Legislators, to the happy prevention of many cruel practices formerly established.

How distressing it must be to the female community and to those who interest themselves in their behalf, to observe daily that several daughters in a rich family can prefer no claim to any portion of the property, whether real or personal, left by their deceased father, if a single brother be alive: while they (if belonging to a Kooleen family or Brahmun of higher rank) are exposed to be given in marriage to individuals who have already several wives and have no means of maintaining them.

Should a widow or a daughter wish to secure her right of maintenance, however limited by having recourse to law, the learned Brahmuns, whether holding public

* शुल्कंन ये प्रयच्छन्ति स्वसुतां लोभमोहिताः।
कन्याविक्रयिणः पापा महाकिल्बिषकारिणः॥

situations in the courts or not, generally divide into two parties, one advocating the cause of those females and the other that of their adversaries. Sometimes in these or other matters respecting the law, if the object contended for be important, the whole community seems to be agitated by the exertions of the parties and of their respective friends in claiming the verdict of the law against each other. In general, however, a consideration of difficulties attending a law suit, which a native woman, particularly a widow, is hardly capable of surmounting, induces her to forego her right; and if she continue virtuous, she is obliged to live in a miserable state of dependence, destitute of all the comforts of life; it too often happens, however, that she is driven by constant unhappiness to seek refuge in vice.

At the time of the decennial settlement in the year 1793, there were among European gentlemen so very few acquainted with Sanskrit and Hindoo law that it would have been hardly possible to have formed a committee of European oriental scholars and learned Brahmuns, capable of deciding on points of Hindoo law. It was, therefore, highly judicious in Government to appoint Pundits in the different Zillah Courts of Appeal, to facilitate proceeding of Judges in regard to such subjects. But as we can now fortunately find many European gentlemen capable of investigating legal questions with but little assistance from learned Natives, how happy would it be for the Hindoo community, both male and female, were they to enjoy the benefits of the opinion of such gentlemen, when disputes arise, particularly on matters of inheritance.

Lest any one should infer from what I have stated,

that I mean to impeach, universally, the character of the great body of learned Hindoos, I declare, positively, that this is far from my intention. I only maintain, that the Native community place greater confidence in the honest judgment of the generality of European gentlemen than in that of their own countrymen. But, should the Natives receive the same advantages of education that Europeans generally enjoy, and be brought up in the same notions of honour, they will, I trust, be found, equally with Europeans, worthy of the confidence of their countrymen and the respect of all men.

ESSAY

ON

THE RIGHTS OF HINDOOS

OVER

ANCESTRAL PROPERTY,

ACCORDING TO

THE LAW OF BENGAL.

CALCUTTA:

1830.

PRELIMINARY NOTE.

—o—

THE translation into English, by the celebrated Mr. H. T. Colebrooke, of the DAYUBHAGU, a work on Succession, and of an extract from the MITAKSHURA, comprising so much of the latter as relates to Inheritance, has furnished the principal basis of the arguments used in the following pages. I have also referred occasionally to the valuable remarks of that eminently learned scholar, in his preface and notes added to the original work. In quoting the Institutes of Munoo, I have had recourse to the translation of this code of Law by the most venerable Sir WILLIAM JONES, that no doubt may be entertained as to the exactness of the interpretation. Only one text of Vrihusputi, the Legislator, and one passage quoted in another part of the *Mitakshura*, which has not been translated by Mr. Colebrooke, have been unavoidably rendered by myself. I have, however, taken the precaution to cite the original Sunskrit, that the reader may satisfy himself of the accuracy of my translation.

ON

THE RIGHT OF HINDOOS.

OVER

ANCESTRAL PROPERTY.

—o—

India, like other large empires, is divided into several extensive provinces, principally inhabited by Hindoos and Mussulmans. The latter admit but a small degree of variety in their domestic and religious usages, while the Hindoos of each province, particularly those of Bengal, are distinguished by peculiarities of dialect, habits, dress, and forms of worship; and notwithstanding they unanimously consider their ancient legislators as inspired writers, collectively revealing human duties, nevertheless there exist manifest discrepancies among them in the received precepts of civil law.

2. When we examine the language spoken in Bengal, we find it widely different from that of any part of the western provinces, (though both derived from the same origin;) so that the inhabitants of the upper country require long residence to understand the dialect of Bengal; and although numbers of the natives of the upper provinces, residing in Bengal, in various occupations, have seemingly familiarized themselves to the Bengalees, yet the former are imperfectly understood, and distantly associated with by the latter. The language of Tellingana and other provinces of the Dukhun not being of Sunskrit origin, is still more strikingly different from the language of Bengal and the dialects of the upper provinces. The variety observable in their respective

habits, and forms of dress and of worship, is by no means less striking than that of their respective languages, as must be sufficiently apparent in ordinary intercourse with these people.

3. As to the rules of civil law, similar differences have always existed. The Dayubhagu, a work by Jeemootvahun, treating of inheritance, has been regarded by the natives of Bengal as of authority paramount to the rest of the digests of the sacred authorities: while the Mitakshura, by Vignaneshwur, is upheld, in like manner, throughout the upper provinces, and a great part of the Dukhun. The natives of Bengal and those of the upper provinces believe alike in the sacred and authoritative character of the writings of Munoo, and of the other legislating saints: but the former receive those precepts according to the interpretation given them by Jeemootvahun, while the latter rely on the explanation of them by Vignaneshwur. The more modern author, Jeemootvahun, has often found occasion to differ from the other in interpreting sacred passages according to his own views, most frequently supported by sound reasoning; and there have been thus created everlasting dissensions among their respective adherents, particularly with regard to the law of inheritance.*

4. An European reader will not be surprised at the differences I allude to, when he observes the discrepancies existing between the Greek, Armenian, Catholic, Protestant, and Baptist churches, who, though they all appeal to the same authority, materially differ from each other in many practical points, owing to the different

* Of eighteen Treatises on various branches of Hindoo Law, written by Jeemootvahun, that on Inheritance alone is now generally to be met with.

interpretations giving to passages of the Bible by the commentators they respectively follow.

5. For further elucidation I here quote a few remarks from the preface to the translation of the Dayubhagu, and of a part of the Mitakshura, by Mr. Colebrooke, well known in the literary world, which are as follows. "It (the present volume) comprehends the celebrated treatise of Jeemootvahun on succession, which is constantly cited by the lawyers of *Bengal*, under the emphatic title of *Dayubhagu*, or 'inheritance'; and an extract from the still more celebrated Mitakshura, comprising so much of this work as relates to inheritance. The range of its authority and influence is far more extensive than that of Jeemootvahun's treatise, for it is received in all the schools of Hindoo law, from Benares to the Southern extremety of the peninsulah of India, as the chief groundwork of the doctrines which they follow, and as an authority from which they follow, and as an authority from which they rarely dissent." (p. 4.) "The Bengal school alone, having taken for its guide Jeemootvahun's treatise, which is, on almost every disputed point, opposite in doctrine to the Mitakshura, has no deference for its authority." (p. 4.) "But (between the Dayubhagu and the abridgments of its doctrines) the preference appeared to be decidedly due to the treatise of Jeemootvahun himself, as well because he was the founder of this school, being the author of the doctrine which it has adopted, as because the subjects which he discusses, are treated by him with eminent ability and great precision." (p. 5.) The following is a saying current among the learned of Bengal, confirming the opinion offered by Mr. Colebrooke:

व्यवस्था द्विविधा प्रोक्ता दायभागमतामता ।
दायभागविरुद्धा या मता न बुधसम्मता ॥

"Opinions are said to be of two kinds, one founded on the authority of the Dayubhagu, and the other opposed to it; (but) what is opposed to the Dayubhagu is not approved of by the learned."

6. From a regard for the usages of the country, the practice of the British courts in Bengal, as far as relates to the law of inheritance, has been hitherto consistent with the principles laid down in the Dayubhagu, and judgments have accordingly been given on its authority in many most important cases, in which it differs materially from the Mitakshura. I notice a few important cases of frequent occurrence, which have been fully discussed, and invariably decided by the judicial tribunals in Bengal, in conformity with the doctrines of Jeemootvahun.

First. If a member of an undivided family dies, leaving no male issue, his widow shall not be entitled to her husband's share, according to the Mitakshura: but according to the Dayubhagu, she shall inherit such undivided portion.*

* Mitakshura, Ch. II. Sec. i. Article 39. "Therefore it is a settled rule, that a wedded wife, being chaste, takes the whole estate of a man, who, being *separated from his coheirs*, and *not subsequently reunited* with them, dies leaving no male issue."

Dayubhagu, Ch. XI. Sec. i, Art 43. "But, on failure of heirs down to the son's grandson, the wife, being inferior in pretensions to sons and the rest, because she performs acts spiritually beneficial to her husband from the date of her widowhood, [and not, like them, from the moment of their birth,] *succeeds to the estate* in their default."

Ditto ditto, Art. 19. "Some reconcile the contradiction, by saying, that the preferable right of the brother supposes him either to be not separated or to be reunited; and the widow's right of succession is relative to the estate of one *who was separated from his coheirs*, and *not reunited with them.* (Art. 20.) That is *contrary* to a passage of Vrihusputi."

Second. A childless widow, inheriting the property of her deceased husband, is authorized to dispose of it, according to the Mitakshura: but according to the Dayubhagu, she is not entitled to sell or give it away.*

Third. If a man dies, leaving one daughter having issue, and another without issue, the latter shall inherit the property† left by her father, according to the Mitakshura; while the former shall receive it, according to the Dyaubhagu.

Fourth. If a man dies without issue or brothers, leaving a sister's son and a paternal uncle, the latter is entitled

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* Mitakshura, Ch. II. Sec. xi. Art. 2. "That, which was given by the father, mother, by the husband, or by a brother; and that, which was presented [to the bride] by the maternal uncles and the rest [as paternal uncles, maternal aunts, &c.] at the time of the wedding, before the nuptial fire; and a gift on a second marriage, or gratuity on account of supersession, as will be subsequently explained, ('To a woman whose husband marries a second wife, let him give an equal sum as a compensation for the supersession.) And also property which she may have acquired *by inheritance*, purchase, partition, seizure, or finding, are denominated by Munoo, and the rest, *woman's property*."

Dayubhagu, Ch. XI. Sec. i. Art. 56. "But the wife must *only* enjoy her husband's estate after his demise. She is not entitled to make a gift, mortgage, or sale of it."

† Mitakshura, Ch. II, Sec. ii. Art. 4. "If the competition be between an unprovided and an enriched daughter, *the unprovided one inherits*; but, on failure of such, the enriched one succeeds," &c. Ch. II. Sec xi. Art. 13. "Unprovided are such as are destitute of wealth or without issue." Hence a provided or enriched one, is such as has riches or issue.

Dayubhagu, Ch. XI. Sec. ii. Art. 3. "Therefore, the doctrine should be respected, which Dicshitu maintains, namely, that a daughter who *is mother of male issue*, or who is *likely to become so*, is *competent to inherit, not* one, who is a widow, or is barren, or fails in bearing male issue, or bearing none but daughter, or from some other cause."

to the property, according to the Mitakshura; and the former, according to the Dayubhagu.*

Fifth. A man, having a share of undivided real property, is not authorized to make a sale or gift of it without the consent of the rest of his partners, according to the Mitakshura; but according to the Dayubhagu, he can dispose of it at his free will.†

Sixth. A man in possession of ancestral real property, though not under any tenure limiting it to the successive generations of his family, is not authorized to dispose of it, by sale or gift, without the consent of his sons and grandsons, according to the Mitakshura; while, according to the Dayubhagu, he has the power to alienate the property at his free will.‡

* Mitakshura, Ch. II. Sec. v. (beginning with the phrase, "If there be not even brother's sons, &c.) Art. 4. "Here, on failure of the father's descendants [including father's son and grandsons], the heirs are successively the paternal grandmother, the paternal grandfather, *the uncles* and their sons."

Dayubhagu, Ch. XI. Sec. vi. Art. 8. "But, on failure of heirs of the father down to the great-grandson, it must be understood, that the succession desolves on the *the father's daughter's son*, [*in preference to the uncle.*"]

† Mitakshura, Ch. I. Sec. i. Art. 30. "The following passage, 'separated kinsmen, as those who are unseparated, are equal in respect of immoveables, for one has not power over the whole, to make a gift, sale or mortgage,' must be thus interpreted: among *unseparated kinsmen, the consent of all is indispensably requisite*, because no one is fully empowered to make an alienation, since the estate is in common; but, among separated kindered, the consent of all tends to the facility of the transaction, by obviating any future doubt, whether they be separate or united; it is not required on account of any want of sufficient power in the single owner, and a transaction is consequently valid even without the consent of separated kinsmen."

Dayubhagu, Ch. II. Sec. xxvii. "For *here* also [in the very instance of land held in common] *as in the case of other goods, equally* exists a property consisting in the *power of disposal at pleasure.*"

‡ Mitakshura, Ch. I. Sec. i. Art. 27, "Therefore, it is a settled point, that property, in the paternal or ancestral estate,

7. Numerous precedents in the decisions of the civil courts in Bengal, and confirmations on appeal by the King in council, clearly shew that the exposition of the law by the author of the Dayubhagu, as to the last mentioned point, so far from being regarded as a dead letter, has been equally, as in other points, recognized and adopted by the judicial authorities both here and in England. The consequence has been, that in the transfer of immoveable property the natives of Bengal have hitherto firmly relied on those judicial decisions as confirming the ancient usages of the country, and that large sums of money have consequently been laid out in purchase of land without reference to any distinction between acquired and ancestral property.

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is, by birth, (although) the father have independent power in the disposal of effects other than immoveables, for indispensable acts of duty, and for purposes prescribed by text of law, as gift through affection, support of the family, relief from distress, ands to forth: but he is subject to the control of his sons and thes rest, in regard to the immoveable estate, whether acquired by himself or *inherited from his father or other predecessor*; since it is ordained, 'Though immoveables or bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons. They are born, and they who are yet unbegotten, and they who are still in the womb, require the means of support: no gift or sale should therefore be made."

Ditto, Ch. I. Sec. v. Art. 10." Consequently, the difference is this; although he have a right by birth in his father's and in his grandfather's property, still, since he is dependent on his father, in regard to the paternal estate, and since the father has a predominant interest, as it was acquired by himself, the son must acquiesce in the father's disposal of his own acquired property; but, since *both have indiscriminately a right in the grandfather's estate*, the son has a power of interdiction [if the father be dissipating the property.]"

Dyaubhagu, Ch. II. Sec. xxviii. "But the texts of Vyas, exhibiting a prohibition, are intended to show a moral offence, since the family is distressed by sale, gift, or other transfer, which argues a disposition in the person to make an ill use of his power as owner. *They are not meant to invalidate the sale or other transfer.*" Ditto, Sec. xxvi, and Sec. xlvi.

8. Opinions have been advanced for some time past, in opposition to the rule laid down in the Dayubhagu,authorizing a father to make a sale or gift of ancestral property, without the consent of his sons and grandson. But these adverse notions created little or no alarm ; since, however individual opinions may run, the general principles followed by every Government are entirely at variance with the practice of groundlessly abrogating, by arbitrary decision, such civil laws of a conquered country as have been clearly and imperatively set forth in a most authoritative code, long adhered to by the natives, and repeatedly confirmed, for upwards of half a century, by the judicial officers of the conquerors. But the people are now struck with a mingled feeling of surprize and alarm, on being given to understand that the Supreme Law Authority in this country, though not without dissent on the Bench, is resolved to introduce new maxims into the law of inheritance hitherto in force in the province of Bengal ; and has, accordingly, in conformity with the doctrines found in the Mitakshura, declared every disposition by a father of his ancestral real property, without the sanction of his sons and grandsons, to be null and void.*

* During the early part of this century, the law regarding the power of alienation of Hindus over ancestral property, under the Bengal School, was much unsettled. In the reported cases from 1792 to 1816 we find that the Courts favoured the absolute power of alienation by the father. In 1816, however, the law was unsettled again by the case of *Bhowanee Churn vs. the Heirs of Ram Kant* which practically over-ruled all previous rulings and declared that the father's power was limited. In 1829 and 1830 the then Chief Justice of the Supreme Court, Sir Charles Edward Grey, repeatedly expressed his opinion against the father's power in several cases, especially in the case of *Unnodapersad* and *Tarapersad Banerjea*. 1831, however, the law was

9. We are at a loss how to reconcile the introduction of this arbitrary change in the law of inheritance with the principles of justice, with reason, or with regard for the future prosperity of the country :—it appears inconsistent with the principles of justice; because a judge, although he is obliged to consult his own understanding, in interpreting the law in many dubious cases submitted to his decision, yet is required to observe strict adherence to the established law, where its language is clear. In every country, rules determining the rights of succession to, and alienation of property, first originated either in the conventional choice of the people, or in the discretion of the highest authority, secular or spiritual; and those rules have been subsequently established by the common usages of the country, and confirmed by judicial proceedings. The principles of the law as it exists in Bengal having been for ages familiar to the people, and alienations of landed property by sale, gift, mortgage, or succession having been for centuries conducted in reliance on the legality and perpetuity of the system, a sudden change in the most essential part of those rules cannot but be severely

settled by the case of *Juggomohun Roy vs. Sreemutee Nemoo Dassee*, when the Chief Justice, Sir Charles E. Grey, referred the matter to the Judges of the Sudder Dewany Adawlut who, after mature consideration, declared that a Hindu father had absolute power over ancestral property. Later on, the Privy Council declared the law in the case of *Nagabuchnia Ummal vs. Gopoo Nadaraya Chetty*, in the following terms : "Throughout Bengal a man who is the absolute owner of property may now dispose of it by will as he pleases whether it be ancestral or not." Thus the law was settled once for all. It was the unsettled state of the law on account of Bhowanee Churn's case and the expressed opinion of Sir Chirles Edward Grey, mentioned above, that called forth the present trertise from Ram Mohun Roy, and we think it helped a great deal in settling the law.

—ED.

felt by the community at large; and alienations being thus subjected to legal contests, the courts will be filled with suitors, and ruin must triumph over the welfare of a vast proportion of those who have their chief interest in landed property.

10. Mr. Colebrooke justly observes, in his Preface to the translation of the Dayubhagu, that "The rules of succession to property, being in their nature arbitrary, are in all systems of law merely conventional. Admitting even that the succession of the offspring to the parent is so obvious as almost to present a natural and universal law, yet this very first rule is so variously modified by the usages of different nations, that its application at least must be acknowledged to be founded on consent rather than on reasoning. In the laws of one people the rights of primogeniture are established; in those of another the equal succession of all the male offspring prevails; while the rest allow the participation of the female with the male issue, some in equal, other in unequal proportions. Succession by right of representation, and the claim of descendants to inherit in the order of proximity, have been respectively established in various nations, according to the degree of favour with which they have viewed those opposite pretensions. Proceeding from lineal to collateral succession, the diversity of laws prevailing among different nations, is yet greater, and still more forcibly argues the arbitrariness of the rules." (page 1.)

11. We are at a loss how to reconcile this arbitrary change with reason; because, any being capable of reasoning would not, I think, countenance the investiture, in one person, of the power of legislation with the office of judge. In every civilized country, rules and codes are

found proceeding from one authority, and their execution left to another. Experience shews that unchecked power often leads the best men wrong, and produces general mischief.

12. We are unable to reconcile this arbitrary change with regard for the future prosperity of the country; because the law now proposed, preventing a father from the disposal of ancestral property, without the consent of his son and grandson, would immediately, as I observed before, subject all past transfers of land to legal contest, and would at once render this large and fertile province a scene of confusion and misery. Besides, Bengal has been always remarkable for her riches, insomuch as to have been styled by her Mohummudan conquerors "Jummutoolbelad," or paradise of regions; during the British occupation of India especially, she has been manifoldly prosperous. Any one possessed of landed property, whether self-acquired or ancestral, has been able, under the long established law of the land, to procure easily, on the credit of that property, loans of money to lay out on the improvement of his estate, in trade or in manufactures, whereby he enriches himself and his family and benefits the country. Were the change which it is threatened to introduce into the law of inheritance to be sanctioned, and the privilege of disposing of ancestral property (though not entailed) without the consent of heirs be denied to landholders, they being incapacitated from a free disposal of the property in their actual possession, would naturally lose the credit they at present enjoy, and be compelled to confine their concerns to the extent of their actual savings from their income; the consequence would be, that a

great majority of them would unavoidably curtail their respective establishments, much more their luxuries, a circumstance which would virtually impede the progress of foreign and domestic commerce. Is there any good policy in reducing the natives of Bengal to that degree of poverty which has fallen upon a great part of the upper provinces, owing, in some measure, to the wretched restrictions laid down in the Mitakshura, their standard law of inheritance? Do Britons experience any inconvenience or disadvantage owing to the differences of legal institutions between England and Scotland, or between one county of England and another? What would Englishmen say, were the Court of King's Bench to adopt the law of Scotland, as the foundation of their decisions regarding legitimacy, or of Kent, in questions of inheritance? Every liberal politician will, I think, coincide with me, when I say, that in proportion as a dependent kingdom approximates to her guardian country in manners, in statutes, in religion, and in social and domestic usages, their reciprocal relation flourishes, and their mutual affection increases.

13. It is said that the change proposed has forced itself on the notice of the Bench upon the following premises :—

1st. Certain writings, such as the institutes of Munoo and of others, esteemed as sacred by Hindoos, are the foundation of their law of inheritance. 2ndly. That Jeemootvahun, the author of the Dayubhagu, is but a commentator on those writings. 3rdly. That from these circumstances, such part of the commentary by Jeemootvahun as gives validity to a sale or gift by a father of his ancestral immoveables, without the consent of his son

and grandson, being obviously at variance with sacred precepts found on the same subject, should be rejected, and all sales or gifts of the kind be annulled.

14. I agree in the first assertion, that certain writings received by Hindoos as sacred, are the origin of the Hindoo law of inheritance, but with this modification, that the writings supposed sacred are only, when consistent with sound reasoning, considered as imperative, as Munoo plainly declares: "He *alone* comprehends the system of duties, religious and civil, who can reason, by rules of logic, agreeably to the Ved, on the general heads of that system as revealed by the holy sages." Ch. xii. v. 106. Vrihusputi. "Let no one found conclusions on the mere words of Shastrus: from investigations without reason, religious virtue is lost."* As to the second position, I first beg to ask, whether or not it be meant by Jeemootvahun's being styled a *commentator* that he wrote commentaries upon all or any of those sacred institutes. The fact is, that no one of those sacred institutes bears his comment. Should it be meant that the author of the Dayubhagu was so far a commentator, that he called passages from different sacred institutes, touching every particular subject, and examining their purport separately and collectively, and weighing the sense deducible from the context, has offered that opinion on the subject which appeared to agree best with the series of passages cited collectively, and that when he has found one passage apparently at variance with another, he has laid strees upon that which seemed the more reasonable and more

* केवलं शास्त्रमाश्रित्य न कर्त्तव्योऽर्थनिर्णयः ।
युक्तिहीनविचारेण धर्महानिः प्रजायते ॥ बृहस्पतिः ॥

conformable to the general tenor, giving the other an interpretation of a subordinate nature, I readily concur in giving him the title of a commentator, though the word expounder would be more applicable. By way of illustration, I give here an instance of what I have advanced, that the reader may readily determine the sense in which the author of the Dayubhagu should be considered as a commentator.

