REPORT

OF THE

LAW COMMISSIONERS

ON THE

JUDICIAL SYSTEM OF INDIA.

JULY 2, 1842.
REPORT

ON THE

JUDICIAL SYSTEM OF INDIA.

The Indian Law Commissioners to Lord Ellenborough, Governor-General of India.

My Lord, July 2, 1842.

We have now the honor to reply to your Lordship's letter of the 4th April last.

2. This communication embraces three topics:—

1st. The legal training in India of the honorable Company's civil servants destined for the judicial branch of the service, and the means of retaining in that branch such qualified persons as may once adopt it.

2nd. The expediency of appointing a chief judge, with superior emoluments, to each of the Company's Sudder or highest courts of judicature.

3rd. The expediency of conferring upon the superior courts of appeal a limited extent of original civil jurisdiction.

3. We propose to submit our sentiments on these topics in the order in which we have noticed them; but we think it will conduces to a clearer understanding of the whole subject, if, before entering upon the consideration of the particular points, we place before your Lordship a concise historical account of the several judicial systems prevailing at the three presidencies of Bengal, Madras, and Bombay; exhibiting their original character, and tracing them through their various modifications to their present state. This narrative occupies paragraphs 4 to 104 of this address.

4. On the consolidation of the judicial system of Bengal, in 1793, the administration of civil justice was vested in Zillah and city courts, having unlimited original jurisdiction; provincial courts of appeal, and the Sudder Dewanny Adawlut, the Company's highest Court of Appeal, consisting of the Governor-General and members of council.

5. The Zillah and city judges were authorized to refer to their registers suits for property not exceeding 200 rupees in value, but their decrees were not valid until countersigned by the judges.

6. The only native courts which found a place in this system, were those of certain functionaries, styled Referees (Ameens), Arbitrators (Salisan), and Moonsiffs, who were empowered to try, either immediately or by reference from the Zillah or city judges, suits for personal property not exceeding 50 rupees in value.

7. These establishments were perhaps originally adequate to the duties imposed upon them. However that may have been, it is certain that, in process of time, the increase of litigation consequent on the general improvement of the country, and the growing confidence in the judicial tribunals, rendered alterations in the system necessary; and as these causes continued to operate, various methods were from time to time resorted to, to check the growing evil of overburthened judicatories.
8. These remedial measures, as they affected the European agency, consisted in removing the primary cognizance of the more valuable suits from the Zillah and city to the superior courts; in augmenting the number of judges, and increasing the powers of single judges of those courts; extending the judicial functions of the registers, and appointing assistant judges to share the labor of the Zillah and city judges.

9. But the limited number of civil servants at the disposal of the Government, and the heavy expense attending this description of agency, presented serious obstacles to a general resort to it, whilst a liberal policy pointed to a more extensive employment of the natives of the country as a means both of increasing the efficiency of the courts and of improving the moral condition of the people.

10. The various changes in the civil branch of the judicial system from 1793, up to the present time, may be thus briefly stated.

11. Original suits, exceeding 5,000 rupees in value, were transferred from the Zillah to the provincial courts, though subsequently those between 5,000 rupees and 10,000 rupees were allowed to be instituted in the Zillah or provincial courts, at the election of the plaintiffs. Original suits, above 1,000 rupees, were also made transferrable from the Zillah to the provincial courts, at the discretion of the Sudder Dewanny Adawlut, which court was further authorized to call up from the provincial courts any original suits of the value of 43,103 sicca rupees, (the amount then limited for appeals to the King in Council,) which they deemed could be more conveniently and expeditiously tried by themselves. This last-mentioned power, we understand, the court never exercised.

12. Each judge of a provincial court, sitting singly, was empowered to perform a considerable part of the functions of the whole court.

13. In 1833, the provincial courts were abolished, and original suits above 5,000 rupees made cognizable in the Zillah courts.

14. The rule which made the Zillah judge's countersignature essential to the validity of his register's decrees was repealed; the register's powers were extended to suits of 500 rupees, and might be especially extended to suits of 5,000 or 10,000 rupees. The appointment of additional registers was provided for, and the services of the registers of the provincial courts were made available for the trial of original suits.

15. The office of register to the provincial courts was abolished in 1821, and that of register to the Zillah courts in 1831-2.

16. The office of assistant judge was instituted in 1803, for the purpose of relieving the Zillah judges of any portion of their work which circumstances prevented their performing themselves. It was abolished in 1814, but has since been revived with the designation of additional judge.

17. Commissions to natives to act as referees and arbitrators were recalled, and the original jurisdiction of the Moonsiffs was successively extended, first to suits for personal property to the amount of 64 rupees, provided the cause of action had arisen within one year (in 1817 extended to three years) before the institution of the suit; next to similar suits not exceeding 150 rupees; and lastly to all descriptions of suits (except for Lakhiraj lands) not exceeding 300 rupees in value, and subject only to the general rules of limitation for the institution of suits. At this point it now stands, but the Moonsiffs have not jurisdiction over British subjects, European, Foreigners, or Americans, excepting in suits relating to arrears or exactions of rent.

18. Sudder Ameens were first appointed in 1803, for the trial, by reference from the Zillah judge, of suits for real and personal property to the value of 200 rupees. Their powers were afterwards enlarged to suits of 150 rupees, and in special cases of 500 and 1,000 rupees. This last amount has, since 1831, become the general standard.

19. Finally, in 1831, the office of Principal Sudder Ameen was constituted for the trial, by reference from the Zillah judge, of suits to the value of 5,000 rupees. Their jurisdiction now embraces causes of an unlimited amount, and the few original suits which remained to the Zillah judges, have thus been virtually transferred to the native functionaries. In a recent report on the subject of special appeals, we have
recommended that all suits cognizable by the Principal Sudder Ameens and Sudder Ameens, should be instituted immediately in the courts of those officers.

20. It is unnecessary to detail the various changes which the system of appeals underwent during the period under view. It may be generally stated, that previous to the year 1831, a regular appeal lay to the Zillah judge from the decrees of all his subordinate courts, and a special appeal to the provincial court; and when such first appeals were tried by the register or Sudder Ameen, a special appeal lay to the Zillah judge. From the Zillah judge's decrees in original suits, an appeal lay to the provincial court, and a special appeal to the Sudder Dewanny Adawlut. From the decrees of the provincial courts in original suits, an appeal lay to the Sudder.

21. Under the present system the decrees of Moonsifs and Sudder Ameens are appealable to the Zillah judge, whose decisions thereon are conclusive; but the Sudder Court may authorize the reference of any such appeals to the Principal Sudder Ameen, from whose decisions thereon a special appeal lies to the Zillah judge*.

From the Principal Sudder Ameen's decrees in original suits not exceeding 5,000 rupees in amount, an appeal lies to the Zillah judge, and a special appeal to the Sudder Dewanny Adawlut. From the decrees of the Zillah judges in any original suits, which for special reasons they may have retained on their own files, and from the decrees of the Principal Sudder Ameens in original suits exceeding 5,000 rupees, a regular appeal lies to the Sudder Court.

22. The salary of the Zillah judges is 2,500 rupees per mensem, or 30,000 rupees per annum; and that of an additional judge, rupees 2,166 10 8 per mensem, or 26,000 rupees per annum. Principal Sudder Ameens of the first grade receive 600 rupees, those of the second grade 400 rupees per mensem; the Sudder Ameens have 250 rupees per mensem; Moonsifs of the first grade receive 150 rupees, those of the second grade 100 rupees per mensem.

23. The following statement shows the quantity of civil business depending before, and disposed of by the Zillah and subordinate courts in the lower provinces during the year 1840.

* In a report of the 4th December, 1841, on the subject of special appeals, we have recommended that from all first decisions in appeal from the decrees of Moonsifs and Sudder Ameens, a special appeal should lie to the Sudder Dewanny Adawlut.
Statement of the Civil Business of the Zillah and subordinate Courts in the Lower Provinces in 1840.

<table>
<thead>
<tr>
<th>Number of Judges</th>
<th>Description of Judges</th>
<th>Number of suits depending on the Act January 1840</th>
<th>Number admitted within the year</th>
<th>Re-admitted or received by transfer in the year</th>
<th>Total</th>
<th>Decreed on Trial</th>
<th>Dismissed in Default</th>
<th>Adjusted or withdrawn</th>
<th>Transferred to other Courts</th>
<th>Total disposed of</th>
<th>Depending on Jan. 1, 1841</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Original Suits</strong></td>
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<td></td>
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</tr>
<tr>
<td></td>
<td>Moonisfs</td>
<td>252</td>
<td>37,788</td>
<td>91,563</td>
<td>137,304</td>
<td>57,179</td>
<td>16,318</td>
<td>15,541</td>
<td>6,665</td>
<td>95,703</td>
<td>41,601</td>
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<td>Sudder Ameens</td>
<td>27</td>
<td>2,204</td>
<td>3,968</td>
<td>6,172</td>
<td>2,558</td>
<td>560</td>
<td>278</td>
<td>401</td>
<td>3,797</td>
<td>2,375</td>
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<td><strong>Original Suits and Appeals</strong></td>
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<tr>
<td></td>
<td>Principal Sudder Ameens</td>
<td>40</td>
<td>5,799</td>
<td>10,659</td>
<td>16,458</td>
<td>8,157</td>
<td>1,236</td>
<td>278</td>
<td>1,207</td>
<td>10,878</td>
<td>5,580</td>
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<tr>
<td></td>
<td>Zillah Judges</td>
<td>26</td>
<td>3,219</td>
<td>17,578</td>
<td>29,096</td>
<td>3,768</td>
<td>293</td>
<td>103</td>
<td>20,760</td>
<td>24,926</td>
<td>4,170</td>
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<td></td>
<td>Additional Judges</td>
<td>4</td>
<td>49,010</td>
<td>109,141</td>
<td>189,030</td>
<td>71,662</td>
<td>18,409</td>
<td>16,200</td>
<td>29,033</td>
<td>155,304</td>
<td>53,726</td>
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<td><strong>Summary and Miscellaneous Suits</strong></td>
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<tr>
<td></td>
<td>Moonisfs and Sudder Ameens</td>
<td></td>
<td>18,397</td>
<td></td>
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<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>Principal Sudder Ameens</td>
<td>6,292</td>
<td>6,292</td>
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<tr>
<td></td>
<td>Zillah Judges and Additional Judges</td>
<td></td>
<td>3,247</td>
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<td></td>
<td><strong>Total</strong></td>
<td></td>
<td>27,036</td>
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</table>
24. The system of criminal judicature established in 1793, has, like that for the administration of civil justice, undergone extensive alterations.

25. Originally, the Zillah and city magistrates had judicial cognizance of petty offences only, which they were competent to punish with fifteen days' imprisonment, or fine not exceeding 50 rupees, except in the cases of certain descriptions of landholders, when the fine might be increased to 200 rupees. For petty thefts they could award corporal punishment*, or one month's imprisonment. All other trials were disposed of by the Courts of Circuit and the Nizamut Adawlut‡.

26. The first enlargement of the magistrates' power extended to sentences of imprisonment not exceeding six months, with corporal punishment in cases of theft; and in other cases with fine not exceeding 200 rupees, commutable, if not paid, to a further imprisonment not exceeding six months.

Subsequently, they were empowered to pass sentence of two years' imprisonment with corporal punishment, on persons convicted before them of aggravated thefts, simple burglaries, or receiving stolen property; to which cases of conviction of two or more thefts were afterwards added; and, lastly, they were empowered to sentence to one year's imprisonment, and 200 rupees, commutable, if not paid, to a further imprisonment of one year, persons convicted of affrays unattended with certain circumstances of aggravation.

By some recent acts, certain specific offences have also been made cognizable by the magistrates, to some of which punishments are affixed exceeding the usual jurisdiction of these officers.

27. According to the original plan, the Zillah judges were likewise magistrates, but in 1810, the separation of the two offices was legalized, and, at the same time, the offices of assistant magistrate and joint magistrate, were constituted with the same judicial powers as belonged to the magistrate; but the former office has been discontinued. The offices of magistrate as a joint magistrate, are now held by collectors and deputy collectors, or the former are held as distinct appointments in the lower provinces.

28. To afford relief to the magistrate, they were authorized to refer for trial to their assistants, such petty offences as were originally within their own judicial cognizance; subsequently, the assistants were empowered to adjudge both fine and imprisonment, commuting the fine, if not paid, to an additional imprisonment of fifteen days, and in cases of theft, both corporal punishment and imprisonment. And, eventually, the government were authorized to invest an assistant with special power to pass sentence of imprisonment not exceeding six months, with a fine of 200 rupees, commutable to a further imprisonment of six months, and in cases of theft, to six months' imprisonment and corporal punishment. At the same time the magistrates were authorized to refer to the Hindoo and Mahommedan law officers, and Sudder Ameens of the Zillah courts, trials for offences not requiring a severer punishment than fifteen days' imprisonment, and a fine of 50 rupees, commutable, if not paid, to a further imprisonment of fifteen days; and in cases of theft, one month's imprisonment and corporal punishment. This rule was made applicable also to the Principal Sudder Ameens.

29. The judges of the provincial courts were also judges of the courts of circuit. The jurisdiction of these courts was eventually extended, in ordinary cases, to sentences of imprisonment for seven years, with corporal punishment for certain descriptions of offences. In cases of robbery by open violence, unattended with certain circumstances of aggravation, and in aggravated cases of theft, burglary, and receiving

* Corporal punishment was abolished in 1834, and the undermentioned additional periods of imprisonment substituted.

