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THE

STORY OF NUNCOMAR

AND THE IMPEACHMENT OF

SIR ELIJAH IMPEY



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SIR ELIJAH IMPEY

BY

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IN TWO VOLUMES

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CHAPTER I.

INTRODUCTORY.

In writing the *History of the Criminal Law of England*, I was much struck with the way in which nearly all the most important parts of our history connect themselves in one way or another with the administration of criminal justice, and with the importance which, in writing history, attaches to a technical knowledge of the law. This led me to form a plan of studying, with a lawyer's eye, some of the more remarkable of the trials in which our history abounds; and of giving such accounts of them as might be recognised by lawyers as accurate, and might interest historical students. After some hesitation, I decided to give an account of the impeachment of Warren Hastings, which appeared to me, upon many grounds, not only to be a matter of surpassing interest, but to deserve more study than it has ever received; and I devoted to the study of the subject a considerable part of the moderate amount of leisure left to me by my judicial duties. I found the materials so voluminous, and the subject so intricate, that I soon began to doubt whether I should be able to finish it in any

reasonable time, and whether, if I did, the public would care enough about it to read what I might write. I decided accordingly to make the experiment of giving an account of one branch of the subject—the story of Nuncomar. This matter lies within a moderate compass. It has never been properly examined. The materials for a full account of it exist at the India Office, and in the British Museum. The degree of interest which may be felt in the smaller subject will be some index to the interest likely to be felt in the larger one, of which it forms a part.

[1] James Mill says, "No transaction perhaps of his "whole administration more deeply tainted the reputation "of Hastings than the tragedy of Nuncomar." A similar remark was made by William Wilberforce. The most prominent part too in Nuncomar's story is played by Sir Elijah Impey, and it is natural that a judge who has also held the office of Legal Member of Council in India should feel an interest in the history of a Chief Justice of the Supreme Court of Calcutta charged with judicial murder, alleged to have been committed in order to shield the first Governor-General of Bengal from detection by the majority of his council in corruption.

Another personal reason has weighed with me in the matter. Impey, in the present day, is known to English people in general only by the terrible attack made upon him by Lord Macaulay, in his essay on Warren Hastings. It stigmatises him as one of the vilest of mankind. "No other such judge has dishonoured the English "ermine since Jefferies drank himself to death in the "Tower." "Impey, sitting as a judge, put a man unjustly "to death, in order to serve a political purpose." "The

[1] iii. 449.

"time had come when he was to be stripped of that "robe which he had so foully dishonoured." These dreadful accusations I, upon the fullest consideration of the whole subject, and, in particular, of much evidence which Macaulay seems to me never to have seen, believe to be wholly unjust. For Macaulay himself I have an affectionate admiration. He was my own friend, and my father's, and my grandfather's friend also, and there are few injunctions which I am more disposed to observe than the one which bids us not to forget such persons. I was, moreover, his successor in office, and am better able than most persons to appreciate the splendour of the services which he rendered to India. These considerations make me anxious if I can to repair a wrong done by him, not intentionally, for there never was a kinder-hearted man, but because he adopted on insufficient grounds the traditional hatred which the Whigs bore to Impey, and also because his marvellous power of style blinded him to the effect which his language produced. He did not know his own strength, and was probably not aware that a few sentences which came from him with little effort were enough to brand a man's name with almost indelible infamy.

The story of Nuncomar is the main subject of this book, and I have accordingly examined it minutely. The other charges against Impey I have described in less detail. Though less interesting than the charge relating to Nuncomar, they are of greater historical importance, for they form the first chapter of the history of the introduction of English law into India, and they illustrate the difficulties by which the establishment of the Indian Empire was attended, and

so form a natural introduction to an account of the impeachment of Hastings.

The following are the principal original materials which I have consulted and refer to in this work :—

1. The Bengal Consultations preserved at the India Office. They are one of the most interesting, authentic, and curious collections in the world. It was the practice for a long series of years to enter minutes of all the proceedings at every meeting of the Council, giving the opinions expressed by every member on every subject which came under discussion. The Minutes seem to have been drawn up on the spot, and signed at the time by those whose opinions they express. It is as difficult to understand how this was managed as to discover how the different characters in *Sir Charles Grandison* found time to write each other the letters of which that work is composed ; but, in some way, the thing was done, and the result is that to the present day it is possible to follow with perfect clearness the progress of every measure—legislative, financial, military, or administrative —which occurred in the government of India during a long series of years. Illustrative papers relating to every kind of subject, and often of the deepest interest, are also entered on the Consultations.

2. The Reports of the Parliamentary Committees on Indian Affairs published between 1772 and 1786. These are numerous, as several committees sate, and each published several reports. The report which contains most information as to the Supreme Court and Impey is the report on several petitions relating to the administration of justice in India, the most important of which was a petition by Touchet and Irving, as agents of the Europeans resident in Bengal. The report and its appendixes

form a folio volume. It contains a large number of papers throwing more or less light on all the principal transactions in which Impey was engaged. I quote it as the Report of Touchet's Committee.

3. In the twentieth volume of the *State Trials* there is a full report of the trial of Nuncomar for forgery, and an imperfect account of his trial for conspiracy—no writer on Indian history appears to me to have studied them properly.

4. On the motion made, on 12th December, 1787, by Sir Gilbert Eliot, to impeach Impey, a Committee was appointed to receive evidence on the subject. The evidence given before the Committee, especially that of Mr. Farrer, who was Nuncomar's counsel, is extremely curious. I quote this report as the Report of the Impeachment Committee. A copy of it is to be found at the India Office, and also at the British Museum, but it is not easily accessible elsewhere.

5. The articles of impeachment preferred against Impey by Sir Gilbert Eliot. These are also to be found at the India Office in the same volume as the evidence before the Impeachment Committee.

6. [1] The defence made by Sir Elijah Impey, at the Bar of the House of Commons on the 4th February 1788, was separately published and is printed at full length in the twenty-sixth volume of the *Parliamentary History*.

7. The speech made by Sir Gilbert Eliot, in moving for the impeachment of Impey partly on the 28th April, and partly on the 9th May 1788, is printed in the twenty-

[1] It is characteristic of Mr. Elijah Impey that he does not seem to have been aware of this. He says that the defence had, when he wrote, become so rare, that he meant to give his copy of it to the British Museum (pp. 321, 322). The only book at the British Museum presented by Mr. Impey is a copy of a pamphlet by his father, noticed below.

seventh volume of the *Parliamentary History*. The first part was, it is stated, corrected by Sir Gilbert Eliot himself, but the second and more important part was not corrected by him, and is far less complete.

8. The collection of Impey's letters and papers deposited at the British Museum by his son Elijah Barwell Impey. I have quoted these as the Impey MSS.

9. I have been permitted by members of Barwell's family to examine his letters. They contain amongst other things a kind of life of Nuncomar. Extracts from these letters form the concluding chapter of this work.

10. I have occasionally referred to some of the authorities on the impeachment of Hastings, especially the short-hand notes of the evidence, the speeches of counsel, published by the Treasury in 1859-61, and the curious book called *The History of the Trial of Hastings*, published by Debrett in 1796.

Besides these materials I have referred to a number of well-known books upon India, from which, however, I have derived little assistance. They go into no detail and appear to me to have been written with hardly any reference to the greater part of the large body of evidence to which I have referred. James Mill, for instance, devotes about [1] four pages to the subject which omit all its difficulties. I do not believe that he or any other historian of India had read the trial of Nuncomar with any sort of attention. He dismisses it in eight lines to the effect that the evidence was contradictory and equally balanced. [2] A note appended by Mr. Wilson to this meagre notice is fuller and fairer but it is only a note. The fullest and fairest account of the matter with which

[1] Mill and Wilson, iii. 448-453.

[2] *Ibid.* iii. 452.

I am acquainted is given by Mr. Adolphus in his unfinished [1] history of the reign of George III.

Mr. Adolphus had read the trial of Nuncomar and a good deal of the other evidence, but his account of the matter, like the rest of his book, is greatly deficient in original power.

One work on the subject deserves special notice. This is the life of Sir Elijah Impey by his son Elijah Barwell Impey. It was written by its author by way of answer to Macaulay's article on Warren Hastings. It is to be regretted that Macaulay should never have noticed it. It is a most confused, clumsily composed, intricate book. The author was a Student of Christchurch, never adopted any profession, and passed his life in literary pursuits of no great importance. He was altogether unequal to an encounter with Macaulay, and had none of the special knowledge necessary to enable him to vindicate his father's character. He was moreover far from being an accurate writer, but he brought together in a confused way many matters which cannot have been known to Macaulay when he wrote his article, and which if they had been known to him must have modified his judgment in many particulars.

The last writer who has gone into the subject at any length is a member of the Bengal Civil Service, Mr. Henry Beveridge, just appointed a judge of the High Court. In 1877 and 1878 he published in the *Calcutta Review* three articles on Warren Hastings, of which the second (vol. lxvi. pp. 273-312) and part of the third (vol. lxviii. pp. 282-305) go at considerable length into the story of Nuncomar. Mr. Beveridge has gone into the matter more fully than any previous writer. He appears to have seen some part, but by no means the whole, of the

[1] Edition of 1841, vol. iii. p. 519-524.

evidence to which I have referred, though in many cases he gives no authority for his statements. He has read the trial of Nuncomar, but when he published his reviews he had obviously no professional knowledge of English law. The account which he gives of the trial is very slight, and shows no power of combining and arranging a mass of ill-arranged or unarranged evidence. He takes the view which Burke expressed with passionate eagerness, that Nuncomar was murdered by Hastings by the hands of Impey. I shall notice his arguments in their proper place.

The scheme of my work is as follows. After two introductory chapters, in which I merely repeat well-known facts, I consider in detail, using in every case evidence as nearly original as I have been able to get, the following matters:—

1. The accusation of corruption brought by Nuncomar against Hastings.

2. The accusation of conspiracy brought by Hastings, and the accusation of forgery brought by Mohun Persaud, against Nuncomar, and the proceedings against him down to his trial.

3. The trial itself.

4. Circumstances connected with the trial which do not appear on the face of the proceedings but were long afterwards proved before the Committee of Impeachment, including the efforts made to save Nuncomar and his execution.

5. Occurrences subsequent to the execution of Nuncomar, including various transactions which took place in the Council, and communications between the Council, the Supreme Court, the East India Company and the Secretary of State.

All these matters took place between March 1775 and the early part of 1776.

6. I describe the proceedings for the impeachment of Impey, his defence on the charge relating to Nuncomar, and the refusal of the House of Commons to impeach him, and I give my own opinion on the result of each part of the accusation. The debates on his impeachment took place between December 1787 and May 1788.

7. I give some account of the other articles of impeachment against Impey and of the circumstances out of which they arose, particularly of the contest between the Supreme Court and the Council.

With regard to the spelling of Indian names and words I have to admit ignorance. I have followed no system at all, but have spelt them as I found them spelt by others. In a few cases, however, I have adopted the more modern transliterations, instead of the old-fashioned ones, which have become obsolete. For instance, I write "Khan," not "Cawn," "Shah Alam," not "Shaw Aulum," "Hindustani," not "Hindoostanee," "Diwani Adalat," not "Dewanny Adawlut."

CHAPTER II.

THE SUPREME COUNCIL AND THE SUPREME COURT.

BEFORE the battle of Plassey in 1757 the establishment of the East India Company at Calcutta had been almost exclusively commercial. The effect of the battle was to raise Mir Jafir, whom the Company protected, to the position of Subadar of Bengal, which had previously been occupied by their enemy, Surajah Dowlah. Mir Jafir was a miserable creature, and was deposed in favour of his son-in-law, Mir Cossim, a man of far greater force of character. Quarrels arose between him and the Company, in which they were unquestionably in the wrong, but in which he disgraced himself by cruelty and massacre. A war ensued, which ended in 1764 by the Battle of Buxar, which, rather than Plassey, deserves to be considered as the origin of the British power in Bengal, as from that time forward no native ruler exercised any real authority there. Its immediate consequence was the grant, by the Mogul Emperor, of the "diwani," or right to collect the revenue throughout Bengal, Behar, and Orissa, to the Company,

represented by Lord Clive, who had just arrived from England for the second time.

[1] During the seven years which followed the grant of the diwani (1765-1772) the civil administration of the country was almost entirely in the hands of natives. The head of the native administration of Bengal was Mahomed Rheza Khan, the Naib or Deputy Nabob of Bengal, resident at Moorshedabad. The head of the native administration of Behar was Schitab Roy, the Deputy Nabob of Behar, resident at Patna. Some feeble efforts were made in 1769 to keep a watch upon, if not to control, their proceedings by the appointment of supervisors.

In 1772 Hastings was appointed Governor, and the first task imposed upon him by the East India Company was to depose the Naib Nabobs and cause the Company "to stand forth as diwan." This he did, also by the express orders of the Company, chiefly through the agency of Nuncomar, who hoped to be put in the place of Mahomed Rheza Khan, and was deeply mortified when the places which he and Schitab Roy had occupied were abolished, the most important of their powers being made over to European officers. This is not the place to describe in detail the steps taken for this purpose, or the condition of the administration from 1772 to 1774. It is enough to quote in connection with it a characteristic remark made by Hastings [2] in a letter to Barwell: "The "new government of the Company consists of a confused "mass of undigested materials as wild as chaos itself. "The powers of government are ill-defined: the collec- "tion of the revenue, the provision of the investment;

[1] See Fifth Report, 1812, p. 405.

[2] Gleig's *Life of Hastings*, i. 317, July 22nd, 1772.

"the administration of justice (if it exists at all), the "care of the police, are all huddled together, being exer- "cised by the same hands, though most frequently the "two latter offices are totally neglected for the want of "knowing where to have recourse for them." This system, if it deserves the name, derived its legal powers partly from royal charters incorporating the East India Company as a trading company and establishing courts of justice for the town of Calcutta, and partly from the various grants of the Subadars of Bengal and the Mogul Emperors, the most important of which was the grant of the diwani. Down to 1773 the English Government never asserted any direct original authority whatever in Bengal outside the limits of the town of Calcutta and the factories dependent upon it.

The position of the English in India in 1773 had much analogy in principle to their position in Egypt at the present day [1] and for some years past. Their power in each case originated in military operations of a somewhat anomalous kind. In each case the result of these operations was to create a power limited only by the will of its possessors to make use of it, and this in fact is a conquest, though a conquest of a peculiar kind. The battle of Plassey in itself could hardly be described as a conquest of Bengal, nor the battle of Tel-el-Kebir as a conquest of Egypt. But each in its effects closely resembled a conquest, and each led to the erection of a system of government in which European and native officials, laws, and principles were strangely combined into a far from satisfactory whole. What may happen in Egypt is still matter of speculation. The result of the battles of Plassey, Buxar, and some other military

[1] 1885.

operations has been the conquest of India. In order to understand the spirit in which the Regulating Act of 1773 was framed, we must imagine the Parliament of our own day engaged in passing an Act which should provide for the efficient government of Egypt without openly invading the authority of either the Sultan or the Khedive, or expressly asserting the sovereignty of the Queen.