15. In laying down rules "on succession to the estate of one who leaves no made issue," this author first quotes (Ch. xi. page 158,)the following text of Vrihusputi: "In scripture and in the code of law, as well as in popular practice, a wife is declared by the wise to be half the body of her husband, equally sharing the fruit of pure and impure acts. Of him, whose wife is not deceased, half the body survives: how then should another take his property, while half his person is alive? Let the wife of a deceased man, who left no male issue, take his share notwithstanding kinsmen, a father, a mother, or uterine brother, be present," &c. &c. He next cites the text of Yagnuvulkyu, (p. 160,) as follows:—"The wife and the daughters, also both parents, brothers likewise, and their sons, gentiles, cognates, a pupil, and a fellow student; on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. This rule extends to all persons and classes." The author then quotes a text from the Institutes of Vishnoo, ordaining that "the wealth of him who leaves no male issue, goes to his wife; on failure of her, it devolves on daughters; if there be none, it belongs to the mother," &c. &c. Having thus collected a series of passages from the Institutes of Vrihusputi,

Yagnuvulkyu, and Vishnoo, and examined and weighed the sense deducible from the context, the author offers his opinion on the subject. "By this text, [by the seven texts of Vrihusputi, and by the text of Yagnuvulkyu,] relating to the order of succession, the right of the widow, to succeed in the first instance, is declared" "Therefore, the widow's right must be affirmed to extend to the whole estate." (p. 161.)

16. The same author afterwards notices, in page 163, several texts of a seemingly contrary nature, but to which he does not hesitate to give a reconciling interpretation, without retracting or modifying his own decision. He quotes Sunkhu and Likhitu, Peithcenusi, and Yum, as declaring, "'The wealth of a man who departs for heaven, leaving no male issue, goes to his brothers. If there be none, his father and mother take it; or his eldest wife, or a kinsman, a pupil, or a fellow student." Pursuing a train of long and able discussion, the author ventures to declare the subordinacy of the latter passage to the former, as the conclusion best supported by reason, and most conformable to the general tenor of the law. He begins saying, (P. 169,) "From the text of Vishnoo and the rest, (Yagnuvulkyu and Vrihushputi,) it clearly appears, that the succession devolves on the widow, by failure of sons and other [male] descendants, and this is reasonable; for the estate of the deceased should go first to the son, grandson, and great grandson." He adds, in page 170, pointing out the ground on which the priority of a son's claim is founded, a ground which is applicable to the widow's case also, intimating the superiority of a window's claim to that of a brother, a father, &c. "So Munoo declares the right of inheritance

to be founded on benefits conferred. 'By the eldest son, as soon as born, a man becomes the father of male issue, and is *exonerated from debt to his ancestor; such a son, therefore, is entitled to take the heritage.*'" The author next shews, that as the benefits conferred by a widow on her deceased husband, by observing a life of austerity, are inferior only to those procured to him by a son, grandson, and great grandson, her right to succession should be next to theirs in point of order, (page 173.) "But, on failure of heirs down to the son's grandson, the the wife, being inferior in pretentions to sons and the rest, because she performs acts spiritually beneficial to her husband from the date of her widowhood, (and not, like them, from the moment of their birth,) succeeds to the estate in their default." He thus concludes: "Hence [since the wife's right of succession is founded on reason] the construction in the text of Sunkhu, &c. must be arranged by connexion of remote terms, in this manner: 'The wealth of a man, who departs for heaven, leaving no male issue, let his eldest [that is, his most excellent] wife take; or, in her default, let the parents take it: on failure of them, it goes to the brothers.' The terms 'if there be none,' [that is, if there be no wife,] which occur in the middle of the text, are connected both with the preceding sentence 'it goes to his brothers,' and with the subsequent one, 'his father and mother take it.' For the text agrees with passages of Vishnoo and Yagnuvulkyu, [which declare the wife's right,] and the reasonableness of this has been already shewn." (p. 174.)

17. It is however evident that the author of the Dayubhagu gives here an apparent preference to the authority of one party of the saints over that of the other,

though both have equal claims upon his reverence. But admitting that a Hindoo author, an expounder of their law, sin against some of the sacred writers, by withholding a blind submission to their authority, and likewise that the natives of the country have for ages adhered to the rules he has laid down, considering them reasonable, and calculated to promote their social interest, though seemingly at variance with some of the sacred authors; it is those holy personages alone that have a right to avenge themselves upon such expounder and his followers; but no individual of mere secular authority, however high, can, I think, justly assume to himself the office of vindicating the sacred fathers, and punishing spiritual insubordination, by introducing into the existing law an overwhelming change in the attempt to restore obedience.

18. In this apparent heterodoxy, I may observe, Jeemootvahun does not stand single. The author of the Mitakshura also has, in following, very properly, the established privilege of an expounder, reconciled, to reason, by a construction of his own, such sacred texts as appeared to him, when taken literally, in consistent with justice or good sense. Of this, numerous instances might easily be adduced, but the principle is so invariably adopted by this class of writers, that the following may suffice for examples. The author of the Mitakshura first quotes (Ch. I. Sec. iii. Art. 3 and 4, p. 263—265) the three following texts of Munoo, allotting the best portion of the heritage to the eldest brother at the time of partition. "The portion deducted for the eldest is the twentieth part of the heritage, with the best of all the chattles; for the *middlemost, half of that; for the* youngest, a quarter of it." "If a deduction be thus

made, let equal shares of the residue be alloted; but if there be no deduction, the shares must be distributed in this manner; let the eldest have a double share, and the next born a share and a half, and the younger sons each a share: thus is the law settled."* The author of the Mitakshura then offers his opinion in direct opposition to Munoo, saying, "The author himself† has sanctioned an unequal distribution when a division is made during the father's life time. 'Let him either dismiss the eldest with the best share, &c.'‡ Hence an unequal partition is admissible in every period. How then is a restriction introduced, requiring that sons should divide only equal shares? (Art. 4.) The question is thus answered: True, this unequal partition is found in the sacred ordinances; but *it must not be practised*, because it is abhorred by the world, [for] it secures not celestial bliss';§ as the practice [of offering bulls] is shunned, on account of popular prejudice, notwithstanding the injuction, 'Offer to a venerable priest a bull or a large goat;' and as the slaying of a cow is for the same reason disused, notwithstanding the precept, 'Slay a barren cow as a victim consecrated to Mitru and Vuroonu.'"‖ By adverting to the above exposition of the law, we find that the objection of heterodoxy, if urged against the authority of the Dayu-bhagu, is equally applicable to that of the Mitakshura in its full extent, and may be thus established. 1st. Certain

* Munoo, Ch. ix. v. 112, v. 116 and 117.
† Yagnuvulkyu.
‡ Yagnuvulkyu.
§ A passage of Yagnuvulkyu, according to the quotation of Mitru Mishru in the Veermitroduyu, but ascribed to Munoo in Balumbhuttu's commentary. It has not, however, been found either in Munoo's or Yagnuvulkyu's Institute."—(Mr. Colebrooke.)
‖ Passage of the Ved.

writings, such as the institutes of Munoo and of others, esteemed sacred by Hindoos, are the foundation of the law of inheritance. 2ndly. Vignaneshwur (author of the Mitakshura) is but a commentator on those writings. 3rdly. Therefore, such part of the commentatry of Vignaneshwur as indiscriminately entitles all brothers to an equal share, being obviously at variance with the precepts of Munoo found on the subject, should be rejected, and the best and the largest portion of the heritage be allotted to the eldest brother, by judicial authorities; according to the letter of the sacred text. Again, take the Mitakshura, Ch. I. Sec. 1. Art. 30' p. 257. "The following passage, 'Separated kinsmen, as those who are unseparated, are equal in respect of immoveables, for one has not power over the whole to make a gift, sale, or mortgage;' must be thus interpreted: 'Among unseparated kinsmen, the consent of all is indispensably requisite, because no one is fully empowered to make an alienation, since the estate is in common;' but among separated kindred, the consent of all tends to the facility of the transaction, by obviating any future doubt, whether they be separate or united: it is not required, on account of any want of sufficient power in the single owner, and *the transaction is* consequently *valid even without the consent of separated kinsmen.*" Ditto. Ch. I. Sec. 11. Art. 28, page 316. "'The legitimate son is the sole heir of his father's estate; but, for the sake of innocence, he should give a maintenance to the rest.' This text of Munoo must be considered as applicable to a case, where the adopted sons (namely, the son given and the rest) are disobedient to the legitimate son and devoid of good qualities."

19. I now proceed to the consideration of the last point, as the ground on which the change proposed is alleged to be founded. To judge of its validity we should ascertain whether the interpretations given by the author of the Dayubhagu, to the sacred texts, touching the subject of free disposal by a father of his ancestral property, are obviously at variance with those very texts, or if they are conformable to sound reason and the general purport of the passages cited collectively on the same subject. With this view I shall here repeat, methodically, the series of passages quoted by the author of the Dayubhagu, relating to the above point, as well as his interpretation and elucidation of the same.

20. To shew the independent and exclusive right of a father in the property he possesses, (of course with the exception of estates entailed) the author first quotes the following text of Munoo: "After the (death of the) father and the mother, the brethren, being assembled, must divide equally the paternal estate: For *they have not power over* it, *while their parents live.* Ch. I. Sec. 14, (p. 8). He next quotes Devulu: "When the father is deceased, let the sons divide the father's wealth; for *sons have not ownership while the father is alive* and free from defect." Ch. I. Sec. 18, (p. 9.) After a long train of discussion, the author appeals to the above texts as the foundaton of the law he has expounded, by saying, "Hence the text of Munoo, and the rest (as Devulu) must be taken as shewing, that sons have not a right of ownership in the wealth of the living parents, but in the estates of both when deceased." Ch. I. Sec. 30, (p. 13 and 14.)

21. To illustrate the positon that the father is the

sole and independent owner of the property in his possession, whether self-acquired or ancestral, the author thus proceeds: "A division of it does not take place without the father's choice; since Munoo, Narudu, Gotumu, Bodhayunu, Sunkhu, and Likhitu, and others (in the following passages, 'they have not power over it;' 'they have not ownership while their father is alive and free from defect;' 'while he lives if he desire partition;' 'partition of heritage by consent of the father;' 'partition of the estate being authorized while the father is living,' &c.) declare without restriction, that sons *have not a right* to *any part* of the estate while the father is living, and that *partition awaits his choice:* for these texts, declaratory of *a want of power* and *requiring the father's consent*, must relate also to property *ancestral*, since the same author *have not separately propounded a distinct period for the division of an estate inherited from an ancestor.*" Ch. II. Sec. 8, (p. 25.) The circumstance of the partition of estates being entirely dependent on the will of the father, and the son's being precluded from demanding partition while the father is alive, sufficiently prove that they have not any right in the estate during his life time; or else the sons, as having property in the estate jointly with the father, would have been permitted to demand partition. Does not common sense abhor the system of a son's being empowered to demand a division between himself and his father of the hereditary estate? Would not the birth of a son with this power, be considered in the light of a course rather than a blessing, as subjecting a father to the danger of having his peaceable possession of the property inherited from his own father or other ancestor disturbed?

22. The author afterwards reasons on those passages that are of seemingly contrary authority; first quoting the text of Yagnuvulkyu, as follows. "The ownership of father and son is the same in land which was acquired by his father, or in a corrody, or in chattels." He adopts the explanation given to his text by the most learned, the ancient Oodyot, affirming that it "properly signifies, as rightly explained by the learned Oodyot, that, when one of two brothers, whose father is living, and who have not received allotments, dies leaving a son, and the other survives, and the father afterwards deceases, the text, declaratory of similar ownership, is intended to obviate the conclusion, that the surviving son alone obtains his estate, because he is next of kin. As the father has ownership in the grandfather's estate; so have his sons, if he be dead." Ch. II. Sec. 9, (page 25.) The author then points out, that such interpretation given to the text, as declares the claims of a grandson upon the estate of his grandfather equal to those of his father, while the father is living, is palpably objectionable; for, if sons had ownership during the life of their father, in their grandfather's estate, then should a division be made between two brothers, one of whom has male issue, and the other has none, the children of that one would participate, since (according to the opposite opinion) they have equally ownership." Ch. II. Sec. 11, (p. 26.) He next quotes Vishnoo: "When a father separates his sons from himself, his will regulates the division of his own acquired wealth. But in the estate inherited from the grandfather, the ownership of father and son is equal." Upon this text the author of the Dayubbagu justily remarks in the following terms. "This

is very clear; *when* the father separates his sons from himself, he may, by his own choice, give them greater or less allotments, if the wealth were acquired by himself; but not so, if it were property inherited from the grandfather, because they have an equal right to it. The father has not in such case an unlimited discretion." Ch. II. Sec. 17, (p. 27.) That is, *a father dividing his property among his sons, to separate them from himself during life time*, is not authorized to give them of his own caprice, greater or less allotments of his ancestral estate, as the phrase in the above text of Vishnoo, when a father separates his sons from himself," &c. prohibits the free disposal by a father of his ancestral property *only* on the occasion of allotments among his sons to allow them separate establishments. The author now conclusively states, that "Hence (since the text becomes pertinent, by taking it in the sense above stated, or because there is ownership restricted by law in respect of shares, and not an unlimited discretion), both opinions, that the mention of like ownership provides for an equal division between father and son in the case of property ancestral, and that it establishes the son's right to require partition, ought to be rejected." Ch. II. Sec. 18, (p. 27).

23. The author, thirdly, quotes Yagnuvulkyu. "The father is master of the gems, pearls and corals, and of all (other moveable property), but neither the father, or the grandfather, is so of the *whole* immoveable estate;" and points out the sense conveyed by the term "the whole" found in the above passage, saying, "Since here also it is said the 'whole,' this prohibition forbids the gift or other alienation of the *whole*, because (immoveables and similar possessions are) means of supporting

the family." (Ch. II. Sec. 23). That is, the father is likewise master of the ancestral estate, though not of the whole of it, implies that a father may freely dispose of a part of his ancestral estate, even without committing a moral offence. This passage of Yagnuvulkyu, cited by the opposite party, who deny to the father the power of free disposal of ancestral estates, runs, in a great measure, against them, since it disapproves a sale or gift by a father only of the whole of his ancestral landed property, while his sons are living, withholding their consent.

24. To justify the disposal by a father, under particular circumstances, even of the whole ancestral estate, without incurring a moral offence, the author adds, (Ch. II. Sec. 26.) "But if the family cannot be supported without selling the whole immoveable and other property, even the *whole* may be sold or otherwise disposed of. as appears from the obvious sense of the passage, and because it is directed, that 'a man should *by all means* preserve himself;'" and because a sacred writer positively enjoins the maintenance of one's family by all means possible, and prefers it to every other duty. "His aged mother and father, dutiful wife, and son under age, should be maintained even by committing a hundered unworthy acts.* Thus directed Munoo." Vide Mitakshura, Ch. II. Munoo positively says: "A mother, a father, a wife, and a son, shall not be forsaken; he, who forsakes either of them, unless guilty of a deadly sin, shall pay six hundred panas as a fine to the King." (Ch. VIII. *v.* 389).

* वृद्धौ च मातापितरौ साध्वी भार्य्या सुतः शिशुः ।
अप्यकार्य्यशतं कृत्वा भर्त्तव्या मनुरब्रवीत् ॥

25. He, fourthly, quotes two extraordinary texts of Vyasu, as prohibiting the disposal, by a single parcener, of his share in the immoveables, under the notion that each parcener has his property in the whole estate jointly possessed. These texts are as follow: "A single parcener may not, without consent of the rest, make a sale or gift of the whole immoveable estate, nor of what is common to the family." "Separated kinsmen, as those who are unseparated, are equal in respect of immoveables: for one has not power over the whole, to give, mortgage, or sell it." Upon which the author, of the Dayubhagu remarks, Ch. II. Sec. 27:) "It shrould not be alleged that by the texts of Vaysu one person has not power to make a sale, or other transfer of such property. For here also (in the very instance of land held in common) as in the case of other goods, there equally exists a property consisting in the power of disposal at pleasure." That is, a partner has, in common with the rest, an undisputed property existing either in the whole of the moveables and immoveables, or in an undivided portion of them; he, therefore, should not be, or cannot be, prevented from executing, at his pleasure, a transfer of his right to another by a sale, gift, or mortgage of it.

26. In reply to the question, what might be the consequence of disregard to the prohibition conveyed by the above texts of Vyasu? the author says: "But the texts of Vyasu exhibiting a prohibiton, are intended to shew a moral offence; since the family is distressed by a sale, gift or other transfer, which argues a dispositoin in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer." (Ch. II. Sec. 28). A partner is as completely a legal

owner of his own share, (either divided or undivided) as a propritor of an entire estate; and consequently a sale or gift executed by the former, of his own share, should, with reason, be considered equally valid, as a contract by the latter for his sole estate. Hence prohibition of such transfer being clearly opposed to common sense and ordinary usage, should be understood as only forbidding a dereliction of moral duty, committed by those who infringe it, and not as invalidating the transfer.

27. In adapting this mode of exposition of the law, the author of the Dayubhagu has pursued the course frequently inculcated by Munoo and others; a few instances of which I beg to bring briefly to the consideration of the reader, for the full justification of this author. Munoo, the first of all Hindoo legislators, prohibits donation to an unworthy Brahmun in the following terms—"Let no man, apprised of this law, present, even water to a priest, who acts like a cat, nor to him who acts like a bittern, nor to him who is unlearned in the Ved." (Ch. IV. *v.* 192). Let us suppose that in disregard to this prohibition a gift has been actually made to one of those priests; a question then naturally arises, whether this injunction of Munoo's invalidates the gift, or whether such infringment of the law only renders the donor guilty of a moral offence. The same legislator, in continuation, thus answers; "Since property, though legally gained, if it be given to either of those three, becomes prejudicial in the next world both to the giver and receiver." (*v.* 193). The same authority forbids marrying girls of certain descriptions, saying, "Let him not marry a girl with reddish hair, nor with any deformed limb, nor one troubled with habitual sickness, nor one

either with no hair or with too much, nor one immoderately talkative; nor one with inflamed eyes." (Ch. III. *v.* 8). Although this law has been very frequently disregarded, yet no voidance of such a marriage, where the ceremony has been actually and regularly performed, has has ever taken place; it being understood that the above prohibition, not being supported by sound reason, only involves the bridegroom in the religious offence of disregard to a sacred precept. He again prohibits the acceptance of a gratuity, on giving a daughter in marriage naming every marriage of this description "Assooru," as well as declaring an Assooru marriage to be illegal; but daughters given in marriage on receiving a gratuity have been always considered as legal wives, though their fathers are regarded with contempt, as guilty of a deadly sin. The passages above alluded to are as follow: (Munoo:) "But even a man of the servile class *ought not to receive a gratuity* when he gives his daughter in marriage; since a father, who takes a fee *on that occasion.* tacitly *sells* his daughter." (Ch. IX. *v.* 98). "When the bridegroom, having given as much wealth as he can afford to the father and paternal kinsmen and to the damsel herself, takes her voluntarily as his bride; that marriage is named Assooru" (Ch. III. *v.* 31). "But in this code, three of the five last are held legal, and two illegal, the ceremonies of *Pisaches* and *Assoorus* must never be performed." (Ch. III. *v.* 25).

28. The author finally quotes the following text: "Though immoveables or bipeds have been acquired by a man himself, a gift or sale or them (*should*)" not (*be made*) by him, unless convening all the sons; and he proceeds affirming, "So likewise other texts as this, must

be interpreted in the same manner (as before). For the words 'should' and 'be made' must necessarily be understood." (Ch. II. Sec. 29). That is, there is a verb wanting in the above phrase "a gift or a sale not by him," consequently "should" or "ought" and "be made" are necessarily to be inserted, and the phrase is thus read: "A gift or sale *should* not *be* or ought not to be made by him," expressing a prohibition of the free disposal by a father even of his self-acquired immoveables. This text also, says the author, cannot be intended to imply the invalidity of a gift or sale by a lawful owner; but it shews a moral offence by breach of such a prohibition: "Since the family is distressed by a sale, gift, or other transfer, which argues a disposition in the person to make an ill use of his power as owner." Moreover, as Munoo, Devulu, Gotumu, Boudhayunu, Sunkhu, and Likhitu, and others represent a son as having no right to the property in possession of the father, in the plainest terms, as already quoted in para. 21) no son should be permitted to interfere with the free disposal by the father of the property he actually possesses. The author now concludes the subject with this positive decision. "Therefore, since it is denied that a gift or sale should be made, the precept is infringed by making one. But the gift or transfer is not null: for a fact cannot be altered by a hundred texts." (Ch. II. Sec. 30).

29. In illustration of this principle it may be observed, that a man legally possessed of immoveable property (whether ancestral or self-acquired) has always been held responsible and punishable as owner, for acts occuring on his estate, of a tendency hurtful to the peace of his neighbours or injurious to he community at large. He

even forfeits his estate, if found guilty of treason or similar crimes, though his sons and grandsons are living who have not connived at his guilt. In case of default on his part in the discharge of revenue payable to Government from the estate, he is subjected to the privation of that property by public sale under the authority of Government. He is, in fact, under these and many other circumstances, actually and virtually acknowledged to be the lawful and perfect owner of his estate; a sale or gi by him of his property must therefore stand valid or unquestionable. Sacred writings although they prohibit such a sale or gift as may distress the family, by limiting their means of subsistence, cannot alter the fact, nor do they nullify what has been effectually done. I have already pointed out in the 37th paragraph the sense in which prohibitions of a similar nature should be taken, according to the authority of Munoo, which the reader is requested not to lose sight of. Mr. Colebrooke judiciously quotes (page 32) the observation made by Rughoonundun (the celebrated modern expounder of law in Bengal) on the above passage of the Dayubhagu, ("A fact cannot be altered by a hundred texts,") which is as follows: "If a Brahmun be slain, the precept 'Slay not a Brahmun' does not annul the murder: nor does it render the killing of a Brahmun impossible. What then? It declares the sin." Admitting for a moment that this sacred text (quoted in the Mitakshura also) be interpreted conformably to its apparent language and spirit, it would be equally opposed to the argument of our adversaries, who allow a father to be possessed of power over his self-acquired property; since the text absolutely denies to the father an independent power even over his self-acquired

immoveables, declaring, "Though *immoveables* and bipeds have been *acquired by a man himself*," &c. &c. In what a strange situation is the father placed, if such be really the law! How thoroughly all power over his own possessions is taken away, and his credit reduced!

30. The author quotes also two passages from Narudu, as confirming the course of reasoning, which he has pursued, with regard to the independence claimable by each of all the coheirs in a joint property. The passages above alluded to are thus read: "When there are many persons sprung from one man, who have duties apart and transactions apart, and are separate in business and character, if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please; *for they are masters of their own wealth.*" (Ch. II. Sec. 31).

31. After I had sent my manuscript to the Press, my attention was directed to an article in the "*Calcutta Quarterly Magazine*, No. VI. April—June, 1825," being a Review of Sir F. W. McNaghten's Considerations on Hindoo Law. In this essay I find an opinion offered by the writer, tending to recommend that any disposal by a father of his ancestral immoveables should be nullified, on the principle that we ought "to *make that invalid which was considered immoral.*" (p. 225). I am surprised that this unqualified maxim should drop from the pen of the presumed reviewer, who, as a scholar, stands very high in my estimation, and from whose extensive knowledge more correct judgment might be expected. Let us, however, apply this principle to practice, to see how far, as a general rule, it may be safely adopted.

32. To marry an abandoned female, is an act of evil

moral example: Are such unions to be therefore declared invalid, and the offspring of them rendered illegitimate?

To permit the sale of intoxicating drugs and spirits, so injurious to health, and even sometimes destructive of life, on the payment of duties publicly levied, is an act highly irreligious and immoral: Is the taxation to be, therefore, rendered invalid and payments stopped?

To divide spoils gained in a war commenced in ambition and carried on with cruelty, is an act immoral and irreligious: Is the partition therefore to be considered invalid, and the property to be replaced?