† In sentences passed by the Nizamut Adawlut, two years; magistrate and assistant magistrate, one year; Assistant Principal Sudder Ameens and Sudder Ameens, one month. This change is to be attended to in the perusal of what follows.

‡ See the Post Office Act, No. XVII. of 1837, and the Act respecting the exportation of warlike stores, &c., No. XVIII. of 1841.
stolen property, to fourteen years' imprisonment and corporal punishment; in cases of wounding with intent to murder, to fourteen years' imprisonment. These courts had also the power of imposing fines, fixing a specific period of imprisonment in default of payment.

30. To increase the efficiency of the Courts of Circuit, for the dispatch of current and appeal business, single judges of the court were invested with similar powers to those conferred upon them in their circuit capacity.

31. All trials in which the judge of the circuit differed from his Mahomedan law officer, regarding the guilt or innocence of a prisoner, and all trials in which the offence proved required a severer punishment than the Circuit Court was competent to award, were referred for the determination of the Nizamut Adawlut.

32. In 1829, the Courts of Circuit were abolished, and their duties were transferred to commissioners of circuit, who were likewise commissioners of revenue. But the plan was found to impose too onerous duties on the commissioners; and since 1832, the Zillah judges in the capacity of sessions judges, have with few exceptions, discharged the functions of the former Courts of Circuit.

33. Formerly, the course of appeal in criminal cases was from the assistants, Principal Sudder Ameens, Sudder Ameens and law officers, to the magistrate, or joint magistrate, and from the orders of the latter officers, to the Courts of Circuit or Session, with a further appeal to the Nizamut Adawlut.

34. The system of criminal appeals has been lately revised, and the following are the rules now in force. From the sentences and orders of assistants, Principal Sudder Ameens, Sudder Ameens and law officers, one appeal lies to the magistrate, or joint magistrate. From those of magistrates and joint magistrates, and assistants, vested with special powers (except in certain minor cases), one appeal lies to the sessions judges; and from sentences or orders passed in criminal trials by the sessions judges, one appeal lies to the Nizamut Adawlut. The decisions of the appellate authorities on such appeals are final, except that a power is vested in the Nizamut Adawlut to call for the records of any criminal trials of any subordinate court, and pass orders thereon. But no superior court has power to enhance any punishment awarded, or to punish any person acquitted by the courts below.

35. The salary of a magistrate and collector in the north-west provinces, is, we believe, 2,250 rupees per mensem, or 27,000, per annum; in the lower provinces, 2,000 rupees per mensem, or 24,000 per annum. That of a magistrate is 1,125 rupees per mensem, or 13,500 per annum. Deputy collectors and joint magistrates of the first grade, receive 1,000 rupees per mensem, or 12,000 per annum. Those of the second grade 700 rupees per mensem, or 8,400 per annum. Assistants to collectors and magistrates, and to deputy collectors and joint magistrates, receive 400 rupees per mensem, or 4,800 rupees per annum. The salaries of Hindoo, and Mahommedan law officers, not being Sudder Ameens, are 60 rupees and 100 rupees per mensem, respectively.

36. The following statement* shows the quantity of criminal business depending before, and disposed of by, the sessions and subordinate courts in the lower provinces, during the year 1840.

37. The courts of Sudder Dewanny, and Nizamut Adawlut, at Fort William, as constituted in 1793, consisted of the Governor-General and the members of the Supreme Council; but to obviate the delay of justice which arose under the arrangement, and to separate more distinctly the judicial functions of the Government from its legislature and executive authority, each court was made to consist of three judges, styled respectively chief, second, and third judge, the chief judge being one of the civil members of Council, and the two puisne judges selected from among the civil servants, not members of Council. Two judges were necessary to hold a court, and, on a difference of opinion arising, the voices of the majority determined the question. The special sittings of the court were summoned by the register under the direction of the chief judge, the

* See Table A, page 10.
senior puisne judge exercising the power of the chief judge, during the non-attendance of the latter.

38. The duties of chief judge, however, were found incompatible with those of a member of council, and to complete the separation of the judicial from the executive authority, it was enacted that the chief judge should be selected in the same manner as the puisne judges. But this law was repealed two years afterwards, the office of chief judge was replaced on its former footing, and provision was made for the appointment of three puisne judges.

39. The business of the courts being greatly on the increase, the Government was empowered to appoint as many puisne judges as might be found necessary for its dispatch, and to prevent the interruptions in the proceedings of the courts from the occasional absence or indisposition of the judges, and further to increase the efficiency of the courts, any judge sitting singly was empowered to hold a court, and generally to pass orders or judgments, excepting for the modification or reversal of the orders or judgments of one or more of the judges of the court, or of those of an inferior court.

40. It was provided also that in cases of a difference of opinion between four judges present, and the number of voices being equal, the chief judge, concurring with any one of the other judges, should possess a casting vote.

41. The distinctive appellations of chief, second, third, fourth, &c., judges of the Sudder Courts, having in some instances been found productive of inconvenience, they were abolished in 1829.

42. In the changes in the judicial system which took place in 1831, separate courts of Sudder Dewanny and Nizamut Adawlut, were established at Allahabad for the western provinces; and at the same time, in consequence of the accumulation of appeals, civil and criminal, before the Sudder Courts at Calcutta, the powers of single judges were further increased, the rules on which subject were also made applicable to the western court. And it was provided, that when in any case the opinions of the judges of one Court of Sudder Dewanny of Nizamut Adawlut were balanced, the question should be referred to a judge of the other Court of Sudder Dewanny or Nizamut Adawlut.

43. By a recent enactment the Sudder Courts have been empowered to transfer to their registers the duty of preparing appealed cases for trial, and of executing the decrees and orders of those courts.

44. From 1811 to 1829 the Sudder Court of Calcutta was composed of a chief judge, (not being a member of the Supreme Council,) whose salary was 5,000 sicca rupees per mensem, and puisne judges drawing sicca rupees 4,583 5. 4. But the powers of the chief judge as described above, differed in nothing from those of his colleagues, excepting that special meetings of the court were summoned, when necessary, by his direction; and in cases of equality of voices, when four judges were present, the chief judge concurring with one of the other judges, possessed a casting vote.

45. The Presidency Sudder Court now consists of four permanent and three temporary judges, that of Allahabad of three permanent judges. We believe, however, that this arrangement is at present in abeyance by order of the Honourable Court of Directors. The salary of the permanent judges is 4,350 Company’s rupees per mensem; the temporary judges received 3,500 rupees.

46. The annexed statements show the quantity of civil and criminal business depending before and disposed of by the Courts of Sudder Dewanny and Nizamut Adawlut at Calcutta,—the former in 1841, the latter in 1840*.

47. We should observe that the preceding narrative does not embrace those parts of the territories of the Bengal Presidency in which the regulations are not in force, and in which are established special systems of individual administration; but the statements of business in the Calcutta Sudder include cases received from the Special Courts subject to its jurisdiction.

* See Table B., page 11.
## Statement of the Criminal Business of the Zilah and subordinate Courts in the Lower Provinces, for 1840

<table>
<thead>
<tr>
<th>No. of Officers</th>
<th>Description of Officers</th>
<th>Number of prisoners under examination on Jan. 1, 1840</th>
<th>Number apprehended in 1840</th>
<th>Total</th>
<th>Convicted</th>
<th>Acquitted</th>
<th>Committed to the Sessions</th>
<th>Died, escaped or transferred</th>
<th>Total of prisoners disposed of</th>
<th>Prisoners remaining on Jan. 1, 1841</th>
<th>Remarks</th>
</tr>
</thead>
</table>
| 27             | Magistrates                              | 2,192                                                 | 64,192 a.                  | 66,354| 40,118    | 19,547    | 3,597                     | 643                           | 63,905 b.                        | 2,449                            | a. Heinous cases ... 16,739  
||                |                                          |                                                       |                            |       |           |           |                           |                               |                                  |                     | Petty ... 47,453               |
| 31             | Joint Magistrates                         |                                                       |                            |       |           |           |                           |                               |                                  |                                  | 64,192                           |
| 40             | Assistant to Do.                         |                                                       |                            |       |           |           |                           |                               |                                  |                                  |                     |
| 27             | Principal Sudder Ameens                   |                                                       |                            |       |           |           |                           |                               |                                  |                                  |                     |
| 43             | Law Officers, not being Sudder Ameens     |                                                       |                            |       |           |           |                           |                               |                                  |                                  |                     |

### Cases depending, Jan. 1, 1840.

- **Cases admitted in 1840.**
- **Total.**
- **Total cases disposed of, Jan. 1, 1841.**
- **Cases remaining, Jan. 1, 1841.**

1. **Number of prisoners under trial on Jan. 1, 1840.**
2. **Committed or referred back by Nizamut Adawlut in 1840.**
3. **Total.**
4. **Convicted.**
5. **Acquitted.**
6. **Committed to the Sessions.**
7. **Died, escaped or transferred.**
8. **Total prisoners disposed of.**
9. **Prisoners remaining under trial, Jan. 1, 1841.**

### Cases depending, Jan. 1, 1841.

- **Cases admitted in 1840.**
- **Total.**
- **Total cases disposed of.**
- **Cases remaining in Jan., 1840.**

- **Cases depending, Jan. 1, 1841.**
- **Cases admitted in 1840.**
- **Total.**
- **Total cases disposed of.**
- **Cases remaining in Jan., 1840.**

- **Number of prisoners under trial on Jan. 1, 1840.**
- **Committed or referred back by Nizamut Adawlut in 1840.**
- **Total.**
- **Convicted.**
- **Acquitted.**
- **Committed to the Sessions.**
- **Died, escaped or transferred.**
- **Total prisoners disposed of.**
- **Prisoners remaining under trial, Jan. 1, 1841.**

During this year 1361 persons were required by the magistrates to find security for their good behaviour; and the cases of 621 security prisoners were reviewed by the Session Judge.

* These appeals include second appeals which are now cut off by Act XXXI of 1841.
B.—Statement of Civil and Criminal Business of the Courts of Sudder Dewanny and Nizamut Adawlut of Calcutta, for 1841 and 1840, respectively.

**Civil Business, 1841.**

<table>
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<tr>
<th>Type of Appeal</th>
<th>Depending 1st January, 1840</th>
<th>Admitted in 1841</th>
<th>Total</th>
<th>Decided on Trial</th>
<th>Dismissed on default</th>
<th>Adjusted or withdrawn</th>
<th>Transferred to other Courts</th>
<th>Total disposed of</th>
<th>Depending on 1st January, 1840</th>
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<tr>
<td>Regular appeals</td>
<td>446</td>
<td>194</td>
<td>640</td>
<td>220</td>
<td>38</td>
<td>12</td>
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<td>270</td>
<td>370</td>
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<tr>
<td>Special appeals</td>
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<td>134</td>
<td>353</td>
<td>158</td>
<td>6</td>
<td>2</td>
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<td>166</td>
<td>187</td>
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<tr>
<td>Miscellaneous and summary appeals</td>
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<td>328</td>
<td>993</td>
<td>378</td>
<td>44</td>
<td>14</td>
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<td>436</td>
<td>557</td>
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<tr>
<td>Miscellaneous petitions and procedure</td>
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**Criminal Business, 1840.**

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>No. of prisoners under trial, 1st January, 1840</th>
<th>Prisoners referred in 1840</th>
<th>Total under trial</th>
<th>Convicted</th>
<th>Acquitted or Commitments Cancelled</th>
<th>Remanded</th>
<th>Died, or Escaped</th>
<th>Total prisoners disposed of</th>
<th>Total prisoners remaining 1st January, 1841</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal trials</td>
<td>146</td>
<td>598</td>
<td>744</td>
<td>365</td>
<td>228</td>
<td>59</td>
<td>3</td>
<td>655</td>
<td>89</td>
</tr>
<tr>
<td>Cases pending 1st January, 1840</td>
<td>Case pending in 1840</td>
<td>Cases received in 1840</td>
<td>Total cases</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appeals from sentences of Commissioners of Circuit and Session Judges, on trials called for</td>
<td>20</td>
<td>95</td>
<td>115</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Special appeals from orders of Commissioners of Circuit and Session Judges, on appeals from Magistrates and Joint Magistrates</td>
<td>110</td>
<td>387</td>
<td>497</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* These special appeals are now cut off by Act No. XXXI of 1841.
48. The Madras judicial system, instituted in 1802, was formed upon the model of that established in 1793, for Bengal. It consisted of Zillah Courts for the trial of civil suits in the first instance, without any limitation as to the amount or value of the subject of litigation. Provincial Courts of appeal for hearing appeals from the Zillah Courts.

And a Sudder Adawlut at the presidency, for hearing appeals from the Provincial Courts.

49. The judges of Zillah Courts were authorized to refer to their registers, suits to an amount not exceeding 200 rupees, with a discretionary power to revise their decisions.

And to grant commissions to natives to hear and decide suits for a value not exceeding 80 rupees, viz.: suits preferred to them directly against under renters or ryots; suits against other persons referred to them by the judge, and suits submitted to them as arbitrators.

50. In 1809, the original jurisdiction of the Zillah Courts was limited to suits not exceeding 5,000 rupees.

And suits exceeding that amount were transferred to the jurisdiction of the Provincial Courts.

In the same year the occasional appointment of assistant judges, to aid the judges of Zillah Courts in disposing of arrears, was authorized.

And the jurisdiction of registers was extended to 500 rupees.

The original jurisdiction of the native commissioners or Moonsiffs was also extended to embrace all suits for money or personal property within the former limitation of 80 rupees.