This comparison, however, gives a most imperfect idea of the difficulties by which the legislation of 1773 was embarrassed. The question was not only, or indeed principally, between the British Government and the native authorities. There were three parties to the question, namely, Lord North's ministry, the East India Company, and the native powers, who, however, were to some extent represented by the East India Company.

A full account of the discussions which led to the Act, and an abstract of the principal arguments used in the debate upon it, is to be found in the *Annual Register* [1] for 1773, written in all probability by Burke. The discussion appears to have turned almost entirely on the question of the right of Parliament to interfere with the charter and the territorial possessions of the Company. The Company regarded their political authority as being their property independent of Parliament, and rightfully subject, so far as it was subject to anything at all, only to the Emperor of Delhi and to the Nabob of Bengal. Each of these princes was a mere shadow, subject, as far as Bengal was concerned, for all practical purposes to

[1] *History of Europe*, ch. vi. pp. 63-82 ; ch. viii. pp. 93-108. See, too, Lecky's *Eighteenth Century*, iii. pp. 472-91, and Adolphus, i. pp. 535-553, also the account of the debates in the *Parliamentary History*.

their own officers. It is difficult in our days, and with our experience, to understand how such a view could ever have been seriously maintained or permitted to influence the deliberations of Parliament. Not only was it strenuously advocated, and that by plausible arguments, but its principal advocate was Burke, the very man who in later life was the bitterest enemy the Company ever had, the great advocate of Fox's India Bill, the leader in the impeachment of Warren Hastings. [1] I do not, however, propose to enter upon this point into any detail. It is enough for my present purpose to point out how deeply the two provisions of the Bill which relate to the internal affairs of India are affected by the unwillingness to deal roughly with the theory of the East India Company. The practical consequence of this and the force of the theory itself, will display themselves at several points in the course of this work.

The Council, before the Regulating Act, consisted of a president and an indeterminate number of members, usually about twelve, many of whom held other offices than that of councillor both at Calcutta and in the various inland factories. It was a loosely constituted, ill-organised body. Warren Hastings observed upon it, "[2] By the constitution of the Company the Council at "large have the supreme authority in all matters which "either come in the course of office before their notice, "or of which they choose to take cognizance; but as

[1] In Wraxall, iii. 172, an account is given of one of his speeches on this measure. Wraxall regarded it as "the finest composition pro-"nounced in the House of Commons during the whole time I remained "a member of that assembly, from 1780-1794." He insists on the word "composition."

[2] *Letter to Sir J. Colebrooke*, Gleig, i. 289.

"their power exists only while they sit in a body, so "much of it is delegated to the governor, their president, "as is supposed to be necessary for giving a continual "currency to business, or for executing such of their "functions as do not appertain to any distinct office of "government. It is not easy to determine what points "fall under this description. In effect, the governor is "no more than any other individual of the Council, if the "others choose to partake of his authority, although the "responsibility of affairs seems to rest with him only. "An opinion that he possesses something more, and a "superior share of diligence or ability, may give him an "influence in the administration which he wants consti- "tutionally, but in the latter he may be exceeded by "others, and the former must vanish when it is put to "the test; and whenever these cases happen, the "government, for want of a power to preside and rule "it, must fall into anarchy. These indeed are the inevit- "able consequences of the ancient form of government "which was instituted for the provision of the invest- "ment; the sale of the Company's exported cargoes, and "the despatch of their ships being applied to the "dominion of an extensive kingdom, the collection of a "vast revenue, the command of armies, and the direction "of a great political system, besides the additional "charge devolved to their commercial department by "its relation to the general trade of the country, and "its effect on the public revenue." So inefficient indeed was the old Council that when it was considered necessary to make really important reforms powers were entrusted to Lord Clive and a Select Committee which practically superseded those of the Council.

It was this experience, no doubt, which determined

the form of the new Council. It consisted of Hastings as Governor-General (a title substituted for that of governor in order to mark the superiority given to Bengal over the other presidencies), and four councillors named in the Bill, General Clavering, Colonel Monson, Barwell and Francis. The Governor-General was to have a casting vote in the case of an equal division. The powers given to the Council were thus defined: "The "whole civil and military government of the said Presi- "dency, and also the ordering, management, and govern- "ment of all the territorial acquisitions and revenues in "the Kingdoms of Bengal, Behar, and Orissa shall be "vested in the said Governor-General and Council, "in like manner as the same now are or at any "time heretofore might have been exercised by the "President in Council or Select Committee in the said "Kingdoms."

These words, it will be observed, do not even hint at the origin or extent of the powers of the Council or of the Company. They say nothing of the Emperor of Delhi on the one hand or of the King of England on the other. They confer no legislative power on the Council, which, however, in [1] another clause of the Act, is authorised to make bye-laws for the town of Calcutta, with the consent and approval of the Supreme Court.

The Supreme Court was established by ss. 13-22. The provisions relating to it are as vague, in the essential parts, as those which relate to the Council. The king is empowered, "by Charter, or Letters Patents, to erect "and establish a Supreme Court of Judicature at Fort "William, to consist of a Chief Justice and three other

[1] 13 Geo. III. ss. 36, 63.

"judges: which said Supreme Court of Judicature shall "have authority to exercise and perform all civil, crimi- "nal, admiralty, and ecclesiastical jurisdiction given to it "by the Charter," and shall be a Court of Oyer and Terminer, and gaol delivery in and for the town of Calcutta and the adjacent factories. These enactments settle neither the local nor the personal limits of the jurisdiction of the High Court outside of Calcutta, nor do they determine what law the Court is to administer.

These defects were to some extent supplied by the Charter. Impey was charged with having procured the introduction into it of illegal provisions. He said, in his defence at the bar of the House of Commons: [1] "The "original draught of this Charter was perused by the "present Lord Chancellor" [Thurlow], "then Attorney- "General; received alterations from Lord Loughborough, "then Solicitor-General; was revised by Lord Walsing- "ham" [better known as Sir W. De Grey], "then Chief "Justice of the Common Pleas, and by Earl Bathurst, "then Lord Chancellor. That I attended all those "noble lords on the occasion, more particularly the "present Lord Chancellor, and had the advantage of "hearing their several reasonings on the subject; that "I have at present in my possession all their rough "draughts, with their several observations, and the re- "ports of the then Attorney and Solicitor Generals, in "their own respective handwritings; that from thence I "did acquire, and have declared that I did acquire, a "more intimate knowledge of the [2] drawers of that Char- "ter—is most undoubtedly true. But, as I cannot with- "out presumption attempt it, I must refrain from

[1] *Parl. Hist.* xxvi. 1354.

[2] "Intentions of the," or some such words, seem to be here omitted.

"vindicating myself from the charge of having advised "illegal powers to be inserted in the charter, or conferred "them on myself. The very attempt to justify myself "would be an insult on the integrity and wisdom of the "noble lords that drew the Charter; and it would be the "utmost arrogance in me to conceive that it can by "any possibility be believed that they could have been "imposed on by or borne with advice from me."

It is consistent with this statement, and, indeed, the statement may be taken to some extent to imply, that Impey was the original draftsman of the Charter; but, however this may have been, he would, of course, receive instructions from the persons named, by whom it was settled, and who, in every way, were responsible for its contents.

[1] The Charter runs to a great length, and deals with a great number of details of no general interest. The essential parts of it are as follows:—It provides in very elaborate language, that the East India Company itself, and all European and British subjects resident in Bengal, Behar, and Orissa, and every other person who, either at the time of bringing the action, or at the time when the cause of action accrued, was "employed by, or" was, "directly or indirectly, in the service of the Company, or "any other of our subjects," should be liable to be sued in the Supreme Court, in respect of any civil matter, by any person who might have claims against them. It is remarkable that nothing is said as to the law to be administered in such cases. The implication, no doubt, is that it was to be the law of England.

After providing for the Civil Jurisdiction of the Court, the Charter proceeds to the subject of its

[1] It is printed in many places, for instance in Morley's *Digest*, ii. 549.

Criminal Jurisdiction. It gives to the Court the authority of Commissioners of Oyer and Terminer and "gaol delivery in and for the town of Calcutta and "factory of Fort William in Bengal, and the factories "subordinate thereto. The trial is to be by jury, both "the grand jurors and the petty jurors 'being subjects "of [1] Great Britain, resident in the said town of Cal- "cutta." The Court was 'to administer Criminal Justice,' "in such manner and form, or as nearly as the condition "and circumstances of the place and the persons will "admit of," as in England. A personal criminal jurisdiction was also given to the Court over all British subjects and their servants resident in Bengal, Behar, and Orissa. The provisions of the Charter as to criminal justice conclude with the following clause, which furnished one of the principal grounds for Impey's impeachment and for the censures passed upon his conduct.

"And whereas cases may arise wherein it may be "proper to remit the general severity of the law, we do 'hereby authorise and empower the said Supreme Court "of Judicature at Fort William in Bengal, to reprieve "and suspend the execution of any capital sentence "wherein there shall appear, in their judgment, a proper "occasion for mercy until our pleasure shall be known, "and they shall in such case transmit to us, under the "seal of the Supreme Court, a state of the said case, "and of the evidence, and of their reasons for recommend- "ing the criminal to our mercy, committing him to "custody or letting him out on bail in the meanwhile."

These provisions do not in express words say, but they

[1] Was this intended to exclude Irishmen? Probably it was a mere slip.

imply, that the Court is to apply the criminal law of England "as nearly as circumstances permit" to all persons resident in the town of Calcutta and in factories subordinate to it, and to all British subjects, which in practice was held to mean European British subjects, and their servants resident in Bengal, Behar, or Orissa.

Such were the position and the powers of the Supreme Council and the Supreme Court respectively, when the councillors and the judges landed in Bengal in October 1774.

CHAPTER III.

HASTINGS, FRANCIS, IMPEY AND HIS COLLEAGUES—NUNCOMAR—DISSENSIONS IN THE COUNCIL.

BEFORE entering upon the main subject of this work I will say a few words of the principal persons to whose transactions it relates, and of the relation in which they stood to each other when these transactions began.

Warren Hastings has been the subject of several biographies, and in particular of the admirable Essay by Lord Macaulay, which, though imperfect, and, I think in some particulars unjust, has told the main features of his career in a way which supersedes the possibility of competition, and inclines me to content myself with a simple reference to it. I will, however, shortly recall the leading points of his life down to the time of his assuming the Governor-Generalship under the Act of 1773.

[1] Hastings was the last descendant of a family which had been settled at Daylesford in Worcestershire from

[1] Gleig, i. 6. In 1794 Burke, in one of his speeches described Hastings with the brutal ferocity characteristic of Burke's later years as "a man "whose origin was low, obscure, and vulgar, and bred in vulgar and

the reign of Henry II. For centuries it was wealthy and powerful, but it was greatly impoverished in the seventeenth century by the adherence of its then head to Charles I.; and Hastings's grandfather enjoyed the last remnant of the family property in the shape of a presentation to the rectory.[1] His son Pynaston married at fifteen. When Pynaston was seventeen his wife died in child-bed, Of Pynaston's career nothing is known, except that when "he became old enough he entered into holy orders, "and went to one of the West India islands, where he

"ignoble habits." The topic was a shameful one under any circumstances, and it was remarked at the time by Mr. Law (Lord Ellenborough's brother) in the House of Commons that "Hastings might have as fair "grounds to boast of his family as any gentleman in the House." Burke might have said in reply that he meant only to taunt Hastings with the follies and misfortunes of his parents, and that he did not intend to deny or discredit his pedigree. Probably this was his intention, as such a taunt would be more likely to wound Hastings's feelings, and indeed, in the eye of reason, to damage his character, than an attack upon his remoter ancestors (*Trial of Hastings*, v. 150, 154).

It is not unlikely, however, that Burke may have meant to refer to a story which Francis may probably have told him, as Francis thought it worth inserting in an autobiographical fragment published by Mr. Merivale (*Life of Francis*, ii. 589). Hastings, he says, "assumes the arms as well "as the name of the Huntingdon family, but no man knows with what "right or by what authority. I understand him to be the natural son "of a steward of the late Lord Darlington." He adds in a note, "So "I have been repeatedly assured by Lady Anne Monson, who was a "daughter of that family. She told me her father sent him with his "own sons to Westminster School, where he was called the classical "boy." By attacking the character of Hastings's mother, Burke would give him a maximum of pain, and so gratify the "immortal hatred" which he "vowed" against Hastings. As for Francis's story, any reader of Mr. Gleig's *Life of Hastings* will see its wild improbability and inaccuracy. Hastings was sent to Westminster by his uncle, Howard Hastings, and had to go to India in consequence of his uncle's death. His father was born in 1715, married in 1730, and became the father of Hastings in 1732. Hastings was named Warren after his mother, Hester Warren.

[1] The living is said in the *Clergy List* to be worth £188 a year.

"died." Warren Hastings was the child whose birth occasioned his mother's death. He was born on the 6th December, 1732. He was educated at the expense of an uncle at Westminster School, where he spent seven years (1742-9) with considerable distinction, and where he was, according to Mr. E. B. Impey, the bosom friend of Sir Elijah, who was just six months his senior. Hastings was appointed to a writership in Bengal, by the interest of Mr. Chiswick, a friend of his uncle, and sailed in January 1750 for his destination, which he reached on the 8th October in the same year.[1] In the early part of his career he played an important, though a subordinate, part in the transactions connected with the capture of Calcutta by Surajah Dowlah, and the wars which were its consequence. Of the remainder of the early part of his career little is to be said. It was the least creditable period in the Company's history, and was also the one in which its agents abused their power for corrupt private objects. No charge in connection with it has, however, been brought against Hastings; though it is probable that he, like others, must at that time have had opportunities of acquiring wealth by shameful means. He was at this time brought into relations with Nuncomar of an unfriendly kind. [2] Mr. Beveridge, in his first article, goes into the subject at considerable length. It is enough for my purpose to say that I think he shows that Nuncomar and Hastings were enemies before Nuncomar's disappointment as to the office of Dewan.

In 1764, after fourteen years' Indian service, Hastings returned to England, where he remained for four years, after which he was sent out as second in Council to

[1] Gleig, i. 33.

[2] *Calcutta Review*, vol. lxv. 205.229.

Madras. He had married and lost his first wife in India. On his voyage out he made the acquaintance of Mrs. Imhoff, the wife of a German portrait painter, who was on his way to seek his fortune in India. Hastings's connection with her is not creditable to his memory. He seems to have bought her from her husband. This man had the meanness to live with her first at Madras and afterwards at Calcutta whilst proceedings for a divorce were going on in the German Courts. When the divorce was obtained, Hastings married Mrs. Imhoff and sent Imhoff back to Germany with 10,000*l.* as the price of his infamy.[1]

Notwithstanding its discreditable origin, the marriage was eminently happy. The parties lived together on terms of perfect happiness and devoted love for forty-two years, from 1776 till Hastings's death in 1818.

Hastings's stay at Madras was short and uneventful. In May, 1771, he was appointed President of the Council at Calcutta. He left Madras towards the end of the year and took his seat at Calcutta in April 1772.