To give a daughter in marriage to an unworthy man, on account of his rank or fortune, or other such consideration, is a deed of mean and immoral example: Is the union to be therefore considered invalid, and their children illegitimate?

To destroy the life of a fellow being in a duel, is not only immoral, but is reckoned by many as murder: Is not the practice tacitly admitted to be legal, by the manner in which it is overlooked in courts of justice?

33. There are of course acts lying on the border of immorality, or both immoral and irreligious; and these are consequently to be considered invalid: such as the contracting of debts by way of gambling, and the execution of a deed on the Sabbath day. The question then arises, how shall we draw a line of distinction between those immoral acts that should not be considered invalid, and those that should be regarded as null in the eye of the law? In answer to this, we must refer to the common law and the established usages of every country, as furnishing the distinctions admitted between the one class and the other. The reference suggested is, I think,

the sole guide upon such questions; and pursuant to this maxim, I may be permitted to repeat, that according to the law and usages of Bengal, though a father may be charged with breach of religious duty, by a sale or gift of ancestral property at his own discretion, he should not be subjected to the pain of finding his act nullified; nor the purchaser punished with forfeiture of his acquisition. However, when the author of the Review shall have succeeded in inducing British legislators to adopt his maxim, and declare that the validity of every act shall be determined by its consistence with morality, we may then listen to his suggestion, for applying the same rule to the Bengal Law of Inheritance.

34. The writer of this Review quotes (in p. 221) a passage from the Dayubhagu, (Ch. II. Sec. 76,) "Since the circumstance of the father being lord of all the wealth, is stated as a reason, and that cannot be in regard to the grandfather's estate, an unequal distribution, made by the father, is lawful only in the instance of his own acquired wealth." He then comments, saying, "Nothing can be more clear than Jeemootvahun's assertion of this doctrine." But it would have been still more clear, if the writer had cited the latter part of the sentence obviously connected with the former; which is that, "Accordingly Vishnoo says, 'When a father separates his sons from himself, his own will regulates the division of his own acquired wealth. But in the estate inherited from the grandfather, the ownership of father and son is equal.'" That is, a father is not absolute lord of his ancestral property, (as he is of his own acquired wealth,) *when occupied* in *separating his sons from himself* during his

life. This is evident from the explanation given by the author of the Dayubhagu himself, of the above text of Vishnoo, in Sec. 56, (Ch. II,) "The meaning of this passage is, 'In the case of his own acquired property, whatever he may choose to reserve, whether half or two shares, or three, all that is permitted to him by the law; but not so in the case of property ancestral;" as well as from the exposition by the same author of this very text of Vishnoo, in Sec. 17, (Ch. II,) already fully illustrated as applicable solely to the occasion of partition, (vide para. *22*, p. *27*.)

35. It would have been equally clear as desirable, because *conclusive*, if the writer of the article had also quoted the following passage of the Dayubhagu touching the same subject, (Ch. II. Sec. 46.) "By the reasoning thus set forth, if the elder brother have two shares of the father's estate, how should the highly venerable father being the natural parent of the brothers, and COMPETENT TO SELL, GIVE, OR ABANDON THE PROPERTY, and being the root of all connection with the *grandfather's estate*, be not entitled, in like circumstances, to a double portion of his own father's wealth?"

36. In expounding the following text of Yagnuvulkyu, "The father is master of the gems, pearls, and corals, and of all (other moveable property), but neither the father, nor the grandfather, is so of whole immoveable estate;" the author of the Dayubhagu first observes, (Ch. II. Sec. 23,) "Since the grandfather is here mentioned, the text must relate to his effects." He then proceeds, saying, "Since here also it is said 'the whole,' the prohibition forbids the gift or other alienation of the 'whole,'" &c.; and thus concludes the section (24:)

"For the insertion of the word 'whole' would be unmeaning (if the gift of even a small part were forbidden.)" The author of the Dayubhagu does not stop here; but he lays down the following rule in the succeeding section already quoted, (26.) "But if the family cannot be supported without selling the *whole immoveable* and other property, even the *whole* may be sold or otherwise disposed of: as appears from the obvious sense of the passage, and because it is directed, that 'a man should by all means preserve himself.'" Here Jeemootvahun justifies, in the plainest terms, the sale and other disposal by a father of the *whole* of the estate *inherited from his own father* for the maintenance of his family or for self-preservation, without committing even a moral offence: but I regret that this simple position by Jeemootvahun should not have been adverted to by the writer of the article while reviewing the subject.

37, To his declaration, that "Nothing can be more clear than Jeemootvahun's assertion of this doctrine," the reviewer adds the followiog phrase: "And the doubt cast upon it by its expounders, Rughoonundun, Shree Krishnu Turkalunkar, and Jugunnath, is wholly gratuitous. In fact, the latter is chiefly to blame for the distiction between illegal and invalid acts." It is, I think, requisite that I should notice here who these three expounders were, whom the writer charges with the invention of this doctrine; at what periods they lived; and how they stood and still stand in the estimation of the people of Bengal. To satisfy any one on these points, I have only to refer to the accounts given of them by Mr. Colebrooke, in his preface to the translation of the Dayubhagu. In speaking of Rughoonundun, he says, "It bears the name of Rughoo-

nundun, the author of the Smriti-tutwu, and the greatest authority of Hindoo Law in the province of Bengal." "The Daya-tutwu, or so much of the Smriti-tutwa as relates to inharitance, is the undoubted composition of Rughoonundun; and in deference to the greatness of the author's name, and the estimation in which his works are held among the learned Hindoos of Bengal, has been throughout diligently consulted and carefully compared with Jeemootvahun's treatise, on which it is almost exclusively founded." (p. vii.) "Now Rughoonundun's date is ascertained at about three hundred years from this time," &c. (p. xii.) Mr. Colebrooke thus introduces Shree Krishun Turkalunkar: "The commentary of Shree Krishnu Turkalunkar on the Dayubhagu of Jeemootvahun, has been chiefly and preferably used. This is the most celebrated of the glosses on the text. Its authority has been long gaining ground in the schools of law throughout Bengal; and it has almost banished from them the other expositions of the Dayubhagu; being ranked in general estimation, next to the treatises of Jeemootvahun and of Rughoonundun." (p. vi.) "The commentary of Muheshwur is posterior to those of Chooramuni and Uchyoot, both of which are cited in it; and is probably anterior to Shree Krishnu's, or at least nearly of the same date." (p. vii.) In the note at foot he observes, "Great-grandsons of both these writers were living in 1806." Hence it may be inferred, that Shree Krishnu Turkalunkar lived above a century from this time. Mr. Colebrooke takes brief notice of Jugunnath Turkupunchanun, saying, "A very ample compilation on this subject is included in the Digest of Hindoo Law, prepared by Jugunnath, under directions of Sir William Jones, &c." (p. ii.) The last mentioned,

Jugunnath, was universally acknowledged to be the first literary character of his day, and his authority has nearly as much weight as that of Rughoonundun.

38. Granting for a moment that the doctrine of free disposal by a father of his ancestral property is opposed to the authority of Jeemootvahun, but that this doctrine has been prevalent in Bengal for upwards of three centuries, in consequence of the erroneous exposition of Rughoonundun, "*the greatest authority of Hindoo law in the province of Bengal*," by Shree Krishnu Turkalunkar, the author of "*the most celebrated of the glosses of the text*," and by the most learned Jugunnath; yet it would, I presume, be generally considered as a most rash and injurious, as well as ill-advised, innovation, for any administrator of Hindoo Law of the present day to set himself up as the corrector of successive expositions, admitted to have been received and acted upon as authoritative for a period extending to upwards of three centuries back.

39. In the foreging pages my endeavour has been to shew that the province of Bengal, having its own peculiar language, manners and ceremonies, has long enjoyed also a distinct system of law. That the author of this system has greatly improved on the expositions followed in other provinces of India, and, therefore, well merits the preference accorded to his exposition by the people of Bengal. That the discrepancies existing amongst the several interpretations of legal texts are not confined alone to the law of disposition of property by a father, but extend to other matters. That in following those expositions which best reconcile law with reason, the author of the Bengal system is warranted by the highest sacred authority, as

well as by the example of the most revered of his predecessors, the author of the Mitakshura; and that he has been eminently successful in his attempt at so doing, more particularly by unfettering property, and declaring the principle, that the alienator of an hereditary estate is only morally responsible for his acts, so far as they are unnecessary, and tend to deprive his family of the means of support. That he is borne out in the distinction he has drawn between moral precepts, a disregard to which is sinful, leaving the act valid and legal, and absolute injunctions, the acts in violation of which are null and void. If I have succeeded in this attempt, it follows that any decision founded on a different interpretation of the law, however widely that exposition may have been adopted in other provinces, is not merely retrograding in the social institution of the Hindoo community of Bengal, mischievous in disturbing the validity of existing titles to property, and of contracts founded on the received interpretation of the law, but a violation of the charter of justice, by which the administration of the exsisting law of the people in such matters was secured to the inhabitants of this country.

APPENDIX.

LETTERS ON THE

HINDOO LAW OF INHERITANCE.

This Appendix appears only in the London Edition of 1832 from which it has been reprinted.—Ed.

APPENDIX.

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No. 1.

HINDOO LAW OF INHERITANCE.

Extract from a Letter published in the Bengal Hurkaru of the 20th September, 1830, relating to the power of a Father over Ancestral Property.

To the Editor of the Bengal Hurkaru and Chronicle.

SIR,

WILL you do me the favour of inserting the following lines in a corner of your valuable paper, as the insertion of them will be the means of dispersing the darkness which the author of the Essay on the Rights of Hindoo Law, has thrown on the minds of those who believe the accuracy of the work in question, as well as of reviving the memory of your judicial readers on the subject of right and wrong, as expounded by the Hindoo Legisiators.

At the perusal of the observations contained in the Essay, I regret to say that I found almost all of them are repugnant to the laws and customs of the country and community, for which I would venture to discuss on those points, though I am perfectly aware, that he, (the learned author,) through his critical powers, is competent to set aside the true sense of the law, and to insert his own ; but I hope your judicial readers will easily perceive the repugnancy in comparing them with Messrs. Colebrooke and Macnaghten's publica tions of the Hindoo Law.

With regard to the father's power in alienating the ancestral landed property, which is treated of by the learned author, I will say nothing more at present, than that it is discussed by Mr. Macnaghten in his Principles and Precedents of the Hindoo law : but I wish to know, Mr. Editor, does it follow from the doctrine of *Jimutavahana,*

cited by the learned author, that a father has power to alienate the whole of the ancestral landed estate, or is it only applicable to the case when alienations are made? If the former be asserted, how can the doctrines*" of *Jimutavahana*, *Sricrishna Tercaluncara*, *Raghunundana*, *Jugunnath Tercapunchanana*, and others, whose works are current in Bengal, be reconciled? But, on the other hand, if the latter supposition be proved to be correct, how can it be inferred, that, according to the *Dayabhaga*, the father has power to alienate the ancestral real property, as said by the learned author.

He, (the learned author,) exhibiting some ordinances regarding marriage, taxation, partition, and so forth, has made some hints on Sir F. W. Macnaghten's Considerations of the Hindoo Law, for his adverting that "*to make that invalid which was considered immoral.*" Mr. Editor, if according to the opinion of the learned author, it be considered as a general rule, that whatsoever alienations are made, they cannot be nullified, then should we not without hesitation say, that a sale without ownership, (that is, a sale by an individual who has no title to that which he has disposed of,) is not invalid? If it be argued that a father, according to the doctrines of *Jimutavahana*, has an independent power over ancestral real property, and can dispose of the whole of it at his free will, then what is to become of this doctrine: "What is bailed for delivery, what is lent for use, a pledge, joint property, a deposit, a son, wife, and the

* "The prohibition is not against donation, or other transfer of a small part incompatible with the support of the family. But, if the family cannot be supported without selling the whole immoveable and other property, even the whole may be sold, or otherwise disposed of." "If there be no land or other permanent property, but only jewels or similar valuables, he is not authorised to expend the whole." "And as appears from the word 'whole' repeated in that text, the gift of all the precious stones, pearls, and the like, inherited from the grandfather, is not immoral, but a gift of the whole immoveable property is an offence."

whole estate of a man who has issue living." *Narada.* "The prohibition of giving away is declared to be eightfold: a man shall not give joint property, nor his son, nor his wife, *without their assent in extreme necessity*, nor a pledge, nor all his wealth, *if he have issue living &c.*" *Vriaaspati.* "A wife, or a son, or the whole of a man's estate, shall not be given away or sold without the assent of the persons interested; he must keep them himself." *Caitayana.*?

In conclusion, I beg the favour of your judicious readers to see how far the Hindoo Law allows a father to alienate the partimonial immoveables, and what are alienable.

Yours most obediently,
A HINDOO.

No. II.

Reply to the above, published in the Hurkaru of the 24th September 1830.

To the Editor of the Bengal Hurkaru and Chronicle.

SIR,

AN article in your journal of the 20th instant, under the signature of "A HIHDOO," offering some remarks on an Essay lately published by me on Inheritance, having been brought to my notice, I beg to express the gratification it affords me to find that the subject excites the public attention due to its importance; for it is reasonable to hope that truth will be speedily elicited by fair and impartial enquiry, and the ruinous effects of error be consequently averted.

I have endeavoured to establish "the full control of Hnidoos over their ancestral property, according to the law of Bengal." In support of this position, I ask permission to quote the unequivocal authority of Jeemootuvahun himself, the author of the Dayubhagu.

First. After citing the text of Munoo in Ch. I., Sec. 14, the author offers his opinion (Sec. 15.) "The text is an

answer to the question, why partition among sons is not authorised while their parents are living ; namely, 'because they have not ownership at that time." He denies them (Sec. 16,) even dependent right in the property in possession of the father. The author then reasons in Sec. 19—"Besides, if sons had property in their father's wealth, partition would be demandable even against his consent ; and there *is no proof, that property is vested by birth alone* ; nor is birth stated in the law as means of acquisition." He concludes the subject in Sec. 30, saying—"Hence the text of Munoo and the rest (as Devulu) must be taken as shewing, that sons have not a right of ownership in the wealth of the living parents, but in the estate of both when deceased."

The author of the Dayubhagu applies the same authorities, and the same reasoning, to property ancestral, in Ch. II, Sec. 8, quoting passages of Munoo, Narudu, Gotumu, Boudhayunu, Sunkh, and Likhitu, &c., he affirms that these passages "declare without restriction, that *sons have not a right to any part of the estate while the father is living*, and that partition awaits his choice : For these texts, declaratory of a *want of power*, and *requiring the father's consent*, *must relate also to property ancestral ;* since the same authors have not separately propouuded a distinct period for the division of an estate inherited from an ancestor."

Secondly. After thus establishing the exclusive and independent ownership of a father in the property self-acquired and ancestral, the author of the Dayubhagu defines, in the plainest language, what sort of power is attached to ownership. "For here also (in the very instance of land held in common) as in the case of other goods, there *equally exists a property consisting in the power of* DISPOSAL AT PLEASURE." (Sec. 27.) Again : "By the reasoning thus set forth, if the elder brother have two shares of the father's estate, how should the highly venerable father, being the natural parent

of the brothers, and competent to sell, give, or abandon the property, and being the root of all connexion with the *grand-father's estate*, be not entitled, in like circumstances, to a double portion of his own fathers's wealth ? (Sec. 46.)"

Thirdly. To reconcile the power of free disposal by a father of property, whether self-acquired,* ancestral, or held in common, with such moral precepts as prohibit such a disposal, through consideration towards the rest of the family ; the author of the Dayubhagu, abhorring the idea of invalidating a sale or gift actually completed by a lawful and independent owner of his own property, proceeds, saying, "But the texts of Vyasu exhibiting a prohibition, are intended to shew a moral offence ; since the family is distressed by a sale or gift, or other transfer, which argues a disposition in the person to make an ill use of his power as owner. *They are not meant to invalidate* the *sale or other transfer*," (Sec. 28.)† He again repeats the same maxim with great explicitness in the succeeding Section, (30th,) conformably to the doctrines often inculcated by Munoo himself, as noticed in my little Essay, (para. 28, pp. 34, 35.) " Therefore, since it is denied that a gift or sale should be made, the precept is infringed by making one. But the gift or transfer *is not null* ; for a fact cannot be altered by a hundered texts."

* "Though immoveables or bipeds have been acquired by a man himself, a gift or sale of them should not be made by him, unless convening all the sons." Cited in the Dayubhagu, Ch. II. Sec. 29, page 32, "and the whole estate of a man who has issue living," should not be disposed of. *Naradu.* "A man shall not give joint property," &c. &c. *Vrihusputi.*

† So scriptural precepts and prohibitions are sometimes received as morally and legally binding, such as Matthew, Ch. V. *v.* 32, prohibiting divorcement of a wife without infidelity on her part ; and *v.* 34, prohibiting oaths of all kinds, obeyed by Quakers, both morally and legally : but in some instances they are received as inculcating only moral duty, such as *v.* 42, "From him that would borrow of thee, turn not thou away ;" and the very prohibition of oaths is disregarded by Christians of other denominations, and their administration legally enforced, although some of the most eminent lawyers declare Christianity to be part and parcel of British Law.

For the reason stated by the author, in Section 28th, "since the family is distressed by a sale, gift, or other transfer," it is evident that a father or a partner subjects himself to a moral offence by the full disposal of all his property, provided his family be thereby involved in distress; but if the family consist of wealthy persons, and do not experience distress from such disposal, no moral offence can be charged to him; nor is he considered guilty of a breach even of moral duty, should he dispose of the whole property in his possession for the maintenance of the family or self preservation, *ordained to be incumbent upon man*, as is obvious from the following quotation. "But if the family cannot be supported without selling the whole immoveable and other property, even the whole may be sold, or otherwise disposed of, as appears from the obvious sense of the passage, and because it is directed that 'a man should by all means preserve himself.'" (Sec. 26.)

Fourthly. In his interpretation of such passages as apparently limit the power of a father with regard to his ancestral property, the author of the Dayubhagu treats them as applicable *only in the instance of a father's separating his sons from himself during life*, with allotments of the property, and *not to any other occasion*; and thus he *positively allows* to the *father* the *free disposal* of his *ancestral* property on all other occasions. Vide. Dayubhagu, Cha. II. Sec. 15, 16, 19, &c. &c.

As a calm enquiry into the merits of a literary question need not call forth the least unfriendly feeling amongst those who happen to espouse opposite views of the subject, it seems to me desirable that we should divest ourselves of disguise, and be fairly known to the public by our real names. I beg therefore to subscribe myself,

Your most obedient servant,

RAMMOHUN ROY.

Sept. 23rd, 1830.

No III.

Extract from a Letter published in the Bengal Hurkaru of the 5th October, 1830, relating to the power of a Father over Ancestral Property.

THE learned author denied any limited power of the father over ancestral real property in his Essay, (page 11.) "a man in his possession of ancestral real property, though not under any tenure limiting it to the successive generations of his family, has the power to alienate the property at his free will;" but I am happy to find in his communication, that he, after some arguments partially admits it in these words:—"In his interpretation of such passage as apparently limit the power of a father with regard to his ancestral property, the author of the Dayubhagu treats them as applicable only in the instance of a father's separating his sons from himself during life with allotments of the property, and not to any other occasion; and thus he positively allows to the father the free disposal of his ancestral property on all other occasions." Hence I beg to enquire, is not the learned author's doctrine evident, that a father has not an unlimited power to make an unequal partition of the patrimonial landed estate with his sons? If so, how should we admit, by parity of reason, that the author of the Dayubhagu "positively allows to the father free disposal of his ancestral property on all other occasions," as declared by the learned author? But we should rather reconcile the doctrine of the Dayubhagu ("they are not meant to invalidate the sale or other transfer") by alleging that if a father infringe the law, and give or sell his patrimonial immoveables for religious purposes, the act cannot be nullified; but if he disposes of it for civil affairs, the transfer is invalid.

Authorities:—Even the king should not, in breach of law, give immoveable property for civil purposes, but he may give land or the like for religious uses; a gift of land without the assent of sons and the rest, is not consonant to duty,

therefore arbitrators may think it has the appearance of a contract not made ; consequently it is an established rule, according to Misru, that a gift of his whole estate by a man, who has issue living, is invalid, without the assent of the persons interested. But this supposes gifts for civil, not for religious cases, since it is recorded in Purans and other works, that Herishchandra and others gave their whole property for religious purposes. Be it any how in regard to the whole of man's estate acquired by himself ; but the gift of what has decended from an ancestor, by a man who has a son living, is void, because he has not independent power over that property ; for Narada declares null a gift made by one who is not an independent owner, and the law quoted by Vachespati, Bhattacharya, and Raghunandana, declares a father not to be independent." Jugunnath Tarcapunchanana.

But if it is argued, that in former times many kings have given their whole kingdoms to a son, assigning some alimony for their own male issue, and are not such gifts for civil purposes? To this I humbly beg to reply, that a gift by a king for civil affairs is valid, provided he should not leave his family starving. Authorities :—Smriti : "All subjects are dependent ; the king alone is free." The last text is attributed to Vyssa by Jemutavahana and herein Raghunandana follows him. "What exceeds the food and clothing required by the members of the family, who are entitled to maintenance, as above mentioned, may be given away, otherwise the family wanting food and clothing, in consequence of more being given, the donor's conduct is not virtuous." Jugunnath.

It becomes material to enquire, whether a man possessing his ancestral real property, is competent to give away the whole of it by will in favour of a son, leaving other sons under maintenance, or is he under the control of his sons, and is the will null and void? Mr. Colebrooke observes,

that "a last will and testament is unknown to the Hindoo Law;" but it has been introduced in this country since the establishment of the British power, and we only admit its validity, wherein we see no discrepancies with the Hindoo Law. The term "will" may, in some cases, be explained as the deed of partition, and in others as the deed of gift; but when the term signifies a deed of partition, we ought not to declare that it is valid, for the father has not an independent power to make an unequal partition of the patrimony, as is clearly proved by the learned author. If we define it as a deed of gift, then we must proceed to point out the law of the gift; the term "gift" means constituting the donee's property after annulling the previous right of the donor, and the English Law on the subject of the will and testament has a different interpretation. Therefore, "it appears" not "inconsistent with the principles of justice," for a judge to consult his own understanding, in a case of dubious point. Menu:—"Let him fully consider the nature of truth, the state of the case, and his own person; and next, the witnesses the place, the mode, and the time, firmly adhering to all the rules of practice." Vrihashpati:—"A decision must not be made solely by having recourse to the letter of written codes; since, if no decision were made according to the reason of law, ('or according to immemorial usage; for the word *yucti* admits both senses,') there might be a failure of justice."

At all events it must be confessed, that the learned author has taken too much liberty with the Chief Justice to assert "that the supreme authority in this country is resolved to introduce new maxims into the Law of Inheritance, hitherto in force in the province of Bengal; and has accordingly, in conformity with the doctrines found in the Mitakshura declared every disposition by a father of his ancestral real property, without the sanction of his sons and grandsons, to be null and void." By the late decision which the Chief

Justice has passed in a case pending in the Supreme Court, and which has given rise to the Essay by the learned author, no new maxim has been introduced, and no custom of Bengal has been infringed.

In the concluding part of his communication, the learned author desires 'that we should divest ourselves of disguise, and be fairly known to the public by our real names;" and with this view he subscribes his own name. I should have no objection to gratify this desire, had not I known that my name would be of no consequence to the public, and would add but little weight to the positions I have advanced. If, however, my assertions be correct, (and I leave them to be decided by your judicious readers), the end of my writing, which was to ascertain the truth of these important questions, is accomplished.