And authority was given for the appointment of head native commissioners or Sudder Ameens, for the trial of suits referred to them by the judges, not exceeding 100 rupees.

The same jurisdiction was conferred upon the law officers of the Zillah Courts ex officio.

51. In 1816, the office of Moonsiff was put on an improved footing, following the arrangement made in Bengal in 1814. Every Zillah was divided into districts, comprising one or more whole Tahsildarees or police jurisdictions, to each of which a “district Moonsiff” was appointed, with power to determine suits to the amount of 200 rupees.

In the same year a regulation was passed, declaring the head inhabitants of villages to be Moonsiffs in their respective villages, with power to decide suits to the value of 10 rupees, and to settle by arbitration suits to the value of 100 rupees.

And the old institution of Punchayets was revived for the adjudication of suits without limitation of amount or value, upon the agreement of both parties to that mode of trial. Village Punchayets to be assembled by the village Moonsiffs, and district Punchayets by the district Moonsiffs, the jurisdiction of the former being restricted to suits for money or other personal property; that of the latter being unrestricted.

The appointment of Sudder Ameens was restricted to the law officers of the Zillah Courts, the jurisdiction being extended to 300 rupees.

52. In 1821, the jurisdiction of registers of Zillah Courts was extended to 1,000 rupees; of Sudder Ameens, to 750 rupees, and of district Moonsiffs to 500 rupees.

53. In 1833 the jurisdiction of these officers was further extended to 3,000 rupees, 2,000 rupees, and 1,000 rupees, respectively, and these are the present limitations.

54. There are nineteen districts in the Madras Presidency. Formerly, each district constituted a “Zillah,” and had its own Zillah Court. But in 1827, a considerable change was made; first, by the establishment of auxiliary courts under assistant judges, with the full power and authority of Zillah Courts, and, afterwards, of courts with nearly similar powers under native judges, now called Principal Sudder Ameens. In eight of the nineteen districts the Zillah Courts have been abolished. In seven of these districts they have been succeeded by courts under assistant judges; and in the remaining one, by a court under a principal Sudder Ameen. In one Zillah, Malabar, besides the Zillah Court
are two auxiliary courts under assistant judges. In another Zillah, Canara, there are also two auxiliary courts under provincial Sudder Ameens.

55. The Provincial Courts are each composed of three judges, members of the civil service. Until 1831, two judges were required to constitute a court. In that year a regulation was passed, authorizing the judges to sit singly, subject to the restriction of not reversing any order or decision passed by another judge of the court, or by any subordinate court.

56. At first, the Provincial Courts had no original jurisdiction, except in cases specially transmitted to them by the Sudder Adawlut. Since 1809, they have had original jurisdiction in all cases above 5,000 rupees.

57. The Sudder Adawlut, or chief court of appeal, as originally constituted, consisted, as in Bengal, of the Governor, and the Members of Council. By Regulation IV. of 1806, it was enacted, that the Governor should be the chief judge, and that the second and third judges should be appointed from among the covenanted civil servants not being members of the Council. By Regulation I. of 1807, it was enacted, that the chief judge should also be selected from among the covenanted civil servants not being Members of Council. By Regulation III. of the same year, it was enacted, that the courts should in future consist of a chief judge being a Member of Council, but not the governor, nor the commander-in-chief, and of three puisne judges, to be selected from among the Company's covenanted servants; and this constitution has continued ever since except that the Governor in Council is empowered by law to appoint additional judges at his discretion.

58. In 1816, the Sudder Adawlut was empowered to call up from the principal courts, original suits amounting to 45,000 rupees. This power, it is believed, has never been exercised.

59. Until 1831, two judges were required to constitute a court. By Regulation VIII. of that year, the judges were empowered to sit singly, subject to the restriction of not reversing orders and decisions passed by another judge of the court, or by subordinate courts. The puisne judges are designated as first, second, and third. When sitting together, the senior presides, but he has not a casting voice. If three judges are present, the majority decide; if two, and they differ, they are to wait for the attendance of the third. The chief judge never sits, except when one of the puisne judges is absent and there is a difference of opinion between the two who are present, or when there is only one judge present, and a case arises in which he thinks that the decision of the lower court should be reversed, for which the concurrence of another judge is necessary.

60. Below are presented at one view, the several civil judicatures at present existing, with a specification of their jurisdiction, original and appellate.
<table>
<thead>
<tr>
<th>COURT.</th>
<th>ORIGINAL JURISDICTION.</th>
<th>APPELLATE JURISDICTION.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sudder Adawlut.</strong></td>
<td>Authorised at discretion to call up original suits filed in the provincial courts, amounting to 45,000 rupees and upwards.</td>
<td>Regular appeals from decrees of the provincial courts in original suits.—Special, from decrees of the provincial courts on regular appeals from decrees of zillah judges, and from decrees of assistant judges and principal sudder ameens in suits above 1000 rupees.</td>
</tr>
<tr>
<td>Provincial Courts.</td>
<td>Original suits above 5,000 rupees.</td>
<td>Regular, from decrees of zillah judges in original suits, and from decrees of assistant judges and principal sudder ameens, in the original suits above 1,000 rupees.—Special, from decrees of zillah judges, on regular appeals from assistant judges, principal sudder ameens, registers, and sudder ameens.</td>
</tr>
<tr>
<td>Zillah Courts.</td>
<td>Original suits to the amount of 5,000 rupees.</td>
<td>Regular, from decrees of assistant judges, and principal sudder ameens, in original suits not exceeding 1,000 rupees, and from decrees of registers, sudder ameens, and district moonsiffs.—Special, from decrees of assistant judges, principal sudder ameens, registers and sudder ameens, on regular appeals from district moonsiffs.</td>
</tr>
<tr>
<td>Auxiliary Courts under Assistant Judges.</td>
<td>Original suits to the amount of 5,000 rupees.</td>
<td>Regular, from decrees of sudder ameens and district moonsiffs.—Special, from decrees of sudder ameens, on regular appeals from district moonsiffs.</td>
</tr>
<tr>
<td>Auxiliary Courts under Principal Sudder Ameens.</td>
<td>Original suits to the amount of 5,000 rupees.</td>
<td>Regular, from decrees of district moonsiff.</td>
</tr>
<tr>
<td>Attached to Zillah Courts.</td>
<td>Original suits referred by the judge to the amount of 3,000 rupees.</td>
<td>Regular appeals from decrees of sudder ameens and district moonsiffs, referred by the judge.</td>
</tr>
<tr>
<td>Attached to Zillah and Auxiliary Courts.</td>
<td>Original suits referred by the judge to the amount of 25,000 rupees.</td>
<td>Regular appeals from district moonsiffs, referred by the judge.</td>
</tr>
<tr>
<td>District moonsiffs. Salary, Rupees.</td>
<td>Original suits to the amount of 1,000 rupees, preferred directly, or referred by the judge.</td>
<td></td>
</tr>
</tbody>
</table>
15

<table>
<thead>
<tr>
<th>COURT.</th>
<th>ORIGINAL JURISDICTION.</th>
<th>APPELLATE JURISDICTION.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Village moonsiffs.</td>
<td>Original suits to the amount of 10 rupees, preferred directly as arbitrator at the request of both parties, to the amount of 100 rupees. Jurisdiction confined to suits for money, or other personal property.</td>
<td></td>
</tr>
<tr>
<td>:District punchayets assembled by district moonsiffs.</td>
<td>Suits for real and personal property, without any limitation of amount or value, both parties consenting.</td>
<td></td>
</tr>
<tr>
<td>Village punchayets assembled by village moonsiffs.</td>
<td>Suits for money or personal property, without limitation of amount or value, both parties consenting.</td>
<td></td>
</tr>
</tbody>
</table>

61. As in Bengal the office of magistrate was originally vested in the Zillah judges, who were also charged with the superintendence of the police, the jurisdiction of the magistrate was confined to petty offences and petty thefts, as it was in Bengal prior to 1807; their power of punishment being limited to imprisonment for fifteen days, or a fine of 50 rupees, (200 rupees in the cases of Jemindars, &c,) for the former, and imprisonment for one month, or thirty strokes with a rattan, for the latter.

62. In 1816, a great change was made by transferring the office of magistrate, and the superintendence of the police to the collectors of revenue, with the same jurisdiction and powers of punishment as had been previously vested in the Zillah judges. The Zillah judges were still, however, charged with criminal jurisdiction, the cognizance of cases punishable by six months' imprisonment, with thirty strokes with a rattan, or a fine of 200 rupees, having been transferred to them from the Courts of Circuit; and to them was left the duty of committing to the Court of Circuit persons charged with graver offences brought before them by the magistrate or by the police.

63. In 1822, the criminal judges were empowered, in special cases, to pass sentence of imprisonment for two years, with corporal punishment not exceeding thirty strokes with a rattan, since commuted to 150 lashes with cat-o'-nine-tails, and this is the maximum of their power at present.

64. Assistant judges of auxiliary courts are joint criminal judges of their Zillahs, and have the same power and authority as the criminal judge. So, also, have principal Sudder Ameens, except in cases in which the persons charged with offences are Europeans or Americans.

65. Sudder Ameens of Zillah and auxiliary courts are authorized to exercise jurisdiction in criminal cases referred to them by the criminal judge, joint criminal judge, or principal Sudder Ameen presiding in the court, with the same power of punishment as the presiding officer, but their sentences are liable to revision by him.

66. The jurisdiction of the magistrates remains in general as it was settled in 1816: but, as in Bengal, they have extended powers under particular acts. Sub-collectors are joint magistrates, and assistant collectors are assistant magistrates, with the powers of the magistrate within the local suits of their charges, or in cases referred to them. The Courts of Circuit were originally constituted as in Bengal, and still exist exercising the same jurisdiction and powers as were exercised by those in Bengal until 1829.

67. The judges of the Sudder Adawlut are also judges of the Foujdarry Adawlut. The jurisdiction of the court corresponds with that of the Nizamut Adawlut of Bengal.
68. We subjoin statements of the administration of civil and criminal justice by the several judicatories in the Presidency of Madras, from 1st July, 1839, to 30th June, 1840, the latest period of twelve months of which we are able to give an account. (See page 17.)

69. We have recommended the abolition of the Provincial Courts, and have proposed to establish eighteen superior Zillah Courts to take up the whole of the appellate jurisdiction heretofore exercised by them, (except in cases liable to the jurisdiction of the Privy Council, reserved for the Sudder Adawlut,) together with the appellate jurisdiction of the Zillah and auxiliary courts as at present constituted, and to recognize a set of subordinate but independent Zillah Courts by continuing those already established in some districts under assistant judges and principal Sudder Ameens, and by establishing others of the same class, in all the rest, to exercise original jurisdiction in all cases now cognizable, originally, as well by the provincial courts as by the present Zillah and auxiliary courts, that is to say, in all cases beyond the jurisdiction of district moonsifs, and in all cases within the jurisdiction of district moonsifs in which the parties suing prefer to have their causes tried and decided by them; but not to exercise appellate jurisdiction except in cases referred to them by the superior Zillah Court or under special orders.

70. We have also proposed that the office of register shall be abolished.

71. We have recommended that the subordinate Zillah Courts shall be conducted partly by assistant judges and partly by Principal Sudder Ameens, or in other words partly by covenanted civil servants and partly by natives and other persons not covenanted, at the discretion of the Local Governments; in making this recommendation, we stated that we looked to dispensing eventually with assistant judges altogether, and placing all the judges in courts of this class on the footing of Principal Sudder Ameens, but we have thought it expedient that the change should be brought about gradually.

72. The subject has been referred to the Government of Madras, with an intimation from the Government of India, that it is considered desirable to get rid of the class of assistant judges altogether, and to introduce the principle of making over to uncovenanted judges (native or European) the duties of original jurisdiction, unless in cases reserved on very special grounds, and of confining the European covenanted judges to the decision of appeals and to the functions of general control. It is not expected that it will be possible to do this all at once, but the Governor-General in Council has expressed a hope that it will not be necessary, in carrying the proposed reforms with effect, to add to the present number of covenanted assistant judges, which is above shown to be nine.

73. In the department of criminal justice we have recommended that the jurisdiction now exercised by the Courts of Circuit should be vested in the judges of the Superior Zillah Courts, as session judges, and that the present jurisdiction of criminal judges shall be exercised by the judges sitting in the subordinate Zillah Courts, who shall also commit to the superior court persons charged with crimes and offences beyond their own jurisdiction, as the criminal judges now commit to the Courts of Circuit, leaving the existing system untouched in other respects, but we believe that further changes have been proposed by the Government of India.
Statement referred to in paragraph 68.

Statement showing the Civil Business done by the Courts in the Presidency of Madras, and remaining 1839-40.