Between 1772 and the arrival of the new Council in 1774, two great subjects principally occupied the attention of Hastings. The first were the measures taken for the abolition of what was known as the

[1] Gleig, i. 162-7. Mr. Gleig says of Hastings and his second wife: "I "never heard so much as an insinuation hurtful to the honour of either "party. They were both too high-minded to inflict on a husband an "injury which never can be repaired." Whether or not they acted on the principle, *volenti non fit injuria*, is a question of no interest, but there is much to be said for the probability that they did. A great number of Hastings's letters to his wife are at the British Museum. Extracts from them have lately been published, both by his latest biographer, Mr. Trotter, and in the *Echoes of Old Calcutta*. They are more or less in the nature of love-letters, and some passages in them are not at all to my taste.

double government, to which I have already referred. The second was the Rohilla war, of which I will here say only that it was undertaken in consequence of a treaty between Hastings and the Nawab Vizier made at Benares in 1773, and that it was concluded in the early part of 1774.

On Hastings's character a very few words will be sufficient. If a man's ability is measured by a comparison between his means of action and the results of his action, he must I think be regarded as the ablest Englishman of the eighteenth century. In a striking [1] paper which he read to the House of Lords in 1791, and to which, should I ever write the history of his impeachment, I should refer at length, he said, so far as I can judge with strict truth, "Every division of official "business which now exists in Bengal, with only such "exceptions as have been occasioned by the changes of "authority enacted from home, are of my formation. The "establishment formed for the administration of the "revenue, the institution of the courts of civil and "criminal justice in the province of Bengal and its "immediate dependencies; the form of government "established for the province of Benares with all its "dependent branches of revenue, commerce, judicature "and military defence; the arrangements created for "subsidy and defence of the province of Oude, every "other political connection and alliance of the govern-"ment of Bengal were created by me."

After many striking references to particular instances he proceeded to state the part which he had played in the foreign policy of India. "The valour of others acquired, "I enlarged and gave shape and consistency to the

[1] Printed in the *History of the Trial*, iv. 97-104.

"dominion which you hold there; I preserved it; I "sent forth its armies with an effectual, but economical "hand, through unknown and hostile regions to the "support of your other possessions; to the retrieval of "[1] one from degradation and dishonour; and of the [2] other "from utter loss and ruin.". . . "I gave you all, and you "have rewarded me with confiscation, disgrace, and a life "of impeachment."

The difficulties under which Hastings's achievements were performed were as remarkable as the achievements themselves. He was called upon to act the part of an absolute sovereign, when both in fact and in law he was merely a private man with no defined legal powers whatever, except those of one of the managing directors of a commercial company. His masters were divided into parties of the bitterest kind, and gave him an intermittent and doubtful support. When he received by Act of Parliament some degree of legal power he had to share it with colleagues who waged against him a war bitter and persistent beyond example. They put him several times in a minority, reversed his policy and displaced the officers whom he had appointed. He was hampered in his operations by having to work with and by means of men who had hardly any other object in view than their own immediate money interests, and the protection of those interests was the point which principally engaged the attention of the most influential persons at the India House. Parliament was so little disposed to support him, that on one occasion the House of Commons passed resolutions requiring the Company to recall him. Upon the innumerable questions financial, economical, military,

[1] Bombay. [2] Madras.

diplomatic and legal which he had to decide, he had to act almost entirely on his own judgment and with little trustworthy or friendly advice. Under all these difficulties he never lost courage, and never failed in devising means of success or at the worst of escape.

He was one of the most pleasing, amiable and light-hearted of human beings. "In private life," says[1] Wraxall, "he was playful and gay to a degree hardly "conceivable, never carrying his political vexations into "the bosom of his family. Of a temper so buoyant and "elastic that the instant he quitted the Council Board "where he had been assailed by every species of opposi-"tion, often heightened by personal acrimony, oblivious "of these painful occurrences, he mixed in society like "a youth on whom care never intruded."

Few men have been more devotedly loved. The letters[2] in which his friends announced his death are evidence of this. One lady describes him as "the "most perfect of human beings, the indulgent friend and "parent of my life." Another says, "I gave the adored "and patient sufferer the last thing he took, a mouthful "of cold water, for which he put his blessed hand on "mine, for he could not then speak," and she speaks of him as "such a sincere angelic friend." He was probably as patient and sweet-tempered a man as ever lived, and it is also probable that no man's temper was ever tried more severely.

The faults attributed to him by[3] Burke and his friends were, amongst other things, that he was corrupt to the last degree, fraudulent, oppressive, "wild, savage, "unprincipled," a "wild beast who groans in a corner "over the dead and dying," "a captain-general of

[1] iii. 144. [2] Gleig, iii. 523-526. [3] *Trial*, v. 143.

"iniquity, thief, tyrant, robber, cheat, sharper, swindler, "we call him these names, and are sorry that the English "language does not afford terms adequate to the enor- "mity of his offences. . . . . Sir Walter Raleigh was "called a spider of hell. This was foolish and indecent "in Lord Coke. Had he been a manager on this trial "he would have been guilty of a neglect of duty had he "not called the prisoner a spider of hell." Burke certainly did not fail in the duty of calling names.

The calmer and more serious charge against Hastings is that he was [1] wholly unprincipled, and that so far as he succeeded in his enterprises he did so by unscrupulous ingenuity, and by occasional acts of downright tyranny and fraud. It might be said by a calm and serious critic that his character probably was attractive and amiable in private life, but that he was capable of selling the services of a British force to exterminate the Rohillas; that he acted consistently on the principle that the East India Company was entitled, when in want of money, to plunder any one who happened to have it; and that, in order to protect his own reputation, he conspired with Impey to bring about the judicial murder of Nuncomar. The truth of this view of Hastings's character depends on the question whether these charges are proved. In the present work I shall deal only with the last of them.

[1] "The difference between Francis and Hastings was thus stated in the "essay on the 'History and Discovery of Junius,' by the late Mr. Parkes. "Ostensibly they were mainly divided on the two great lines of Indian "policy—the one expediency, which Hastings patronised as most con- "ducive to individual and territorial aggrandisement; the other the "immutable principles of right and justice, which Francis advocated as "the true principles of government" (Merivale's *Francis*, ii. 74). I do not agree with this, but it puts in a short form the most general and definite charge which can be made against Hastings.

Far the most remarkable of the other members of the Council was Francis. The question whether he was or was not the author of *Junius* is a question which never has been and, happily for people who like puzzles, probably never will be, [1] definitely settled. He was eight years younger than Hastings and Impey, having been born on October 22nd, 1740; so that when he landed at Calcutta, on October 19th, 1774, he was within three days of completing his thirty-fourth year. If he was Junius, he had been engaged from 1769 to 1772 in the composition of the Letters of Junius. If he was not Junius, his public life may be said to have begun when he landed at Calcutta; for, up to that time, he had had no avowed occupation, except that of holding a clerkship at the War Office. Why he was appointed is a question which Mr. Merivale, at least, was quite unable to answer, though he refers to all sorts of gossiping stories about it, none of which he appears to believe.

Francis's character is beautifully sketched by Lord Macaulay. "Junius," he says, "was a man clearly not des-
"titute of real patriotism and magnanimity, a man whose
"vices were not of a sordid kind. But he must also have
"been a man in the highest degree arrogant and insolent;
"a man prone to malevolence, and prone to the error of

[1] I have never given any serious study to the question. The arguments adduced by Lord Macaulay in his article on Hastings to show that Francis was Junius appear to me to show that Lord Macaulay did not sufficiently distinguish between reasonable grounds of suspicion and proof. In Mr. Merivale's *Life of Francis* a good deal of additional evidence is given. The great argument on the subject, the only one which, if well founded, is practically conclusive, is the argument from handwriting, but this is as dull as it is important. The moral resemblance between the two men (if two they were) is certainly close. Sir Alexander Cockburn took a great interest in the question of handwriting, and, I believe, left some unpublished papers on it.

"mistaking his malevolence for public virtue. 'Doest "'thou well to be angry?' was the question asked in old "time of the Hebrew prophet. And he answered, 'I do "'well.' This was evidently the temper of Junius; and "to this cause we attribute the savage cruelty which "disgraces several of his letters. No man is so merci- "less as he who, under a strong delusion, confounds his "antipathies with his duties. . . . . All this, we believe, "might stand, with scarcely any alteration, for a character "of Philip Francis." Mr. Merivale [1] quotes and adopts this language, adding: "Closely allied to this master "defect was that of a proud, unaccommodating spirit." It will, I think, appear in the course of this narrative, at all events in one important part of it, that Francis was capable not only of the faults of undying malignity and ferocious cruelty, but also of falsehood, treachery, and calumny.

Little need be said of the other members of the Council. [2] General Clavering was a man of great parliamentary influence, but no considerable personal qualities. He was rash and violent to the last degree, and extremely pugnacious. Before leaving England, he wanted to fight the Duke of Richmond. [3] A few months after his arrival in India he did actually fight his colleague Barwell. During the discussions about Nuncomar, [4] he seemed at one

[1] *Life of Francis*, 6.

[2] Burke, in opening the charge for corruption against Hastings, gives a magniloquent eulogium of his character (*Speeches*, ii. 66).

[3] There is a letter on the subject from Barwell to his sister, dated May 17th, 1775, which gives his account of the matter, and which will be found in Chapter XVII.

[4] See *inf.* pp. 62, 63. There is a curious history in the Bengal Consultations of another quarrel of his, in which he refused to fight a certain resident at Serampore on the ground that he was no gentleman, and that he had been a spy.

time likely to fight Hastings rather as a school-boy than as a duellist. His conduct, in all the matters now to be related seems to me to have been that of a hasty, violent person, of no intrinsic importance. Of Monson there is still less to be said. [1] I may, however, observe, that he took out as his secretary Mr. Farrer, who, by his interest, was admitted to be an advocate of the Supreme Court. Mr. Farrer was a man of considerable ability and knowledge of his profession. He defended Nuncomar, and gave evidence before the Impeachment Committee to which I shall have frequent occasion to refer. He made a considerable fortune in the short space of four years, after which he returned to England, and subsequently sat in Parliament.

Barwell, the remaining member of Council, had considerable ability, at least, some of his letters have given me that opinion. He made an enormous fortune, and this in itself raises a presumption against his official purity. Imputations have also been made on his personal habits. His letters relate principally to his commercial affairs. There is one curious point in them. He explains to his sister that he considered that he had complied with orders forbidding the Company's servants to be concerned

[1] In an interesting letter to Lord Lifford, in January, 1778, on the Bar of Calcutta, its position and prospects, Impey says: "One gentleman "whose name is Farrer has already made a large fortune, but that arose "from very fortunate accidents on his arrival and his being [illegible] "and pushed forward by Sir G. Clavering and Mr. Monson. His success "has relaxed his diligence. He is very capable, but has nearly given up "his attendance at the bar. I believe he does not mean to continue "[much] longer in the country" (*Impey MSS.*). I have had a search made at the four Inns of Court, but can find no record of his having been called to the bar. He was of a legal family, for he was the great-uncle of my friends Sir Thomas Farrer and his well-known brothers Messrs. W. J. and F. W. Farrer.

in such contracts by entering into them under the names of natives. This, he says, was a real compliance with the spirit of the orders, because they were intended to prevent oppression by the English contractor, who out of Calcutta was subject to no legal control whatever, whereas the natives under whose name he contracted were. This is a lame excuse, but it is curious. [1] At the end of this work, in a separate chapter, I have printed several of these letters, both on account of their intrinsic interest, and because they show the view which he took at the time of several of the matters which have historical interest. So much it seems necessary to say as to Hastings and his Councillors. I will now refer, with equal brevity, to the judges of the Supreme Court: namely, Sir Elijah Impey, the chief justice; and Chambers, Lemaistre, and Hyde, the three puisne judges.

[2] Elijah Impey was born at Hammersmith on the 13th June, 1732. He was the third son of a merchant of some wealth. [3] He was sent to Westminster in 1739, where he remained till 1751. [4] In December, 1751, Impey went to Trinity College, Cambridge, being at the same time entered as a student at Lincoln's Inn. In 1756 he was second senior optime and second chancellor's medallist. He was called to the Bar in 1756,

[1] See *Echoes of Old Calcutta*, p. 131, note, as to his corruption. See as to his dissolute character p. 251, note. Part of this note quotes what, if strictly interpreted, amounts to a similar imputation on the character of Hastings, at least in his early life, but I think a pronoun must be wrong, and that Barwell and not Hastings was the real object of Lord Clive's contempt.

[2] *Memoir*, p. 2.

[3] *Ibid.* p. 6, 13.

[4] *Memoir*, p. 9. Mr. Impey describes his degree as that of "a junior wrangler," a strange barbarism to the ear of a Cambridge man.

and in 1757 he was elected to a fellowship at Trinity—a circumstance which ought to have pleaded in his favour with Lord Macaulay, who obtained the same honour about seventy years afterwards. Impey practised on the Western Circuit, according to his son successfully.[1] Adolphus mentions him as one of the counsel by whom the East India Company were heard in 1772 against a bill to restrain the Company from sending out supervisors to India. When the Supreme Court of Calcutta was established under the provisions of the Regulating Act, 13 Geo. 3, c. 63, he was, as appears from his letters, appointed to be the first chief justice by Lord Bathurst, who was chancellor from 1771-1778, on the recommendation of Thurlow, who was then Attorney-General. He seems to have regarded himself as under such obligations to Thurlow, that he wrote to him by every opportunity for no less than seven years, though during the whole of that period Thurlow never answered one of his letters.

Impey left England for India in April, 1774, with the other three judges of the Supreme Court, and arrived at Calcutta on the 19th of October.

If Macaulay's account of Impey is to be believed, he must have been one of the most odious and contemptible of human beings, committing the most abominable crimes from the basest of motives, or even without any motive at all. For, if this view is correct, he began by committing the most execrable of all murders—a judicial murder under the forms of law—simply out of gratuitous subserviency to Hastings. He proceeded for no obvious reason to erect a system of tyranny and oppression all over Bengal, attempting

[1] Vol. i. p. 537.

with his colleagues to usurp "supreme authority through "the whole of the vast territory, subject to the presi- "dency of Fort William." He gave up this monstrous pretension in consideration of an enormous bribe, and he abetted crimes said to have been perpetrated in Oudh, under the authority of Hastings, simply because "there "was something inexpressibly alluring, we must suppose, "in the peculiar rankness of the infamy which was to be "got at Lucknow." In short, he was a fiend in human shape, and a very contemptible one.