I am, Sir,
Your most obedient servant,
October 1st, 1830. A HINDOO.

No. IV.

Reply to the above, published in the Hurkaru of the 13th October 1830.

To the Editor of the Bengal Hurkaru and Chronicle.

SIR,

Another article on the Hindoo Law of Inheritance, under the signature of "A HINDOO," having appeared in your Journal of the 5th Instant, I beg to offer a few remarks on the matters therein comprised.

Your learned correspondent has filled a large space with the illustration of his views as to the term "woman's property," a subject which is entirely foreign to the main point in question,* "the full control of Hindoos over their ancestral

* Therefore omitted as irrelevant, but afterwards answered separately.

property, according to the law of Bengal," and which may, therefore, be separately discussed, without distracting the attention of the reader, by mingling the one with the other : under this impression I deem it proper that these two different positions should be divided, and my present reply be confined to the subject at issue.

Your learned correspondent first states, that although in my Essay I ascribed to a father the power of free disposal of his ancestral property, yet, in my reply, dated the 24th ultimo, I have partially admitted limitation by saying, that "in his interpretation of such passages as apparently limit the power of a father, with regard to his ancestral property, the author of Dayubhagu treats them as applicable only in the instance of a father's separating his sons from himself, during life, with allotments of the property, and not to any other occasion." To rectify this misapprehension, I beg to to refer the reader to my Essay, para. 22, p. 29, where he will find a precisely corresponding statement in these terms : "As the phrase in the above text of Vishnoo, 'when a father separates his sons from himself,' prohibits the free disposal, by a father, of his ancestral property, *only* on the occasion of allotments among his sons, to allow them separate establishments." Is it not evident that I have equally, in my Essay and in the Appendix, maintained the doctrine, that according to the Dayubhagu, a sale, gift, or other transfer by a father of his ancestral property, is legally valid ; and that while separating his sons from himself during life, a father should give them equal portions of the property derived from his ancestors ? So much for the charge of inconsistency.

In answer to the query advanced by your learned correspondent, "how should we admit, by parity of reason, that the author of the Dayubhagu positively allows to the father free disposal of his ancestral property on all other occasions," I beg to bring again to the recollection of the reader some

of the passages of the Dayubhagu itself, Chap. II. Sec. 8, 27, and 46, (quoted by me in the Appendix, page 52, * line 19,) manifestly permitting the free disposal by a father of his ancestral property.

Supported by the text of Vishnoo, " when a father separates his sons, &.," (Chap. II. Sec. 16,) the author of the Dayubhagu declares such sacred passages as seemingly limit the power of a father touching his ancestral estate, to be applicable only in the instance of a father's separating his sons from himself during life, and not to any other occasion ; and thus excepts from the general rule this instance only, saying " or the meaning of the text (cited in Sec. 9) may be, as set forth by Dhareshwur, a father, *occupied in giving allotment at his pleasure*, has equal ownership with sons in the paternal grandfather's estate. He is not privileged to make an unequal *distribution of it* at his choice, as he is in regard to his own acquired property." (Chap. II. Sec. 15) The author of the Dayubhagu proceeds still further, and applies the above limitation of the power of a father over his ancestral property only to such a father as is designated by the appellation of "*issue of the soil*" in the following language :—" The text before cited (Sec. 9) declaratory of the equal ownership of father and son, must be explained as intending *a father who was* (Kshetriyu) *issue of the soil or wife.*" That is, a son of two fathers, or begotten by appointment. Hence, according to the latter exception, the limitation of a father's power is applicable only to such a father as is called *issue of the soil*, now rarely to be found ; while, according to the former, the limitation is applied only to the time of separation by a father of his sons from himself with allotments. This alternative decidedly proves, that in all other instances the Dayubhagu positively allows to the father the free disposal of his ancestral equally with his self-acquired property.

A sale or other transfer by the father, of the whole ancestral and self-acquired property, for the support of the

family, for the performance of indispensable religious rites, as a part of domestic duty, or for self-preservation, is declared by the author of the Dayubhagu to be consistent with the sacred texts ; hence, in such cases, he attaches no moral offence to the father for so doing, saying, "But if the family cannot be *supported* without selling the whole immoveable and other property, even the *whole* may be sold or otherwise disposed of ; as appears *from the obvious sense of the passage*, (quoted in Ch. II. Sec 22,) and because it is *directed* that a man should *by all means preserve himself.*" But such sale or other transfer as occasions distress to the family, and is consequently prohibited by the sacred texts inculcating moral duty, subjects the doer, according to the Dayubhagu, to the reproach of a moral offence, though the sale or transfer actually made by a lawful owner must stand vaild.—"But the texts of Vyas, (cited in Sec. 27,) exhibiting a prohibition, are *intended to shew a moral offence* since the family is distressed by a sale, gift, or other transfer, which argues a disposition in the person to *make an ill use of his power as owner.* They are *not meant to invalidate the sale* or other transfer," (Sec. 28). Hence an attempt to reconcile the doctrine thus laid down in the Dayubhagu, with that recently proposed in opposition to the plainest language and the obvious purport of that work, is but an effort to upset the authority of the universally acknowledged law long prevailing throughout Bengal. As to the particulars of the precepts which should be considered as only morally binding, and those that are both legally and morally binding, I beg to refer the reader to my Essay, pages 29, 30, 31, par. 23, 24, 25, 26 ; and to the Appendix, No. II. note 2nd, page 53.

Under the head of "Authorities," (not specified,) your learned correspondent inserts the following passage : "*Even the king should not, in breach of law, give* immoveable property *for civil purposes*," &c. In the succeeding phara-

graph he conditionally admits a gift by a king, even for civil purposes, saying, that "a gift by a king *for civil affairs is valid*, provided he should *not leave his family starving*." Your learned correspondent immediately afterwards quotes : "All subjects are dependent, the king *alone is free*," in opposition to both the preceding assertions. I trust your learned correspondent does not mean, by the above text, to establish that all subjects have a dependent right in their lawful possessions, and that the king is privileged to take or give them away at his pleasure. While ascertaining the real doctrine of the author of the Dayubhagu, as to the power of a father over ancestral property, your learned correspondent does not quote a single passage from that author, but he quotes Misru, who is well known to have opposed the author of the Dayubhagu in this and other points.

Your learned correspondent finally quotes Jugunnath on the subject at issue in these terms : "What exceeds foods and clothing required by the members of the family who are entitled to maintenance, as above mentioned, may be given away ; otherwise the family wanting food and clothing, in consequence of more being given, the donor's conduct is not virtuous." Pray, Mr. Editor, does not Jugunnath exactly follow the author of the Dayubhagu, by maintaining the doctrine, that if the family is distressed by a gift, the donation thus performed attaches *a moral offence to the donor ?*

In the concluding part of his letter, your learned correspondent introduces the subject of a last Will or Testament. I hope I may be able to spare a few hours shortly for the consideration of this point : in the mean time,

I remain your most obedient servant,

Oct. 12, 1830. RAMMOHUN ROY.

No. V.

Continuation of the above Reply, published in the "Bengal Hurkaru" of the 21st October, 1830.

To the Editor of the Bengal Hurkaru and Chronicle.

SIR,

Your learned correspondent. "A HINDOO introduces the subject of a last Will and Testament in his letter which appeared in your journal of the 5th instant, questioning the validity of such instruments, on the authority of the following language of Mr. Colebrooke: "A last Will and Testament is *unknown to the Hindoo Law*, but it has been introduced in this country *since the establishment of the British power*, and we only admit its validity wherein we see no discrepancies with the Hindoo Law." I much regret that Mr. Colebrooke, an eminent scholar, and diligent student of Hindoo Law, while offering the above opinion, should have overlooked the very first part of the gloss on the Dayubhagu, by Shree Krishnu, which he "chiefly and preferably used," and which, in the preface to his translation of that work, (page 6,) he characterises as "the most celebrated of the glosses on the text." "Its authority has been long gaining ground in the schools of law throughout Bengal, and it has almost banished from them the other expositions of the Dayubhagu, being ranked, in general estimation, next after the treatises of Jeemootvhunu and of Raghoonundun." The passage I allude to is to be found in that celebrated gloss, expounding the purport of Sec. 38, Ch. I. of the Dayubhagu.

Nor does this learned gentleman seem to have recollected his own translation of the same passage, which runs in these words: "But when he, for the sake of obviating disputes among his sons, determines their respective allotments, continuing, however, the exercise of power over them, that is not partition, for his property still subsists, since there has been no relinquishment of it on his part. Therefore the use

of the term partition, in such an instance, is lax and indeterminate." That is, in this instance the father *does not separate his sons from himself with allotments;* he only declares what certain portion of his property each son is to enjoy immediately after the extinction of his ownership by death, civil or natural; such previously determined division, therefore, cannot in reality be styled *partition* during the life of the father, which implies separation, and consequently does not fall within that only case in which his privileges over ancestral property are restricted.

To shew the priority of Shree Krishnu's era to the British conquest of India, I beg to refer the reader to the Preface to the translation of the Dayubhagu, by Mr. Colebrooke, (page 7, and the note therein contained,) giving an account of the probable periods at which Shree Krishnu and some other commentators of the Dayubhagu lived. They shew clearly that Shree Krishnu, whose authority is esteemed next to that of Jeemootvahunu, existed and died before the *establishment of British power* in India. How then, Mr. Editor, could Shree Krishnu declare the *law* on the point, if the practice of a father's prescribing the manner of distributing his property after his ownership should be extinct, was unknown at his time?

So the celebrated Radhamohun Vidyavachusputi, while treating of previously determined partition by a father, quotes the following passage:—"With regard to debts, ploughing stipulation, *previous partition* of property, and other transactions, whatever was determined by a father becomes incumbent upon his sons after his demise." This system of predetermination of allotments has been in most freequent use in Bengal from time immemorial; insomuch, that few fathers, possessed both of prudence and of property, have omitted a practice so effectually calculated to obviate future contentions in their family. Aged persons of respectability can still be found to certify this fact. Be-

sides, historical works in Sunscrit manifestly shew the frequency of this practice among eminent princes and celebrated characters, some soon, others long before their retirement or death. I may, perhaps, on a future occasion, have sufficient command of time to prepare a list of conspicuous instances; but, for the present, I beg to refer the reader to the Ramayunu and the Muha Bharutu, works commonly read, and highly revered by the Hindoo community at large.

Your learned correspondent observes that I have taken too much liberty with the Chief Justice, and that I was not correctly informed as to the particulars of the decision passed in the case pending in the Supreme Court, which gave rise to the late Essay by me, a charge which, I beg to declare, is without foundation, since neither in the Essay nor in the Appendix, can any expression, I venture to affirm, be found that borders on disrespect towards his Lordship; and to vindicate the information I have been furnished with, I may be permitted to appeal to every Barrister of the Court, who had an opportunity of being acquainted with the opinions expressed, and which I have endeavoured to combat.

I fully concur with your learned correspondent in the assertion, that "a Judge may consult his own understanding in a case of dubious point." I, at the same time, trust you learned correspondent will condescendingly agree with me, when I repeat that "a Judge is required to observe strict adherence to the established law, where its language is clear," like that of the Dayubhagu.

I remain, Mr. Editor,
Your most obedient servant,
RAMMOHUN ROY.

October 20th, 1830.

No. VI.

Extract from a Letter published in the Bengal Hurkaru, and in the Herald of 7th Nov. 1830, relating to the power of a father over Ancestral Property.

In his second communication the learned author, to establish his own doctrine, that a father, according to the Dayubhau, has power to alienate the ancestral real property at his free will, referred the reader to the passages of the Dayubhgu, Chap. II. Sec. 8, 27, and 46, and those of his own Essay. The passages of the Dayubhagu, above referred to, do not manifestly admit the free disposal by a father of his ancestral property ; for the first passage denotes only that the partition of ancestral property can not take place while the father is living, without his consent and choice ; the second does not disable a coparcener from alienating his own share of joint property ; and the last enjoins that a father shall have two shares at a partition in his life time. To prove this, I beg to refer your readers to the above passages themselves.

The learned author, in order to support his opinion, repeatedly quotes the passage of the *Dayubhagu*, Sec. 28, Chap. II. ("They are not meant to invalidate the sale or other transfer.") To refute this, I can at once say, that that passage does not enjoin, that a father has power to alienate his ancestral property, as declared by him, but it is meant to shew the validity of a sale, or like alienation by a coparcener of his own share, as is clearly evident from the following passages of *Sricrishna Tercalancara*, the Commentator of the *Dayubhagu*.—"Since there is not a general property of the whole, a community of rights, consisting in there being numerous owners to the same thing, does not exist : and community signifies only the state of not being separated. But here it is the notion of the author of the *Dayubhagu*, who maintains a several right to a part vested in each person, that nothing prevents a donation or other

transfer of the coparcener's own share, even before partition, since a common property is already vested in him." Vide *Dayubhagu*, page 32, Annotation 28.

The learned author, from a passage of *Sricrishna Tercalancara*, commenting on Sec. 38. Chap. I. of the *Dayubhagu*, infers that the will is not foreign to the Hindoo Law To this, at present, I can only reiterate that it is unknown to the law in question, and the passage* itself confirms my observations, for it only exhibits the power of the father in determining the shares of his sons, and that determination is termed *Bhacta Vibhagu*, and it does not admit the father's unlimited power over ancestral real property.

As, however, the learned author observes, that a last will or testament is not foreign to the Hindoo Law, I shall be greatly obliged by his shewing the corresponding *Sanscrit* term for *testament*, *testator*, *legacy*, *legatee*, and *executor*, in any of the Hindoo Law works. When the learned author shall point out the above corresponding terms, I shall then endavour to prove that his censures against those learned persons, the Honorable the Chief Justice and Mr. Colebrooke, are unjust, and void of reason. In the mean time, I beg to conclude, Mr. Editor, and remain,

Your obedient servant,
A HINDOO.

November 2, 1830.

NO. VII.

Reply to the above, published in the Hurkaru of the 15th Nov. 1830.

To the Editor of the Bengal Hurkaru and Chronicle.

SIR,

Your learned correspondent, under the signature of "A

* "But when the father, for the sake of obviating disputes among his sons, determines their respective allotments, continuing, however, the exercise of power over them, that is not partition; for his property still subsists, since there has been no relinquishment of it on his part. Therefore, the use of the term partition, in such an instance, is lax and indeterminate."

HINDOO," has recurred to the subject of Inheritance, in his communication of the 2nd instant, begining by citing the passages of the Dayubhagu, (Chap. II. Sec. 8, 27, and 46,) quoted by me in my Appendix. He then proceeds to say, that "the passages of the Dayubhagu, above referred to, do not manifestly admit the free disposal by a father of his ancestral property; for the first passage denotes only that the partition of the ancestral property cannot take place while the father is living, without his consent and choice; the second does not disable a coparcener from alienating his own share of joint property, and the last enjoins that a father shall have two shares at a partition in his life time." I am, therefore, obliged to recite those passages severally, and leave the reader to judge.

In the first passage, (Chap. II. Sec. 8,) the author of the Dayubhagu, after quoting the texts of Munoo and others, affirms that these authors "declare, without restriction, that sons *have not a right to any part of the estate* while the father is living, and that partition awais his choice; for these texts, declaratory of *want of power*, and requiring the father's consent, MUST RELATE ALSO TO PROPERTY ANCESTRAL, since the same authors have not separately propounded a distinct period for the division of an estate inherited from an ancestor." I would now ask if the sons, as appears clearly by this passage, have no right to any part of the father's property ancestral or acquired, has not the father the sole right in that property? And is not this something more than a mere declaration, that "partition of ancestral property cannot take place while the father is living, without his consent and choice," as affirmed by your learned correspondent? The author of the Mitakshura is of the contrary opinion, that sons have a right to the ancestral property, even while the father is living; and *upon this ground* he denies the father's power of disposal of ancestral property without the consent of his sons, saying, "In such property,

which was acquired *by the paternal grandfather*, through acceptance of gifts, or by conquest or other means, [as commerce, agriculture, or service,] *the ownership of father and son is notorious*; and, THEREFORE, partition *does take place*. For, or because *the right is equal or alike*; THEREFORE, *partition is not restricted to be made by the father's choice*; *nor has he a double share*." Mitakshura, Chap. I. Sec. 5. Art. 5.

The second passage quoted by me, and referred to by your learned correspondent, (Chap. II. Sec. 27,) is as follows: "For here also, [in the very instance of land held in common,] as in the case of other goods, there equally exists a *property consisting in the power of disposal at pleasure*." I beg to submit whether this passage does only declare the validity of the disposal of land, held in common by a parcener, as noticed by your learned correspondent; or does it, as I contend, define ownership, with regard to land held in common, as equally with that in goods to consist in the power of disposal at pleasure?

I now proceed to the 3rd passage alluded to by your learned correspondent, (Chap. II. Sec. 46.) which thus runs; "By the reasoning thus set forth, if the elder brother have two shares of the father's estate, how should the highly venerable father, being the natural parent of the brothers, and *competent to sell*, give or *abandon* the property, and being the root of all connexion *with the grandfather's estate*, be not entitled, in like circumstances, to a double portion of his own father's wealth?" I may here again safely appeal to the reader, weather this passage merely "enjoins, that a father shall have two shares at a partition in his life time," as alleged by your learned correspondent; or whether it does not entitle a father to a double share of his ancestral property while separating his sons from himself, *on the ground that* he is possessed of the power "*to sell, give, or abandon the property*, and is the root of all connexion with the *grandfather's estate*?"

His next remarks apply to the Section 27. Chap. II. containing the following texts of Vyas, ("A single parcener may not, without consent of the rest, make a sale or gift of the whole immovable estate, nor of what is common to the family:" "separated kinsmen, as those who are unseparated, are equal in respect of immoveables: for one has not power over the whole to give, mortgage, or sell it,") and also, to the Section 28th, quoted by me, ("But the texts of Vyas, exhibiting a prohibition, are intended to shew a moral offence, since the family is distressed by a sale, gift, or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other trausfer.") With reference to these quotations, your learned correspondent observes, "I can at once say that that passage does not enjoin, that a father has power to alienate his ancestral property; but it is meant to shew the validity of a sale or like alienation by a parcener of his own share."

I first beg to be permitted to bring to the notice of your learned correspondent the terms "Kinsmen," "separated" or "unseparated," whom the latter texts of Vyas, quoted above, prohibit from disposing of immoveables at their free will; and then to ask, whether this text (equally with that preceding it, forbidding a parcener from disposing of property held in common,) is not represented by the author of the Dayubhagu (in Sect. 28,) as "shewing a moral offence" in disregard to the prohibition, and "not meaning to invalidate the sale or other transfer?" The term "Kinsmen" is well explained in Dr. Wilson's Dictionary, enumerating a father, grandfather, great grandfather, &c. among kinsmen. Hence, a father, according to the Dayubhagu, may dispose of immoveables, subjecting himself, in certain cases, to the blame of moral offence, in like manner as a parcener may dispose of his undivided share. Your learned correspondent

may now be pleased to say candidly, how far his conclusion, that the above passage (28) only shews "the validity of a sale or like alienation "by a coparcener of his own share," is accurate?

As to the quotation from Shree Krishnu, by your learned correspondent, it relates to the doctrine maintained by the author of the Dayubhagu, that a several right to a part is vested in each parcener, and that each has not property in the whole; and thus Shree Krishnu justifies a sale or gift by a partner of his share, without at all limiting the power of a father over ancestral property.

I qnoted in my last communication, a passage from the commentary of Shree Krishnu, and another from that of the late Radhamohun, shewing that the practice of making a will was known to the Hindoo Law, without any attempt, on my part, to prove by inference from this separate and distinct subject of enquiry, a father's unrestricted power over ancestral property—I may, therefore, be permitted to observe, that your learned correspondent might have dispensed with the assertion, that the passage "does not admit the father's unlimited power over ancestral property." It was not cited as so doing.

Your learned correspondent admits that the passage of Shree Ksishnu "exhibits the power of the father, in determining the shares of his sons, and that ditermination is termed 'Bhaktu Vibhagu," or partition in a loose sense; since the father still continues the exercise of power over those predetermined allotments. But he wishes me to point out the corresponding Sunskrit terms for testament, testator, &c. used in English, in connection with a last will. In reply, I beg to observe, that since the will is termed Bhaktu Vibhagu, or *partition*, in a loose sense, the Sunskrit terms relating to Will must bear the names compounded with "partiiton," such as "Bhagu Lekhu" a will, "Vibhukta" a testator, "Vibhuktu" legacy, "Bhagee" legatee, "Niyogekrit"

executor, and so forth, all in a loose sense, but in common use. I remain in haste,

Your most obedient servant,

Nov. 13, 1830. RAMMOHUN ROY.

P. S. You may, perhaps, hear from me again before quitting the River.

No. VIII.

Published in the Bengal Hurkaru of the 23rd Nov. 1830

To the Editor of the Bengal Hurkaru and Chronicle

SIR,

I DID, or rather could, not until yesterday, read with attention that part of a letter which appeared in your journal of the 5th ultimo, under the signature of "a Hindoo," which relates to the subject of "*Streedhun*," or woman's property. Your learned correspondent enquires "whether the publication of the Eassy (by me) is intended only to shew the discrepancies betwixt the Mitakshura and Dayubhagu, or to point out the laws current in Bengal and Benares?" Your learned correspondent then adds, "If the former supposition be correct, I can recommend the learned author to say as he pleases; but, on the other hand, if the latter be just and proper, then I beg to refer to the doctrines of Balam Bhuttu, Mitru Misru, Cumulkar, and other Western writers and commentators." In reply to the query, I beg leave to state that the Essay in question was written expressly with a view to shew discrepancies between the doctrines maintained by the *Dayubhagu* and those inculcated in the *Mitakshura*, and for the satisfaction of your learned correspondent, I quote the language of the Essay on this very subject. "Judgments have accordingly been given on its (*Dayubhagu's*) authority, in many most important cases, in which it differs materially from the Mitakshura," (page 8, par, 6.) Now, your learned correspondent can have no ob-

jection to the assertion I made as to the differences existing between the Dayubhagu and the Mitakshura, with regard to "woman's property," as he has in one of the alternatives "recommended" me "to say" as "I please."

I fully agree with your learned correspondent as to the encroachments gradually made by the modern Hindoo Law expounders, on the rights of females, laying stress upon shallow reasoning and unconnected passages—a fact which I noticed in a pamphlet published by me in 1822, in these terms, "To compare the laws of female inheritance, which they (the ancients) enacted, and which afforded that sex the opportunity of the enjoyment of life, with that which moderns and our contemporaries have gradually introduced and established, to their complete privation, directly or indirectly, of most of those objects that render life agreeable."

I shall be most happy to make an attempt, on a future occasion, to illustrate this subject. In the mean time,

I remain, your very obedient servant,

RAMMOHUN ROY.

*Kedgeree, Nov. 19, 1830.**

* Some of these letters were written by the Raja on board ship on his way to England.—Ed.

PETITIONS

AGAINST THE

PRESS REGULATIONS.

CALCUTTA:

1823.

MEMORIAL TO THE SUPREME COURT.*

To the Honourable Sir Francis Macnaghten,

Sole Acting Judge of the Supreme Court of Judicature at Fort William in Bengal.

My Lord,

In consequence of the late Rule and Ordinance passed by His Excellency the Governor General in Council, regarding the Publication of Periodical Works, your Memorialists consider themselves called upon with due submission, to represent to you their feelings and sentiments on the subject.