<table>
<thead>
<tr>
<th>Statistic</th>
<th>Original Suits</th>
<th>Appeals</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Disposed of</td>
<td>Instituted</td>
</tr>
<tr>
<td>Sudder Adawlut</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provincial Courts of Appeal:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Centre</td>
<td>9</td>
<td>12</td>
</tr>
<tr>
<td>Northern</td>
<td>18</td>
<td>11</td>
</tr>
<tr>
<td>Southern</td>
<td>10</td>
<td>7</td>
</tr>
<tr>
<td>Western</td>
<td>4</td>
<td>-1</td>
</tr>
<tr>
<td>Total</td>
<td>41</td>
<td>34</td>
</tr>
<tr>
<td>Superior Zillah Judicatories, viz.:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judges and Assistant Judges</td>
<td>1,167</td>
<td>a 9,288</td>
</tr>
<tr>
<td>*Assistant Judges attached to Zillah Courts</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Principal Sudder Ameens</td>
<td>135</td>
<td>a 643</td>
</tr>
<tr>
<td>Registers</td>
<td>402</td>
<td>a..</td>
</tr>
<tr>
<td>Sudder Ameens</td>
<td>7,445</td>
<td>a..</td>
</tr>
<tr>
<td>Total Superior Zillah Judicatories</td>
<td>9,151</td>
<td>9,931</td>
</tr>
<tr>
<td>Inferior Zillah Judicatories:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Moonsiffs—District</td>
<td>52,395</td>
<td>55,336</td>
</tr>
<tr>
<td>Village</td>
<td>4,035</td>
<td>8,926</td>
</tr>
<tr>
<td>Total</td>
<td>56,430</td>
<td>59,262</td>
</tr>
<tr>
<td>Punchayets—District</td>
<td>11</td>
<td>18</td>
</tr>
<tr>
<td>Village</td>
<td>14</td>
<td>6</td>
</tr>
<tr>
<td>Total</td>
<td>30</td>
<td>22</td>
</tr>
<tr>
<td>Total Inferior Zillah Judicatories</td>
<td>56,460</td>
<td>59,284</td>
</tr>
<tr>
<td>Grand Total</td>
<td>63,652</td>
<td>69,349</td>
</tr>
</tbody>
</table>

* No suits are instituted before the registers and Sudder Ameens: what they receive are referred to them by the judge, assistant judge, or Principal Sudder Ameen of the court before whom all are instituted.

* Under Reg. VII. of 1809.
<table>
<thead>
<tr>
<th>Country</th>
<th>Police</th>
<th>District</th>
<th>Magistrate</th>
<th>Criminal Courts</th>
<th>Circuit Courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Village</td>
<td>4,423</td>
<td>72</td>
<td>7,752</td>
<td>9,975</td>
<td>9,972</td>
</tr>
<tr>
<td>Total</td>
<td>5,700</td>
<td>106,660</td>
<td>108,938</td>
<td>118,288</td>
<td>118,288</td>
</tr>
<tr>
<td>Omani</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>5,700</td>
<td>106,660</td>
<td>108,938</td>
<td>118,288</td>
<td>118,288</td>
</tr>
</tbody>
</table>

Abstract of the Administration of Criminal Justice by the Judicial Functionaries in the Madras Presidency, 1839—40.
74. The Presidency of Bombay comprises (12) twelve districts, of which six are on the coast (Goozerat and the Kenkuns), and six above the Ghats (the Deckhan Khandeish and the Southern Mahratta country).

75. Under the system which obtained until 1827, each district had a judge and a collector, except in the territories above the Ghat, where, after the Deckhan was formed into Zillahs in that year, one judge presided over two collectorates.

76. The European judicial functionaries in each Zillah were under the denomination of judge, register, and assistant register, vested with the trial of all original suits except those of very small amount. The judge tried all original suits beyond the cognizance of the register, and all appeals. The register's jurisdiction was at first limited to suits of 200 rupees, but his decrees were final up to 25 rupees. His powers were afterwards raised to 500 rupees, and assistant registers were appointed for trial of the suits under 200 rupees, which the register used to decide.

77. Special powers were then conferred on registers who had served six years on the judicial line, enabling them to try original suits, not exceeding 1000 rupees, and to hear appeals from the assistant register, Sudder Ameens, and Moonsiffs, his decisions thereon being final, unless under special appeal. Appeals from his decisions in original suits above 500 rupees, went direct to the Sudder Adawlut.

78. In A.D. 1827, the jurisdiction of the registers and assistant registers (from that time termed senior and junior assistant judges), was greatly enhanced; but in 1830, all original jurisdiction was entirely taken away from the European functionaries of every grade, except as to suits in which Government was a defendant, or any European or American, or any near relative or dependant of a native judicial servant of any grade, is a party. And by Act 11 of 1836, Principal Sudder Ameens and Ameens were empowered to try suits in which Europeans or Americans are parties. The suits still reserved from cognizance of natives are tried by the assistant judge, from whose decision an appeal lies to the judge. If he confirm the decree, his decision is final, otherwise, the case may be further appealed to the Sudder Adawlut.

79. In the Deckhan, where natives of rank (Sirdars) are exempted from the jurisdiction of the ordinary courts, the judge of Poonah, under the title of Agent for Sirdars in the Deckhan, and the Judge of Dharwar, as Agent for Sirdars in the Southern Mahratta country, try all cases in which any native of rank, within their respective jurisdictions, is defendant. These Sirdars are divided into three classes, and an appeal lies to the Governor in Council, and not to the Sudder Adawlut, in all cases wherein a Sirdar of the first two classes is a party.

From decisions in Sirdar cases by the assistant agents, an appeal lies to the agent, in the first instance, and from his decision a special appeal either to the Governor in Council, or to the Sudder Adawlut, as the case may be.

80. The whole number of original suits decided by sixteen European functionaries in 1838 was eighty-four, of which sixty-five were Sirdar cases; the proportion of the whole number (eighty-four) to that decided by natives is only 135 to 1000.

The civil functionaries of the Zillah judge are thus, with a trifling exception, confined to deciding ordinary and special appeals from his assistants and from the native tribunals. The assistant judges try appeals from the native functionaries, decisions, as referred to them by the judge, or filed by themselves, if at a detached station.

81. The salary of every Zillah judge is 28,000 rupees, except at Surat, where it is 30,000 rupees. That of an assistant judge at a detached station is 14,400 rupees; at the Sudder station, 8,400 rupees.

82. By the code of 1827, civil jurisdiction over a certain class of suits, those relating to "land," was given to the collectors of revenue, their assistants and head native officers; and by a very wide construction put upon this part of the code, the entire cognizance of every suit having the most remote connexion with "land," was taken away from the Zillah Courts, and transferred to the collectors. A limit has, however, been put to this very extensive jurisdiction by Act 16 of 1838, and the revenue
Same subject continued.

Jurisdiction of native judges. Regulation 16 of 1802, and 11 of 1821. Increase in 1827 to 5,000 rupees. Reduced in 1831.

Have no criminal jurisdiction. Court of appeal. Had original jurisdiction. Its abolition.

Having a direct appeal to the Sudder Adawlut. Sudder Adawlut, how first constituted. Reorganized in 1820.

And again in 1840.

... officers are now confined to—First, giving possession of lands or the like, to any party forcibly dispossessed of the same, if a plaint be preferred within six months of the date of dispossession; and, Secondly, cognizance of all disputes regarding rent of the current or former years, between ryots and superior holder, which the parties may submit to arbitration of the revenue officers; Thirdly, of all questions regarding use of wells, tanks, and water-courses, or of roads; and Fourthly, of all disputes respecting boundaries, such being by the Act still reserved for the collectors’ courts.

83. The civil jurisdiction conferred on the native servants was exceedingly limited until 1827, Moonsiffs being only empowered to try suits for 50 rupees; Sudder Ameens for 100 rupees. In that year every native functionary, then termed commissioner, was empowered to decide causes up to 500 rupees, and might have his powers extended to 5,000 rupees. In 1830, original jurisdiction to an unlimited extent was conferred on every native functionary, that of the European officer being strictly confined to a few special cases already mentioned, (paragraph 78).

84. In the following year, however, (1831, this jurisdiction was very much circumscribed, the Principal Sudder Ameens alone being invested with unlimited original jurisdiction, the power of hearing appeals from decisions of other native functionaries up to 100 rupees being also conferred upon them. The jurisdiction of Sudder Ameens was confined to 10,000 rupees, that of Moonsiffs reduced to 5,000 rupees, the limit fixed by the code of 1827.

85. The native judicial functionaries of the Bombay Presidency have no criminal jurisdiction whatever.

86. From the Zillah Courts, constituted as above, an appeal formerly lay to the Court of Appeal in Gozerat, and from it to the Sudder Adawlut at the Presidency. The Court of Appeal (while in existence) had also jurisdiction for the trial of any original suits referred to it by the Sudder Adawlut, but we have no reason to believe that it was ever called upon to exercise it.

In 1820 it was found practicable to abolish the first-named court, as an intermediate court of appeal; and though it was judged expedient to reorganize a court of appeal for Gozerat in 1828, it was again, and finally, abolished in 1830.

87. In the Presidency of Bombay, therefore, for the last twenty-two years, with exception of a brief interval, the appeal has been immediate from the Zillah Courts to the court of highest resort in civil cases.

88. The system which at one time prevailed at the other presidencies, of vesting in the Governor in Council the supreme jurisdiction, both civil and criminal, was in force at Bombay so late as A.D. 1820.

In that year, on the abolition of the Gozerat Court of Appeal, the judges of it were constituted the judges of the Court of Sudder Dewanny and Sudder Foujdarry Adawlut, the Governor and Members of Council being thenceforth relieved from the judicial duties which as judges of that court they had hitherto been required to perform.

89. The new Court of Sudder Dewanny and Sudder Foujdarry Adawlut, was composed of a chief and three puisne judges; the puisne judges being still required to perform their former functions of a Circuit Court, visiting the different Zillahs (the six coast districts) then subject to their jurisdiction, delivering the jails, and generally performing all the duties devolving on a Circuit Court.

90. These combined labours of a Superior and Circuit Court having been found too onerous for the judges of a single court, the Court of Circuit and Appeal was, in 1828, reorganized, but soon abolished, as above stated, (paragraph 86.) The duties of a Court of Circuit, however, were not again imposed on the Sudder Foujdarry Adawlut, but instead thereof, the Zillah judges were, under the designation of Session judges, invested with the ordinary jurisdiction of a Court of Circuit as regards

* In 1827 the Governor in Council was made a special court for trying, in place of the Sudder Adawlut, appeals from decisions passed by the Zillah judges above the Ghants, as agents for Sirdars. These functions the Governor in Council still exercises.—Vide paragraph 79.
the trial of criminal cases; and the three junior puisne judges of the
Sudder Foujdarry Adawlut, though still required to perform circuits, were
relieved "from holding any but State trials, or any other trials of a pecu-
liar or aggravated nature, which from any circumstance Government on
report from the local authority, may wish to be reserved for that purpose."
They are only required on these circuits to receive petitions and make a
general enquiry into the judicial management of each Zillah visited by
the commissioner.

91. The presidency, for this purpose, is divided into three circles,
which may be termed the Northern, Middle, and Southern, each being
visited once in the year by one of the commissioners.

92. In order to provide for the due performance of the duties of the
Sudder Adawlut during the absence of the puisne judges on these circuits,
one of the Members of Council was constituted chief judge of the court,
as is still the case at Madras, but his functions were expressly limited to
attending in court when a full court of three judges could not be assembled
without his attendance. The Honorable Mr. Anderson, in his
capacity of chief judge, presided at the trial of five causes in the first half
of 1840, and this is the only instance we can find, in which the Member,
of Council has been called in since his appointment for this particular
duty.

93. Neither the chief nor senior puisne judge has any superior
function, except that of having the casting vote when the number of voices
happens to be equal.

94. The judges when present at the seat of the court, are occupied in
trying appeals direct from the decisions of assistant judges in cases above
5,000 rupees, and regular and special appeals from the decisions in appeal
by the judges and assistant judges, as well as in miscellaneous business.
Appeals to the Sudder Dewanny Adawlut are, in the first instance, taken
up by a single judge of the court, and if he is disposed to concur in the
decision of the lower court, his decree affirming it is final; but if he see
reason to doubt the correctness of the decision, or find in the case any
point of interest or importance that has not been yet decided, he refers it
to a full court, consisting of three judges, of whom he may himself be one*.

In criminal cases the court has to revise all sentences passed by
session judges for more than seven years' imprisonment, or solitary con-
finement for six months, and has generally to exercise control over all
Zillah judges and magistrates.

95. The salary of the senior puisne judge has for some years been
fixed at 40,000 rupees, that of the second at 36,000 rupees, each of the
others 35,000 rupees. By very late orders from England, it is understood
that the senior, and each of the other puisne judges, is hereafter to
receive 42,000 rupees per annum. The three juniors get each 316 rupees
per mensem as travelling allowances, in addition.

96. The criminal and magisterial powers of the subordinate autho-
rities may be very briefly explained

97. Formerly, each judge, besides being the criminal judge, was also
the magistrate of his own Zillah until 1818, when the duties of magistrate
were transferred to the collector, except at the Sudder station of each
court, which remained subject to the control of the judge as magistrate;
but in 1830, the police and magisterial duties of each Sudder station were
also transferred to the collectors, except at the city of Surat, where they
are still performed by the judge.

98. In 1830, the powers of the criminal judge were increased to those of
a session judge, in which capacity he has to perform all the functions
of a Court of Circuit, trying (with the aid of his assistants) all cases
involving more than one year's imprisonment; and, the number of Zillahs
having been reduced to six by placing two collectors under the juris-
diction of one court, the sessions judge, in four out of the six, has to

* We observe from the draft of a law lately published, that in civil cases the same course of
procedure is about to be prescribed for the Sudder Courts of the Bengal and Agra Presidencies.
Duties of assistant judges.

The assistant judges try criminal cases referred to them by the sessions judge, (or at the detached stations those committed by the magistrate,) having power to sentence to two years' imprisonment with hard labour. The assistant judges at detached stations have somewhat higher powers, both civil and criminal, than those immediately under the judges' superintendence, they prepare cases for the sessions, have charge of the jail; &c.

Collectors also magistrates.