I have not, in my own experience of persons holding conspicuous positions in life, met with any of the fiends in human shape, or even with any of those parti-coloured monsters with characters like the pattern of a shepherd's plaid, half black, half white, which abound in Macaulay's histories, and form one of the principal defects in those most delightful books. I have read everything I could find throwing light on Impey's character, and it appears to me that he was neither much blacker nor much whiter, in whole or in part, than his neighbours. He seems to me to have resembled closely many other judges whom I have known. He was by no means a specially interesting person, and was in all ways a far smaller man than Hastings. He seems to have had an excellent education both legal and general, to have been a man of remarkable energy and courage, and a great deal of rather common-place ability. I have read through all his letters and private papers, and I can discover in them no trace of corruption. Though he had a strong avowed and perfectly natural anxiety about his own interests, he seems to have had a considerable share of public spirit. He was obviously a zealous, warm-hearted man, much

attached to his friends, but not the least likely to be a tool of, or subservient to any one, and certainly not to Hastings, with whom at one time he had a violent quarrel. There was nothing exceptionally great or good about him, but I see as little ground from his general character and behaviour to believe him guilty of the horrible crimes imputed to him as to suspect any of my own colleagues of such enormities. When his conduct in the different matters objected to is fully examined, I think it will appear that if the whole of his conduct is not fully justified, he ought at least to be honourably acquitted of the tremendous charges which Macaulay has brought against him. His son's account of his life after his victory over his powerful enemies is pleasing. He survived for twenty-one years the unsuccessful attempt to impeach him, and died in his 77th year, October 1st, 1809. His pursuits at this period of his life were those of a highly cultivated and accomplished man. His son was obviously attached to him with a depth and sincerity which speaks strongly in favour of both of them.

A very few words will suffice as to the three puisne judges. Chambers, a member of The Club, a friend of Dr. Johnson, and Vinerian Professor of Law at Oxford, was the most distinguished of them. He succeeded Impey, and during the early questions between the Council and the Court, appears to have been regarded by Francis as an ally of the Council, but a treacherous or half-hearted one. [1] In the fragment already referred to Francis observes in a mutilated passage "Chambers ". . . . in all their public opinions and decisions, par- "ticularly in the verdict against Fowke and the murder "of Nuncomar, his deserting us in that manner and

[1] Merivale's *Francis*, ii. 57. The blank is in the original.

"condemning us with an apparent reluctance, looked like "the confession of a friend, and did us more mischief "perhaps, than the declared hostility of the others." Francis, after his return to Europe, corresponded in an intimate way with Chambers. On several occasions Chambers appears to me to have acted weakly, and this was admitted and dwelt upon in the debates on Impey's impeachment, both by Gilbert Elliot and by Fox.[1]

Lemaistre appears to me to have been narrow-minded, arrogant and violent; and little is to be said in favour of Hyde. [2] In one of his letters to Thurlow, Impey complains grievously of the conduct of Lemaistre and Hyde. He says that they "opposed with much vehemence" a rule of Court, the object of which was to prevent the High Court from interfering with the collection of the revenue. The letter contains the following curious passage: "The rule is framed on a principle which I "cannot the least doubt, namely, that the Company have "a full right to recover the arrears of revenue in their "own courts by their own officers. The opposition to it "goes on the idea that they are only recoverable in the "Supreme Court.

"It is absolutely impossible that with human power "we could in the mode by which we must proceed

[1] In a scurrilous Calcutta newspaper, *Hickey's Gazette*, he was nicknamed Sir Viner Pliant. In one of Impey's letters there is an account of Hickey. Impey first knew him on the Western Circuit as clerk to Serjeant Davy, who must have been one of the leaders of the Circuit at that time. Davy was a well-known man in his day. He was junior to Dunning in the great case of the negro Somersett in 1771 (20 *State Trials* 76), and was in some other important cases. Hickey was exceedingly well known in Calcutta.—See *Echoes of Old Calcutta*, 155-162.

[2] Impey to Thurlow, November 28th, 1776 (*Impey MSS.*).

"determine $\frac{1}{100}$th part of them, and so the question seems "reducible to this, whether the Revenue shall or shall not "be collected? I do not say the present mode is unex- "ceptionable. There are evils which I wish the legislature "would remedy. For the conduct of Lemaistre I can- "not account. As for Hyde I much fear the return of "his old disorder, but it is too delicate a matter to touch "upon. He is absolutely under the management of "Lemaistre, who I fear thinks he shall please Lord "Sandwich, whom he thinks his patron, by opposing the "Company. What you wrote to me concerning Hyde "frequently occurs to me. He is an honest man, but a "great coxcomb, his tongue cannot be kept still, and he "has more pride and pomp than I have seen in the "East."

In a letter to Dunning [1] about a year later Impey says, "Every day's experience shows me more and more the truth "of your prediction about Hyde. Lemaistre is [2] violent "beyond measure. They have set themselves in direct "opposition to me in everything. Hyde is even abusive "on the bench, which I have never been provoked to "rep [ly to]. Chambers on the contrary supports me and "behaves handsomely to me. The sole object of disgust "to Hyde and Lemaistre is my not joining with them in "opinion to prevent the collection of the revenues being "enforced by the officers of the Company."

These letters appear to imply that Hyde had been out of his mind. They have an important bearing on Impey's character and conduct, because they show that there was

[1] Impey to Dunning, August 30th, 1777 (*Impey MSS.*).

[2] The expressions "and scurrilous" and "and scurrilous on the bench" are here struck out. The letters at the British Museum are draft copies preserved by Impey.

a division in the Court as well as in the Council, and that Impey was by no means in the position in the Court which his enemies afterwards ascribed to him. The importance of this will appear hereafter.

The last of the personages whom I shall notice is [1] Nuncomar. The leading points in his career and in his character are sufficiently well known. He was governor of Hoogly in 1756, when Surajah Dowlah took Calcutta. He was afterwards appointed by the Company to be collector in the place of Hastings of Burdwan Nuddea and Hoogly.

[2] In 1765 he obtained the place of Naib Subah or deputy Nabob of Bengal under Nujm ul Dowla who was appointed titular Nabob by the Company after Mir Cossim's expulsion. [3] This appointment was made in compliance with the entreaties of the Nabob himself, but Nuncomar's character and conduct were so bad that he was soon deprived of his place by the Council, and Mahomed Rheza Khan was appointed instead of him. How he was engaged in the succeeding years does not appear in detail, but Hastings, in an elaborate despatch to the Directors in September 1772, says, [4] "From the year "1759 to the time when I left Bengal in 1764, I was "engaged in a continued opposition to the interests and "designs of that man because I judged him to be adverse "to the welfare of my employers, and in the course of this "contention I received sufficient indications of his ill will

[1] I spell his name thus because it is the easiest, and probably the commonest and best-known way of spelling it. It is also spelt "Nundcomar," "Nunducomar," "Nandkomar," "Nandu Kumar," &c.

[2] Mill, iii. p. 194. In Gleig, i. 62-69, is a correspondence between Hastings and Clive on the subject of Nuncomar's appointment.

[3] Mill, iii. 253.

[4] Gleig, i. 252.

"to have made me an irreconcilable enemy, if I could "suffer my passions to supersede the duty which I owe to "the Company."

When Hastings was appointed President in 1772, the Company, having decided to dispossess the Naib Subahs or deputy Nabobs and to "stand forth as Diwan," [1] sent orders to Hastings to put Mahomed Rheza Khan under arrest and prosecute him for misconduct in his office. [2] Hastings was also ordered to employ Nuncomar's services for this purpose, and if he proved serviceable to reward

[1] See their despatch, August 28th, 1771 (Gleig, i. 221).

[2] The following were the terms of the order: "We cannot forbear "recommending you to avail yourself of the intelligence which Nun- "comar may be able to give respecting the Naib's administration; "and while the envy which Nuncomar is supposed to bear this "minister may prompt him to a ready communication of all pro- "ceedings which have come to his knowledge, we are persuaded that no "scrutable part of the Naib's conduct can have escaped the watchful "eye of his jealous and penetrating rival. Hence we cannot doubt "that the abilities and disposition of Nuncomar may be successfully "employed in the investigation of Mahomed Rheza Khan's administra- "tion, and bring to light any embezzlement, fraud, or malversation "which he may have committed in the office of Naib Dewan, or in the "station he has held under the several successive Subahs; and while we "assure ourselves that you will make the necessary use of Nuncomar's "intelligence, we have such confidence in your wisdom and caution, that "we have nothing to fear from any secret motives or designs which may "induce him to detect the mal-administration of one whose power has "been the object of his envy, and whose office the aim of his ambition; "for we have the satisfaction to reflect that you are too well apprised of "the subtlety and disposition of Nuncomar to yield him any post of "authority which may be turned to his own advantage, or prove detri- "mental to the Company's interest. Though we have thought it neces- "sary to intimate to you how little we are disposed to delegate any power "or influence to Nuncomar, yet, should his information and assistance "be serviceable to you in your investigation of the conduct of Mahomed "Rheza Khan, you will yield him such encouragement and reward as "his trouble and the extent of his services may deserve" (Gleig, i. p. 222, 223).

him, but not to trust him with power. Nuncomar aided Hastings to the utmost in the prosecution of Mahomed Rheza Khan in the hopes of regaining his office, but in this he was disappointed, for Mahomed Rheza Khan was acquitted and the office he had held was abolished. Nuncomar was, however, rewarded for the services he had rendered by the appointment of his son Rajah Goordass to the office of Dewan to the household of the titular Subadar, an appointment which had previously formed one department of the office of [1] Naib Subah

[1] These offices are extremely puzzling. The following scheme gives my understanding of them. It should be observed that Naib and Nabob, or Nawab, are the same word, each meaning deputy. Nawab, of which Nabob is the English spelling, is the complimentary plural of Naib, and the difference is as between *tu* and *vous*.

1. The Emperor.
2. The Subadar of Bengal, whose office included—
   (*a*) The Diwani, or management of the revenue and civil justice.
   (*b*) The Nizamut, or military power and criminal justice.

In Bengal these two powers were united in the same person. In the other provinces of the Mogul Empire they were divided. In February, 1765, Nujm ul Dowla, the titular Subadar, entered into a treaty with the East India Company enabling them to exercise his authority. In August, 1765, the Emperor, Shah Alam, granted to the Company the Diwani. The Company thus held the Diwani from the Emperor and the Nizamut from the Subadar. In virtue of these powers they appointed

3. The Naib Subah of Bengal (not including Behar). His office included—
   (*a*) That of Naib Diwan, in which he represented the Company.
   (*b*) Naib Nazim, in which he represented the Subadar of Bengal.

The office of Naib Nazim included—
   (*a*) The Nizamut, or criminal justice.
   (*b*) the care of (*α*) the person of the Nabob ; (*β*) the expenditure of the money allotted for his state and support.

When Mahomed Rheza Khan ceased to be Naib Subah, so much of his office as included the duties of Naib Diwan was abolished, and the duties transferred to European officers. So much of his duties as Naib Nazim

which had been held by Mahomed Rheza Khan. The other branch of that office which related to the care of the person of the Nabob was given to the Munny Begum, the widow of Mir Jafir. It was in connection with these last-mentioned appointments that Nuncomar charged Hastings with corruption.

Nuncomar's character is described by Macaulay in terms in which I think his rhetorical power greatly overcame the discriminating good sense shown in so many of his descriptions of character. [1] The main features of Nuncomar's character seem to be sufficiently obvious. It may be doubted whether any human being has ever passed his life under greater moral disadvantages. The decay of the Mogul Empire constitutes one of the blackest scenes in human history—a scene of reckless and brutal violence, bloody but indecisive war, endless intrigues and frauds. In the great European wars there has always been something more or less spirit-stirring and ennobling to fight about—religion, forms of government, or the development of great nations and impressive political plans, but in the Indian wars, throughout the greater part

as related to the Nizamut was, after an interval, restored to him. The care of the person of the Subadar was given to the Munny Begum, and the expenditure of his income to the Rajah Goordass.

[1] "Of his moral character it is difficult to give a notion to those who "are acquainted with human nature only as it appears in our island. "What the Italian is to the Englishman, what the Hindoo is to the "Italian, what the Bengalee is to other Hindoos, such was Nuncomar "to other Bengalees," and then follows the celebrated description of Bengalees. As an instance of the injustice of these super-superlatives, I may observe that Lord Macaulay's first remark on Bengalees is: "The "physical organisation of the Bengalees is feeble even to effeminacy." Nuncomar, therefore, ought to have been hardly able to stand or even sit up. Sir Gilbert Elliot said of him: "In person he was tall and majestic, "robust yet graceful" (*Parl. Hist.* 27, 438). In Barwell's account he is described as of "an excessively strong constitution."

of the eighteenth century, everything was base and low. There was not even a single leader to whom any one could feel any sort of personal loyalty. The Moguls, the Mahrattas, the Afghans, the Rajputs, who tore each other to pieces from Peshawur to Bombay; the Mohammedan adventurers like Hyder and his son Tippoo, who set up principalities in southern India by the help of armies of adventurers; differed from each other only in the degree of ferocity and cunning which they displayed from time to time, nor were any of them much better than robbers, on a large scale, the worthy ancestors of the Dacoits and Thugs who have at last been nearly exterminated in our own days. Of all the provinces of the Empire none was so degraded as Bengal, and till he was nearly sixty years old Nuncomar lived in the worst and most degraded part of that unhappy province. A pushing, active, prominent successful man in such circumstances could hardly be other than Nuncomar actually was, false all through, and dead to every sentiment except pride, hatred and revenge. It is, however, due to Nuncomar to say that even a bitter enemy gives him credit for one good quality. "He was," says [1] the author of the *Siyyar ul Mutaqherin* "a man "of a wicked disposition and a haughty temper, envious, "to a high degree, and on bad terms with the greater part "of mankind, although he had conferred favours on two "or three men and was firm in his attachments."

One of Barwell's letters to his sister (who seems to have been his principal correspondent) contains a kind of life of Nuncomar. I cannot judge of the truth of the statements contained in it, but it is so curious that I give it for what it is worth in a subsequent chapter.

[1] The Mohammedan *History of the Fall of the Mogul Empire*—a most curious book (ii. 465).

Such were the principal personages to whom I shall have to refer. The relations in which they stood to each other at the time of the events now to be related, are so notorious, and are so well described by Macaulay, that a short quotation from his essay will be enough for my purpose; but it must be remembered that it expresses his opinions and not mine, and that I quote it simply because of its inimitable brevity and spirit, and without having specially studied the original authorities as to the matters which it states. It must be borne in mind that the Council had come out from England "[1] armed with the most uncompromising spirit "of hostility towards the government of the Company, and "towards Hastings in particular." In this state of feeling they landed, and six days after their arrival "wrested the "government out of the hands of Hastings, condemned, "[2] certainly not without justice, his late dealings with the "Nabob Vizier, recalled the English agent" [Middleton] "from Oude, and sent thither a creature of their own" [Bristow], "ordered the brigade which had conquered the "unhappy Rohillas to return to the Company's territories, "and instituted a severe inquiry into the conduct of the "war. Next, in spite of the Governor-General's remon- "strances, they proceeded to exercise in the most indiscreet "manner their new authority over the subordinate pre- "sidencies, threw all the affairs of Bombay into confusion "and interfered with an incredible mixture of rashness and "feebleness in the intestine disputes of the Mahratta "government. At the same time they fell on the internal "administration of Bengal, and attacked the whole fiscal "and judicial system, a system which was undoubtedly

[1] Merivale's *Francis*, ii. 9.

[2] This is Macaulay's opinion. I express none.