* In 1823 Mr. Buckingham, the proprietor of a newspaper named the *Calcutta Journal* published at Calcutta, having incurred the displeasure of the Government of Mr. Adam, the then (Officiating) Governor General, was ordered to leave the country, and soon afterwards a Rule and Ordinance was passed on the 14th of March 1823, curtailing the freedom of the press. According to the Act of Parliament, 13 Geo. III. Cap. 63, every regulation made by the Governor General then required to be sanctioned and registered by the Supreme Court before it passed into law, (a provision since repealed by Sec. 45 of 3 and 4 Wm. IV. Cap. 85.) Leave was obtained by Mr. Furgusson, Barrister-at-law, on behalf of Mr. Buckingham for protesting against sanction being accorded to the Regulation by the Supreme Court. The matter was heard by Sir Francis Macnaghten. It was for this occasion that this memorial was drawn up and was read before the Court by the Registrar on the 31st of March 1823. The Supreme Court having, however, registered the regulation, a petition to King Geerge IV. was drawn up by Ram Mohun Roy, signed by many respectable men and sent to England. The petition follows this memorial.—Ed.

Your Memorialists beg leave, in the first place, to bring to the notice of your Lordship, various proofs given by the Natives of this country of their unshaken loyalty to, and unlimited confidence in the British Government of India, which may remove from your mind any apprehension of the Government being brought into hatred and contempt, or of the peace, harmony, and good order of society in this country, being liable to be interrupted and destroyed, as implied in the preamble of the above Rule and Ordinance.

First. Your Lordship is well aware, that the Natives of Calcutta and its vicinity, have voluntarily entrusted Government with millions of their wealth, without indicating the least suspicion of its stability and good faith, and reposing in the sanguine hope that their property being so secured, their interests will be as permanent as the British Power itself; while on the contrary, their fathers were invariably compelled to conceal their treasures in the bowels of the earth, in order to preserve them from the insatiable rapacity of their oppressive Rulers.

Secondly. Placing entire reliance on the promises made by the British Government at the time of the Perpetual Settlement of the landed property in this part of India, in 1793, the Landholders have since, by constantly improving their estates, been able to increase their produce, in general very considerably;* whereas, prior to that period, and under former Governments, their forefathers were obliged to lay waste the greater part of their estates, in order to make them appear of inferior

* Generally, it is said, two or three fold.—REPORTER.

value, that they might not excite the cupidity of Government, and thus cause their rents to be increased or themselves to be dispossessed of their lands,—a pernicious practice which often incapacitated the landholders from discharging even their stipulated revenue to Govesnment, and reduced their families to poverty

Thirdly. During the last wars which the British Government were obliged to undertake against neighbouring Powers, it is well known, that the great body of Natives of wealth and respectability, as well as the Landholders of consequence, offered up regular prayers to the objects of their worship for the success of the British arms from a deep conviction that under the sway of that nation, their improvement, both mental and social, would be promoted, and their lives, religion, and property be secured. Actuated by such feelings, even in those critical times, which are the best test of the loyalty of the subject, they voluntarily came forward with a large portion of their property to enable the British Government to carry into effect the measures necessary for its own defence, considering the cause of the British as their own, and firmly believing that on its success, their own happiness and prosperity depended.

Fourthly. It is manifest as the light of day, that the general subjects of observation and the constant and the familiar topic of discourse among the Hindoo community of Bengal, are the literary and political improvements which are continually going on in the state of the country under the present system of government, and a comparison between their present auspicious pospect and their hopeless condition under their former Rulers.

Under these circumstances, your Lordship cannot

to be impressed with a full conviction, that whoever charges the Natives of this country with disloyalty, or insinuates aught to the prejudice of their fidelity and attachment to the British Government, must either be totally ignorant of the affairs of this country and the feelings and sentiments of its inhabitants, as above stated, or, on the contrary, be desirous of misrepresenting the people and misleading the Government, both here and in England, for unworthy purposes of his own.

Your Memorialists must confess, that these feelings of loyalty and attachment, of which the most unequivocal proofs stand on record, have been produced by the wisdom and liberality displayed by the British Government in the means adopted for the gradual improvement of their social and domestic condition, by the establishment of Colleges, Schools, and other beneficial institutions in this city, among which the creation of a British Court of Judicature for the more effectual administration of Justice, deserves to be gratefully remembered.

A proof of the Natives of India being more and more attached to the British Rule in proportion as they experience from it the blessings of just and liberal treatment, is, that the Inhabitants of Calcutta, who enjoy in many respects very superior privileges to those of their fellow subjects in other parts of the country are known to be in like measure more warmly devoted to the existing Government; nor is it at all wonderful they should in loyalty be not at all inferior to British-born Subjects, since they feel assured of the possession of the same civil and religious liberty, which is enjoyed in England, without being subjected to such heavy taxation as presses upon the people there.

Hence the population of Calcutta, as well as the value of land in this City, have rapidly increased of late years, notwithstanding the high rents of houses and the dearness of all the necessaries of life compared with other parts of the country, as well as the Inhabitants being subjected to additional taxes, and also liable to the heavy costs necessarily incurred in case of suits before the Supreme Court.

Your Lordship may have learned from the works of the Christian Missionaries, and also from other sources, that ever since the art of printing has become generally known among the Natives of Calcutta, numerous Publications have been circulated in the Bengalee Language, which by introducing free discussion among the Natives and inducing them to reflect and inquire after knowledge, have already served greatly to improve their minds and ameliorate their condition. This desirable object has been chiefly promoted by the establishment of four Native Newspapers, two in the Bengalee and two in the Persian Language, published for the purpose of communicating to those residing in the interior of the country, accounts of whatever occurs worthy of notice at the Presidency or in the country, and also the interesting and valuable intelligence of what is passing in England and in other parts of the world, conveyed through the English Newspapers or other channels.

Your Memorialists are unable to discover any disturbance of the peace, harmony, and good order of society, that has arisen from the English Press, the influence of which must necessarily be confined to that part of the community who understand the language throughly; but they are quite confident, that the publications in the Native Languages, whether in the shape of a Newspape

or any other work, haven one of them been calculated to bring the Government of the country into hatred and contempt, and that they have not proved, as far as can be ascertained by the strictest inquiry, in the slightest degree injurious ; which has very lately been acknowledged in one of the most respectable English Missionary works. So far from obtruding upon Government grouudless representations, Native Authors and Editors have always restrained themselves from publishing even such facts respecting the judicial proceedings in the Interior of the country as they thought were likely at first view to be obnoxious to Government.

While your Memorialists were indulgiug the hope that Government, from a conviction of the manifold advantages of being put in possession of full and impartial information regarding what is passing in all parts of the Country, would encourage the establishment of Newspapers in the cities and districts under the special patronage and protection of Government, that they might furnish the Supreme Authorities in Calcutta with an accurate account of local occurrences and reports of Judicial proceedings,—they have the misfortune to observe, that on the contrary, his Excellency the Governor General in Council has lately promulgated a Rule and Ordinance imposing severe restraints on the Press and prohibiting all Periodical Publications even at the Presidency and in the Native Languages, unless sanctioned by a License from Government, which is to be revocable at pleasure whenever it shall appear to Government that a publication has contained any thing of an unsuitable character.

Those Natives who are in more favourable circumstances and of respectable character, have such an

invincible prejudice against making a voluntary affidavit, or undergoing the solemnities of an oath, that they will never think of establishing a publication which can only be supported by a series of oaths and affidavits, abhorrent to their feelings and derogatory to their reputation amongst their countrymen.

After this Rule and Ordinance shall have been carried into execution, your Memorialists are therefore extremely sorry to observe, that a complete stop will be put to the diffusion of knowledge and the consequent mental improvement now going on, either by translations into the popular dialect of this country from the learned languages of the East, or by the circulation of literary intelligence drawn from foreign publications. And the same cause will also prevent those Natives who are better versed in the laws and customs of the British Nation, from communicating to their fellow subjects a knowledge of the admirable system of Government established by the British, and the peculiar excellencies of the means they have adopted for the strict and impartial administration of justice. Another evil of equal importance in the eyes of a just Ruler, is, that it will also preclude the Natives from making the Government readily acquainted with the errors and injustice that may be committed by its executive officers in the various parts of this extensive country; and it will also preclude the Natives from communicating frankly and honestly to their Gracious Sovereign in England and his Council, the real condition of his Majesty's faithful subjects in this distant part of his dominions and the treatment they experience from the local Government: since such information cannot in future be conveyed to England, as it has heretofore been,

either by the translations from the Native publications inserted in the English Newspapers printed here and sent to Europe, or by the English publications which the Natives themselves had in contemplation to establish, before this Rule and Ordinance was proposed.

After this sudden deprivation of one of the most precious of their rights, which has been freely allowed them since the Establishment of the British Power, a right which they are not, and cannot be charged with having ever abused, the Inhabitants of Calcutta would be no longer justified in boasting, that they are fortunately placed by Providence under the protection of the whole British Nation, or that the King of England and his Lords and Commons are their Legislators, and that they are secured in the enjoyment of the same civil and religious privileges that every Briton is entitled to in England.

Your Memorialists are persuaded, that the British Government is not disposed to adopt the political maxim so often acted upon by Asiatic Princes, that the more a people are kept in darkness, their Rulers will derive the greater advantages from them, since, by reference to History, it is found that this was but a short-sighted policy which did not ultimately answer the purpose of its authors. On the contrary, it rather proved disadvantageous to them; for we find that as often as an ignorant people, when an opportunity offered, have revolted against their Rulers, all sorts of barbarous excesses and cruelties have been the consequence; whereas a people naturally disposed to peace and ease, when placed unde a good Government from which they experience just and liberal treatment, must become the more attached to it, in proportion as they become enlightened and the great body of the people

are taught to appreciate the value of the blessings they enjoy under its Rule.

Every good Ruler, who is convinced of the imperfection of human nature, and reverences the Eternal Governor of the world, must be conscious of the great liability to error in managing the affairs of a vast empire; and therefore he will be anxious to afford every individual the readiest means of bringing to his notice whatever may require his interference. To secure this important object, the unrestrained Liberty of Publication, is the only effectual means that can be employed. And should it ever be abused, the established Law of the Land is very properly armed with sufficient powers to punish those who may be found guilty of misrepresenting the conduct or character of Government, which are effectually guarded by the same Laws to which individuals must look for protection of their reputation and good name.

Your memorialists conclude by humbly entreating your Lordship to take this Memorial into your gracious consideration; and that you will be pleased by not registering the above Rule and Ordinance, to permit the Natives of this country to continue in possession of the civil rights and privileges which they and their fathers have so long enjoyed under the auspices of the British nation, whose kindness and confidence, they are not aware of having done anything, to forfeit.

CHUNDER COOMAR TAGORE,
DEWARKU NAUTH TAGORE,
RAMMOHUN ROY,
HURCHUNDER GHOSE,
GOWREE CHURN BONNERJEE,
PROSSUNNO COOMAR TAGORE.

APPEAL TO THE KING IN COUNCIL.

TO THE KING'S MOST EXCELLENT MAJESTY
MAY IT PLEASE YOUR MAJESTY,

We, your Majesty's faithful subjects, Natives of India and Inhabitants of Calcutta, being placed by Providence under the sovereign care and protection of the august head of the British nation, look up to your Majesty as the guardian of our lives, property, and religion, and when our rights are invaded and our prayers disregarded by the subordinate authorities, we beg leave to carry our complaints before your Majesty's throne, which is happily established in mercy and justice, amidst a generous people celebrated throughout the earth as the enemies of tyranny, and distinguished under your royal auspices, as the successful defenders of Europe from Continental usurpation.

2nd. We, your Majesty's faithful subjects, now come before your under the most painful circumstances, the local executive authorities having suddenly assumed the power of legislation in matters of the highest moment, and abolished legal privileges of long standing, without the least pretence that we have ever abused them, and made an invasion on our civil rights such as is unprecedented in the History of British Rule in Bengal, by a measure which either indicates a total disregard of the civil rights and privileges of your Majesty's faithful subjects, or an intention to encourage a cruel and

unfounded suspicion of our attachment to the existing Government.

3rd. The greater part of Hiudoostan having been for several centuries subject to Mahumuddan Rule, the civil and religious rights of its original inhabitants were constantly trampled upon, and from the habitual oppression of the conquerrors, a great body of their subjects in the southern Peninsula (Dukhin), afterwards called Marhuttahs, and another body in the western parts now styled Sikhs, were at last driven to revolt; and when the Mussulman power became feeble, they ultimately succeeded in establishing their independence; but the Natives of Bengal wanting vigour of body, and adverse to active exertion, remained during the whole period of the Mahumuddan conquest, faithful to the existing Government, althoug their property was often plundered, their religion insulted, and their blood wantonly shed. Divine Providence at last, in its abundant mercy, stirred up the English nation to break the yoke of those tyrants, and to receive the oppressed Natives of Bengal under its protection. Having made Calcutta the capital of their dominions, the English distinguished this city by such peculiar marks of favour, as a free people would be expected to bestow, in establishing an English Court of Judicature, and granting to all within its jurisdiction, the same civil rights as every Briton enjoys in his native country; thus putting the Natives of India in possession of such privileges as their forefathers never expected to attain, even under Hindoo Rulers. Considering these things and bearing in mind also the solicitude for the welfare of this country, uniformly expressed by the Honourable East India Company, under whose immediate

control we are placed, and also by the Supreme Councils of the British nation, your dutiful subjects consequently have not viewed the English as a body of conquerors, but rather as deliverers, and look up to your Majesty not only as a Ruler, but also as a father and protector.

4th. Since the establishment of the Supreme Court of Judicature in Calcutta till the present time, a period that has been distinguished by every variety of circumstances, the country sometimes reposing in the bosom of profound peace, at others shaken with the din of arms—the local Government of Bengal, although composed from time to time, of men of every shade of character and opinion, never attempted of its own will and pleasure to take away any of the rights which your Majesty's royal ancestors with the consent of their Councils, had been graciously pleased to confer on your faithful subjects. Under the cheering influence of equitable and indulgent treatment, and stimulated by the example of a people famed for their wisdom and liberality, the Natives of India, with the means of amelioration set before them, have been gradually advancing in social and intellectual improvement. In their conduct and in their writings, whether periodical or otherwise, they have never failed to manifest all becoming respect to a Government fraught with such blessings; of which their own publications and the judgment passed upon them by the works of their contemporaries, are the best proofs. Your faithful subjects beg leave in support of this statement to submit two extracts from English works very lately published, one by a Native of India, and other by English Missionaries; the first is from a work published on the 30th of January last, by Rammohun Roy, entitled "a Final Appeal to the Christian Public,"

which may serve as a specimen of the sentiments expressed by the Natives of India towards the Goverment.

"I now conclude my Eassay in offering up thanks to the Supreme Disposer of the universe, for having unexpectedly delivered this country, from the long continued tyranny of its former Rulers, and placed it under the Government of the English, a nation who not only are blessed with the enjoyment of civil and political liberty, but also interest themselves, in promoting liberty and social happinesss, as well as free inquiry into literary and religious subjects, among those nations to which their influence extends."—Pages 378, 379.

5th. The second extract is from a periodical work published at the Danish settlement of Serampore, by a body of English Missionaries, who are known to be generally the best qualified and the most careful observers of the foreign countries in which Europeans have settled. This work, entitled the "FRIEND OF INDIA," treating of the Native Newspapers published in Bengal, thus observes, "How necessary a step this (the establishment of a Native Press), was for the amelioration of the condition of the Natives, no person can be ignorant who has traced the effects of the Press in other countries. The Natives themselves soon availed themselves of this privilege; no less than four Weekly Newspapers in the Native language have now been established, and there are hopes, that these efforts will contribute essentially to arouse the Native mind from its long lithargy of death; and while it excites them to inquire into what is going forward in a world, of which Asia forms so important a portion, urge them to ascertain their own situation respecting that eternal world, which really communicates all the vigour and interest

now so visible in Europeans. *Nor has this liberty been abused by them in the least degree*; yet these vehicles of intelligence have begun to be called for, from the very extremities of British India and the talents of the Natives themselves, have not unfrequently been exerted in the production of Essays, that would have done credit to our own countrymen."—(*Friend of India*, quarterly series, No. VII. published in December 1882).

6th. An English gentleman, of the name of Buckingham, who for some years published a Newspaper in this place, entitled the "CALCUTTA JOURNAL," having incurred the displeasure of the local Government, was ordered to leave this country, and soon afterwards, the Hon'ble John Adam, the Governor-General in Council, suddenly without any previous intimation of his intentions, passed a Rule and Ordinance, on the 14th of March, thus taking away the liberty of the Press, which your Majesty's faithful subjects had so long and so happily enjoyed, and substituting his own will and pleasure for the Laws of England, by which it had hitherto been governed. (This Rule, Ordinance, and Regulation is annexed: *vide* Paper annexed No. 1.)*

7th. It being necessary according to the system established for the Government of this conntry that the above Regulation should receive the approbation of the Supreme Court by being registered there, after having been fixed up for 20 days on the walls of the Court-room, before it could become Law on the following Monday, (the 17th of March,) Mr. Fergussion, Barrister,

* These annexed papers have not been published as unnecessary.—ED.

moved the Court to allow parties who might feel themselves aggrieved by the New Regulation, to be heard against it by their Counsel before the sanction of the Court should establish it as Law, and the Honourable Sir Francis Macnaghten, the sole acting Judge, expressed his willingness to hear in this manner, all that could be urged against it, and appointed Monday the 31st of the same month of March, for Counsel to be heard. His Lordship also kindly suggested, that in the mean time, he thought it would be advisable to present a Memorial to Government, praying for the withdrawal of the said Rule and Ordinance. These observations from the Honourable Sir Francis Macnaghten, inspired your Majesty's faithful subjects at this Presidency, with a confident hope, that his Lordship disapproved of the Rule and Ordinance, and would use his influence with Government to second the prayer of the Memorial he recommended to be presented, or that at least in virtue of the authority vested in him for the purpose of protecting your faithful subjects against illegal and oppressive acts, he would prevent the proposed Rule from passing into Law.

8th, Your faithful subjects agreeable to a suggestion of this nature, proceeding from such a source, employed the few days intervening, in preparing a Memorial to Government, containing a respectful representation of the reasons which existed against the proposed Rule and Ordinance being passed into Law; but in preparing this Memorial in both the English and Bengalee Languages, and discussing the alterations suggested by the different individuals who wished to give it their support and signature, so much time was necessarily consumed, that it was not ready to be sent into circulation for signature

until the 30th of March; consequently only fifteen Natives of respectability had time to read it over and affix their signature before the following day on which it was to be discussed in the Supreme Court and finally sanctioned or rejected. Besides that this number was considered insufficient, it was then too late for Government to act upon this Memorial, so as to supersede the discussions and decision that were to take place in the Court, and a few individuals, therefore, of those who concurred in it, hastily prepared another Memorial of the same tenor in the morning of that day, addressed to the Supreme Court itself, demonstrating our unshaken attachment to the British Government, and praying the Court to withhold its sanction from a Regulation which would deprive us of an invaluable privilege, firmly secured to us by Laws of the Land, which we had so long enjoyed and could not be charged with ever having abused. (Annexed paper No. 2.) And although from these circumstances, the Memorial had still fewer signatures, your Majesty's faithful subjects reposed in the hope, that in appealing to a British Court of Law they might rely more on the justice of their cause, than the number or weight of names, especially, since it is well-known, that there are many under the immediate influence of Government, who would not express an opinion against the acts of those in power at the time, although it were to secure the salvation of all their countrymen.

9th. This Memorial being, by the order of the Judge, read by the Registrar of the Court, Mr. Fergusson, (who besides his professional skill and eminence as an English Lawyer, has acquired by his long practice at the Calcutta Bar, a very intimate acquaintance with the state of this

Country) in virtue of the permission granted him, entered into an argument, shewing the Rule and Ordinance to be both illegal and inexpedient. (The grounds on which he opposed it are given at length, annexed paper No. 3.)

10th. These and other conclusive arguments, urged by Mr. Fergusson, and also by Mr. Turton, both eminently skilled in the Laws of England, powerfully strengthened the hopes previously created by the observations that formerly fell from the Bench, that the learned Judge would enter his protest against such a direct violation of the Laws, and uncalled for invasion of the rights of your faithful subjects.

11th. Notwithstanding, we observed with astonishment and regret, that his Lordship, in giving his decision, paid no regard whatever to the above Memorial, not alluding to it in the most distant manner, nor to the arguments it contained; and his Lordship further disclosed, that at the time he expressed a desire to hear every objection that could be urged, and recommended a Memorial to Government against it, from which your faithful subjects unanimously hoped that the mind of the Judge was undecided, and rather unfavourable to the Rule, his Lordship had previously pledged himself by promise to Government to give it his sanction. (Annexed paper No. 4, containing the speech made by Sir Francis Macnaghten the Judge, who presided on the occasion).

12th. Your Majesty's faithful subjects cannot account for the inconsistency manifested by Sir F. Macnaghten in two different points with regard to the sanctioning of this Regulation. In the first place, according to his Lordship's own statement from the Bench, he refused not

only once, but twice, to see the Regulation before it passed in Council, probably because his Lordship thought it improper for him to give it his approbation until it came before him in the regular manner; but he afterwards, when application was made to him a third time, not only consented to read it, but with some alterations agreed to give it his sanction, a change of conduct for which no reason was assigned by his Lordship. Again, when application was made to his Lordship to hear the objections that might be urged against it, before giving it his Judicial approval, his Lordship withheld from the knowledge of the public, not only that he had already so pledged himself; but even that he had previously seen the Regulation, and expressed himself ready to hear all that could be said respecting it, in the same manner as if his mind had been unfettered by any promise, and perfectly open to conviction. Consequently, some of your Majesty's faithful subjects prepared a Memorial and retained Counsel against the new Regulation, and had afterwards the mortification to find, their representations were treated with contemptuous neglect, and that the arguments of the most able Lawyers could be of no avail.

13th. Your Majesty in Parliament has been graciously pleased to make it a part of the Law of this Country, that after a Regulation has passed the Council, it must be fixed up for twenty days in the Supreme Court, before it can be registered, so as to receive the full force of Law, an interval which allows the Judge time for deliberation and to hear from others all the objections that may exist to the proposed measure, and might have the effect of preventing the establishment of injudicious and inexpe-

dient or unjust and oppressive acts; but if, as in this case, the Judges enter into previous compact with the Local Government, and thus preclude the possibility of any effectual representation from your faithful subjects, who have no intimation of what is meditated till it be finally resolved upon, the salutary effect of twenty days' delay is lost, and your faithful subjects will be in constant apprehension, the most valuable and sacred of their rights may, as in this instance, be suddenly snatched from them at a moment's warning, before they know that such a measure is in contemplation, or have time to represent the evils which it is calculated to inflict upon them.

14th. In pursuance of the Regulation passed as above described, the Government issued an official order in the "GOVERNMENT GAZETTEE" of the 5th of April, commanding the attention of Editors of Newspapers, or other periodical works, to certain restrictions therein contained, prohibiting all matters which it might consider as coming under the following heads:

(1st). Defamatory or contumelious reflections against the King, or any of the Members of the Royal Family.

(2nd). Observations or statements touching the character, constitution, measures, or orders of the Court of Directors, or other public authorities in England, connected with the Government of India, or the character, constitution, measures, or orders of the Indian Governments, impugning the motives and designs of such authorities of Governments, or in any way tending to bring them into hatred or contempt, to excite resistance to their orders, and to weaken their authority.

(3rd). Observations or statements of the above des-

cription, relative to, allied, or Friendly Native Powers, their Ministers, or Representatives.

(4th). Defamatory or contumelious remarks of offensive insinuations lavelled against the Governor-General, the Governors or Commanders-in-Chief, the Members of Council, or the Judges of His Majesty's Courts at any of the Presidencies, or the Bishop of Calcutta, and publications of any description, tending to expose them to hatred, oboloquy or contempt, also libellous or abusive reflections and insinuations against the Public Officers of Government.