Every collector or sub-collector, as magistrate or joint magistrate, has been, since 1818, vested with the entire magisterial and police duties of his own district, and, since 1830, of the Sudder station also. He has jurisdiction in criminal cases to the extent of awarding one year's imprisonment, with hard labour and fine. All cases requiring greater punishment than this, he committed for trial to the session judge. Assistant collectors are also assistant magistrates. Under the code of 1827, magistrates had power to adjudge to fine, ordering imprisonment not exceeding two months, flogging to thirty stripes, and personal restraint. Assistant collectors were also constituted assistant magistrates, the magistrates having power to refer to them any cases within his own cognizance, but with liberty to mitigate or annul any sentences passed by them. By a regulation passed in the same year for the Deckhan, then first brought under the operation of the general regulations for the presidency, much greater powers than those above stated were conferred on the magistrates in that province, to the extent of two years' imprisonment with hard labour, fine, flogging, and personal restraint. In 1829, the power was giving to Government to invest assistant magistrates with the same powers. In 1830 these powers were reduced, and those of the magistrates and assistant magistrates in the other parts of the presidency were enhanced to one year's imprisonment with hard labour, and this is now, everywhere, the limit to the magistrates' penal jurisdiction under Bombay. Sentences exceeding three months' imprisonment, passed by assistant magistrates, must be confirmed by the magistrate.

General uniformity enacted in 1830

Their powers.

Salaries of magisterial officers.

<table>
<thead>
<tr>
<th>Office</th>
<th>Per Mensem</th>
<th>Per Annum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal Collector of Surat</td>
<td>2,666 rupees</td>
<td>32,000 rupees</td>
</tr>
<tr>
<td>All other Collectors and Magistrates</td>
<td>2,333</td>
<td>28,000</td>
</tr>
<tr>
<td>Sub-Collectors and Joint Magistrates</td>
<td>1,400</td>
<td>16,800</td>
</tr>
<tr>
<td>First Assistant</td>
<td>800</td>
<td>9,600</td>
</tr>
<tr>
<td>Ditto, Rutmgerrie and Kaira</td>
<td>700</td>
<td>8,400</td>
</tr>
<tr>
<td>Second Assistant</td>
<td>550</td>
<td>6,600</td>
</tr>
<tr>
<td>Third Assistant, Principal Collectors</td>
<td>500</td>
<td>6,000</td>
</tr>
<tr>
<td>Third Assistant</td>
<td>400</td>
<td>4,800</td>
</tr>
<tr>
<td>Fourth Assistant, Principal Collector</td>
<td>450</td>
<td>5,400</td>
</tr>
<tr>
<td>All others</td>
<td>300 - 400</td>
<td>3,600 - 4,800</td>
</tr>
</tbody>
</table>
102. Statement of causes decided by the Courts under the Bombay Presidency, 1838.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>European Agency.</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judges as agent for Sirdars</td>
<td>2</td>
<td>4</td>
<td>7</td>
<td>11</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Assistant ditto.</td>
<td>1</td>
<td>25</td>
<td>52</td>
<td>77</td>
<td>53</td>
<td></td>
<td>7</td>
<td>60</td>
<td>17</td>
</tr>
<tr>
<td>Judges</td>
<td>6</td>
<td></td>
<td></td>
<td>77</td>
<td>53</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assistant ditto.</td>
<td>10</td>
<td>14</td>
<td>15</td>
<td>29</td>
<td>10</td>
<td>1</td>
<td>11</td>
<td>22</td>
<td>7</td>
</tr>
<tr>
<td>Total...</td>
<td>16</td>
<td>43</td>
<td>74</td>
<td>117</td>
<td>65</td>
<td>3</td>
<td>19</td>
<td>87</td>
<td>30</td>
</tr>
<tr>
<td><strong>Native Agency.</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Principal Sudder Ameens</td>
<td>6</td>
<td>371</td>
<td>4,301</td>
<td>4,672</td>
<td>2,838</td>
<td>549</td>
<td>703</td>
<td>4,090</td>
<td>592</td>
</tr>
<tr>
<td>Sudder Ameens</td>
<td>14</td>
<td>941</td>
<td>12,504</td>
<td>13,345</td>
<td>8,177</td>
<td>2,597</td>
<td>1,699</td>
<td>12,473</td>
<td>872</td>
</tr>
<tr>
<td>Moonsifl's</td>
<td>66</td>
<td>3,736</td>
<td>46,627</td>
<td>50,363</td>
<td>27,143</td>
<td>13,838</td>
<td>5,704</td>
<td>45,675</td>
<td>4,678</td>
</tr>
<tr>
<td>Jagheerdars</td>
<td></td>
<td>144</td>
<td>418</td>
<td>562</td>
<td>353</td>
<td></td>
<td>70</td>
<td>423</td>
<td>139</td>
</tr>
<tr>
<td>Total...</td>
<td>86</td>
<td>5,082</td>
<td>63,850</td>
<td>68,932</td>
<td>38,511</td>
<td>15,974</td>
<td>8,176</td>
<td>62,661</td>
<td>6,271</td>
</tr>
<tr>
<td><strong>Gross Total...</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>5,125</td>
<td>63,924</td>
<td>69,049</td>
<td>38,576</td>
<td>15,977</td>
<td>8,195</td>
<td>62,748</td>
<td>6,301</td>
<td></td>
</tr>
<tr>
<td><strong>Appeals.</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agent</td>
<td>2</td>
<td>3</td>
<td>25</td>
<td>28</td>
<td>20</td>
<td></td>
<td></td>
<td></td>
<td>20</td>
</tr>
<tr>
<td>Judges</td>
<td>6</td>
<td>518</td>
<td>919</td>
<td>1,437</td>
<td>1,017</td>
<td>51</td>
<td>34</td>
<td>1,102</td>
<td>335</td>
</tr>
<tr>
<td>Assistant Judges</td>
<td>10</td>
<td>137</td>
<td>1,875</td>
<td>2,012</td>
<td>1,222</td>
<td>42</td>
<td>75</td>
<td>1,333</td>
<td>914</td>
</tr>
<tr>
<td>Principal Sudder Ameens</td>
<td>1</td>
<td>11</td>
<td>76</td>
<td>87</td>
<td>81</td>
<td>1</td>
<td>4</td>
<td>86</td>
<td>1</td>
</tr>
<tr>
<td>Total, Subordinate Courts</td>
<td>19</td>
<td>910</td>
<td>2,895</td>
<td>3,805</td>
<td>2,340</td>
<td>94</td>
<td>113</td>
<td>2,547</td>
<td>1,258</td>
</tr>
<tr>
<td>Sudder Adawlut.</td>
<td>4</td>
<td>116</td>
<td>129</td>
<td>245</td>
<td>143</td>
<td></td>
<td></td>
<td>143</td>
<td>102</td>
</tr>
</tbody>
</table>

* Not known.

103. Abstract of work performed by Judges of the Sudder Dewanny Adawlut, Bombay, 1838.

<table>
<thead>
<tr>
<th>Sitting as single Judge</th>
<th>Sitting in full Court of three Judges</th>
<th>Decided by full Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Simson</td>
<td>15</td>
<td>5</td>
</tr>
<tr>
<td>Giberne</td>
<td>27</td>
<td>25</td>
</tr>
<tr>
<td>Pyne</td>
<td>15</td>
<td>30</td>
</tr>
<tr>
<td>Greenhill</td>
<td>10</td>
<td>29</td>
</tr>
<tr>
<td>By the full Court.</td>
<td>67</td>
<td>89</td>
</tr>
<tr>
<td>Total...</td>
<td>86</td>
<td></td>
</tr>
</tbody>
</table>
104. Statement showing the amount of criminal business disposed of by the tribunals under the Bombay Presidency, 1838.

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance of past year with District and Village Officers</td>
<td>648</td>
<td></td>
</tr>
<tr>
<td>Magistrates</td>
<td>300</td>
<td></td>
</tr>
<tr>
<td>Judges</td>
<td>316</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1,264</td>
<td></td>
</tr>
<tr>
<td>Received during the year</td>
<td>37,987</td>
<td></td>
</tr>
<tr>
<td></td>
<td>39,251</td>
<td></td>
</tr>
<tr>
<td>Disposed of by District and Village Police:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acquitted</td>
<td>12,301</td>
<td></td>
</tr>
<tr>
<td>Punished</td>
<td>12,399</td>
<td></td>
</tr>
<tr>
<td>Under examination</td>
<td>703</td>
<td></td>
</tr>
<tr>
<td></td>
<td>25,943</td>
<td></td>
</tr>
<tr>
<td>Disposed of by Magistrate:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acquitted</td>
<td>5,618</td>
<td></td>
</tr>
<tr>
<td>Punished</td>
<td>4,200</td>
<td></td>
</tr>
<tr>
<td>Under examination</td>
<td>548</td>
<td></td>
</tr>
<tr>
<td></td>
<td>10,566</td>
<td></td>
</tr>
<tr>
<td>Disposed of by Judge:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acquitted</td>
<td>1,052</td>
<td></td>
</tr>
<tr>
<td>Punished</td>
<td>1,401</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2,453</td>
<td></td>
</tr>
<tr>
<td>Under examination by Judge</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>289</td>
<td></td>
</tr>
</tbody>
</table>

Sudder Foydjarry Adamuitt.

| Number of Offenders whose trials referred | 272 |
| Sentence confined:                        |     |
| Death                                    | 22  |
| Transportation for life                  | 29  |
| Imprisonment for life                    | 6   |
| Ditto, with fine                         | 167 |
|                                         | 244 |
| Acquittals                               | 28  |
| Review of sentence on petition:          |     |
| Confirmed                                | 201 |
| Mitigated, or annulled                   | 90  |
|                                         | 291 |

105. It will be seen from the foregoing narrative, that the system now in operation for the administration of civil justice in the territories of the Bengal and Bombay Presidencies, and which it is proposed to extend to those of Madras, is based upon the principle of employing native industry and intelligence, in the primary disposal of suits, under the safeguard of an immediate appeal to the European functionaries, and of their constant and vigilant supervision of the general conduct of the native judges.

106. To the justice and sound policy of this principle, we cordially subscribe; but, in reducing it to practice, an evil of a very serious nature has been incurred, which has already been extensively felt, and which, if not remedied, will greatly impair the judicial administration. We allude to that which has attracted your Lordship's attention—the absence of all previous training in those to whom, as judges of first and local appeal, the Government must principally look for the guidance and control of the courts of primary jurisdiction. At present, there is not a single situation in the civil branch of the judicial department in Bengal, open to a covenanted servant before his elevation to the important office of Zillah judge; nor in Bombay, do the Zillah and assistant judges exercise any original jurisdiction before they are invested with appellate jurisdiction.

107. In the criminal branch, those civil servants who have risen through the grades of assistant, joint magistrate, and magistrate, have the benefit of the knowledge and experience acquired in those offices, when called to exercise the powers of a sessions judge; but in Bengal, at least, such a preparation is not considered indispensable, and an
officer conversant only in revenue matters, is equally eligible to that appointment.

108. In devising a remedy for this anomalous state of things, we have been led to review generally the principle of admission to the Honorable Company's civil service, and the educational training both in England and India, which the persons nominated have to undergo, before entering upon the active business of life.

109. Considering the great importance of the duties which the civil servants of the Company are destined to perform in the various branches of our Indian administration, and the extent to which, from the weakness of the native character, the happiness of the people depends upon the dispositions and capacities of the officer placed over them, it will readily be admitted how essential it is to the credit of the Government, and the welfare of the millions committed to their charge, to raise to the utmost, the moral and intellectual qualifications of the covenanted civil service. In the depressed condition of the people, caused by the long period of misrule and confusion which preceded the establishment of British supremacy in India. The benefits of the strong and settled government which succeeded, were, no doubt, sensibly felt; though the instruments employed were but ill qualified by previous education and pursuits for the discharge of the new duties which devolved upon them. But circumstances are now greatly changed; population has increased; cultivation and trade have extended; European residents are gradually spreading themselves over the country; and the commercial and other transactions of life must be expected to assume a more complex character, as society advances in civilization, and the elements of it become more mixed. At every step the country takes in the march of general prosperity and improvement, the duties of those employed in its civil administration become the more delicate and important; and whilst extensive efforts are making, by means of an improved education, to raise the qualifications of the natives of the country, for the subordinate situations under Government, it is a matter of paramount importance to exact from those for whom the offices of greater responsibility and control are exclusively reserved, a higher standard of qualification than has yet been required of them.

110. In the suggestions which we are about to submit to your Lordship on this subject, we advocate not those measures which abstractedly we should consider the best, but such as we believe will be found the most effectual, consistently with a due regard to the patronage vested in the Honorable East India Company.

111. We think the first object should be, to extend as far as practicable the field of selection for the civil service, and by adopting the principle of competition, to secure from among a large body of candidates a sufficient number of young men possessing superior talents and acquirements.

112. With this view, we propose that all nominations by the Directors of the East India Company for each season should be to the general service in the first instance; that no person should be eligible for such nomination before the age of seventeen; and that all so nominated should be at liberty to enter themselves candidates for admission to the civil service. These candidates should undergo an examination involving a test of high attainments, and on the required number declared duly qualified by the result of it, the appointments to the civil service should be bestowed according to priority on the examiner's list.

Those nominees who declined to compete, and those who failed in the competition for the civil branch of the service, would stand appointed to the military branch.

113. If this scheme cannot be adopted in its fullest extent, we recommend as near an approach to it as may be found practicable, and that at all events the principle of competition be preserved.