"defective, but which it was very improbable that gentle-
"men fresh from England would be competent to amend.
"[1] The effect of their reforms was that all protection to life
"and property was withdrawn, and that gangs of robbers
"plundered and slaughtered with impunity in the very
"suburbs of Calcutta. Hastings continued to live in the
"Government House, and to draw the salary of Governor-
"General. He continued even to take the lead at the
"Council Board in the transaction of ordinary business;
"for his opponents could not but feel that he knew much
"of which they were ignorant, and that he decided, both
"surely and speedily, many questions which to them
"would have been hopelessly puzzling. But the higher
"powers of government and its most valuable patronage
"had been taken from him.

"The natives soon found this out. They considered
"him as a fallen man, and they acted after their kind.
"Some of our readers may have seen in India a cloud of
"crows pecking a sick vulture to death, no bad type of
"what happens in that country as often as fortune deserts
"one who has been great and dreaded. In an instant
"all the sycophants who had lately been ready to lie for
"him, to forge for him, to pander for him, to poison for
"him, hasten to purchase the favour of his victorious
"enemies by accusing him. An Indian government has
"only to let it be understood that it wishes a particular
"man to be ruined, and in twenty-four hours it will be
"furnished with grave charges, supported by depositions
"so full and circumstantial, that any person unaccustomed
"to Asiatic mendacity, would regard it as decisive." . . .
"Hastings was now regarded as helpless. The power to

[1] I doubt the correctness of all this. Lord Macaulay gives no authority. I do not know what he refers to.

"make or mar the fortune of every man in Bengal had "passed, as it seemed, into the hands of the new Council- "lors. Immediately charges against the Governor-General "began to pour in. They were eagerly welcomed by "the majority, who, to do them justice, were men of too "much honour to countenance false accusations, but who "were not sufficiently acquainted with the East to be "aware that in that part of the world a very little en- "couragement from power will call forth in a week more "Oateses and Bedloes and Dangerfields than Westminster "Hall sees in a century."

Having thus introduced the subject of this work, and the principal persons to whose acts it relates, I shall proceed in the following chapters to examine in detail the events which formed the subject-matter of the principal accusations against Impey, and indirectly, at least in two cases, against Hastings also.

CHAPTER IV.

NUNCOMAR'S ACCUSATION AGAINST HASTINGS.

I STATED in the last chapter the points in Nuncomar's career which brought him into contact with Hastings, and which must beyond all question have inspired him with a deadly hatred for Hastings—a feeling which Hastings may have returned. I have also quoted Macaulay's description of the quarrels in the Council which followed its first establishment. In those quarrels Nuncomar probably thought he saw an opportunity not only to revenge himself upon Hastings, but also to reverse the course taken with regard to Mahomed Rheza Khan, and to obtain for himself part, at least, of the power which his rival had been deprived of. Mahomed Rheza Khan had been practically acquitted by Hastings in March, 1774. [1] I say practically because the inquiry had been closed, and a report favourable to the defendant had been transmitted to the directors. Their

[1] "The inquiry into the conduct of Mahomed Rheza Khan is closed, "and referred to the Court of Directors for their judgment, which it is "probable will acquit him of every charge against him. In the mean-"time we have released him."—Hastings to Sullivan, March 20th, 1774 (Gleig, i 390). As to the Directors' despatch, see Mill, iii. 455.

final decision was not given till March 3rd, 1775, and could not have reached India till after Nuncomar's conviction for forgery. He had therefore a special and powerful motive for using the opportunity which the quarrels in the Council afforded for the ruin of Hastings. However this may have been, the course which he took is well ascertained, being recorded in minute detail in the Bengal Secret Consultations.

[1] On the 11th March, 1775, Francis informed the Board that he had received that morning a visit from Nuncomar, in which Nuncomar delivered him a letter addressed to the Governor-General and Council, and requested him as a duty belonging to his office of Councillor to lay it before the Board. Francis accordingly laid it before the Board declaring himself to be unacquainted with its contents.

The letter set forth Nuncomar's past history and connection with the Company. He said he had persuaded Mir Jafir to make war on Mir Cossim after the massacre at Patna. He received and distributed the revenue of Bengal after Mir Cossim's and Sujah Dowlah's defeat at Buxar. He was deprived of his place by certain corrupt Europeans for their own private ends, and for seven years Mahomed Rheza Khan held it in his stead, committing every sort of oppression and corruption, whereas against him, Nuncomar, no charge could ever be made. He assisted Hastings when he was appointed Governor in prosecuting Mahomed Rheza Khan and Schitab Roy, and got up the case against them, showing that Mahomed Rheza Khan had embezzled 305 lakhs and nearly 27,000 rupees (£3,052,000 and upwards), and Schitab Roy 90 lakhs (£900,000). Each offered large

[1] Bengal Secret Consultations, Range A, vol. xxvii. fo. 1331.

bribes to himself and to Hastings to quash the proceedings. Mahomed Rheza Khan offered ten lakhs (£100,000) to Hastings, and two lakhs (£20,000) to him, Nuncomar, and Schitab Roy offered four lakhs (£40,000) to Hastings, and one (£10,000) to Nuncomar. These offers he reported to Hastings, who refused them, but soon after the proceedings were stayed. Why? Let the Council inquire and they would find out.

After referring to some other proceedings of Hastings as being suspicious, he went on to say, "Thus far I have "written in general terms, I shall now beg leave to offer "a more particular and circumstantial statement of facts." He then stated that in the Bengal year 1179 (1772), he had at Calcutta on four different occasions, delivered to two of Hastings's servants, Jagganat and Bal Kishen, for their master, eight bags of gold mohurs to the value of Rs. 104,105, as a present for procuring the appointment of Nuncomar's son Rajah Goordass to the Niabut or treasurership of the titular subadar's household, and causing the Munny Begum, who was the widow of Mir Jafir, to be made the guardian of his person instead of Mahomed Rheza Khan, who had formerly held both offices. He also said that the Munny Begum had given Hastings at Moorshedabad a lakh of rupees on the same account, and that she had also written to Nuncomar's son Goordass, to say that she wished to give Hastings another lakh and a half of rupees, and that Goordass must ascertain from Nuncomar the form in which Hastings would like to receive it. Nuncomar (as he said) reported this to Hastings, who said he had connections at Cossimbazar and would wish the money to be paid on his account to one Nurr Sing, who lived there; which was accordingly done.

The sums thus alleged by Nuncomar to have been paid to Hastings were in all:

Gold, paid by Nuncomar's servants to the servants of Hastings		Rs.104,105
Payments by Munny Begum		
At Moorshedabad . . .	Rs.100,000	
At Cossimbazar	Rs.150,000	=Rs.250,000
		Rs.354,105

The letter also contains a passage which seems to be meant as an explanation of Nuncomar's reasons for attacking Hastings. It occurs in the middle of the letter, and somewhat obscures it as it interrupts the order of time. It states that on the arrival of the Council Hastings at first refused to introduce Nuncomar to them (though he afterwards did so through Mr. Alexander Elliot), and reproached him with having "contracted a friendship with my enemy" and concluded with this menace: "I shall pursue what is for my own "advantage; but in that your hurt is included. Look to it." Nuncomar, according to his own account, bore with Hastings, believing that "what he said proceeded from a "gust of passion," and that "he would not seriously "determine upon effecting my ruin," but at last he was satisfied to the contrary. Hastings, he said, received two of his enemies, Juggut Chund and Mohun Persaud. He speaks of Mohun Persaud as follows: "Mohun "Persaud, whose villainy and lying intrigues are known "to both the English gentlemen and the natives through-"out this city, who is my inveterate enemy, and whom "the Governor formerly turned out of his house, and "forbid him to appear there again, is now recalled into

"his presence, is presented with pān by him and assured "of his protection. Mohun Persaud is admitted by the "Governor to private conferences, both in town and at "his gardens." . . . . "What title from rank or fidelity "have these to such intimate connection with the "Governor? What other title have they than their "enmity and malevolence to me? I have no power in "this country. Mr. Hastings is the superior of us all. "The goodness of God is the only defence I have against "declared hatred of such an enemy. I esteem my "honour dearer than my life, and I am not insensible of "the injury my character may suffer from the discoveries "I am about to make, but peculiar disgrace attends my "silence and I am left without a choice."

The special interest of this passage is that Mohun Persaud was the prosecutor of Nuncomar in the forgery case. It is noticeable that Nuncomar should assign the favour said to have been shown to him by Hastings, as the proximate cause of his determination to expose Hastings. The full significance of this, and the inferences to be drawn from it, will appear more clearly from the matters to be related in the next chapter.

This paper having been duly entered on the Consultations, Hastings recorded the following remarks. Their elaborate courtesy and calmness are like those of a duellist. "The Governor-General observes—as Mr. Francis "has been pleased to inform the Board that he was "unacquainted with the contents of the letter sent into "the Board by Nuncomar—that he thinks himself justified "in carrying his curiosity further than he should have "permitted himself without such a previous intimation, "and therefore begs leave to ask Mr. Francis whether he

"was before this acquainted with Nuncomar's intention "of bringing such charges before the Board?" Francis replied, in the same highly polite style, that he did not deem himself obliged to answer any question of mere curiosity. "I am willing, however, to inform the "Governor-General that though I was totally unac- "quainted with the contents of the paper I have now "delivered into the Board till I heard it read, I did "apprehend in general that it contained some charge "against him."

On the next day but one, namely, March 13th, [1] a further letter from Nuncomar was received and read, in which, after referring to and confirming his previous letter, he said: "I have the strongest written vouchers to produce "in support of what I have advanced; and I wish and "entreat, for my honour's sake, that you will suffer me to "appear before you to establish the fact by an additional "incontestable evidence."

Monson moved that Nuncomar should be called before the Board. Hastings upon this entered a Minute, which is about as long as a leading article in the *Times*. It concludes with an expression of regret by Hastings that he has "found it necessary to deliver" his "senti- "ments on a subject of so important a nature in an "unpremeditated Minute drawn from me at the Board, "[2] which I should have wished to have leisure and retire- "ment to have enabled me to express myself with that "degree of caution and exactness which the subject re- "quires. . . . . I reserve to myself the liberty of adding "my further sentiments in such a manner and form as I "shall hereafter judge necessary."

[1] Bengal Consultations, Range A, vol. xxvii. fo. 1454.

[2] The slipshod grammar shows the writer's eager haste.

It appears from this, and from other evidence, that it was the practice of the Council that the members should sit down, during the meeting, and write elaborate essays upon important occasions. I do not think the Minute in question could have been written by any one in less than an hour and a half; and whilst Hastings was writing, and the clerk copying, it—for it is not in his hand-writing—the others must have sat silent. However this may be, the substance of the Minute is as remarkable as its form. Sir Gilbert Elliot, and Burke, long afterwards described it as bearing every mark of conscious guilt. It certainly bears marks of strong excitement, and though I should not go so far as Sir Gilbert Elliot and Burke, in thinking it inconsistent with innocence, I think it suggests that there was something to explain. It begins with a clear, strong, and perfectly natural expression of indignation. It also states a resolution inflexibly adhered to. "Before the question is put I declare that I will not "suffer Nuncomar to appear before the Board as my "accuser. I know what belongs to the dignity and "character of the first member of this administration. "I will not sit at this Board in the character of a crimi-"nal, nor do I acknowledge the members of this Board to "be my judges. I am reduced on this occasion to make "the declaration that I look upon General Clavering, "Colonel Monson, and Mr. Francis as my accusers." He goes on to say that he cannot prove this, "in "the direct letter of the law," but that he is morally sure of it. Nuncomar and others were only their tools. Francis had no right to take charge of Nuncomar's letter. Nuncomar "was guilty of great insolence and "disrespect" in desiring him to do so. Francis knew it contained a charge against Hastings. "If the charge

"was false it was a libel.[1] It might have been false for "anything Mr. Francis could know to the contrary since "he was unacquainted with the contents of it; in this in- "stance therefore he incurred the hazard of presenting a "libel to the Board." He, Hastings, knew what Nuncomar's intentions were. "I was shown a paper containing "many accusations against me, which I was told was "carried by Nuncomar to Colonel Monson, and that he "himself was employed for some hours in private with "Colonel Monson explaining the nature of these charges." He does not suggest that it makes any alteration in the nature of these charges whether they were delivered "im- "mediately from my ostensible accusers, or whether they "came to the Board through the channel of patronage, "but it is sufficient to authorise the conviction which I "feel in my own mind that those gentlemen are parties "in the accusations of which they assert the right to be "judges." Having established to his own satisfaction that the other members of Council were his real accusers, he proceeds as follows:—"The chief of the administration, "your superior, gentlemen, appointed by the legislature "itself shall I sit at this Board to be arraigned in the pre- "sence of a wretch whom you all know to be one of the "basest of mankind? I believe I need not mention his "name, but it is Nuncomar. Shall I sit here to hear "men collected from the dregs of the people give evidence "at his dictating against my character and conduct? I "will not. You may if you please form yourself into a "Committee for the investigation of these matters in any

[1] The turn of the expression here is peculiar. It implies an admission that the charge was true, though it might have been false, but this can hardly have been the writer's meaning. I read it rather as an argument founded on a concession (for the sake of the argument) that the charge was true.

"manner which you may think proper, but I will repeat "that I will not meet Nuncomar at the Board, nor suffer "Nuncomar to be examined at the Board, nor have you a "right to it, nor can it answer any other purpose than "that of vilifying and insulting me to insist upon it." Monson asked for the name of the person who had told Hastings about the visit of Nuncomar to himself. Hastings refused to give it as it would expose his informant to the vengeance of the majority. He added, however that Barwell had received similar information. This Barwell confirmed, and Hastings produced a paper which he said was a copy of what Nuncomar had shown to Monson. Barwell said that he also had a copy of the same document. I take the paper to be one which is entered on the proceedings [1] of the same date. It is substantially the same as the part of the later paper which relates to the charges about Mahomed Rheza Khan and Schitab Roy, but it makes no reference to the sums said to have been paid by Nuncomar himself or to the two and a half lakhs alleged to have been paid to Hastings by the Munny Begum.

Monson said as the Governor would not give up his informant "in regard to my conversation with Nun-

[1] Range A, vol. xxvii. fo. 1488. Macaulay falls into an inaccuracy here. He says "At the next meeting" (the meeting of March 13), "another communication from Nuncomar was produced," and adds that when Nuncomar was called in he "not only adhered to the original "charges, but after the fashion of the East produced a large supplement." Mr. Beveridge notices this, and says that it is incorrect. It is incorrect, but Mr. Beveridge does not observe the explanation. Nuncomar circulated charges against Hastings before he came to the Council at all. In the paper which he delivered to Francis he did "make a large supple-"ment" to the charges so circulated, but he stood by the charges delivered to Francis and made no further addition to them. The paper referred to is entered on the Consultations in a way which puzzled me at first, but this is obviously the explanation of it.

"comar" he would say no more. He added "I do here-"by declare that [1]the Governor and Mr. Barwell have "been totally misinformed, for I never heard or saw any "paper in Persian or any other country language which "contained to the best of my knowledge any accusation "against the Governor-General." This admits by not denying a conversation with Nuncomar, and suggests that Monson did "see or hear" a paper in English.