(5th,) Discussions having a tendency to create alarm or suspicion among the native population of any intended official interference with their religious opinions and observances, and irritating and insulting remarks on their peculiar usages and modes of thinking on religious subjects.

(6th.) The republication from English, or other papers, of passages coming under the foregoing heads.

(7th.) Defamatory publications tending to disturb the peace, harmony, and good order of society.

(8th.) Anonymous appeals to the Public, relative to grievances of professional or official nature, alleged to have been sustained by public officers in the service of His Majesty or the Honourable Company.

This Copy of the Restrictions will be authenticated by the annexed Copy, (No. 5.) .

15th. The above Restrictions, as they are capable of being interpreted, will in fact afford Government and all its Functionaries from the highest to the lowest, complete immunity from censure or exposure respecting any thing done by them in their official capacity, however desirable

it might be for the interest of this Country, and also that of the Honourable Company, that the public conduct of such public men should not be allowed to pass unnoticed. It can scarcely be doubted that the real object of these Restrictions is, to afford all the Functionaries of Government complete security against their conduct being made the subject of observation, though it is associated with a number of other restraints totally uncalled for, but well calculated to soothe the supreme authorities in England and win their assent to the main object of the Rule—the suppression of public remark on the conduct of the public Officers of Government in India.

16th. Your Majesty's faithful subjects could have surely no inducement in this distant quarter of the world to make contumelious and injurious reflections on your Majesty or any of the members of your Majesty's illustrious family, or to circulate them among people to whom your Majesty's name is scarcely known, and to the greatest part of whom, even the fame of your greatness and power has not reached; but to those few Natives who are possessed of sufficient information to understand the political situation of England, the English Newspapers and Books which are constantly brought to this country in great abundance, are equally intelligible with the periodical publications printed in Calcutta.

17th. Neither can your Majesty's faithful subjects have any wish to make remarks on the proceedings of the Courts of Directors, of whose beneficent intentions they are well convicted, but that the Honourable Body who have so often manifested their earnest desire to ameliorate the condition of their Indian dependents, must be naturally anxious to be made exactly acquainted with

the manner in which their wishes are carried into execution, and the operation and effect of the acts passed relative to this country.

18th. Whoever shall maliciously publish what has a tendency to bring the Government into hatred and contempt, or excite resistance to its orders, or weaken their authority, may be punished by Law as guilty of treason or sedition; and surely in a country enjoing profound peace externally and internally, and where seditious and treasonable publications are unknown, it could not be necessary for Government to throw aside of a sudden, the Laws which for any thing that has appeared, were fully sufficient, and arm itself with new and extraordinary powers at a time when that Government is more secure than at any former period.

19th. It may surely be left for British Judges and Juries to determine whether the mention made of the proceedings of Government, be malevolent, seditious and dangerous to the state, so as to render a writer or publisher culpable and amenable to punishment; but if mere mention of the conduct of Government without misrepresentation or malice on the part of the writer, bring it into hatred and contempt, such conduct will never receive the countinance or protection of your Majesty by the sanction of a Law to prevent its exposure to public observation, and the discovery of that dissatisfaction it may have occasioned, which would afford the higher authorities an opportunity of removing them.

20th. After a body of English Missionaries have been labouring for about twenty-five years by preaching and distributing publications in the native languages in all parts of Bengal, to bring the prevailing system of religion

into disrepute, no alarm whatever prevails, because your Majesty's faithful subjects possess the power of defending their Religion by the same means that are employed against it, and many of them have exercised the freedom of the Press to combat the writings of English missionaries, and think no other protection necessary to the maintenance of their faith. While the Teachers of Christianity use only reason and persuation to propagate their Religion, your Majesty's faithful subjects are content to defend theirs by the same weapons, convicted that true Religion needs not the aid of the sword or of legal penalties for its protection. While your Majesty's faithful subjects perceived that Government shewed no displeasure, and claimed no arbitrary power of preventing the publication of what was written in defence of the prevailing religion of the country, it was impossible to entertain any such suspicion as that intimated in the 5th article, viz. that Government would interfere with the established faith of the natives of this country. Nevertheless, if any person with a malicious and siditious design were to circulate an unfounded rumour that Government meant so to interfere with our religious privileges, he would be severely punished by law: but if the Government really intended to adopt measures to change the religion of the country, your Majesty's faithful subjects would be absolutely prohibited by the present Restrictions from intimating the appalling intelligence to their countrymen: and although they have every reason to hope that the English nation will never abandon that religious toleration which has distinguished their progress in the East, it is impossible to forsee to what purposes of religious oppression such a Law might at some future time be applied.

21st. The office of the Lord Bishop of Calcutta not calling him to preach Christianity in that part of the town inhabited by the natives, or to circulate Pamphlets among them against the established Religion of the Country, but being of a nature totally distinct, and not at all interfering with the religious opinion of the native population, they could never dream of vilifying and defaming his character or office.

22nd. The Judges of the Supreme Court in Calcutta and of the English Courts of Judicature at the other Presidencies, enjoy, in virtue of their office, the power of protecting their characters and official conduct from defamation and abuse: since such would be either a contempt of the Court, liable to summary punishment, or punishable by those Laws enacted against libel. It is therefore hard to be conceived, that they stand in need of still further protection, unless it should be wished thereby to create an idea of their infallibility, which however is incompatible with the freedom allowed to Barristers, of delivering their sentiments before hand on the justice or injustice of the opinions the Judges may pronounce, and in case of appeal, of controverting the justice and equity of their decision. The only object of such a restriction is calculated to attain, must therefore be defeated, unless it be meant thereby to prevent the publication of the pleadings which as they take place in an English Court of Judicature are by Law public, and ought to be accessible to all.

23rd. The seventh restriction prohibiting defamatory publications tending to disturb the peace, harmony, and good order of Society, is equally unnecessary, since the British Legislature has already provided a

punishment for such offences by the Laws enacted against libel.

24th. Your Majesty's faithful subjects will not offer any more particular remarks on the superfluous Restrictions introduced to accompany those more important ones which are the principal object of Government, and will conclude with this general observation, that they are unnecessary, either because the offences prohibited are imaginary and improbable, or because they are already provided for by the Laws of the Land, and either the Government does not intend to put them in force at all, or it is anxious to interrupt the regular course of justice, abolish the right of Trial by jury and, taking the Law into its own hands, to combine the Legislative and Judicial power, which is destructive of all Civil Liberty.

25th. Your Majesty's faithful subjects have heard, that your Majesty constantly submits to the greatest freedom of remark among your British born subjects without losing any part of the homage and respect due to your exalted character and station, and that the conduct of your Ministers is constantly the topic of discussion, without destroying the dignity and power of the Government. While such is the case in a country where it is said above nine-tenths of the Inhabitants read newspapers, and are therefore liable to be led by the opinions circulated through the Press, its capability of bringing a Government into hatred and contempt must be far less in a country where the great mass of the population do not read at all, and have the greatest reverence for men in power, of whom they can only judge by what they feel, and are not to be moved by what is written, but by what is done,

where consequently Government can only be brought into hatred and contempt by its own acts.

26th. The Marquis of Hastings, who had associated for the greater part of his life, with Kings and Princes, entertained no apprehension that the salutary control of public scrutiny which he commended, would bring him or his Indian administration into hatred and contempt; and in effect, instead of such begin the result, the greater the freedom he allowed to the Europeon conductors of the Press, only rendered his name the most honored and revered in this part of the world, because it was universally believed, that his conduct proceeded from a consciousness of rectitude which feared no investigation.

27th. But your faithful subjects might forbear urging further arguments on this subject to your Majesty, who with your actions open to observation, possess the love, the esteem, and the respect of mankind, in a degree which none of the despotic Monarchs of Europe or Asia can ever attain, whose subjects are prohibited from examining and expressing their opinions regarding their conduct.

28th. Asia unfortunately affords few instances of Princes who have submitted their actions to the judgment of their subjects, but those who have done so, instead of falling into hatred and contempt, where the more loved and respected, while they lived, and their memory is still cherished by posterity; whereas more despotic Monarchs, pursued by hatred in their life time, could with difficulty escape the attempts of the rebel or the assassin, and their names are either detested or forgotten.

29th. The idea of the possession of absolute power and perfection, is evidently not necessary to the stability

of the British Government of India, since your Majesty's faithful subjects are accustomed to see private individuals citing the Government before the Supreme court, where the justice of their acts is fearlessly impugned, and after the necessary evidence being produced and due investigation made, judgment not unfrequently given against the Government, the judge not feeling himself restrained from passing just sentence by any fear of the Government being thereby brought into contempt. And your Majesty's faithful subjects only pray, that it may be permitted by means of the Press or by some other means equally effectual, to bring forward evidence regarding the acts of Government which affect the general interest of the community, that they also may be investigated and reversed, when those who have the power of doing so, become convinced that they are improper or injurious.

30th. A Government conscious of rectitude of intention, cannot be afraid of public scrutiny by means of the Press, since this instrument can be equally well employed as a weapon of defence, and a Government possessed of immense patronage, is more especially secure, since the greater part of the learning and talent in the country being already enlisted in the service, its actions, if they have any shadow of Justice are sure of being ably and successfully defended.

31st. Men in power hostile to the Liberty of the Press, which is a disagreeable check upon their conduct, when unable to discover any real evil arising from its existence, have attempted to make the world imagine, that it might, in some possible contingency, afford the means of combination against the Government, but not to mention that extraordinary emergencies would warrant

measures which in ordinary times are totally unjustifiable, your Majesty is well aware, that a Free Press has never yet caused a revolution in any part of the world, because, while men can easily represent the grievances arising from the conduct of the local authorities to the supreme Government, and thus get them redressed, the grounds of discontent that excite revolution are removed; whereas, where no freedom of the Press existed, and grievances consequently remained unrepresented and unredressed, innumerable revolutions have taken place in all parts of the globe, or if prevented by the armed force of the Government, the people continued ready for insurrection.

32nd. The servants of the Honourable Company are necessarily firmly attached to that system from which they derive their consequence and power, and on which their hopes of higher honours and still greater emoluments depend; and if it be possible to imagine, that these strong considerations are not sufficient to preserve subordination among them, the power of suspension and ruin which hangs over their heads for any deviation from duty, is certainly sufficient to secure that object.

33rd. After the British Government has existed for so many years, it has acquired a certain standard character in the minds of the natives of India, from the many excellent men who have from time to time held the reins of power, and the principles by which they have been guided. Whatever opinion therefore, may be entertained of the individuals composing it at a particular period, while the source of power remains the same, your Majesty's faithful subjects cannot of a sudden lose confidence in the virtue of the stream, since although it may or a period be tainted with corruption, yet in the natural

course of events it must soon resume its accustomed character. Should individuals abuse the power entrusted to them, public resentment cannot be transferred from the delinquents to the Government itself, while there is a prospect of remedy from the higher authorities; and should the highest in this country turn a deaf ear to all complaint, by forbidding grievances to be even mentioned, the spirit of loyalty is still kept alive by the hope of redress from the authorities in England; thus the attachment of the Natives of India, to the British Government must be as permanent as their confidence in the honour and Justice of the British nation, which is their last Court of Appeal next to Heaven. But if they be prevented from making their real condition known in England, deprived of this hope of redress, they will consider the most peculiar excellence of the British Government of India, as done away.

34th. If these conclusions drawn from the particular circumstances of this country, be met with such an argument as that a colony or distant dependency can never safely be entrusted with Liberty of the Press, and that therefore Natives of Bengal cannot be allowed to exercise the privileges they have so long enjoyed, this would be in other words to tell them, that they are condemned to perpetual oppression and degradation, from which they can have no hope of being raised during the existence of the British Power.

35th. The British nation has never yet descended to avow a principle so foreign to their character, and if they could for a moment entertain the idea of preserving their power by keeping their colonies in ignorance, the prohibition of periodical publications is not enough, but

printing of all kinds, education, and every other means of diffusing knowledge should be equally discouraged and put down. For it must be the distant consequences of the diffusion of knowledge that are dreaded by those (if there be any such) who are really apprehensive for the stability of Government, since it is well known to all in the least acquainted with this country, that although every effort were made by periodical as well as other publications, a great number of years must elapse before any considerable change can be made in the existing habits and opinions of the Natives of India, so firmly are they wedded to established custom. Should apprehensions so unworthy of the English nation prevail, then, unlike the ancient Romans who extended their knowledge and civilization with their conquests, ignorance and degradation must mark the extent of British Power. Yet surely even this, affords no hope of perpetual Rule, since notwithstanding the tyranny and oppression of Gengis Khan and Tamerlane, their empire was not so lasting as that of the Romans, who to the proud title of conquerors, added the more glorious one of Enlighteners of the World. And of the two most renowned and powerful monarchs among the Moguls, Ukbar was celebrated for his clemency, for his encouragement of learning, and for granting civil and religious liberty to his subjects, and Arungzebe, for his cruelty and intolerance, yet the former reigned happy, extended his power and his dominions, and his memory is still adored, whereas the other, though endowed with equal abilities and possessed of equal power and enterprize, met with many reverses and misfortunes during his life time, and his name is now held in abhorrence.

36th. It is well known that despotic Governments naturally desire the supression of any freedom of expression which might tend to expose their acts to the obloquy which ever attends the exercise of tyranny or oppression, and the argument they constantly resort to, is, that the spread of knowledge is dangerous to the existence of all legitimate authority, since, as a people become enlightened, they will discover that by a unity of effort, the many may easily shake off the yoke of the few, and thus become emancipated from the restraints of power altogether, forgetting the lesson derived from history, that in countries which have made the smallest advances in civilization, anarchy and revolution are most prevalent—while on the other hand, in nations the most enlightened, any revolt against governments which have guarded inviolate the rights of the governed, is most rare, and that the resistance of a people advanced in knowledge, has ever been—not against the existence,—but against the abuses of the Governing power. Canada, during the late war with America, afforded a memorable instance of the truth of this argument. The enlightened inhabitants of that colony, finding that their rights and privileges had been secured to them, their complaints listened to, and their grievances redressed by the British government, resisted every attempt of the United States to seduce them from their allegiance to it. In fact, it may be fearlessly averred, that the more enlightened a people become, the less likely they are to revolt against the governing power, as long as it is exercised with justice tempered with mercy, and the rights and privileges of the governed are held sacred from any invasion.

37th. If your Majesty's faithful subjects could conce-

ive for a moment, that the British nation actuated solely by interested policy, considered India merely as a valuable property, and would regard nothing but best means of securing its possession and turning it to advantage, even then, it would be of importance to ascertain whether this property be well taken care of by their servants, on the same principle that good masters are not indifferent about the treatment of their slaves.

38th. While therefore the existence of a free Press is equally necessary for the sake of the Governors and the governed, it is possible a national feeling may lead the British people to suppose, that in two points, the peculiar situation of this country requires a modification of the laws enacted for the control of the Press in England. First, that for the sake of greater security and to preserve the union existing between England and this country, it might be necessary to enact a penalty to be inflicted on such persons as might endeavour to excite hatred in the minds of the Natives of India against the English nation. Secondly, that a penalty should be inflicted on such as might seditiously attempt to excite hostilities with neighbouring or friendly states. Although your Majesty's faithful subjects are not aware that any thing has yet occurred to call for the precautions thus anticipated, yet should such or any other limitations of the liberty of the Press be deemed necessary, they are perfectly willing to submit to additional penalties to be legally inflicted. But they must humbly enter their protest against the injustice of robbing them of their long standing privileges, by the introduction of numerous arbitray restrictions, totally uncalled for by the circumstances of the country—and whatever may be their

intention, calculated to suppress truth, protect abuses—and encourage oppression.

39th. Your Majesty's faithful subjects now beg leave to call your Majesty's attention to some peculiarly injurious consequences of the new laws that have thus been suddenly introduced in the manner above described. First, the above Rule and Ordinance has deprived your Majesty's faithful subjects of the liberty of the Press, which they had enjoyed for so many years since the establishment of the British Rule. Secondly, your Majesty's faithful subjects are deprived of the protection of your Majesty and the high council of the British nation, who have hitherto exclusively exercised the legislative power in this part of your Majesty's dominions.

40th. If upon representations being made by the local authorities in the country, your Majesty after due investigation had been pleased with the advice of the high council of the realm to order the abolition of the liberty of the Press in India, your Majesty's faithful subjects from the feeling of respect and loyalty due to the supreme legistalive power, would have patiently submitted, since although they would in that case, still have lost one of their most precious privileges, yet their claim to the superintendence and protection of the highest legislative authority, in whom your faithful subjects have unbounded confidence, would still have remained unshaken ; but were this Rule and Ordinance of the local Government to be held valid, and thus remain as a precedent for similar proceedings in future, your faithful subjects would find their hope of protection from the Supreme Government, cut off, and all their civil and reli-

gious rights placed entirely at the mercy of such individuals as may be sent from England to assume the executive authority in this country, or rise into power through the routine of office, and who from long officiating in an inferior station, may have contracted prejudices against individuals or classes of men, which ough not to find shelter in the breast of the Legislator.

41st. As it never has been imagined, or surmised in this country, that the Government was in any immediate danger from the operation of the native Press, it cannot be pretended, that the public safety required strong measures to be instantly adopted, and that consequently there was not sufficient time to make a representation to the authorities in England, and wait for their decision, or that it was incumbent on the highest Judicial authority in India, to sanction an act so repugnant to the laws of England, which he has sworn to maintain inviolate.

42nd. If as your Majesty's faithful subjects have been informed, this Government were dissatisfied with the conduct of the English newspaper, called the "Calcutta Journal," the banishment of the Editor of that paper, and the power of punishing those left by him to manage his concern, should they also give offence, might have satisfied the Government; but at any rate your Majesty's faithful subjects, who are natives of this country, against whom there is not the shadow of a charge, are at a loss to understand the nature of that justice which punishes them, for the fault imputed to others. Yet notwithstanding what the local authorities of this country have done, your faithful subjects feel confident, that your Majesty will not suffer it to be believed throughout your

Indian territories, that it is British justice to punish millions for the fault imputed to one individual.

43rd. The abolition of this most precious of their privileges, is the more appalling to your Majesty's faithful subjects, because it is a violent infringement of their civil and religious rights, which under the British Government, they hoped would be always secure. Your Majesty is aware, that under their former Mohammudan Rulers, the natives of this country enjoyed every political privilege in common with Mussulmans, being eligible to the highest offices in the state, entrusted with the command of armies and the government of provinces and often chosen as advisers to their Prince, without, disqualification or degrading distinction on account of their religion or the place of their birth. They used to receive free grants of land exempted from any payments of revenue, and besides the highest salaries allowed under the Government, they enjoyed free of charge, large tracts of country attached to certain offices of trust and dignity, while natives of learning and talent were rewarded with numerous situations of honour and emolument. Although under the British Rule, the natives of India, have entirely lost this political consequence, your Majesty's faithful subjects were consoled by the more secure enjoyment of those civil and religious rights which had been so often violated by the rapacity and intolerance of the Mussulmans; and notwithstanding the loss of political rank and power, they considered themselves much happier in the enjoyment of civil and religious liberty than were their ancestors; but if these rights that remain are allowed to be unceremoniously invaded, the most valuable of them being placed at the mercy of one

or two individuals, the basis on which they have founded their hopes of comfort and happiness under the British Power, will be destroyed.

44th. Your Majesty has been pleased to place this part of your dominions under the immediate control of the Court of Directors, and this Honourable Body have committed the entire management of this country (Calcutta excepted) to a number of gentlemen styled Civil Servants, usually under the superintendence of a Governor General. These gentlemen who are entrusted with the whole administration, consist of three classes; First, subordinate local officers, such as Judges of Districts, Magistrates, Collectors and commercial agents; Secondly, officers superior to them as Judges of Circuit, and Members of different Revenue and Commercial Boards, &c. Thirdly, those who fill the highest and most important officers, as Judges of the Sudder Dewany Adalut, Secretaries to Government, the Members of the Supreme Council, and sometimes a Civil Servant may rise to the highest office, of Governor General of India. In former times, native fathers were anxious to educate their children according to the usages of those days, in order to qualify them for such offices under government as they might reasonably hope to obtain; and young men had the most powerful motives for sedulously cultivating their minds, in the laudable ambition of rising by their merits to an honourable rank in society; whereas, under the present system, so trifling are the rewards held out to native talent, that hardly any stimulus to intellectual improvement remains; yet, your Majesty's faithful subjects felt confident, that notwithstanding these unfavourable circumstances, the natives of India would

not sink into absolute mental lethargy while allowed to aspire to distinction in the world of letters, and to exercise the liberty of the Press for their moral and intellectual improvement, which are far more valuable than the acquisition of riches or any other temporal advantages under arbitrary power.

45th. Those gentlemen propose and enact laws for the Government of the extensive territory under their control, and also administer these laws; collect revenue of all sorts, and superintend manufactories carried on in behalf of the state; and they have introduced according to their judgment, certain judicial, commercial, and revenue systems, to which it may be supposed they are partial, as being their own, and therefore support them with their whole influence and abilities as of the most efficient and salutary character. It is also the established custom of these gentleman to transmit official reports from time to time, to the Court of Directors, to make them acquainted with the mode in which the country is governed, and the happiness enjoyed by the people of this vast empire, from the manner in which the laws are adminstered.

46th. Granting that those gentleman were almost infallible in their judgment and their systems nearly perfect; yet your Majesty's faithful subjects may be allowed to presume, that the paternal anxiety which the Court of Directors have often expressed for the welfare of the many millions dependent upon them in a country situated at the distance of several thousand miles, would suggest to them the propriety of establishing some other means besides, to ascertain whether the systems introduced in their Indian possessions, prove so beneficial to

the natives of this country, as their authors might fondly suppose or would have others believe, and whether the Rules and Regulations which may appear excellent in their eyes, are strictly put in practice.

47th. Your Majesty's faithful subjects are aware of no means by which impartial information on these subjects can be obtained by the Court of Directors or other authorities in England, except in one of the two following modes : either, first, by the existence of a Free Press in this country and the Establishment of Newspapers in the different Districts under the special patronage of the Court of Directors and subject to the control of law only, or secondly by the appointment of a commission composed of gentlemen of intelligence and respectabitity, totally unconnected with the Governing Body in this country, which may from time to time, investigate on the spot, the condition of your Majesty's faithful subjects, and judge with their own eyes regarding the operation of the systems of law and jurisprudence under which they live.

48th. But the immense labour required for surveying a country of such extent, and the great expense that would be necessary to induce men of such reputation and ability as manifestly to qualify them for the important task, to undertake a work of such difficulty, which must be frequently repeated, present great, if not insuperable obstacles to the introduction or efficacy of the letter mode of proceeding by commission ; from which your Majesty's faithful subjects therefore, do not entertain any sanguine expectations ; unless your Majesty influnced by humane considerations for the welfare of your subjects, were graciously pleased to enjoin its adoption from a

conviction of its expediency whatever might be the expense attending it.

49th. The publication of truth and the natural expression of men's sentiments through the medium of the Press, entail no burden on the State, and should it appear to your Majesty and the enlightened men placed about your throne, that this precious privilege which is so essential to the well being of your faithful subjects, could not safely be entrusted to the Natives of India, although they have given such unquestionable proofs of their loyalty and attachment, subject only to the restraints wisely imposed upon the Press by the laws of England, your faithful subjects intreat on behalf of their countrymen, that your Majesty will be graciously pleased to grant it, subject to such severer restraints and heavier penalties as may be deemed necessary; but legal restraints, not those of arbitrary power—and penalties to be inflicted after trial and conviction according to the forms of the Laws of England,—not at the will and pleasure of one or two individuals without investigation or without hearing any defence or going through any of the forms prescribed by law, to ensure the equitable administration of justice.