114. The appointments to the civil service having been thus settled, on the principle of superior attainments, we propose that the nominees should continue in England three years, for the purpose of further qualifying themselves for the high stations they are destined to fill. We have fixed on seventeen as the age at which school education is usually com-
26

Education in India of the civil servants.

115. The course of study to which the civil servants should devote themselves during the remainder of their stay in England, is, in our opinion, history in general, and the history of India in particular, political economy, moral and political philosophy and jurisprudence, especially that branch of it which relates to the conflict of laws. It would be advisable that a syllabus of these subjects should be prepared, in which the best source of information should be pointed out.

116. The progress of the students in these departments of knowledge should be ascertained by annual examinations, and the examiners should have full authority to reject, at the final examination, any one whose attainments did not reach a certain fixed standard, or whose general conduct and character were found to be unsatisfactory.

117. It would of course be essential to the success of this plan, that the standard of qualification should be rigidly adhered to, and that the Board of Examiners should be so constituted as to command the confidence of all, and secure the support of public opinion, in the firm and upright discharge of their duty.

118. We do not attach importance to the study of the Oriental languages in England beyond such an elementary acquaintance with them as would accelerate future proficiency in India. It is in the latter country that the greatest facilities for acquiring this description of knowledge exist, and we think the principal part of the time spent in England would be most profitably devoted to the pursuit of European literature and science. Considering, also, the very limited means of instruction in the Oriental languages available in England, the establishment even of a low Oriental test might interfere with the principle which we suppose will be acted upon, of allowing the civil servants to choose their own plans and places of instruction.

119. On their arrival in India, the attention of the civil servants should be principally directed to the study of the vernacular languages, proficiency in two of which should be required of them.

120. Their professional studies should now assume a local character, means should be afforded them of acquiring a knowledge of the system of the internal administration of the country, and of the principles of law and equity which have regulated the decisions of the India courts. For this purpose, the regulations enacted for the particular presidency, the printed reports of cases decided by Her Majesty's and the Company's superior courts, and the most useful portions of the Hindoo and Mahomedan laws, which have been rendered accessible to the English student by translations and treatises, should be made the subjects of lectures. And as a means of obtaining some practical knowledge of the administration of justice, the students should be required at convenient times to attend the trials, civil and criminal, in the Queen's Court of Judicature.

121. Periodical examinations should be held for the purpose of ascertaining the progress made in these various branches of study, and on a civil servant passing a certain test, he should be declared qualified to take a part in public business.

122. In this state of his noviciate, we think it very desirable that he should be afforded the best opportunities of perfecting himself in the languages, and acquiring a general knowledge of the manners, habits, feelings, and institutions of the people.

123. In our courts of justice, the native character is seen in its worst aspect; and the unfavorable impressions which the mind of the young civilian receives from this partial view, is too apt to have a prejudicial

* The courts we are recommending for the trial of the matters which are now brought before the Supreme Courts in civil actions at law, as well as the subordinate criminal courts proposed on a former occasion, would also be available for this purpose, perhaps with even greater advantage than the Supreme Courts, with reference to their own simple course of procedure.
influence upon the whole tenour of his future conduct. On the other hand, first impressions drawn from intercourse with the respectable classes, and a more general survey of the people in their ordinary intercourse with each other, would lay the foundation for a kindliness of feeling towards them, and a reasonable consideration for their prejudices and feelings.

124. It is chiefly at the beginning of his career, and whilst holding a subordinate situation, that the civil servants will find time for the prosecution of general enquiries, and the greatest readiness on the part of the natives to communicate their sentiments. The possession of superior office is at all times an obstacle to free communication with the people; nor would we advocate, in the higher judicial functionary, that familiarity of intercourse which would be useful and proper in the officers of revenue.

125. To the acquisition of this description of knowledge the revenue systems of Madras and Bombay are peculiarly favorable. There the annually-recurring Ryotwari settlements require a constant and local intercourse between the revenue officers of Government and the agricultural inhabitants; and the minute information respecting the interests of the different classes of the village community, the various rights in land, and the instruments by which those rights are modified or transferred, necessarily acquire in the course of such detailed arrangements, cannot but prove valuable to the future judicial officer.

126. We would therefore recommend for those Presidencies, that the civil servants, on being reported qualified to take a part in public business, should be attached as assistants to collectors and magistrates for the period of three years. That is, we would continue the initiatory system now in force there, which was introduced during the governments of Sir Thomas Munro and Mr. Elphinstone.

127. Regarding the junior civil servants on the Bengal establishment, we find it more difficult to come to any decided opinion. The detailed village settlements which have been for some years in progress in the western provinces and Cuttack, and partially in Bengal, Behar, and Benares, afford perhaps even better opportunities of acquiring practical information than the ordinary revenue arrangements of Madras and Bombay. But these settlements are now drawing to a close, and we understand that in about two years the whole will be completed, either in perpetuity or for terms of twenty-five or thirty years. The principal business of the revenue officers will then be reduced to the simple duty of collecting the revenue, and making the usual arrangements in the departments of Adbkarry and stamps; and it is only the occasional failure of a settlement, or the management of a few estates under the superintendence of the Court of Wards, which would call for local and minute investigation. To a knowledge of the mere routine of a Bengal collector’s office, as conducted at the Sudder station, we attach no importance as a preparation for judicial duties.

128. Where the charge of the police is also vested in the collector of revenue, (as is universally the case at Madras and Bombay,) the occasional deputation of the assistant into the interior, for the purpose of local inquiries, would give opportunity for acquiring information, and would operate as a check on the native officers of police. But we believe that, in most districts of the Bengal Presidency, the functions of revenue and police are committed to distinct officers, and the same assistant could not work satisfactorily under two superiors.

129. If sufficient employment could be found for the junior civil servants of this Presidency, of a nature calculated to store their minds with that general practical knowledge which we think so desirable an acquisition, we would recommend the same disposition of them during the three years as at the other two presidencies, otherwise we would at once commence with those selected for the judicial line, the peculiar training to which we shall presently advert, and continue it for a period of three years.

130. On the expiration of the three years of Mofussil preparation, we would choose the ablest and most competent of the civil servants for the judicial line.
employment in the judicial line; and as we propose that all so chosen should thereafter be confined exclusively to that line, we would, in making the selection, consult individual inclination as far as the exigencies of the service permitted.

131. We have not fixed upon an earlier stage in the civil servant's career as the period of selection, because it appeared to us important that it should be deferred to as late a period as possible, consistently with other considerations, to allow of the fullest development of those qualifications which should guide the Government in the distribution of its agency.

132. The legal part of the education which we have proposed for the civil servants in England, and on their first arrival in this country, may be thought unnecessary for those who are eventually attached to the revenue branch of the administration; but when we consider the important functions, partaking often of a judicial character, which such officers, as they advance in the service, are called upon to perform, and the numerous instances in which they act as the legal advisers of Government, we think the accurate acquaintance with the principles of right and wrong, and the general knowledge of the laws of the country to which such a course of study must lead, will be found of essential advantage to them.

133. For the civil servants who, after three years of revenue practice are set apart for the judicial branch, we would recommend at least one year of judicial apprenticeship previous to their appointment to the exercise of independent functions.

134. We beg to draw your Lordship's attention to a minute recorded by Mr. Cameron, when officiating as fourth ordinary Member of the Council of India, on the subject of judicial training, copy of which, and of the letter to Lord Goderich therein referred to, is appended to this address. The minute has special reference to the judicial training of natives, but the principle is equally applicable to our purpose, except that in the case of English gentlemen, the defect of moral principle insisted on in the letter to Lord Goderich does not exist. The mode proposed by Mr. Cameron of constituting the court schools for judicature, appears to all of us unexceptionable; and we recommend that every civil servant on his first appointment to the judicial line, should be attached as an official assessor to a Mofussil Court, superintended by a covenanted European judge, (or to the civil and criminal courts subordinate to the supreme court which we contemplate for each presidency.)

135. It is not necessary that in this capacity his time should be exclusively occupied in assisting at the civil and criminal trials in courts. There are ministerial duties now left principally to the native officers of the courts, in the superintendance of which he might be beneficially employed; and we also think it very desirable that he should be occasionally deputed for the purpose of conducting local investigations connected with cases depending before the judge.

136. Mr. Cameron dissents from the recommendation that the civil servants intended for the judicial line, should pass the first three years of their noviciate in the revenue department, and has thought it right to state his views in a separate minute.

137. To the majority of the commissioners it appears, that by such employment in the revenue department as they contemplate, a young man would acquire a better command of the native languages, which he must of necessity be continually using, than if he were occupied during the same time in the duty of an assessor to a court, without any obligation, or having any need to take an active part in the proceedings as an interlocutor. It appears to them, also, that a man whose duties have brought him into contact with people of all classes, and have afforded him opportunities of making himself acquainted with their manners and habits, their ways and forms of dealing, and intercourse with each other, and the details of their economy generally; who has conversed with them freely, and is used to hear them speak without reserve, is likely to be better able to deal with a witness, so as to elicit the truth from him, and to know when he has got the truth, better able to estimate the value of native documents exhibited in evidence, and to understand the merits of
causes turning upon the ordinary transactions and dealings of natives among themselves; better able, therefore, in general, to perform the office of a judge, than one of the same standing who has had no opportunities of becoming acquainted with the character of the natives, except as it has been exhibited by those whom he has had to do with only as adverse litigants or as tutored witnesses, although by his practice in judicial business, he may have become better versed in jurisprudence, and more expert in applying its principles and rules.

They do not apprehend, however, that a young man well grounded in jurisprudence by the education proposed to be given him in England, and having in view to attach himself eventually to the judicial line, and being of an age at which he may be expected to have attained some stability of character, would altogether neglect this science during his temporary employment in active duties in other branches of the service. They would expect him rather to prosecute the study, and to improve his theoretical knowledge, whilst laying up a store of information and experience which must be of the greatest service to him when he is called upon to apply that knowledge practically in the discharge of judicial functions.

139. On the completion of the last stage of his probationary course, the civil servant should be eligible to the office of judge of a court of primary jurisdiction; from which he should be promoted in his turn to the situation of Zillah judge of appeal; and from the most distinguished of the officers of this grade, the judges of the Sudder Court should be selected. The number of courts of original jurisdiction to be reserved according to this plan for the covenanted officers, should, as far as practicable, be so regulated, as to ensure to each three years' experience in the trial of original suits before his promotion to be a Zillah judge. We have adverted in two previous notes to the manner in which the institutions which we contemplate for the improvement of the English portion of Indian judicature, may be made conducive to the judicial education of the young civil servants. The subordinate civil courts will consist of several judges with various degrees of knowledge, and various amounts of salary. They will have to administer English law, Hindoo law, and Mahomedan law. The chief of each court will distribute the suits among himself and his colleagues, (after the plaint has disclosed the nature of each suit,) according to the qualifications of each. Now, we think, that when this court shall be established, young civil servants, before they are sent to administer justice in the Mofussil, might officiate as inferior judges. None but the most simple suits would be confided to them in the beginning of their career by the chief of the court; none but such suits as, according to the theory of the present system, are intended to be brought before the Court of Requests. There are provisions in our schemes for the transfer of suits to judges of higher qualifications if unexpected difficulties should emerge in the course of their investigation. The young civil servants will thus exercise the judicial function in such a manner that his mistakes may be prevented by the transfer of the suit, or by consultation with his superiors, or may be set right by an immediate appeal on the spot. He will exercise his functions under the eye of the college of justice and the Government, and in the presence of the watchful and not very submissive public of the capital. He will acquire habits of attention and method, and the art of weighing evidence, and of separating law from fact.

140. By thus securing to the civil servant destined eventually to superintend and control the native judicatures, an appropriate training in the first place, and afterwards a due degree of experience in the administration of justice in courts of primary jurisdiction, we think a sufficient remedy will be provided for the great defect which we noticed as attaching to the present judicial system of Bengal and Bombay; and with the full information which we have obtained in the course of our present consideration of this subject, we would wish to modify, on the same principle, the recommendation we submitted in a later report on the proposed change in the judicial establishments at Madras, to the effect that all original jurisdiction should be left eventually in the hands of the native judges.
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Emoluments of the judicial branch of the service.

141. In order that those who have once become attached to the judicial department may have no cause for disappointment, with reference to the pecuniary advantages of other lines, the emoluments of it should be so adjusted as to render it on the whole the most lucrative branch of the service.

142. Having thus submitted to your Lordship the suggestions which have occurred to us on the first topic proposed for consideration, we proceed to the second, viz.:—The expediency of appointing a chief judge, with superior emoluments to each of the supreme native courts.

143. In England, the judges of the superior courts sit together, in the presence of a numerous bar and a large concourse of spectators. In those courts there are numerous occasions, besides the pronouncing of decisions, on which it is fitting that only a single authority should speak in the name of the court. On all such occasions, it is desirable that what is delivered should be expressed with propriety and dignity of language and manner, and not merely that it should be unobjectionable in substance. There are also many occasions, in which decisions are pronounced, where, if the chief justice delivers his opinion on the law or facts correctly, and in a luminous manner, the judges who follow will be shorter in the exposition of their own views, and will frequently do no more than express a simple assent. In this manner a great deal of time is saved to courts. In England, also, the chief justices have in charge the nisi prius sittings at Westminster and London, (including most of the great mercantile causes,) in addition to their share of assize business. This is, perhaps, the most difficult duty discharged by the English judges. It may be added that, until very recently, the chief baron of the Exchequer discharged alone a large equitable jurisdiction; he, at present, tries all the revenue jury cases. The chief justice of the King’s Bench is coroner of England. The chief justices are usually appointed to the Privy Council, and more than one of them are commonly promoted to the House of Lords, where there services have often been of great utility upon judicial appeals, as well as other legal matters; the present chief justice, it is believed, exercises particular functions in conducting the business of the House of Lords. The chief justices are, moreover, entrusted with various ex-officio duties of minor importance, including the appointment to several subordinate offices.