After this the motion of Monson to call in Nuncomar was carried, Barwell observing that he did not think the Board could "with any propriety place the Governor on "the footing of a criminal arraigned at their tribunal and "Nuncomar on that of his accuser." He observed that the proper course was a suit in the Supreme Court. Monson and Clavering both gave consideration for the character of Hastings as their reason for confronting him with Nuncomar. Monson's motion being carried, the following scene took place:

The Governor-General. I declare the Council now dissolved; and I do protest against any acts of it as a Council during my absence as illegal and unwarranted.

Mr. Francis. I beg leave to ask the Governor-General whether he means to quit the chair?

The Governor-General. I shall not answer your question, because I do not think it sufficiently defined. I quit the Council.

Here follow the words "(Signed) Warren Hastings."

The handwriting of the signature differs much from Hastings's usual hand. It is somewhat cramped and very black, as if written under excitement. This looks as if the books were written up whilst the Council was sitting.

[1] It is "age" in the Consultations, no doubt miswritten by a slip of the pen.

After Hastings's departure, Barwell also withdrew, recording his opinion that the Council was dissolved. The majority put Clavering in the chair, and called in Nuncomar, whom they required "to deliver to the Board "what he has to say in support of his charge against the "Governor-General." He replied, "I am not a man "officiously to make complaints, but when I perceived "my character, which is as dear to me as life, hurt by "the Governor's receiving into his presence Juggut Chund "and Mohun Persaud, who are persons of low repute, and "denying me admittance, I thought it incumbent upon "me to write what I have. Everything is contained in "the letter which I have given in, besides which I have "papers, which, if the Board order me, I will deliver up." Upon being required to do so, he delivered a translation, and showed what he declared to be the original of a letter from the Munny Begum. It is an obscure and lengthy document,[1] dated 2nd September, 1772. The substance of it is as follows. The Begum said that having obtained the promotion she desired she thought she ought to make Hastings a present, and offered him a lakh of rupees. He said that Nuncomar had promised two lakhs. The Begum guessed that the two lakhs were part of three lakhs "about which," the letter says, "I wrote to you in "a letter despatched unto Kasim Bey, and of which I "sent you word by Juggut Chund." This allusion was not explained by Nuncomar, nor did he produce any letter as being the one referred to. The letter went on to say that the Begum feared that if she referred to this, all that

[1] The date given in the Bengal Consultations is "the 3d of Jumma duasany, the 14th year of the present "reign," *i.e.* of the reign of Shah Alum, the Mogul Emperor. This should be (I am informed by my friend Colonel Yule) the 3d of Jumādi-as-Sāni, equivalent to September 2nd, 1772.

Nuncomar's kindness had done for her "would be entirely "destroyed." Therefore she sent word to the Governor that she had given Nuncomar a general authority to do what he thought right in her interests, and that though she had not heard specifically of the promise to pay two lakhs she thought herself bound to fulfil Nuncomar's promises. She accordingly asked Hastings to accept one lakh at Moorshedabad, and said she would draw upon Nuncomar for a second lakh to be delivered by him to Hastings at Calcutta, and to be repaid by her to Nuncomar. The letter contained the strongest injunctions to secrecy, suggesting that in the future they should "con- "sult a plan beforehand, that when we are called upon "no difference may appear in our representations and "answers." "What I have here written should be kept "in the most profound secrecy, and should only pass from "my heart to yours. Let nothing of the secret part of "these transactions be known to the Governor or the "gentlemen of Council, or any others. The proverb is "'A word to the wise.'"

The three members of the Council asked Nuncomar for the original of this paper, and he produced what he said was the original.

Mr. Auriol, the assistant-secretary, was told to look on the characters of the seal and inform the Board that (miswritten for "what") they are. He said that the "characters are Persian and express the name of Munny "Begum."

Sir John D'Oyley, the head Persian interpreter, who was not present at first, being now arrived, was called in and the seal was shown to him. "He also declares it to be Munny Begum's," an expression which shows how ill-fitted the Council were for taking evidence. D'Oyley's

statement goes much further than Auriol's, but the writer of the Consultations seems to have considered them equivalent to each other.

Some time afterwards, a letter from the Munny Begum, received a few days before, was produced from the Persian office. The Munshi to Sir John D'Oyley said that the handwriting of the two letters was not the same, but that the seal of the letter (apparently of the letter produced by Nuncomar) "is Munny Begum's seal." Upon "this it is observed by the Board that the letter which has "been given in by the Rajah was written two years and "a half ago, and that the letter produced by Sir John "D'Oyley was written only a few days ago," suggesting that they might have been written by different clerks. The spirit shown by such a remark is noticeable. The Council, who had taken upon themselves judicial functions as soon as a difficulty appears in Nuncomar's case, suggest an answer to it instead of inquiring into its weight.

Their examination of Nuncomar proceeded as follows:

Q. Have you any other proofs to produce?—*A.* I have no more papers. *Q.* Has any application been made to you by the Governor-General, or any other person on the part of the Governor-General, to obtain from you the original letter which you have produced?—*A.* The Begum applied to me for it through Cantoo Baboo, the Governor's Banyan. I gave it into Cantoo Baboo's hand, who read it and on being refused the original he desired he might take a copy of it to read to the Begum. I told him he might copy it in my presence, but it being then late in the evening he said he would defer copying it till another day. *Q.* Did he renew his application for a copy?—*A.* He did not renew his application.

This is a further proof of the temper of the Council. Nuncomar must obviously have made a statement to them before as to this matter, for there was nothing to suggest it in his previous letters or statements.

In answer to further questions, Nuncomar said that he was present himself when the gold was given to Hastings's Khansamahs, and that he was accompanied by [1] Chytun Nath, Nur Sing, and Sedanund on the occasion. He said that these persons were all in Calcutta, except Nur Sing, who was at Moorshedabad. He was finally asked, "Are you sure that the Governor's two Khansamahs "received the money on account of the Governor?" He replied, "They undoubtedly took it for the Governor. I "asked the Governor if it had reached him, and he said "it had."

The Board summoned Cantoo Baboo to attend and be examined, but he replied that the Governor prevented him from attending, adding, "When the Council is com- "plete if I am summoned I will attend." The Council voted that he was guilty "of a high indignity to this Board," dismissed Nuncomar, informed the Governor-General that Nuncomar had withdrawn and invited him to return and take his seat. The Governor replied that he could not recognise the majority as a Council, and could not call a Council that night as Barwell was in the country, but that he would do so the next day.

Upon this the majority came to the following resolution: "It appearing to the Board that the several sums "of money specified in Maharajah Nuncomar's letter of "the 8th March, viz." (enumerating them as above, and stating the total at 354,105 rupees), "have been received "by the Governor-General, and that the said sums of

[1] He was a witness for Nuncomar in the forgery case.

"money do of right belong to the Honourable East India "Company, resolved that the Governor-General be "required to pay into the Company's treasury the "amount of those sums for the Company's use." It was further ordered that the proceedings of the Board and all the papers should be delivered to the Company's attorney, that he might lay them before counsel for their opinion as to how to proceed for the recovery of the sums.

Such was Nuncomar's accusation of Hastings, and such were the proceedings taken upon it by the majority of the Council. The interval between the first mention of the accusation and the final judgment of the majority of the Council was two days. Nuncomar's letter was presented on the 11th, and the Council gave its decision on the 13th March. Before giving the further history of the charges in question, some remarks must be made upon the proceedings above described.

It is impossible to exaggerate the haste, recklessness and violence of Clavering, Monson, and Francis. I have given in full detail the whole of the evidence on which they acted. It consisted exclusively of the evidence of Nuncomar, which evidence was, as regarded the Munny Begum, hearsay, corroborated only by a letter which was authenticated only by Nuncomar. Nuncomar was not only an avowed accomplice in the alleged corrupt acts, but one who professed himself to be actuated by motives of revenge and suspicion against the man whom he accused. The only questions put to Nuncomar by the Council were either trivial or were questions which he must have suggested himself, though if they had allowed themselves time to study the letter said to be written by the Begum, and to compare it with the written accusation of Nuncomar, the Council must have perceived that on

several points there was urgent need of inquiry. The story told in the letters does not on its face agree with the charge made by Nuncomar. Nuncomar said he had given Hastings in gold 104,105 rupees, and that the Munny Begum had given him at Moorshedabad a lakh, and had caused Nurr Sing, Cantoo Baboo's brother at Cossimbazar to pay him a lakh and a half more, making in all 354,104 rupees.

The letter says that the Munny Begum was to pay two lakhs, and that she was raising one lakh to pay it to Hastings at Moorshedabad, and it begs Nuncomar to pay the other lakh to Hastings at Calcutta, and promises to repay him.

Upon this Nuncomar should have been asked whether he did what the Munny Begum asked him, and whether the 104,105 rupees which he said he gave in gold to Hastings at Calcutta was the lakh which the Munny Begum asked him to advance? If he said yes, his statement and the statement in the Begum's letter were in direct conflict; for according to the letter the total amount paid, or caused to be paid by the Begum was two lakhs, and according to his statement the amount was three lakhs and a half. If he said no, two questions arose, namely, first on what consideration the 104,105 rupees in gold were paid, and secondly, how the letter of the Begum could be reconciled with his accusation, the letter stating that the Begum was to pay one lakh at Moorshedabad and expressing a wish to borrow another from Nuncomar to be paid at Calcutta, and the accusation stating that one lakh was paid at Moorshedabad, and another lakh and a half to Nurr Sing at Cossimbazar, the suburb of Moorshedabad? I do not say that

these questions might not have been satisfactorily answered, but I do say that they ought to have been asked, for they arise upon matters patent on the face of the document accepted by the Council. Apart from this the majority of the Council did not observe the most obvious and common precautions. They took no steps to ascertain the authenticity of the letter attributed to the Munny Begum. beyond comparing the inscriptions on two seals. They did not even impound the alleged original, but returned it to Nuncomar. They did not even send for the persons alleged by Nuncomar to have delivered and received the bags of gold, nor did they ask Nuncomar a single question as to the time when, and the place where the gold was delivered, the persons from whom he got so large a sum, the books in which he had made entries about it, the place and time of his alleged conversation with Hastings on the subject, or any of the other obvious matters by which his truthfulness might be tested.

The one person for whom they did propose to send was the servant of the Governor-General, whom they appear to have wished to question on the matter which they got Nuncomar to state about him. Their course with respect to Cantoo Baboo was characteristic. He was summoned again a [1] week afterwards and appeared [2] and was examined. His examination related solely to his reasons for not appearing before, which were that his master forbade him, in order to avoid a recognition of the majority as constituting a Council after he had quitted the Council. They attached so little importance to the evidence which he could give about Hastings, that they did not ask him a question about it. Clavering moved

[1] Consultations, March 20th, 1775, fo. 1509.

that "he should be put in the stocks to have that same "punishment inflicted upon him which the Governor in- "flicts every day upon many miserable Hindoos barely for "easing themselves upon the esplanade two miles distant "from the town." He gave as his reason for the motion that the Governor had said "that if I (Clavering) meant "anything personal to him he would make me answer for "it with his life." Upon this Hastings observed, "I said "if he attempted anything in his own person and by his "own authority, I would oppose it with my person, or "personally oppose it at the peril of my life. I added "that if he made use of the law I would oppose it by the law." After this written exchange of insults the Council on the motion of Francis adjourned. I have noticed it because nothing can set in a stronger light the furious animosity of the majority against Hastings, and his not unnatural resentment than such a proposal and such a reply officially recorded. The proposal itself sets in the strongest light the length to which the Council were prepared to go. They had no legal right whatever, as far as I can ascertain, to summon persons before them and to punish them for non-attendance. The proposal to put in the stocks the secretary and agent of the Governor-General, could have no other object than to insult his employer in the most public and degrading way.

The subsequent history of these charges is as follows:[1] On the 2nd May Mr. Grant, accountant of the provincial Council at Moorshedabad, produced accounts which he said he had received from a clerk in the Nabob's treasury, and which were alleged to show that Munny Begum had

[1] Mill, iii. 443, and see Gleig, i. 528; see also Burke, Speech on the Seventh Charge of the Impeachment, April 21st, 1789 (*Speeches*, ii. 55). Also Eleventh Report of the Select Committee and its appendices.

received 967,693 rupees more than she had accounted for. Upon this the majority of the Council sent Mr. Goring to inquire into her accounts. Two assistants were afterwards sent to him, and questions framed by Hastings were put to her. From this inquiry it appeared that she had paid 150,000 rupees to Hastings when he visited Moorshedabad in 1772, [1] but that she paid it in accordance with ancient usage, as a customary allowance payable to the Governor when he visited the Nabob. The charge was certainly extremely large, as it amounted to 2,000 rupees a day, but it was proved by [2] Mr. Wright, the Auditor of Indian Accounts, that payment at the same rate and for the same purpose had been made to both Clive and Verelst. The Munny Begum denied emphatically that she ever gave or caused to be given to Hastings any sum beyond this lakh and a half. Other witnesses were also examined, and the statements made by Nuncomar, the proceedings in the Council, and the evidence collected by Goring and his colleagues at Moorshedabad were all transmitted by the Council to the Court of Directors. The following is [3] Lord Thurlow's account given in the House of Lords on the 17th March, 1795:

"The information given by Nuncomar to the majority "was submitted to the [4] law officers of the Company in "Bengal, who did not recommend any prosecution in "India, but advised the Board to transmit every paper

[1] Burke's Speech on Seventh Charge (*Speeches on Impeachment of Hastings*, ii. 55).

[2] *History of Trial of Hastings*, v. 115, note. This witness was called by Fox, greatly to his honour. It had escaped the counsel for Hastings (see Lord Thurlow's speech, *Hist. Trial*, v. 208).

[3] *History of the Trial of Hastings*, v. 207.

[4] He should have said "to counsel." The Company had then no Advocate-General. The papers were submitted to Mr. Farrer.

"and all the evidence to the Company, who might, if "the matter were worthy of their notice, file a bill against "Mr. Hastings and compel a discovery. These documents "arrived at a time when it certainly was the anxious wish "of the Minister (Lord North) to take any fair and "reasonable ground he could for the removal of Mr. "Hastings. The papers were all submitted to the law "officers of the Company, who declared that the information "of Nuncomar, even upon the *ex parte* case before them, "could not possibly be true. The reasons for that belief were "assigned at length. The directors, though a majority "of them were very well disposed to oblige the Minister, "concurred with their law officers, and all that [1] rubbish "and trash remained unanswered from 1776 to the year "1789, when, as your lordships know, it was repeatedly "pressed upon you by the managers, and it was very "properly rejected by the Court."

The charge of receiving the bribes mentioned did in fact form part of the 7th article of impeachment against Hastings, and the rejection of Nuncomar's statements, when tendered in evidence, forms a memorable part of that proceeding. Though these statements were rejected, Burke opened them in his speech [2] 21st April, 1789, at enormous length, and, as it seems to me, most unskilfully, the argument being deferred by a preface of endless length and diluted, when at last it is reached, by much irrelevant matter. On the 25th April he continued his speech, and entered at great length into the recommendations of the Company's counsel not to proceed against Hastings. [3] He endeavoured to diminish the force of their opinion by

[1] These words are more violent than strong. [2] *Speeches*, ii. 1-62.