50th. Notwithstanding the despotic power of the Mogul Princes who formerly ruled over this country, and that their conduct was often cruel and arbitrary, yet the wise and virtuous among them, always employed two intelligencers at the residence of their Nawabs or Lord Lieutenants, *Ukhbar-nuvees*, or news-writer who published an account of whatever happened, and a *Khoofeanuvees*, or confidential correspondent, who sent a private and particular account of every occurrence worthy of notice;

and although these Lord Lieutenants were often particular friends or near relations to the Prince, he did not trust entirely to themselves for a faithful and impartial report of their administration, and degraded them when they appeared to deserve it, either for their own faults or for their negligence in not checking the delinquencies of their subordinate officers; which shews, that even the Mogul Princes, although their form of Government admitted of nothing better, were convinced, that in a country so rich and so replete with temptations, a restraint of some kind was absolutely necessary, to prevent the abuses that are so liable to flow from the possession of power.

51st. The country still abounds in wealth, and its inhabitants are still addicted to the same corrupt means of compassing their ends, to which from having long lived under arbitrary Government, they have become naturally habituated and if its present Rulers have brought with them purer principles from the land of their birth which may better withstand the influence of long residence amid the numerous temptations to which they are exposed;—on the other hand, from the seat of the Supreme Government being placed at an immense distance and the channel of communication entirely in their own hands, they are left more at liberty to follow their own interests, and looking forward to the quiet and secure enjoyment of their wealth in their native land, they may care little for the character they leave behind them in a remote country, among a people for whose opinion they have no regard. Your Majesty's faithful subjects therefore, humbly presume, that the existence of a restraint of some kind, is absolutely necessary to

preserve your faithful subjects from the abuses of uncontrolled power.

52nd. That your Majesty may be convinced, that yonr faithful subjects do not allude merely to possible abuses, or point out only theoretical defects in established systems, they beg leave to call your Majesty's attention to the observations contained in a Number of a most respectable Baptist Missionary work, the accuracy of which, although it has now been two years* in circulation, in all parts of India, not one of the numerous civil servants of the Honourable Company, has ventured to dispute nor have the flagrant abuses it points out, been remedied.

53rd. It might be urged on the other hand, that persons who feel aggrieved, may transmit representations to the Court of Directors, and thus obtain redress; but the natives of this country are generally ignorant of this mode of proceeding; and with neither friends in England nor knowledge of the country, they could entertain no hope of success, since they know that the transmission of their representations, depends in point of time, upon the pleasure of the local Government, which will probably, in order to counteract their influence, accompany them with observations, the nature of which would be totally unknown to the complainants,—discouragements which in fact have operated as complete preventives, so that no instance of such a representation from the Natives of Bengal, has ever been known.

54th. In conclusion, your Majesty's faithful subjects humbly beseech your Majesty, first, to cause the Rule and Ordinance and Regulation before mentioned, which

* No IV. Quarterly series of the Friend of India, published in Dec. 1821.

has been registered by the Judge of your Majesty's Court, to be rescinded; and to prohibit any authority in this country, from assuming the legislative power, or prerogatives of your Majesty and the High Council of the Realm, to narrow the privileges and destroy the rights of your Majesty's faithful subjects, who claim your protection, and are willing to submit to such laws, as your Majesty with the advice of your Council, shall be graciously pleased to enact.

Secondly, your Majesty's faithful subjects humbly pray, that your Majesty will be pleased to confirm to them the privilege, they have so long enjoyed, of expressing their sentiments through the medium of the Press, subject to such legal restraints as may be thought necessary, or that your Majesty will be graciously pleased to appoint a commission of intelligent and independent Gentlemen, to inquire into the real condition of the millions Providence has placed under your high protection.

55th. Your Majesty's faithful subjects from the distance of almost half the globe, appeal to your Majesty's heart by the sympathy which forms a paternal tie between you and the lowest of your subjects, not to overlook their condition; they appeal to you by the honour of that great nation which under your Royal auspices has obtained the glorious title of Liberator of Europe, not to permit the possibility of millions of your subjects being wantonly trampled on and oppressed; they lastly appeal to you by the glory of your Crown on which the eyes of the world are fixed, not to consign the natives of India, to perpetual oppression and degradation.

A LETTER

ON

ENGLISH EDUCATION.

CALCUTTA :

1823.

A LETTER ON ENGLISH EDUCATION.*

To his Excellency the Right Honorable Lord Amherst, Governor General in Council.

My Lord,

Humbly reluctant as the natives of India are to obtrude upon the notice of Government the sentiments they entertain on any public measure, there are circumstances when silence would be carrying this respectful feeling to culpable excess. The present rulers of India, coming from a distance of many thousand miles to govern a people whose language, literature, manners, customs, and ideas, are almost entirely new and strange to them, cannot easily become so intimately acquainted with their real circumstances as the natives of the country are them-

* It is well known that among those persons who laboured for the spread of English Education in this country Raja Ram Mohun Roy was one of the foremost. The old Hindu College owed its origin to the exertions of Sir Edward Hyde East, David Hare, and Ram Mohun Roy. After the establishment of the Hindu College there began the celebrated controversy between the 'Orientalists,' *i. e.* persons who were for the encouragement of the study of the oriental languages and against the introduction of English Education, and the 'Anglicists,' *i. e.* the advocates of English Education, of whom Ram Mohun Roy was one of the most prominent. This controversy raged for some 12 years or more till it was ended by the Resolution of Lord William Bentinck, of the 7th May 1835. It was at the first stage of this controversy, when the Orientalists had induced the Government to sanction the establishment of a Sanscrit College, that the above letter was written, the object of it being to protest against the proposed measure. It was owing perhaps to this agitation that the foundation stone of the building, intended for the Sanscrit College, was laid in the name of the Hindu College (February 1824,) and the Hindu College was located there together with the Sanscrit College.—Ed.

selves. We should therefore be guilty of a gross dereliction of duty to ourselves and afford our rulers just grounds of complaint at our apathy, did we omit on occasions of importance like the present, to supply them with such accurate information as might enable them to devise and adopt measures calculated to be beneficial to the country, and thus second by our local knowledge and experience their declared benevolent intentions for its improvement.

The establishment of a new Sanscrit School in Calcutta evinces the laudable desire of Government to improve the natives of India by education,—a blessing for which they must ever be grateful, and every well-wisher of the human race must be desirous that the efforts made to promote it, should be guided by the most enlightened principles, so that the stream of intelligence may flow in the most useful channels.

When this seminary of learning was proposed, we understood that the Government in England had ordered a considerable sum of money to be annually devoted to the instruction of its Indian subjects. We were filled with sanguine hopes that this sum would be laid out in employing European gentlemen of talent and education to instruct the natives of India in Mathematics, Natural Philosophy, Chemistry, Anatomy, and other useful sciences, which the natives of Europe have carried to a degree of perfection that has raised them above the inhabitants of other parts of the world.

While we looked forward with pleasing hope to the dawn of knowledge, thus promised to the rising generation, our hearts were filled with mingled feelings of delight and gratitude, we already offered up thanks to

Providence for inspiring the most generous and enlightened nations of the West with the glorious ambition of planting in Asia the arts and sciences of Modern Europe.

We find that the Government are establishing a Sanscrit school under Hindu Pundits to impart such knowledge as is already current in India. This seminary (similar in character to those which existed in Europe before the time of Lord Bacon) can only be expected to load the minds of youth with grammatical niceties and metaphysical distinctions of little or no practical use to the possessors or to society. The pupils will there acquire what was known two thousand years ago with the addition of vain and empty subtleties since then produced by speculative men, such as is already commonly taught in all parts of India.

The Sanscrit language, so difficult that almost a life time is necessary for its acquisision, is well known to have been for ages a lamentable check to the diffusion of knowledge, and the learning concealed under this almost impervious veil, is for from sufficient to reward the labour of acquiring it. But if it were thought necessary to perpetuate this language for the sake of the portion of valuable infomation it contains, this might be much more easily accomplished by other means than the establishment of a new Sanscrit College, for there have been always and are now numerous professors of Sanscrit in the different parts of the country engaged in teaching this language, as well as the other branches of literature which are to be the object of the new seminary. Therefore their more diligent cultivation, if desirable, would be effectualy promoted, by holding out premiums and granting certain allowances to their most eminent profes-

sors, who have already undertaken on their own account to teach them, and would by such rewards be stimulated to still greater exertion.

From these considerations, as the sun set apart for the instruction of the natives of India was intended by the Government in England for the improvement of its Indian subjects, I beg leave to state, with due deference to your Lordship's exalted situation, that if the plan now adopted be followed, it will completely defeet the object proposed, since no improvemnt can be expected from inducing young men to consume a dozen of years of the most valuable period of their lives, in acquiring the niceties of Baikaran or Sanskrit Grammar, for instance, in learning to discuss such points as the following : *khada*, signifying to eat, *khadati* he or she or it eats, query, whether does *khadati* taken as a whole convey the meaning he, she or it eats, or are separate parts of this meaning conveyed by distinctions of the words, as if in the English language it were asked how much meaning is there in the *eat* and how much in the *s*, and is the whole meaning of the word conveyed by these two portions of it distinctly or by them taken jointly ?

Neither can much improvement arise from such speculations as the following which are the themes suggested by the Vedanta,—in what manner is the soul absorved in the Deity ? What relation does it bear to the Divine Essence ? Nor will youths be fitted to be better members of society by the Vedantic doctrines which teach them to believe, that all visible things have no real existence, that as father, brother, &c. have no actual entity, they consequently deserve no real affection, and therefore the sooner we escape from them and leave the world the better.

Again, no essential benefit can be derived by the student of the *Mimansa* from knowing what it is that makes the killer of a goat sinless by pronouncing certain passages of the Vendata and what is the real nature and operative influence of passages of the Vedas, &c.

The student of the Naya Shastra cannot be said to have improved his mind after he has learned from it into how many ideal classes the objects in the universe are divided and what speculative relation, the soul bears to the body, the body to the soul, the eye to the ear, &c.

In order to enable your Lordship to appreciate the utility of encouraging such imaginary learning as above characterized, I beg your Lordship will be pleased to compare the state of science and literature in Europe before the time of Lord Bacon with the progess of knowledge made since he wrote.

If it had been intended to keep the British nation in ignorance of real knowledge, the Baconian philosophy would not have been allowed to displace the system of the schoolmen which was the best calculated to perpetuate ignorance. In the same manner the Sanscrit system of education would be the best calculated to keep this country in darkness, if such had been the policy of the British legislature. But as the improvement of the native population is the object of the Government, it will consequently promote a more liberal and enlightened system of instruction, embracing Mathematics, Natural Philosophy, Chemistry, Anatomy, with other useful sciences, which may be accomplished with the sums proposed by employing a few gentlemen of talent and learning educated in Europe and providing a College furnished with necessary books, instruments, and other apparatus.

In presenting this subject to your Lordship, I conceive myself discharging a solemn duty which I owe to my countrymen, and also to that enlightened sovereign and legislature which have extended their benevolent care to this distant land, actuated by a desire to improve the inhabitants, and therefore humbly trust you will excuse the liberty I have taken in thus expressing my sentiments to your Lordship.

I have the honor &c.
RAMMOHUN ROY.

APPENDEX

ADRESS TO LORD WILLIAM BENTINCK.*

To the Right Hon. Lord William
Cavendish Bentinck, &c.

My Lord :

With hearts filled with the deepest gratitute, and impressed with the utmost reverence, we, the undersigned native inhabitants of Calcutta and its vicinity, beg to be permitted to approach your Lordship, to offer personally our humble but warmest acknowledgments for the invaluable protection which your Lordship's government has recently afforded to the lives of the Hindoo female part of your subjects, and for your humane and successful exertions in rescuing us for ever, from the gross stigma hitherto attached to our character as wilful murderers of females, and zealous promoters of the practice of suicide.

Excessive jealousy of their female connexions, operating on the breasts of Hindu princes, rendered those despots regardless of the common bonds of society, and of their incumbent duty as protectors of the weaker sex, insomuch that, with a view to prevent every possibility of their widows forming subsequent attachments, they availed themselvs of their arbitrary power, and under the

* This remarkable address was presented on the 16th January 1830 to Lord William Bentinck upon the passing of the Act for the abolition of the *Suttee* by Ram Mohun Roy, Callynauth Roy, Huree Hur Dutt, and others on behalf of 300 inhabitants of Calcutta. There were two addresses prepared, one being in Bengali read by Baboo Callynath Roy, the other, a translation of the former in English, read by Baboo Huree Hur Dutt. There is very reason to believe that the adress was drawn up by Ram Mohun Roy from its language and from the sentiments conveyed in it.—Ed.

cloak of religion, introduced the practice of burning widows alive under the first impressions of sorrow or despair, immediately after the demise of their husbands. This system of female destruction, being admirably suited to the selfish and servile disposition of the populace, has been eagerly followed by them, in defiance of the most sacred authorities, such as the *Oopunishuds* or the principal parts of the *Veds*, and the *Bhugvud Geeta*, as well as of the direct commandment of Munoo, the first and the greatest of all the legislators, conveyed in the following words : 'Let a widow continue till death forgiving all injuries, performing austere duties, avoiding every sensual pleasure,' &c. (Ch. 5, v. 158.)

While in fact fulfilling the suggestions of their jealousy they pretended to justify this hideous practice by quoting some passages from authorities of evidently inferior weight, sanctioning the wilful ascent of a widow on the flaming pile of her husband, as if they were offering such female sacrifices in obedience to the dictates of the Shastrus and not from the influence of jealousy. It is however, very fortunate that the British government under whose protection the lives of both the males and females of India have been happily placed by Providence, has, after deligent inquiry, ascertained that even those inferior authorities, permitting wilful ascent by a widow to the flaming pile, have been practically set aside, and that, in gross violation of their language and spirit, the relatives of widows have, in the burning of those infatuated females almost invariably used to fasten them down on the pile, and heap over them large quantities of wood and other materials adequate to the prevention of their escape—an outrage on humanity which has been frequently perpetra-

ted under the indirect sanction of native offiecrs, undeservedly employed for the security of life and preservation of peace and tranquillity.

In many instances, in which the vigilance of the magistrate has deterred the native officers, of police from indulging their own inclination, widows have either made their escape from the pile after being partially burnt, or retracted their resolution to burn when brought to the awful task, to the mortifying disappointment of the instigators : while in some instances the resolution to die has been retracted, on pointing out to the widows the impropriety of their intended undertaking, and on promising them safety and maintenance during life, notwithstanding the severe reproaches liable thereby to be heaped on them by their relatives and friends.

In consideration of circumstances so disgraceful in themselves, and so incompatible with the principle of British rule, your Lordship in Council, fully impressed with the duties required of you by justice and humanity, has deemed it incumbent on you, for the honour of the British name, to come to the resolution, that the lives of your female Hindoo subjects should be henceforth more efficiently protected ; that the heinous sin of cruelty to females may no longer be committed, and that the most ancient and purest system of Hindoo religion should not any longer be set at nought by the Hindoos themselves. The magistrates, in consequence, are, we understand, positively ordered to execute the resolution of government by all possible means.

We are, my Lord, reluctantly restrained by the consideration of the nature of your exalted situation, from indicating our inward feelings by presenting any

valuable offering as commonly adopted on such occasions; but we should consider ourselves highly guilty of insincerity and ingratitude, if we remained negligently silent when urgently called upon by our feelings and conscience to express publicly the gratitude we feel for the overlasting obligation you have graciously conferred on the Hindoo community at large. We, however, are at a loss to find language sufficiently indicative even of a small portion of the sentiments we are desirous of expressing on the occasion; we must therefore conclude this address with entreating that your Lordship will condescendingly accept our most grateful acknowledgments for this act of benevolence towards us, and will pardon the silence of those who, though equally partaking of the blessing bestowed by your Lordship, have through ignorance or prejudice omitted to join us in this common cause.

The following was the reply of Lord William Bentinck to the above address:—

"It is very satisfactory for me to find that, according to the opinions of so many respectable and intelligent Hindoos, the practice which has recently been prohibited, not only was not required by the rules of their religion, but was at variance with those writings which they deem to be of the greatest force and authority. Nothing but a reluctance to inflict punishment for acts which might be conscientiously believed to be enjoined by religious precepts, could have induced the British government at any time to permit, within territories under its protection, an usage so violently opposed to the best feelings of human nature. Those who present this address are right in supposing that by every nation in the world, except the Hindoos themselves, this part of their customs has always been made a reproach against them, and nothing so strangely contrasted with the better features of their own national character, so inconsistent with the affections which unite families, so destructive of the moral principles on which society is founded, has ever subsisted amongst a people in other respects so civilized. I trust that the reproach is removed for ever; and I feel a sincere pleasure in thinking that the Hindoos will thereby be exalted in the estimation of mankind, to an extent in some degree proportioned to the repugnance which was felt for the usage which has now ceased."

—Ed.

ANTI-SUTTEE PETITION.*

TO THE HONOURABLE THE COMMONS OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND IN PARLIAMENT ASSEMBLED.

The humble Petition of the undersigned Natives of India.

Sheweth,

That a practice has prevailed throughout India particularly in Bengal, of burning those widows on the funeral piles of their deceased husbands, who could be induced to offer themselves as voluntary sacrifices.

That this barbarous and inhuman practice has been happily abolished by the Government of the Right Honourable Lord William Cavendish Bentinck, who has thus conferred an inestimable benefit on the native population of India.

That the regulation prohibiting the practice has been received with gratitude by many, while the majority of the native population have remained passive and acquiescent, although nearly a twelve-month has elapsed since the abolition took place.

That as a proof of your Honourable House of the feeling entertained on the subject by a numerous portion of the native community, the subjoined address was

* This is the counter-petition to the memorial of the advocates of *suttee*, which Ram Mohun Roy brought with him to England from India and presented to the House of Commons. We cannot but believe, that this also like the foregoing was prepared by the Raja himself.—Ed.

presented to the Governor-General in Council expressive of their thanks for his benevolent interference.

[Here was recited the address presented by the Inhabitants of Calcutta to Lord William Bentinck, in January 1830.

That your petitioners have, however, learned that a number of natives, professing to be attached to the ancient practice, have prepared a petition to your Honourable House, soliciting the re-establishment of the rite of burning their widows; and therefore to prevent your Honourable House from supposing that their sentiments are those of the whole native population, your petitioners respectfully present themselves to the notice of your Honourable House, and pray that the Regulation of the local government may be confirmed and enforced.

That your petitioners cannot permit themselves to suppose that such a practice, abhorrent to all the feelings of nature, the obligations of society, and the principles of good government, will receive the sanction of your Honourable House, much less that, having been abolished, the British name and character will be dishonoured by its re-establishment.

That your petitioners confidently rely on receiving from your Honourable House a full and final confirmation of the Act of the Governor General in Council abolishing the rite of widow burning.

And your petitioners will ever pray.

APPENDIX.

PETITION TO GOVERNMENT AGAINST REGULATION III. OF 1828 FOR THE RESUMPTION OF LAKHERAJ LANDS.*

—o—

To the Right Honourable Lord William Cavendish Bentinck, Governor-General in Council, &c. &c. &c.

The humble petition of the undermentioned inhabitants of Bengal, Behar, and Orissah, Sheweth:

That, placed as your petitioners are, under the sole protection of British rule they confidently feel justified when oppressed, in claiming justice and paternal care

* This is reprinted from the Asiatic Journal Vol. 1, New series, Jan.-April 1830. It is probable that it is, and it is generally known to be, the production of Ram Mohun Roy. However, we have inserted it in the Appendix, as there is no direct evidence, except what Mr. Adam says in his lecture on the Life and Labours of Rammohun Roy. Mr. Adam speaks of this petition against Reg. 3 of 1828 in the following terms:—

"In another instance, the Executive Government of India passed a Regulation in 1828 authorizing its Revenue Officers to dispossess the holders of rentfree lands at their own discretion, without any judicial decree having been sought or obtained against the validity of the title to such lands. Rammohun Roy instantly placed himself at the head of the native land-holders of Bengal, Behar, and Orissa, and in a petition of remonstrance to Lord William Bentinck, Governor General, protested against such arbitrary and despotic proceedings. The appeal was unsuccessful in India, was carried to England, and was there also made in vain; and at the present moment, if there is one cause more than another producing hatred and disaffection to the British Government in India, it is this measure, against which Rammohun Roy. both in India and England, raised his powerful and warning voice on behalf of his countrymen whom he loved, and on behalf of the British Government to which he was in heart attached, and for whose honor and stability he was sincerely concerned."

See also page 579.—Ed.

from that power, and approaching for redress the footstool of your Lordship, the local representative of their sovereign, and the immediate guardian of the safety and security of their lives and property. With this strong impression, your pitioners most humbly appeal to your Lordship in Council against the operation of Regulation III. of 1828, recently passed by Government, which appears to your petitioners unprecedented in severity' and unparallelled in oppression.

That your petitioners, in the first instance, entreat your Lordship's permission to bring to your notice the preamble of Regulation XIX. of 1793, containing the solemn assurances of justice couched in the following terms · The Governor-general in Council 'has further resolved that the claims of the public on their lands, (provided they, the holders of such lands, as are exempted from the payment of public revenue, register the grants as required in the Regulation) shall be tried in the courts of judicature, that no such exempted lands may be subjected to the payment of revenue untill the titles of the proprietor shall have been adjudged invalid by a final judicial decree.' Your petitioners trust, after a reference to the language above quoted, your Lordship will not consider their hopes of legal protection founded upon slight grounds, and their fears excited by the contrary plan laid down in the present Regulations, as mere creations of fancy. The whole of the tenour of the preamble, your petitioners presume, clearly exhibits, that although Marquis Cornwallis, then the governor-general of India, was as desirous as any of his successors to resume such lands as were alienated in opposition to the ancient and existing laws of the country, yet, from srictt

regard for the principles of justice, and for the spirit and usages of the British law, his Lordship felt dissuaded from empowering a collector an agent in behalf of government to exercise judicial power over the parties whose rights were to be contested by that government.

That your petitioners, in the second place, beg your Lordship's attention to Regulation II. of 1819, which, though it varies from Regulation XIX. of 1793 in some essential points, yet guarantees to your petitoners that no part of their property can be rendered liable to attachment without the decision of a higher and more adequate authority than a collector of land revenue, or can be subjected to forfeiture without a chance of redress from the established jondicial courts and the regular courts of appeal. Your petitioners, however, deeply regret to find themselves suddenly deprived of their long-cherished confidence by the threatening promulgation of Regulation III. of 1828, and being in the eve of ruin, they are driven to the necessity of appealing to your Lordship in Council, and humbly, but earnestly, solicit your Lordship's condescending attention to the grounds of their complaint.

That clause 1st, sec. iv. of the Regulation in question, totally overlooking the solemn pledge contained in the preamble of Regulation XIX. of 1793, has authorized a collector to institute inquiries in regard to lands free of assessment, without previously obtaining the sanction of the Board of Revenue for such inquiry, as required in sec. 15, Regulation XIX., and in article first, sec. v. Regulation II. of 1819, and has transferred 'the force and effect' of a judicial decree to any decision that the collector may pass upon such inquiry against the present

holders of lands of the above description; that the second and third articles of the same section not only invest a collector with unrestrained power to adjudge any land in possession of individuals to be the property of government, but give him further absolute authority 'to carry immediately into effect his decree by attaching and assessing the land,' so adjudged, without being required to refer his decision to a higher authority for confirmation, as directed in sec. xx., Regulation II. of 1819. Your Lordship will now perceive that a collector of land revenue is, by virtue of his office, empowered in the first instance to search out lands subject to the claims of government; he again is authorized to prefer an action before himself as a judge against the party who may be supposed to have been illicitly in possession of them; and lastly, he is rendered competent not only to adjudge the land to be the property of government, but also to dispossess the present proprietor of the same land by a stroke of his pen in 'a Persian roobakaree' held by himself. In short, a collector is under one capacity commissioned to act the part of plaintiff, while under another the same collector is vested with the power of discharging functions of an absolutely judicial nature, in passing a decree in cases in which he in fact stands as plaintiff or informer, and to carry immediately into effect whatever decree he may pass, a system which your petitioners presume the most despotic government might feel reluctant to adopt.