144. As the occupation of chief justices in England requires, rather than that of puisne judges, powers of communicating their sentiments with impressive effect, in the presence of a public audience, whilst the most valuable qualifications of puisne judges are frequently not combined, in any high degree, with that of eloquence; so, in England, there is no difficulty in selecting for the one or other station. The attorney-general usually succeeds to any vacant chief justiceship; the attorney-general will commonly be a person competent to take a part in the debates of the House of Commons; at all events, he will generally have acquired distinction as a leader of causes. The talents of a leader of causes and those of a learned and sensible junior, who possibly would be very incompetent to address a jury with effect, but the value of whose legal opinions was generally appreciated, will often indicate the proper person to be selected with a view to a chief justiceship, or puisne judgeship. The promotion of a puisne judge to a chief justiceship, is unusual, and if it were common, it might tend to shake the public opinion in the independence of the puisne judges. It often happens in England, that the puisne judges of a court have, in many trials at nisi prius, acted under the control and direction of the chief justice as their leader.

145. In India, none of these circumstances exist to affect the constitution of the company’s supreme courts. The functions of the Sudder judges are confined to the judicial business before their courts. In Bengal, and Bombay the greatest part of the civil business of these courts is disposed of by the judges sitting singly. In the Sudder Court at Calcutta, about two-thirds of the civil suits are thus disposed of; and in that at Bombay, about one-half, and the same might take place at Madras under the existing law. The number of intelligent practitioners is very small; and, we believe, the audience, generally speaking, consists
of little more than the parties interested or their agents, and authorized pleaders, and other parties or their agents awaiting the trial of their own suits.

146. Nor do the circumstances of the two countries differ less with regard to the mode in which the judges are appointed.

The sphere of selection for the highest judicial offices under the Company’s control, is limited to the civil service, in which promotion is regulated on the principle of seniority as the general rule. It is seldom that very superior qualifications are to be found in any particular judge, which would render his elevation to an eminent position in the court conducive to its greater respectability, and the improvement of the administration of justice; whilst from the peculiar nature of the civil service, selection according to individual merit, unless that merit is generally acknowledged, has been found to create dissatisfaction. Indeed, it was an inconvenience of this description which induced the Government of Bengal, in 1829, to abolish the distinctive appellatives of the judges of the Sudder Court; and as the duties of all the Sudder judges are essentially the same, there does not appear to be any sufficient reason, whilst the constitution of the Sudder Court remains, in other respects, unaltered, for re-establishing the distinction of rank and emolument that formerly prevailed.

147. The highest courts in the court which we shall recommend, (and which, for the sake of distinguishing them from the present supreme courts, propose to call the Colleges of Justice,) will consist of the judges of the Supreme Courts, and the judges of the Sudder Courts.

148. Should our recommendation on this subject meet with the approval of the Government of India, the chief justice, as president of the college, will be invested with certain powers of superintendence and direction, which would give consistency to its proceedings, whilst the combination of the knowledge and experience of the English and Indian judges, would tend greatly to improve the practice of the courts, and generally to raise the standard of the judicial administration.

149. We admit that the appointment of English lawyers to preside over courts which are to superintend all the judicial establishments is not unattended with risk, but we think that, upon the whole, it is preferable to the appointment of judicial servants of the Company. For we think it more probable, in these days, that an English lawyer may be found free from the narrow prejudices which his professional education has, it may be admitted, a tendency to create, than that a judicial servant of the Company should be found with a mind sufficiently disciplined in the principles and distinctions of jurisprudence, to watch effectively over the whole administration of justice.

150. The last subject, is the expediency of investing the Sudder Courts with a limited extent of original jurisdiction.

151. To this measure we think there are, under present circumstances, serious objections. We consider the great object of the Sudder Courts to be, to fix and maintain right principles, to preserve uniformity in the administration of the law, and to exercise a general supervision and control over all the inferior courts.

The system of special appeals, which we have recommended in our Report of the 4th December, 1841, for the better attainment of this object, would throw open the Sudder Courts to a large class of appeals, now altogether excluded from them, and we believe the present number of judges would not be found more than sufficient to the dispatch of the business so increased, even under the modification of the present practice of trying special appeals, which we have suggested in the same report.

152. We entirely agree with your Lordship, that “no man can be capable of appreciating the value of evidence, who has never heard a witness examined, and who is not well acquainted with the mode of conducting causes in courts of justice, and generally with the national character, as well as the national languages; for upon the value of such evidence, and such knowledge of character, and of language, the decision must, in most cases, depend.”

153. In most cases, the decision must depend upon these things, but
not in all. And even in those cases in which it does depend upon these things, it does not depend upon these things only. In many cases, it depends wholly, or in part, upon a correct knowledge of the principles of law or jurisprudence, upon the habit of applying these principles to the facts which evidence establishes, upon the habit of eliciting from the evidence, (assuming it to be credible,) the facts which form a proper basis for the application of the principles of law or jurisprudence.

154. We now take the liberty of observing that this knowledge and those habits are what are specially requisite in an appellate judge. We admit that no man ought to be appointed an appellate judge who has not acquired practical skill in the decision of original suits.

155. We admit also that if considerations of economy do not forbid, the practical skill thus acquired by the appellate judge might with advantage be kept up by the occasional exercise of original jurisdiction; while the ordinary judges of first instance would derive benefit from the model thus exhibited to their observation.

156. But we hold that, as the qualities most essential in an appellate judge are not likely to be found united to an intimate acquaintance with the national character and the national languages, it will be expedient to have some judges in the appellate court whose unacquaintance with the national character and languages must be excused on account of that knowledge of law and jurisprudence, and of those judicial habits which, at present at least, can be most effectually acquired in courts of English judicature.

157. There are three functions, as it seems to us, which an appellate court may perform, though it does not follow that every appellate court performs all the three. First,—To say whether the evidence appears to have been properly taken and properly appreciated by the court below. If not, the course is to have it investigated afresh, either by the same or another court of original jurisdiction.

158. The appellate court ought never, we think, to set up its own opinion in opposition to that of the court which heard the witnesses give theirevidence, further than to order a fresh investigation; but it may upon reasonable grounds of doubt order, that the same inferior court, or another, should hear the witnesses over again, or merely that the inferior court should reconsider its finding.

159. The only one of these three courses known in English practice is the second. Upon a motion for a new trial, upon the ground that the case has not been properly investigated by the judge and jury at nisi prius, the court, if it assents to the grounds of the motion, orders that the case shall be investigated again by another jury. The evanescent nature of a jury makes it impossible to direct that the same jury should either reconsider its finding or investigate the case afresh.

160. In the Supreme Courts of India, there being no trials at nisi prius, and no jury in civil cases, the analogy of English practice is preserved, as far as those important differences permit, by the court which first tried the case ordering a new trial before itself;—a proceeding which seems to be recommended by nothing but the preservation (little more than nominal) of the above-mentioned analogy.

161. Secondly, the appellate court has to say whether the facts of the case have been correctly elicited from the evidence (assuming the inferior judge's opinion on the credulity of the evidence to be correct). If it thinks they have not, it should correct the error itself. This is what is done in English practice upon a demurrer to evidence.

162. Lastly, the appellate court has to say whether the court below has correctly applied the law to the facts. Here again, if it thinks the court below has erred, it sets right the error without any further inquiry.

163. If this is a correct account of appellate judicature, the appreciation of testimony from the national character, and the demeanor of witnesses is no part of it, though we do not deny that an appellate judge who is capable of such appreciation, would bring to the decision of
questions of law more of the desired acuteness of mind and perspicuity of judgment than one who has not that advantage.

164. In conclusion, we beg to apprize your Lordship that the question of the best mode of training junior civil servants in the judicial department was referred to us by order of the Honorable the President in Council, in August, 1838*, to be considered in connexion with the general system of judicial procedure, and as this address contains all that has occurred to us on the subject, we take the liberty of requesting your Lordship's permission to submit a copy of it to the Honorable the President in Council, as a formal reply to the official communications adverted to.

We have, &c.,
A. AMOS.
C. H. CAMERON.
F. MILLETT.
D. ELLIOTT.
H. BORRODAILE.

* Mr. Officiating Secretary Maddock's letter No. 282, dated 13th August, 1838, and No. 295, dated 26th ditto.
UPON this recommendation I have the misfortune to differ from my colleagues. I would have the time which they think should be passed in the revenue and police department occupied in sitting as an official assessor at the Presidency, or in the Mofussil, and in performing such ministerial duties as the judges may properly delegate.

It is said that in India, and particularly in the presidencies of Madras and Bombay, no civil servant who has passed some years in the revenue department makes a better judge than one who, under the present system, has been always employed in the judicial department.

This proposition is proved by so many and such competent witnesses, that I cannot refuse my assent to it.

But under the present system, there is nothing that can be properly called judicious apprenticeship, excepting the appeal, (and the appeal considered as a means of instructing inexperienced judges, is a most defective instrument,) there is nothing to correct the erroneous notions which a young man may fall into at the commencement of his judicial career, and it is consequently probable that many of these erroneous notions may become inveterate.

But in our scheme of official assessors there is a real apprenticeship under a competent instructor always present, and ready to remove the false impressions which otherwise might mislead the beginner.

I do not therefore hold the proposition, which I admit to be proved by testimony to be conclusive of the present question, and with respect to certain arguments which I have seen used in support of that proposition, and which, if sound, would be conclusive of the present question. I think I can show that those arguments involve a great and very dangerous, because very plausible, fallacy.

The fallacy is that of not distinguishing between the knowledge which a judge ought to bring into courts, and the knowledge which he ought to acquire in courts, through the various instruments of evidence, or, in other words, of not distinguishing between jurisprudence and the several subject matters to which the principle of law and justice are applied by means of jurisprudence.

I admit that a knowledge of the several subject matters which he has to deal with would be useful to a judge, if he could acquire that knowledge without sacrificing time which ought to be occupied in the study of law and jurisprudence. But believing that such knowledge cannot be acquired without making that sacrifice, I think, upon the whole, such knowledge is not useful to a judge.

With regard to such subject matters, as only appear at intervals in courts of justice, there is probably no difference of opinion among thinking men. No one probably would contend that a judge ought to make himself a good chemist and a good navigator; because he may have occasionally to decide suits for infringing a chemical patent or for running down a ship. But in the courts of the East India Company so many suits relate to subject matters connected with the revenue system of the country, that men of great and deserved reputation have thought that a judge ought, on that account, to have a practical knowledge of that system.

An aspirant to a seat on the bench of these courts ought certainly to learn the revenue law which he is to administer. He ought also to learn by constant attendance in court, how that law is to be applied to the affairs of man. But that he should, on this account, go through such an apprenticeship as would fit him for the discharge of a revenue office, is to require something of him which cannot be attained without a very serious interruption of his properly judicial education.
Let us consider a question of the same kind, where there is no authority of respected names to withdraw our consideration from the mere reason of the thing.

There is in the county of Cornwall a court called the Court of the Stanneries, in which all the suits arising out of the business of mining are decided. How should an aspirant to the bench of that court be educated? I should say he ought to learn the general law of England, the particular law of the mining districts, by reading; and so much of the business of mining as may be thought necessary to him, by sitting as an official assessor to the present judge. He will thus acquire, at the same time, a practical knowledge of Cornish mining, so far as it forms the subject matters of law suits, and of law, as applied to Cornish mining; whereas, if he were sent for three years to acquire practical knowledge under the superintendent of a copper mine, it is to be feared that there would be an irreparable hiatus in his judicial pursuits.

The grounds, however, on which my colleagues recommend a revenue apprenticeship for judicial officers are different from those of which I have been endeavouring to expose the fallacy.

To them "it appears that by such employment in the revenue department as they contemplate, a young man would a better command of the native languages, which he must of necessity be continually using, than if he were occupied during the same time in the duty of an assessor to a court, without having any obligation, or having any need to take an active part in the proceedings of an interlocutor."

As the official assessor is bound to express an opinion upon the case, and as he is liable to be consulted by the judge at any moment during its progress, it seems to me that the shame of being obliged to confess, or of letting it be seen in public, that he does not understand what is said, would be a very powerful stimulus to the acquisition of the language in which the proceedings are conducted, such a stimulus as, I should suppose, none but the incorrigibly idle and worthless could disregard.

It also appears to my colleagues, that "A man whose duties have brought him into contact with people of all classes, and have afforded him opportunities of making himself acquainted with their manners and habits, their ways and forms of dealing, and intercourse with each other, and the details of their economy generally; who has conversed with them freely, and is used to hear them speak without reserve, is likely to be better able to deal with a witness so as to elicit the truth from him, and to know when he has got the truth; better able to estimate the value of native documents exhibited in evidence, and to understand the merits of causes turning upon the ordinary transactions and dealings of natives among themselves; better able, therefore, in general, to perform the office of a judge, than one of the same standing who has had no opportunities of becoming acquainted with the character of the natives, except as it has been exhibited by those whom he has to do with only as adverse litigant or as tutored witness."