[3] *Ibid.* pp. 63-108, and see particularly pp. 73-79. The Company's counsel on this occasion were Thurlow, Wedderburn, Adair, Dunning, and Sayer.

criticising the way in which the case for their opinion was drawn, and went so far as to say, [1] "Upon that case I "am not sure if it was *res integra*, but I would not have "rather hesitated myself, who am now here an accuser, "what judgment to give."

[2] The case is printed in the Reports of the Select Committee. It seems to me to be fairly stated, notwithstanding Burke's criticisms. It says that Goordass, Nuncomar's son, was examined, that he said that Hastings had received two lakhs exclusive of the lakh and a half for entertainment, that of these two lakhs one was paid by Nuncomar at Calcutta, that Nuncomar took it up at interest from bankers, and that he, Goordass, received in part payment two bills from Yatibar Ali Khan for 35,000 rupees and 15,000 rupees respectively, and an order, which was never paid, for 5,000 rupees more. Yatibar Ali Khan denied all knowledge of this. Goordass also said that Chyton Durr was aware of Munny Begum's order to Nuncomar to pay the lakh. Chyton Durr denied this. Goordass being questioned as to how he knew of the lakh paid at Cossimbazar, said from the Munny Begum's letter to his father Nuncomar, and on being further asked if he had seen the letter, said he had seen only a copy of it.

It appears from the case, therefore, that the whole story depended at last on Nuncomar, for Goordass knew only what his father told him, and every one alleged to be able to prove any part of it denied what was said of him.

It would be foreign to my present purpose to go at full length into the arguments on this subject which were

[1] *Speeches*, p. 74.

[2] See Appendix IIIA. to the Ninth Report (Reports from Committees of the House of Commons, vol. vi. p. 380).

brought forward on the impeachment of Hastings, but this is the proper place to make some observations on the contention long afterwards put by Sir Gilbert Elliot before the House of Commons, and by Burke before the House of Lords, in relation to them.

Sir Gilbert Elliot maintained that their value was such that Hastings was reduced to the last extremity; that he could no longer live without utter ruin and exposure in the same place as Nuncomar; that to murder him was Hastings's only resource; that the charges themselves bore upon their face the strongest evidence of their truth; and that Hastings's conduct, when they were made, was emphatically that of a guilty man. This view of the matter lies at the root of the theory that Nuncomar was the victim of a conspiracy which ended with a judicial murder. I will accordingly examine it.

The evidence on the subject divides itself into two parts, namely, the statements of Nuncomar, and the behaviour of Hastings in respect of them.

I have already stated some of the objections which attach to Nuncomar's accusations. There is upon the face of his statements an inconsistency which does not seem to have been noticed by the Council, and which was never explained. He was at best an uncorroborated accomplice, and a man of bad character, especially in regard to truthfulness. He named a number of persons as having taken a subordinate part in his offence, and no one of them was produced in corroboration of what he said. This was the fault rather of the Council than of Nuncomar, for they voted Hastings's guilt as I have already pointed out simply upon Nuncomar's statement, and without the least attempt to test its truth.

[1] Burke and Sir Gilbert Elliot took a different view of the matter. Burke says, "I will venture to say if ever "there was an accuser that appeared well and with "weight before anybody it was this man." . . . "When "he comes to produce his evidence, he tells you first the "sums of money given, the specie in which they were "given, the very bags in which they were put, the ex- "change that was made by reducing them to the current "money of the country; he names all the persons "through whose hands the money passed, eight in "number besides himself, Munny Begum and Goordass "making eleven, all referred to in this transaction." How the circumstantial character of the accusation confirmed it I do not see. It would have done so if the eight persons mentioned had been called and had confirmed Nuncomar's statement, and if independent proof had been given that Nuncomar had actually obtained for the purpose the bags of gold which he said he gave to Hastings's servants; but no one of these persons was produced by Nuncomar or summoned by the Council, and of the three who were afterwards questioned on the subject, Goordass merely repeated what he had heard from Nuncomar, and Munny Begum and Nurr Sing contradicted flatly what Nuncomar had said of them. Both Burke and Elliot seem to have assumed, more or less distinctly, that the instant such an accusation was made, and before proof of it was given, it was the business of Hastings to disprove it. This appears to me to be an inversion of the known well-established fundamental rule that he who asserts must

[1] Speech of April 21st, 1789 (*Speeches*, ii. 41). The passage quoted from Burke is nearly a repetition of a passage in the speech of Sir Gilbert Elliot on the impeachment of Impey (*Parl. Hist.* xxvii. p. 339-340).

prove. It would in practice involve the consequence that in order to impose upon your enemy the task of proving a negative, you have only got to make a sufficiently circumstantial set of statements against him, bringing in the names of other persons.

A far stronger, or at all events a much more plausible, ground of accusation against Hastings is derived from his conduct when he was accused and afterwards. Both Elliot and Burke insist upon this—Burke at most wearisome length, and with a ferocity of language which at a distance of nearly a hundred years is still disgusting.[1] "Goaded, provoked and called upon for" an explanation "in the manner I have mentioned he chooses to have a "feast of disgrace, if I may say so, a riot of infamy, "served up to him day by day for a course of years, in "every species of reproach that could be given by his "colleagues and by the Court of Directors . . . . for "years he lay down upon that sty of disgrace, fattening "in it, lying feeding upon that offal of disgrace and "excrement, and everything that can be opprobrious to "the human mind rather than deny the fact."

In ordinary language the argument is this. An innocent man would have courted inquiry. Hastings prevented it, and that by an exercise of power which, if not illegal, was questionable and unnecessary. An innocent man would at the very least have affirmed his innocence and denied the truth of the accusations made against him. Hastings never did so.

These are arguments which require full consideration. The first is founded upon the conduct pursued by Hastings towards the Council already described. Hastings's claim to vindicate the dignity of his position

[1] *Speeches*, ii. 69.

by refusing "to sit as a criminal" at the Board of which he was the President, has been severely censured. "[1] If the dignity in the accused be a sufficient objection "to inquiry, the responsibility of the leading members "of every Government is immediately destroyed; all "limitation of their power is ended; and all restraint "upon misconduct is removed." Burke said, [2] "Mr. "Hastings's idea of dignity has no connection with "integrity."

It is certainly true that no man can be said to forfeit his dignity in repelling by proper means an unjust accusation. It is on the other hand equally true that there are situations in life in which a person accused of misconduct cannot submit to an instant inquiry into it before particular persons without forfeiting that position. If the commander-in-chief of an army in the field were accused of cowardice or treachery by his principal subordinates, he could not even permit an inquiry into the charges to be held without laying aside his command. If a judge on the bench were accused of partiality or corruption in the course of a trial, he would not consent to an inquiry till the trial was over, and he was accused in due course by a competent authority. The position of Hastings had a considerable analogy to these cases, though the analogy is not quite complete. He was a constituent part of the governing body, which was not the Council, but the Governor-General and Council, and the [3] opinion of the most eminent lawyers of the day

[1] Mill, iii. 447.

[2] *Speeches*, ii. 50.

[3] In Appendix III. to the Eleventh Report of the Select Committee (Reports, vol. vi. p. 719) are given the opinions on this point of Thurlow, Dunning, Wallace, and Sayer. All except Wallace regard the Governor-General as an integral part of the body, able to dissolve a meeting by

was that he had power to dissolve its meetings. I do not therefore agree in the language used by Mill and Burke. Hastings's language about dignity seems to me to have referred rather to the nature of his official position than to his personal dignity. He suggested the appointment of a Committee of inquiry, but refused to preside at his own trial. If he had spoken his mind with absolute plainness and without any qualification or reserve I think he would have said: "As to inquiry, inquire if you will as a Committee, but "I am a constituent part of the governing body of this "country, and I will not accept the position of being at "once President of the Court which is to hear and "determine and the prisoner brought before it for trial. "Besides you, Clavering, Monson and Francis are my real "accusers. Nuncomar is acting in concert with you, and "as you admit, has been in previous communication with "you. You are my bitter enemies, and you shall not be "my judges. If I recognised you in that capacity I "should merely consent to my own condemnation. I "stand on my legal rights and I defy you to do your "worst."

Part of this he actually did say in the minute of which I have given the substance, and Monson's admissions and the other matters I have referred to show that the whole of it would, if he had said it, have been strictly true. They were rash, violent, unjust and prejudiced to the highest degree, and if Hastings had remained at the Council and had gone into a discussion of Nuncomar's statements, he could not in reason have

simply leaving it. Wallace was of a different opinion. Sayer thought that though Hastings had the legal power, his use of it was such "as to "convince everybody beyond a doubt of his conscious guilt."

expected anything but a condemnation by a body of which it would have been said he had recognised the authority. It is remarkable that when he was impeached before the House of Commons he suffered grievously for placing greater confidence in the fairness of his enemies. The defence which he made before the Commons was used when he was impeached before the Lords as one of the strongest pieces of evidence against him.

The argument that Hastings never at any stage in the history of the case denied the truth of Nuncomar's statements is, I believe, founded in fact, and some, but not much, importance attaches to it. I do not think much importance attaches to it, because I cannot imagine the state of mind in which a man capable of plotting a judicial murder in order to conceal gross corruption would have had a scruple as to falsely asserting his innocence. I do think that some importance attaches to it because Hastings's character would no doubt have stood better if he had boldly taxed Nuncomar with falsehood. I suppose that his silence at the time that the charges were made arose from the fact that he had received from the Munny Begum the lakh and a half for entertainment—a transaction which, if not positively illegal, was at least questionable—and that as he could not absolutely deny every part of Nuncomar's story he thought it better not to make a qualified partial denial of it, and to leave his enemies to prove what they could.

In the paper which he most unwisely read to the House of Commons and, with an equal want of wisdom, put in writing when his impeachment was under consideration, he followed closely the terms of the accusation at that time advanced against him, and entered upon a kind of wrangle equally ill-conceived and injudicious. In the

formal answer to the impeachment which he put in he was, of course, in the hands of his lawyers. I have looked over it, but cannot find any reference to Nuncomar's case. When an effort was made to give Nuncomar's accusations in evidence on the impeachment of Hastings, his counsel objected that they were inadmissible, as they certainly were, and this objection succeeded, and procured, of course, a unanimous vote in favour of Hastings on that part of the charge against him which related to the receipt of those sums. Should I ever give an account of the impeachment, it will be necessary to discuss these matters fully. At present it is sufficient to say that it would be harsh to infer his guilt from the fact that he availed himself of a complete technical defence against a charge which was so ill supported as Nuncomar's.

I am able, however, to mention a curious circumstance hitherto unknown. The father of Sir Edward Strachey bought at a sale by auction one of the briefs prepared for Hastings's trial. The endorsement does not show for which of his counsel it was prepared, but it has been diligently read and duly scored and underlined. The part of it which relates to the charge of receiving presents from Nuncomar is before me. It consists principally of documents which I have already referred to and had consulted for myself, but it concludes with "Observations "taken from Mr. Hastings's manuscript answer," which I suppose must mean some paper prepared for his counsel or solicitors. The following passages occur in it: "Mr. "Hastings never received any money directly or indirectly "from Nuncomar." "Mr. Hastings affirms that he never "received any sum of money from Munny Begum except "the lakh and a half already mentioned." "Mr. Hastings "solemnly denies that he received any sum of money

"whatever for appointing Munny Begum to be the "guardian of the Nabob." That a consciousness of guilt should have prevented Hastings from making these statements in 1775, when he was in great danger of losing his office, and that it should not have prevented him from making them to his own counsel when nothing was to be gained by falsehood and nothing to be feared from sincerity, appears to me incredible. Whatever value may attach to his denial of the charge against him, this fact shows that he did deny it.

The question relevant to Impey's career and character arising upon this whole matter, is whether Nuncomar's charges had really reduced Hastings to such straits that nothing short of [1] murdering him by the hand of Sir Elijah Impey could save Hastings.

Upon this question the following matters are to be considered. First, Hastings, upon the supposition of his guilt, would not be saved by Nuncomar's death from the only danger to which Nuncomar's charges exposed him, the danger namely of being recalled in disgrace by the Directors, and being saddled with a chancery suit for the payment of about £40,000 on his return home. The Governor-General was liable to removal by the king on the representation of the Court of Directors. No technical legal rules would be a protection against such a removal. The evidence of Nuncomar was already given and recorded. The persons he had named might be interrogated. If the Court of Directors attached weight to Nuncomar's evidence it was not likely that his judicial

[1] Burke's words in his speech, April 21st, 1789 (*Speeches*, ii. 47). Burke was, on petition by Hastings, after a debate extending over several days, censured by a vote of the House of Commons for having gone beyond their instructions in saying this (see *Parl. Hist.* xxvii. 1344-1422).

murder, supposing it to be successfully carried out, would lessen its weight. If they did not attach weight to it there was no occasion to perform, or try to perform, that most critical and difficult operation. Some confirmation is given to this by the circumstance that on the 27th March, a fortnight after Nuncomar's accusation, Hastings [1] wrote to his agents in England, giving them (in a most irregular, unbusinesslike form) authority to resign his office "if the first advices from England contain a "disapprobation of the treaty of Benares or of the "Rohilla war, and mark an evident disinclination to-"wards me." A man was hardly likely to plan a judicial murder in order to avoid the possible loss of an office which he had authorised his agent to resign upon a contingency unconnected with the person to be murdered.

On the other hand, it is to be noticed that this authority was withdrawn, and that Hastings announced his intention of staying where he was, on the 18th May, Nuncomar having been committed for trial in the interval, and being, as Hastings observes in his [2] letter, "in a fair way to be hanged."

[1] The letter is printed in Gleig, i. 521.

[2] It is as follows (Gleig, i. 532): "The visit to Nuncomar when he "was to be prosecuted for a conspiracy, and the elevation of his son to "the first office of the Nizamut when the old gentleman was in gaol and "in a fair way to be hanged, were bold but successful expedients." "P.S.—I now retract the resolution communicated to you separately in "my letters of March 27th. Whatever advices the first packet may "bring, I am now resolved to see the issue of my appeal, believing it to "be impossible that men whose actions are so frantic can be permitted "to remain in charge of so important a trust" (Hastings to Graham and McLeane, May 18th, 1775). The allusions in this passage will be better understood from what is stated in the following chapter. It certainly shows that Hastings was pleased at Nuncomar's being "in a "fair way to be hanged;" but if he had been actually engaged at the time in a conspiracy to murder him, he would hardly have chuckled over

The following passages from an earlier [1] letter are worth notice.

"The letter produced by Nuncomar as Munny Begum's "is a gross forgery. I make no doubt of proving it. It bears most evident symptoms of it in the long "tattling story told with such injunctions of secrecy, and "'a word to the wise' pertinently added to the end of it, "when the sole purpose of the letter was to order the "payment of a lakh of rupees, and Nuncomar's son and "son-in-law were with the Begum, and daily informing "him of all that passed.