That your petitioners further beg leave to bring to the notice of your Lordship the hardship and difficulty they naturally dread from the operation of the regulation at issue. In sec. xxii. Regulation II. of 1819, Government

bestowed upon your native subjects the privilege of seeking redress against the decision of the highest revenue authorities (the boards of revenue) from the nearest zillah or city court, in cases in which the amount of demand did not exceed 500 rupees; that the most indigent individuals, or men engaged in husbandry or humble professions, might easily have access to that court without experiencing much inconvenience or incurring heavy expenses; besides, they were permitted in sec. xxvi. Regulation II. of 1819, to appeal to a higher judicial authority for the vindication of their rights, on the supposition that the decision passed by a zillah or city judge was unjust or erroneous. But your petitioners, with the deepest regret, feel compelled to entreat, your Lordship will refer to clause fifth, sec. iv. of the present Regulation, virtually denying your native subjects all means of self-defence. Though the above clause justifies in theory an appeal to a special commissioner against the decision of a collector, yet it has rendered such an appeal in almost two cases of three almost absolutely impracticable, since numerous individuals possessing small pieces of land of the above description are so occupied in the persuit of their livelihood, as to make it practically impossible for them to leave their respective families and occupations, to a proceed to a distant station for the purpose of conducting an appeal before a special commissioner. Moreover, the collectors in general, from their want of experience of judicial duties are not, and cannot, your petitioners presume, be regarded as sufficiently competent to institute judical investigation; their decisions, consequently, could not bear that weight and respect which are attached to a decree

passed by an experienced judicial officer of government; under these circumstances, any investigation that may be held by a special commissioner, when appealed to him against the decision of a collector, would, in point of fact, be the first as well as last judicial trial.

Your petitioners further beg your Lordship's liberal consideration of the long period that has elapsed since the officers of government were commanded to inquire into the validity of the tenures of lakrauj lands. Severe as the provisions of the present regulations are, and widely as they depart from the spirit of that of Lord Cornwallis, it would have been happy for the people, had even such modes of investigation as are there laid down been acted upon with promptitude. Not only, however, has the cautious and just regard for the safety of private property evinced by that just and wise statesman been set aside, but that, too, under circumstances in many instances far more unfavourable for the security of your native subjects than if their rights had been tried at his time.

Sunnuds, and other records, which might then have been produced so as to place your petitioners' titles beyond dispute, have, from the many accidents to which papers are liable, been lost or destroyed. In cases of disputed and divided succession, and of dispossession by judicial or revenue sales, your Lordship will readily understand how often the possession of the titles must have been withheld from the actual owner of land, however rightful his succession to the property. Fire inundation, and the ravages of destructive insects or vermin, have, in the course of thirty-five years, necessarily caused many important documents to perish, and it is after the

lapse of such a period, that they are now called to make good, before a new species of tribunal, rights which have so long remained undisturbed.

Your petitioners confidently affirm, that on reference to the revenue and judicial records of the zillahs and cities, it will be found that there are innumerable instances in which lands free of assessment have been, since 1793, transferred to different hands by sale at the public auctions, superintended either by revenue or by judicial officers, for the recovery of arrears of revenue due to government, or for the satisfaction of judicial decrees. These have been purchased by individuals of course on the public faith, and hitherto possessed by them without molestation. Now your Lordship in Council may be pleased to judge whether it would be in any way consistant with justice, that such lands should again be resumed from these purchasers, on the grounds of their titles being invalid, and assumed by government, whose public officers once previously obtained their value in satisfaction of the demand of Government upon their prior possessors.

That your petitioners, without fear of contradiction, can plead their past and present conduct as a proof of their unshaken and continued loyalty and attachment to the British rule in India. They have carefully entertained the hope of daily amelioration in their condition, from the augmenting and established power and possessions acquired by the wisdom of their rulers; but they feel painfully disappointed in that expectation when on comparing with each other, the language used and the spirit manifested on the one and the same subject, in Regulations XIX. of 1793, II. of 1819, and III. of 1828.

Your petitioners perceive, with inexpressible grief, a gradual indifference exhibited toward their rights and interests. As loyal subjects, however, they are in duty bound to lay candidly before your Lordship their grievances, and sincerely pray that your Lordship in Council, for the honour of the British name, and from a sense of justice, may be pleased to rescind the Regulation complained of, and thereby save thousands of families of your dutiful subjects from utter ruin.

And your petitioners, as in duty bound, shall ever pray.

SPEECHES AND LETTERS.

—o—

SPEECHES.

I

Speech on settlement of Europeans in India.

From personal experience, I am impressed with the conviction that the greater our intercourse with European gentlemen, the greater will be our improvement in literary, social, and political affairs; a fact which can be easily proved by comparing the condition of those of my countrymen who have enjoyed this advantage with that of those who unfortunately have not had that opportunity; and a fact which I could, to the best of my belief, declare on solemn oath before any assembly. As to the indigo planters, I beg to observe that I have travelled through several districts in Bengal and Behar, and I found the natives residing in the neighbourhood of indigo plantations evidently better clothed and better conditioned than those who lived at a distance from such stations. There may be some partial injury done by the indigo planters; but, on the whole, they have performed more good to the generality of the natives of this country than any other class of Europeans, whether in or out of the service.*

* A great public meeting was held at the Town Hall of Calcutta on the 15th of December 1829, for the purpose of petitioning the Parliament to throw open the China and India trade and to remove the restrictions against settlement of Europeans in India. The above is the report of the speech which Ram Mohun Roy is said to have made in supporting the resolution for abolishing the restrictions on the residence of Europeans in India. It is reprinted from the Asiatic Journal Vol. II. New Series, May-August 1830.—Ed.

II

Speech by Ram Mohun Roy at the meeting of the Unitarian Association held in London in his honour.

I am too unwell and too much exhausted to take any active part in this meeting ; but I am much indebted to Dr. KIRKLAND and Dr. BOWRING for the honour they have conferred on me by calling me their fellow-labourer, and to you for admitting me to this Society as a brother, and one of your fellow-labourers. I am not sensible that I have done any thing to deserve being called a promoter of this cause ; but with respect to your faith I may observe, that I too believe in the one God, and that I believe in almost all the doctrines that you do : but I do this for my own salvation and for my own peace. For the objects of your Society I must confess that I have done very little to entitle me to your gratitude or such admiration of my conduct. What have I done ?—I do not know what I have done !—If I have ever rendered you any services they must be very trifling—very trifling I am sure. I laboured under many disadvantages. In the first instance, the Hindoos and the Brahmins, to whom I am related, are all hostile to the cause ; and even many Christians there are more hostile to our common cause than the Hindoos and the Brahmins. I have honour for the appellation of Christian ; but they always tried to throw difficulties and obstacles in the way of the principles of Unitarian Christianity. I have found some of these here ; but more there. They abhor the notion of simple precepts. They always lay a stress on mystery and mystical points, which serve to delude their followers ; and the conse-

quence is, that we meet with such opposition in India that our progress is very slight ; and I feel ashamed on my side that I have not made any progress that might have placed me on a footing with my fellowlabourers in this part of the globe. However, if this is the true system of Christianity, it will prevail, notwithstanding all the opposition that may be made to it. Scripture seconds your system of religion, common sense is always on your side ; while power and prejudice are on the side of your opponents. There is a battle going on between reason, scripture and common sense ; and wealth, power and prejudice. These three have been struggling with the other three ; but I am convinced that your success, soon or latter, is certain. I feel over-exhausted, and therefore conclude with an expression of my heartfelt thanks for the honour that from time to time you have conferred on me, and which I shall never forget to the last moment of my existance.*

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* This is taken from the last days in England of Raja Ram Mohun Roy by Miss Carpenter. A full report of the proceedings of the meeting is to be found in the Monthly Repository of June 1831, (Vol. v. N. S. pp. 417-420.)—Ed.

LETTERS.

[The following letters and extracts from letters of Ram Mohun Roy are taken from the Last days in England of Raja Ram Mohun Roy by Miss Carpenter.—Ed.]

Extract from a letter dated Calcutta, September 5, 1820.

As to the opinion intimated by Sir Samuel T——r, respecting the medium course in Christian dogmas, I never have attempted to oppose it. I regret only that the followers of Jesus, in general, should have paid much greater attention to inquiries after his nature than to the observance of his commandments, when we are well aware that no human acquirements can ever discover the nature even of the most common and visible things, and, moreover, that such inquiries are not enjoined by the divine revelation.

On this consideration I have compiled several passages of the New Testament which I thought essential to Christianity, and published them under the designation of Precepes of Jesus, at which the Missionaries at Shreerampoor have expressed great displeasure, and called me, in their review of the tract, an injurer of the cause of truth. I was, therefore, under the necessity of defending myself in an 'Appeal to the Christian Public,' a few copies of which tracts I have the pleasure to send you, under the care of Captain S——, and intreat your acceptance of them.

I return, with my sincere acknowledgments, the work which Sir S. T. was so kind as to lend me. May I request the favour of you to forward it to Sir S. T., as well as a copy of each of the pamphlets, with my best

compliments, and to favour me with your and Sir S. T.'s opinion respecting my idea of Christianity, as expressed in those tracts, when an opportunity may occur, as I am always open to conviction and correction ?

Extract from a letter addressed by Raja Ram Mohun Roy to a gentleman of Baltimore, dated Calcutta, October 27 1822, (vide Monthly Repository for 1823, Vol. XVIII. p. 433.)

I have now every reason to hope, that the truths of Christianity will not be much longer kept hidden under the veil of heathen doctrines and practices, gradually introduced among the followers of Christ, since many lovers of truth are zealously engaged in rendering the religion of Jesus clear from corruptions.

I admire the zeal of the Missionaries sent to this country, but disapprove of the means they have adopted. In the performance of their duty, they always begin with such obscure doctrines as are calculated to excite ridicule instead of respect, towards the religion which they wish to promulgate. The accompanying pamphlets, called 'The Bramunical Magazine,' and published by a Bramun, are a proof of my assertion. The last number of this publication has remained unanswered for twelve months.

If a body of men attempt to upset a system of doctrines generally established in a country, and to introduce another system, they are, in my humble opinion, in duty bound to prove the truth, or, at least, the superiority of their own.

It is, however, a great satisfaction to my conscience to find, that the doctrines inculcated by Jesus and his apostles, are quite different from those human inventions,

which the Missionaries are persuaded to profess, and entirely consistant with reason, and the revalation delivered by Moses and the prophets. I am, therefore, anxious to support them, even at the risk of my own life. I rely much on the force of truth, which will, I am sure, ultimately prevail. Our number is comparatively small, but I am glad to inform you, that none of them can be justly charged with the want of zeal and prudence.

I wish to add, in order that you may set me right, if you find me mistaken,--my view of Christianity is, that in representing all mankind as the children of one eternal father, it enjoins them to love one another, without making any distinction of country, caste, colour, or creed ; notwithstanding they may be justified in the sight of the Creator in manifesting their respect towards each other, according to the property of their actions, and the reasonableness of their religious opinions and observance.

I shall lose no time in sending you my Final Appeal to the Christian Public, as soon as it is printed.

Extract from a letter, dated December 9, 1822.

Although our adversaries are both numerous and zealous, as the adversaries of truth always have been, yet our prospects are by no means discouraging, If we only have the means of following up what has already been done.

We confidently hope that, through these various means the period will be accelerated, when the belief in the Divine Unity, and in the mission of Christ, will universally prevail.

Letter to Dr. T. Rees, of London (vide Monthly Repository 1824, Vol. XIX. pp. 681-682.)

REVEREND SIR,—I received your letter of the 16th June last, accompanied by a parcel of books to my address, with feelings of peculiar gratification. I cannot but be proud of the honour which the Committee have conferred upon me in reprinting my compilation of 'The Precepts of Jesus,' and the two Appeals in its defence. I beg you will oblige me by communicating to the members my warm acknowledgments for so distinguished a mark of their approbation. I also beg you will accept my best thanks for your valuable present of the Racovian Catechism, which I shall not fail to read with due attention.

I have no language to express the happiness I derive from the idea that so many friends of truth, both in England and America, are engaged in attempting to free the originally pure, simple and practical religion of Christ from the heathenish doctrines and absurd notions gradually introduced under the Roman power; and I sincerely pray that the success of those gentlemen may be as great as (if not greater than) that of LUTHER and others, to whom the religious world is indebted for laying the first stone of religious reformation, and having recommended the system of distinguishing divine authority from human creeds, and the practice of benevolence from ridiculous outward observances.

But what disappoints, or rather grieves, me much is that our sovereign (whose reign may God crown with peace and prosperity!) whom all parties, either Whigs or Tories, enthusiastic radicals, or political time-servers, are compelled by the force of truth to acknowledge as the

most accomplished person of his time, of most enlightened acquirements, and most liberal sentiments, should not use his royal influence to remove from the members of his National Church the fetter of a solemn oath, imposed by the Thirty-nine Articles, naturally liable to doubt, and disputed as these have been, from the beginning of Christianity, and that he has not caused to be discontinued the repetition of that general denunciation found in the concluding part of the Athanasian Creed, to wit, 'This is the Catholic faith, which except a man *believe faithfully, he cannot be saved.*' The only consolation which I can offer to myself is, that as his Majesty is the best judge of suitable opportunities for the introduction of improvement in the National Church, it is probable that in due time more enlarged principles may receive the Royal sanction.

As to the state of the Unitarian Society in Calcutta, our Committee have not yet been able to purchase a suitable piece of ground for a chapel and school. They will, I hope, soon succeed in their endeavours. We have collected, partly by purchase, and partly by gift, a great number of works, and established a pretty respectable library in Calcutta, in which I have placed the books with which you have favoured me, in the same manner as all the books that the Rev. Mr. ADAM, the Unitarian Missionary in Bengal, and myself have received at different times from England. Mr. ADAM is preparing a catalogue of the books belonging to this library, and will, I doubt not, send a few copies for the perusal of the Committee in London, Liverpool, &c.

In the month of December last, Mr. R., a member of the firm of Messrs. M. and Co., of this place, left

Bengal for Europe, and I embraced that opportunity of answering a letter I had the pleasure of receiving from the venerable Mr. BELSHAM, and begged at the same time his acceptance of a parcel of books sent in charge of that gentleman. I also sent a duplicate by the hands of Mr. S. A., a Member of the Unitarian Society in Calcutta, and a particular friend of mine. As subsequent to these despatches I received the books stated in Mr. BELSHAM's letter to have been forwarded to my address, I beg to send a short letter acknowledging the receipt of them; which I shall feel obliged by your transmitting to that gentleman.

I have the pleasure of sending you for your acceptance a few tracts as a token of regard and respect, and remain,

Yours most obediently,

RAMMOHUN ROY.

CALCUTTA, *June* 4, 1824.

P.S.—From the pamphelt, No. 6 and 7, published by a neighbour of mine, and another by a friend, you will perceive to what a degree of ridicule the Trinitarian preachers have brought the religion they profess among the enlightened natives of India. I hope to God these Missionaries may at length have their eyes opened to see their own errors.

R. M. R.

Letter to Mr. Buckingham.

MY DEAR SIR,—A disagreeable circumstance will oblige me to be out the whole of this afternoon, and as I shall probably on my return home feel so much fatigued as to be unfit for your company, I am afraid I must be under the necessity of denying myself the pleasure of your

society this evening; more especially as my mind is depressed by the late news from Europe. I would force myself to wait on you to-night, as I proposed to do, were I not convinced of your willingness to make allowance for unexpected circumstances.

From the late unhappy news, I am obliged to conclude that I shall not live to see liberty universally restored to the nations of Europe, and Asiatic nations, especially those that are European colonies, possessed of a greater degree of the same blessing than what they now enjoy.

Under these circumstances I consider the cause of the Neapolitans as my own, and their enemies as ours. Enemies to liberty and friends of despotism have never been, and never will be, ultimately successful.

Adieu, and believe me,

Yours very sincerely,

RAMMOHUN ROY.

*August 11th, 1821.**

Letter to J. B. Estlin, Esq., of Bristol.

DEAR SIR,—MRS. MATTHEW being about to depart for Europe, has kindly offered to take charge of any letter or pamphlet that I may address to you. I embrace this opportunity of acknowledging the receipt of your letter and of the books, your excellent father's Lectures on Moral Philosophy, &c., which I had the honor to receive through Mrs. MATTHEW upwards of two years ago, and apologizing to you for the delay which has unavoidably taken place in answering your kind communication. For period of more than two years, owing to the most affecting

* Addressed to JAMES SILK BUCKINGHAM when at Calcutta.

circumstances arising from the hostile feelings of some invididuals towards my family, I found myself unable to pursue any undertaking or carry on correspondence, even with those whom I sincerely loved and revered, either residing in this country or in any other part of the globe. As I intend to lay those circumstances before the public within a short period in the form of a pamphlet, I refrain from detailing them at present. I however trust that in consideration of the accident alluded to, you will kindly excuse the apparent neglect of which I confess I am guilty, and for which I have no other apology to offer.

I rejoice to learn that the friends of the cause of religious truth have exerted themselves in the promotion of the true system of religion in India, and have remitted about 15000 rupees to the care of Messrs. ALEXANDER and Co. for religious purposes, and that the Rev. Mr. ADAM hopes to be enabled to resume his missionary pursuits by the latter end of this month. The time of a fair trial is approaching, and truth I doubt not will expose the corruptions and absurd notions which have gradually disfigured genuine Christianity, and have brought it to a level with heathen mythology. I am happy to inform you that the books which you kindly presented me with were deservedly placed in our Library, under the care of the Rev. Mr. ADAM. A few copies of the Improved Version will be of much use to our friends here. The Rev. Mr. Fox has intimated his intention to furnish us with a certain number of that work.

Should you happen to see Dr. CARPENTER, you will oblige me by presenting my best respects to that gentleman. I shall soon embrace an opportunity of bringing myself in writing to his recollection.

I have the pleasure to send you a copy of a pamphlet (a Bengalee Grammar in English) which has lately been published, and beg you will accept of it as a token of the regard and respect I entertain for you. With my fervent wishes for your health and success, I remain,

Dear Sir,

Yours most faithfully,

RAMMOHUN ROY.

CALCUTTA, *Feb. 7th*, 1827.

Letter to Mrs. Woodford, of Brighton

48, BEDFORD SQUARE.

April 27th, 1832

MY DEAR MADAM,—I now have the pleasure of begging your acceptance of the accompanying copy of my remarks on India, and of another copy of a pamphlet on the abolition of the practice of burning Hindoo widows alive. You will, I am sure, be highly grantified to learn that the present Governor-General of India has sufficient moral courage to afford them protection against their selfish relations, who cruelly used to take advantage of their tender feelings in the name and under the cloak of religion. It must have afforded Mr. WOODFORD and yourself much gratification to learn, by the first conveyance, the division on the second reading of the Reform Bill. The struggles are not merely between the reformers and anti-reformers, but between liberty and tyranny througout the world; between justice and injustice, and between right and wrong. But from a reflection on the past events of history, we clearly perceive that liberal principles in politics and relgion have been long gradually, but steadily, gaining ground, notwithstanding the opposition and obstinacy of

despots and bigots. I am still unable to determine the period of my departure from London, and my visits to you in the country. I may perhaps do myself that pleasure.

RAMMOHUN ROY.

Letter to William Rathbone, Esq.

48, BEDFORD SQUARE, LONDON,

July 31st, 1832.

MY DEAR SIR,—I am *now* happy to find myself fully justified in congratulating you and my other friends at Liverpool on the *complete* success of the Reform Bills, notwithstanding the violent opposition and want of political principle on the part of the aristocrats. The nation can no longer be a prey of the few who used to fill their purses at the expense, nay, to the ruin of the people for period of upwards of fifty years. The Ministers have honestly and firmly discharged their duty, and provided the people with means of securing their rights. I hope and pray that the people, the mighty people of England, may now in like manner do theirs, cherishing public spirit and liberal principles, at the same time banishing bribery, corruption and selfish interests, from public proceedings.

As I publicly avowed that in the event of the Reform Bill being defeated I would renounce my connection with this country, I refrained from writing to yon or any other friend in Liverpool until I knew the result. Thank heaven I can now feel proud of being one of your fellow subjects, and heartily rejoice that I have had the infinite happiness of witnessing the salvation of the nation, nay of the whole world.

Pray remember me kindly to Mr. CROPPER and Mr. BENSON, and present my best respects to Mrs. RATHBONE and love to the children; believe me,

My dear Sir,

Yours very sincerely,

RAMMOHUN ROY.

P. S.—If the German philosopher is still at Liverpool, be good enough to remember me kindly to him, and inform him that we have succeeded in the reform question without having recourse to the principles of phrenology.

R. R.

Letter to Mr. Woodford, of Brighton.

JANUARY, 31st, 1833.

MY DEAR SIR,—I had on the 27th the pleasure of receiving your obliging communication, and beg to offer you and Mrs. W. my best thanks for this mark of attention towards me. I rejoice to observe that the translation of the Veds, &c., which I presented to Mrs. W. before my departure for the continent of Europe, has proved interesting to her and to yourself. I am now confirmed in the opinion, that her good sense and her *rational* devotion to religion will not induce her to reject any reasonable sentiments, on the ground that they are not found in this book, or in that volume.

I was detained in France too late to proceed to Italy last year; besides, without a knowledge of French, I found myself totally unable to carry on communication with foreigners, with any degree of facility. Hence I thought I would not avail myself of my travels through Italy and Austria to my own satisfaction. I have been

studying French with a French gentleman who accompanied me to London, and now is living with me.

I shall be most happy to receive your nephew, Mr. KINGLAKE, as I doubt not his company and conversation as your relative, and a firm friend of liberal principles, will be a source of delight to me. I thank you for the mention you made of Sir HENRY STRACHEY. His talents, acquirements and manners, have rendered his name valuable to those who know him and can appreciate his merits. To the best of my belief and recollection, I declare that I do not know, a native of Persia or India who could repeat Persian with greater accuracy than this British-born gentleman.

RAMMOHUN ROY.

Letter to Mr. Woodford.

48, BEDFORD SQUARE,

August 22nd, 1833.

MY DEAR SIR,—I was glad to hear from Mr. CAREY some time ago, that you and Mrs. W. were in good health when he saw you last: and Sir HENRY STRACHEY, whom I had the pleasure of seeing about three weeks ago, confirmed the same information. He is indeed an extraordinary man; and I feel delighted whenever I have an opportunity of conversing with that philosopher. I have been rather poorly for some days past; I am now getting better, and entertain a hope of proceeding to the country in a few days, when I will endeavour to pay you a visit in Taunton. The reformed Parliament has disappointed the people of England; the ministers may perhaps redeem their pledge during next session. The failure of several mercantile houses in Calcutta has pro-

duced much distrust, both in India and England. The news from Portugal is highly gratifying, though another struggle is still expected. I hope you will oblige me by presenting to Mrs. W. with my best respects, the accompanying copy of a translation, giving an account of the system of religion which prevailed in Central India, at the time of the invasion of that country by Alexander the Great.

RAMMOHUN ROY.

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