If the question were simply which of those two men is likely to know most of the natives, I should not probably have much difficulty in giving the same answer as my colleagues would give; but the question is, which of these two men is likely to know most of the natives, considered as "adverse litigant and tutored witnesses." To that question I am compelled to answer, "He who has devoted his time to the study of them in that particular character, under the advice and correction of a man who has already acquired expertness in the process of examination, and sagacity in estimating the result."

If it should be objected to my opinion, that the popular theory of the jury is opposed to it, I can only answer that I hold the popular theory of the jury to be fundamentally and completely erroneous.

C. H. CAMERON.
Mr. Cameron's Minute on the Means of Educating for Judicial Functions.

THE Committee of Public Instruction suggest as the best mode of supplying the want of official knowledge, as well in the young men educated at the public seminaries, as in others, that "a certain number (say five) of native assistants, on small salaries, should be appointed to each district, three of whom might be placed at the disposal of the judge, and two under the orders of the Revenue Commissioner, the latter being available for employment in any district of the division, at the discretion of that officer. The three attached to the judge might be posted," the Committee proceed to suggest, "according to his judgment, either in his own court or that of the Principal Sudder Ameen, where they would be very useful, after a short time, as confidential clerks, and they would obtain the very best practical education, especially as to details and forms for Moonsiffs."

Having myself, on a former occasion, been obliged to give much of my attention to the subject of preparing natives of the East for the judicial office by appropriate moral and intellectual culture, I am desirous of now stating the opinion at which I arrived; and for this purpose these papers have, at my request, been transferred to the legislative department.

The occasion which attracted my attention to the subject was, the preparation of a plan for judicial establishments for the island of Ceylon, which was part of my duty as a Commissioner, Eastern Inquiry, under the Colonial Office.

As the least troublesome mode of explaining my views, I annex the letter to Lord Goderich, in which I proposed that in every court of original jurisdiction there should be a paid and permanent officer, assisting the judge throughout the conduct of the cause, and giving his opinion upon every matter arising for decision; which opinion, however, should have no legal effect, and indeed no other effect than such moral influence as the learning and character of the officer delivering it, and the arguments by which he might support it, should produce upon the mind of the judge.

This proposition received the assent of the Secretary of State for the Colonies, and the plan has been gradually brought into operation at Ceylon. It is there connected with the plan of assessors which I have previously recommended; but there is, of course, no necessary connection between them. A paid and permanent officer, with the proposed functions, might sit in every court, though no unpaid and unofficial colleagues were associated with him.

To the reasons adduced in my letter to Lord Goderich, I have now only to add some remarks upon the merits of the plan, as compared with other plans which have been proposed or adopted for the attainment of the same end. I am only aware of three such plans.

1st. The plan of appointing the probationer to a clerkship or other office in a court of justice.

2nd. The plan of appointing the probationer a judge for the decision of small causes.

3rd. The plan of appointing the probationer to take the evidence upon which the judge is afterwards to decide.

1st. The first is the plan which forms part of the recommendation of the Committee of Public Instruction, and it is, I think, much to be preferred to the other two. But it is liable to objections which do not apply to my proposition, and which, in my judgment, far outweigh the small advantage which I admit it to possess in point of economy.

For a person employed as a clerk or other officer of court, though he does indeed witness with more or less attention the transactions of judicial business, does not himself transact it. The process necessary for coming to a correct decision, the process necessary for making a decree, does not pass through his mind. He does not acquire actual experience of that duty for which it was intended to fit him.
2nd. In the second plan, the probationer (if it be not abuse of language to call him so) whose business it is to hear and decide small causes, does indeed acquire actual experience, but he acquires it at the expense of the unfortunate suitors, on whom his education inflicts all the misery resulting not only from injustice, but from injustice aggravated by the fallacious promise of justice.

Moreover, as small causes are generally the causes of the rich, the unseemly spectacle is exhibited of a judge learning to adjudicate well the rights of the great and opulent, by adjudicating well or ill the rights of the vulgar.

3rd. The third plan, that of making the probationer (if here again it be not an abuse of language to call him so) take evidence upon which the judge is afterwards to decide, is open to like objections in so great a degree as each is respectively to its own share of them; but it is liable to another of very great weight, viz.: that it separates two functions, those of hearing and deciding, the union of which is essential to the best constitution of a court.

The arrangement which this plan suggests for educating men to the administration of justice, is such that, under it, the administration of justice must be defective, even though performed by the best educated men.

In the plan which I propose there is no such injurious distribution of the functions of hearing and deciding.

In that plan the probationer actually transacts judicial business himself. He actually performs every office which he would perform if he were a judge, not even excepting the office of deciding. But his decision can do no harm. He gets all the benefits of real experience without inflicting upon the suitors any of those evils to which judicial inexperience gives rise.

I have now only a few words to say on the economical part of the subject. I must candidly admit that the plan I propose is more expensive than any of its three competitors. For in all of them, the probationer, though paid by the public, is not paid for learning the business of a judge, but for some service which must at any rate be performed, and for the performance of which the public must at any rate pay.

I submit, however, that if my reasonings are sound, that expense of training judges in the manner I suggest, will be far more than repaid by the advantage of placing on every bench a man who begins his judicial career with a thorough practical knowledge of his duty. Of course, during the illness or temporary absence of the judge, the probationer will be generally competent to transact any business of routine.

The expense, too, of training judges in this manner, will be really much less than it may appear at first sight. It will probably become still less, as the plan works and becomes understood. It may perhaps vanish altogether in the course of a few years. For, independently of any salary which may be paid to the probationer, he will have a strong temptation to accept the office, in the promise which should be made to him, that nothing but some moral or intellectual defect will prevent his being, in due time, promoted to the bench.

That such a promise will operate as a very strong inducement, is made certain by experience; in England, young men are tempted by the very uncertain chance of success at the bar, not only to do gratuitously the work of other men, but pay 100 guineas a year during two or three years, for the privilege of being allowed to do it.

Now, though it is probable that the candidate for the office of Moonsiff be too poor to pay for the instruction to be thus afforded, or even to subsist without some salary, it is, I think, clear that a very small salary indeed will be sufficient from the first, and perhaps none at all hereafter will be necessary. The functions of the probationer are not such as to require that he should be well paid, as a security against bribery. It can be worth no man's while to offer him a bribe.

It is to be observed, besides, that although my plan requires an immediate expenditure of money which the others do not, it will appear upon examination that this expenditure is not all to be placed to the
account of judicial training. I expect from the adoption of the plan, a further collateral advantage, itself worth some pecuniary sacrifice. It seems to me that we shall have what is good in a plurality of judges, while we avoid what is evil in that arrangement.

A plurality of judges is mischievous, because the disadvantage of dividing and weakening responsibility, outweighs the benefit resulting from the joint application of several minds to the same subject.

There will be two minds applied impartially to the examination and discussion of each cause, while the legal responsibility of the decision is concentrated upon one.

The probationer upon this plan, may be regarded in some respects as an advocate, only that instead of being the advocate of a party, exercising his ingenuity in one out of two cases, to mislead the court, he will be the advocate of truth and justice, stimulated by the hope of promotion to the bench, to do his utmost for the interest of those, his clients.

Two objections have been suggested to me which are certainly deserving of notice.

First, it may be objected that each suit will consume more time than it now does. Each suit will certainly consume more time than it now does. But before we can pronounce this to be an evil, we must know whether the time now consumed, is sufficient for a thorough investigation of the case.

It seems to me, that a judge sitting without colleagues, without jury or assessors, and without any effective public, is likely to be in too great a hurry. He has scarcely any adequate motive for stating to himself distinctly, the grounds of the opinion which the evidence and arguments may impress upon his mind. A judge so situated must be apt to decide, without any separation of law from fact; of the sound arguments from the sophistry which may have been addressed to him, and of the trustworthy from the suspected evidence which may have been adduced.

He must, I think, be prone to make up his mind upon the whole matter in the gross, just as an unpractised man makes up his mind in common life, when two conflicting stories are told him; and, seeing or thinking he sees, that one of the conflicting parties is right, and the other wrong, he pronounces accordingly.

This is not the proper mode of arriving at any decision, least of all a judicial decision, which ought to show what propositions the judge assumes as law, and what propositions of fact he considers to be established; and I am therefore of opinion that time, which will be for the most part employed on the analyses above-mentioned, (as will probably be the case when two new men have to record their just opinions upon a complicated matter which they have examined together,) is, upon the whole, time well spent, even though some of it be consumed in superfluous discussions.

The second objection is, that the responsibility of the judge will be divided, and thus weakened. As the opinion of the probationer will have no legal effect, the legal responsibility will not be divided. His moral responsibility will, however, be in a slight degree shared by the probationer, and in that respect weakened. But, on the other hand, both his legal and moral responsibility will be strengthened, because his decision will be so much more open to criticism when the steps by which he arrives at it are thus laid open.

Before I conclude, it may be proper to say a few words upon the mode adopted in Great Britain for selecting persons for a judicial office.

The judges are there invariably selected from among practitioners at the bar; but justice is there administered under circumstances so very favourable to the purity and learning both of the bar and the bench, that however excellent the judges may have generally been who have gone through this kind of training for their office, much of their excellence cannot, I think be attributed to that training. It is rather to political and social than to professional causes, that the lawyers of the mother country owe their freedom from pecuniary corruption, and with regard to intellectual qualities, those which insure success to the advocate, who
s maintaining one side of the question are by no means the best calculated to insure a just discrimination of the merits on both sides.

Eloquence, skill in examination, and reading, in taking advantage of any real or seeming flaw in the adversary's case, are, indeed, qualities which are capable of a beneficent application. But they are exerted at the bar avowedly and systematically, without reference to the merits of the case.

Even thus exerted, they do not fail to produce some good; but that is because they are generally to be found arrayed in something approaching to an equal degree, both on the part of the plaintiff and defendant.

But it cannot be doubted, that they are calculated to engender a habit of mind the reverse of what is desirable in a judge,—a habit of mind which the advocate must throw off before he can satisfactorily perform the noble duties of the bench.

It is not necessary that I should go into the more elaborate examination of this part of the subject, as, for a long period to come, it is very likely that the bar of the Mofussil Courts should be so much improved as to be thought advantageous seminaries for the education of judges, even by those who are disposed to attribute more merit than I do to the system of the mother country.

Since writing the above, I have referred to Dumont's work De l'Organisation Judiciaire, chap. XI., of which I had only a general recollection, and I there find that the plan of training judges, which received the sanction of Mr. Bentham's high authority, is that there should be a judge delegate in each court, to whom the principal judge should refer such causes as he think fit.

It is not said how the principal judge is to distinguish the causes which he selects for reference to his delegate. Probably Mr. Bentham intended that the causes should not be selected until the pleading is completed and the matter ripe for argument or trial.

This plan is open, in a slight degree, to the objections I have urged against the second and third of the plans examined above, and would, I fear, have a great tendency in this country to degenerate into the second plan; and, therefore, notwithstanding the great name of the inventor, and the merit of the invention, I still venture to prefer my order.

C. H. Cameron.

March, 1838.

Letter from Charles Hay Cameron, Esquire, to Viscount Goderich.

My Lord, 19, Chester Street, August 10, 1832.

In the Report I had the honor to address to your Lordship on the 31st January last, I recommended that each court of original jurisdiction in Ceylon should consist of one judge and three assessors, and that the assessors should be chosen as the jurymen now are in the maritime provinces, p. 78, "Ceylon Reports."

I stated to your Lordship, at some length in that Report, the reasons which appeared to me to justify the scheme of judicature described in it. But it has since occurred to me, that by a slight modification, that scheme may be made subservient to the very important and beneficial purpose of giving to a class of native functionaries, the skill and integrity necessary to render them fit for becoming judges of original jurisdiction.

If this object can be accomplished, a great saving of expense will ensue. For the salary with which a native judge would be amply remunerated is quite trifling in comparison with the amount necessary to tempt a competent European to undertake so laborious an office in so warm a climate, and in so distant a region.

But, independently of the economical question, it is of the utmost importance, with a view to the future stability of our dominion in the
East, and the improvement of our native subjects in general, that the higher classes among them should be rendered morally and intellectually competent to fill offices of trust.

What I now propose, is that one of the three assessors in each court of original jurisdiction should be a permanently official person, receiving such a moderate salary as will be necessary to remunerate a native of respectable station for giving up his whole time to the public.

It would be scarcely worth the while of any suitor to attempt to bribe or intimidate a functionary having so little power to affect the fate of the cause, except by reasons founded on law and justice; and as all the functions of the official assessor will be performed under the eye of the European judge and the public, an attempt on his part to sacrifice justice to his private interests could hardly end in anything but detection and disgrace.

Here, then, will be a public servant, obliged by his office to revolve constantly in his mind the maxims of law and morality, and to assist, by his opinion and advice, in the application of them to the real business of life, who will at the same time be removed by his peculiar position from all temptation to pervert those maxims to purposes of chicane, fraud, or oppression.

It seems difficult to imagine a situation better calculated to strengthen the principles of morality, by exercising them in the solution of real and practical questions, and at the same time to avoid the mischiefs which might result from the insecure hold which those principles have hitherto acquired over the minds of natives in general.

A native who has for some years been subjected to this discipline, and who has gone through his noviciate with credit, may, I think, be very safely placed in the more arduous and responsible office of a judge of original jurisdiction; and by such an appointment, four-fifths of the salary necessary to remunerate an European judge will be saved to the public; the honorable ambition of the upper class of natives will be safely gratified, and the great mass of the people will be bound by ties of affection to a Government which ceases to withhold offices of power and emolument from its native subjects, as soon as they become qualified to fill them with advantage to the native community.

I have, &c.,
C. H. CAMERON.