"The resolution taken by me to dissolve the meetings "of the Board (or rather to declare them dissolved) on "the 13th, 14th, and 17th of this month, and the orders "given by me to Cantoo to disobey their summons will, "I hope, be thought as regular as justified by the oc- "casion. I do not recollect an instance of the Council "being called, or continued, without the President's "authority; not even in the contests of Mr. Vansittart's "government. As to an adjournment, the term is non- "sense applied to a permanent body like the Council of "Calcutta, which must meet twice a week, and may "daily, or as often as the Governor chooses to assemble "them. Right or wrong, I had no alternative but to do "that or throw up the service. Indeed I consider this "as a case which supersedes all forms. Their violence "had already carried them to lengths which no rules of "the service would allow or justify, nor could I yield

the matter to his agents. I should have expected him to avoid the topic. The tone of the letter is rather that of a man who has met with a piece of unexpected good luck than that of a murderer who has taken the first step towards the execution of his design and sees its consummation—a doubtful and dangerous process, drawing unpleasantly near.

[1] Hastings to Graham and McLeané, March 25th, 1775 (Gleig, i. 515).

"without inverting the order of it, and submitting to a "degradation to which no power or consideration on earth "could have impelled me. I beg you not to pass un- "noticed the disadvantages to which I am exposed in "being obliged to repel their concerted attacks by un- "premeditated resolutions extorted from me in the midst "of provocations, the most likely to warp and disorder "both my judgment and understanding. I thank God I "have hitherto possessed both undisturbed, at least I "think so.

"I shall continue the practice which I have begun, of "dissolving the meetings of the Council, that is, of "leaving them to themselves, as often as they propose "new indignities for me. Indeed, I expect to be able to "do very little with them, and how the public business "is to be conducted, I cannot devise. The trumpet has "been sounded, and the whole host of informers will "soon crowd to Calcutta with their complaints and ready "depositions. Nuncomar holds his durbar in complete "state, sends for zemindars and their vakeels, coaxing "and threatening them for complaints, which no doubt he "will get in abundance, besides what he forges for him- "self. The system which they have laid down for con- "ducting their affairs is, as I am told, after this manner. "The General rummages the Consultations for disputable "matter with the aid of old Fowke. Colonel Monson "receives, and, I have been assured, even descends to "solicit, accusations. Francis writes."

CHAPTER V.

ACCUSATIONS BROUGHT AGAINST NUNCOMAR BY WARREN HASTINGS AND BY MOHUN PERSAUD.

In my last chapter I gave an account of the accusations made by Nuncomar against Hastings; I now come to the accusations made against Nuncomar. They were two in number. The first was a charge of conspiring with other persons to make false accusations against Hastings and Barwell. In this charge Hastings and Barwell were the avowed prosecutors. The second charge was that of forgery, in which Mohun Persaud was the avowed prosecutor, and in which it was alleged that Hastings was the real prosecutor. The charge of conspiracy was put forward first and under the following circumstances.

The accusations made by Nuncomar were far from being the only ones brought against Hastings. [1] The most important of the others was a charge that he and his banyan between them received 40,000 rupees a year out of the salary of 72,000 rupees paid by the Company to the Foujdar or native head of criminal justice and police at Hoogley. This accusation was made on March 30, and

[1] Gleig, i. 523.

on this, as on the former occasion Hastings dissolved the Council. As Nuncomar was not, at all events ostensibly, concerned in this matter, I need not enter into details upon it, but the fact that it and some other accusations of a similar kind were brought against Hastings at this time, is necessary to be known in order to understand the matters now to be related, and to appreciate their importance.

On the 19th of April [1] Commaul O Deen, one of the persons who had made accusations against Hastings, "came to Hastings about nine in the morning," saying he had just escaped from Fowke and Nuncomar. His dress was torn, he was pale and apparently out of breath, and complained that Nuncomar and Fowke had compelled him by threats to sign a petition or arzee saying that he had paid Hastings bribes to the amount of 15,000 rupees in three years, and 45,000 to Barwell, and that they compelled him also to acknowledge the correctness of a "furd" or account of sums collusively taken by himself on account of the district of Hidjeli of which he farmed the revenues.

Hastings in a letter dated 29th of April, 1775, to his agents Graham and McLeane, gives a curious account of this interview. [2] "When Commaul O Deen first came to

[1] 20 *St. Tr.* 1078, 1084-1086. "He was," says Mr. Beveridge of Commaul O Deen (*Calcutta Review*, vol. lxvi. p. 311), "it seems, the "ostensible holder of a salt-farm at Hidjeli, the real farmer being "Hastings's banyan, Cantoo Baboo." This is certainly important if it is correct. Mr. Beveridge does not give his authority. I know nothing of the matter, but there are passages in the evidence in Nuncomar's trial which suggest a doubt as to Mr. Beveridge's information being correct. The expression "it seems" indicates some uncertainty. Elsewhere (vol. lxviii. p. 280) Mr. Beveridge says, "it is quite certain that Commaul was the benamidar for Hastings's "banyan." In neither passage is any authority referred to. [2] Gleig, i. 523, 524.

"me with his complaint, I heard him attentively. I "cautioned him against a false accusation of which I "represented to him all the consequences. He answered "me so consistently and steadily, that I was persuaded, "and then referred his complaint to the chief justice. "After the examination" (*i.e.* the examination on the 20th April) "I sent for him to Belvidere (having had the "precaution to ask the judges if I could do it with pro- "priety) on the 23rd. I told him if his charges were false "it would be impossible to conceal it from the penetra- "tion of the judges, the jurymen, and the assistants by "whom he would be closely questioned on every minute "fact and circumstance; that the circumstance of his "being proved guilty of a perjury would be infamy and "irretrievable ruin. I conjured him therefore by God "and his conscience, [1] Khodaw Kawasty and Desham "Kawasty, not to involve himself in destruction nor "draw me into the prosecution of an innocent man "(innocent I mean of the [2] zerd) for I was clear "as to the arzee). I entreated him to tell me "fairly and candidly the whole truth, I promised "him both pardon and my future support if he "would reveal the real facts, even though it should "appear from it that he had endeavoured to injure "me, as the greatest injury which he could do was "to deceive me on this occasion. In answer he affirmed "with the most solemn asseverations, that he had related "nothing but the strictest truth; he repeated the story "and again repeated it with variations in little circum-

[1] This I am told would now be written Khudaka waste aur dhâramka waste.

[2] "Zerd" may mean "zarad," violence or crime, but I think it must be a mistake for "furd," the sheet or statement mentioned in the case.

"stances and in the mode of relating it, but with a "strong and undeviating consistency in every material "point."

The judges of the Supreme Court at that time by a most unfortunate arrangement acted as justices of the peace for Calcutta under the [1] Regulating Act. There was no doubt a precedent for this in the case of the judges of the Court of King's Bench, who were (as the judges of the Queen's Bench Division still are) justices of the peace for every county in England, but the arrangement was essentially bad, not only because it occupied the time of the judges with matters which would have been better disposed of by others, but because the functions of a committing magistrate and a judge are essentially different and to a certain extent opposed to each other. A judge who has to try a man whom he has himself committed for trial cannot be as wholly unprejudiced as a judge who tries a case, of which till he takes his seat on the bench he knows nothing, except what he may have learnt from a bare reading of the depositions.

Hastings having referred Commaul O Deen to the Chief Justice, the chief justice called in the help of his brethren, and all the judges in their capacity of justices of the peace summoned Nuncomar, Fowke, Hastings, and Barwell before them, and held an examination of the witnesses and [2] defendants, which is fully reported in the *State Trials*. It lasted from 10 A.M. till 11 P.M.

The report is stated to be "subjoined to the trial of

[1] 13 Geo. III. c. 63, s. 38.

[2] This was in accordance with English practice down to 1836 (see my *Hist. of Criminal Law*, vol. i. p. 227, &c.).

"Nuncomar for forgery. Published by authority of the "Supreme Court of Judicature in Bengal." It is extremely intricate and confused. The main facts alleged by Commaul O Deen were substantially as follows. He said that, having a claim against the dewan or treasurer of the Calcutta district, which he was unable to enforce, he had resort to Nuncomar, and deposited with him two arzees or petitions, charging the dewan with oppression, besides one against a Mr. Archdekin, on which nothing seems to have turned. The two were "meant to frighten" the dewan, but were not to be presented if Commaul O Deen could realize his claim by other means. If he got his money in any way whatever he was to give Nuncomar 6,000 rupees, and Nuncomar was to return the arzees. I suppose the meaning of this was that it was a serious thing to make accusations against a person so prominent as Gunga Govind Sing, and that by leaving the arzees in Nuncomar's possession, Commaul O Deen put himself more or less in Nuncomar's power. Why, if he had expectations of getting his claim by other means, he should do so, I cannot understand. His other protector, Munshi Sudder O Deen (whom by his account he appears to have told what he had done), promised to get the money if Commaul would get back the arzees. On applying to Nuncomar for them he refused to return them unless Commaul would go to Mr. Fowke, a European not at that time in the Company's service, bitterly opposed to Hastings, and give him a written accusation against Hastings. An arzee or petition was accordingly drawn up. The report is so confused and defective that I am not sure whether or not [2] a paper printed in the

[1] This was Gunga Govind, held up to execration on many occasions by Burke.

[2] 20 *St. Tr.* p. 1095, No. I.

State Trials is a translation of it, but I suppose it is. It is a long, tedious story, full of all manner of needless detail as to conversations with different people more or less remotely connected with the main point, but in substance it states that Hastings had compelled Commaul to write a petition charging Fowke with having tried to extort from him a statement that he had given bribes to English gentlemen and natives in power.

[1] When the arzee was finished Nuncomar sent his son-in-law Radachurn with Commaul to the house of Fowke the elder. According to Commaul's account he was most reluctant to go, as indeed he had been to draw up the arzee, and on arriving there the following scene took place. Fowke asked him what sums he had given to Hastings and others as bribes. Commaul said he had given no bribes, whereupon Fowke "suddenly flew into "a passion, and [2] took up a book which lay near him, to "strike me, saying, 'Do you desire your own welfare? "'Write what I desire you, and put your seal to the arzee. "Being frightened I put my seal to the arzee, and said, "'Tell me what you desire I should write, that I may "'write it.' He said, 'Write that you have given 45,000 "'rupees within three years, as bribes to Mr. Barwell,

[1] There are endless details as to when, where, and on what occasions it was begun, proceeded with, and fair copied. These, with all sorts of contradictions and debates on trifling incidents, fill a great part of the report.

[2] 20 *S. T.* 1080. In his evidence on the trial he gives the same story in more detail: "When I saw he was angry, I put my jamma (part of "his dress) in this manner about my neck, and fell at his feet and said, "'Mr. Fowke, this is all a lie. I am a poor man—don't ruin me. "Mr. Fowke, hearing this, took up a book and cried out, 'God, damn you, "'you son of a bitch.' When he took up the book and called me names "I said, 'Bring it, and I will seal it.' He then put down the book; my "body shook for fear, and I sat down on the ground in this manner; I "cried and saton the ground" (1151).

"'15,000 rupees in nuzzers to the Governor, 12,000 "'rupees to Mr. Vansittart, 7,000 rupees to Maha Rajah "'Rajah Bullub, and 5,000 rupees to Baboo Kissen "'Cantoo.' I was confined in a chamber without any "power, and being in fear of my reputation and life, I "wrote what was desired of me with my own hand, "and gave it, and thereby obtained my liberty." The paper thus written was separate from the arzee, and was called a furd or list.

As soon as Commaul was safe out of the room he asked Fowke (the son) and Radachurn to return him his false accusations. Young Fowke, after consulting his father, got him out of the house, and told him to return next day, when he should be satisfied. He did accordingly return, and found the two Fowkes and Nuncomar in consultation. They left together after [1] three-quarters of an hour. Commaul tried to stop them, "and called for justice from the Council and Adalat, "and desired that they would return the writing, which "they had yesterday forced me to write. The said "gentlemen and Maha Rajah, being enraged, told their "people to take me and keep me within the house." He struggled, and by the help of his servants got away, in his own palanquin, and went and complained to the Governor as before related.

A great part of this story was admitted to be true by Nuncomar and Fowke. Nuncomar [2] admitted that Commaul had brought him two arzees against Gunga Govind Sing, and that he had sent Commaul to Fowke to get him to present all the arzees to the Council.

[1] "Two gurries," each of which is the sixtieth part of a day, or 24'.

[2] Deposition of Nuncomar, 1082.

[1] Nuncomar's deposition entirely passes over Commaul's statement as to the terms on which the arzees were left with him, but the whole tenor of his story contradicts it. [2] His account of the arzee which inculpated Hastings was, that Commaul's Moonshee drew it up at Nuncomar's house, and that one of Nuncomar's servants took it to Commaul's house, Commaul having left before it was finished. Nuncomar agreed that he had sent Radachurn with Commaul to Fowke to present the arzee. He said also that Commaul pressed Fowke to deliver it; that it was duly executed and attested, and was to be delivered to the Council, but that Commaul wished the petition against Gunga Govind Sing to be delivered first, "for, if the other were delivered first," (*i.e.* if he began by making an attack upon Hastings) "he should gain no advantage from that" (*i.e.* from the petition against Gunga Govind Sing. [3] When Fowke was before the justices he made a defence which the report says "was not minuted," but he affirmed that Commaul voluntarily sealed the arzee in the presence of two witnesses, "with every expression that could mark "it to be his own voluntary and cheerful act." After this he left Fowke's room, but returned, "declaring his "unwillingness to have that arzee presented to the "Council, entreated and implored Mr. Fowke to give "it back to him, and fell at his feet and embraced his "legs with such violence as to give him pain, that, "provoked with this, Mr. Fowke did lift up a book, "which was a volume of *Churchill's Voyages*, and with

[1] See his letter to the Board of Revenue, inclosing the arzees, which are printed (20 *St. Tr.* 1097-1100).

[2] Given after the native manner, with endless irrelevant and most wearisome details.

20 *St. Tr.* 1092, 1093.

"difficulty restrained himself from striking him with "it, that every syllable of the furd or list of bribes "was false, and that he never saw or heard of such "a paper."

In short, the questions between them were whether the arzee making a charge against Hastings was signed by Commaul voluntarily, or extorted from him by threats, and whether the furd or list of bribes ever existed. The rest of the story was substantially common ground, with, of course, endless contradictions of detail and collateral disputes which it is not worth while to follow out.

There are many circumstances in the story which seem to weigh in favour of Commaul's version of it, though he was obviously a very poor creature. On the trial of one of the indictments, [1] on being asked why if he had not given bribes, he had told Fowke that he had, he said, "I did it through fear. If you were to frighten me, "you might make me sign an assignment of the "kingdom of Hindoostan. . . . Whatever Mr. Fowke "would have bid me write I would have written. . . . "I was so frightened, I should have said 'Yes' to "anything he said." It is very improbable that such a man should bring an accusation against the Governor-General of his own accord and when he was to get nothing by it; and the arzee itself, as printed, shows that he had no interest in it. On 18th April Fowke wrote a letter to the Governor-General and Council acting as a Board of Revenue, to the effect that Commaul had attacked his character some months before, which attack he (Fowke) had refuted on his oath. He then goes on:— "He (Commaul) has now put another paper into my "hands, which I take the liberty of inclosing you for

[1] 20 *St. Tr.* 1153.

"my further justification. In this paper it is pretended "that the Governor-General was active beyond the limits "of justice to forward a charge tending to my dishonour." The letter inclosed the arzee said by Commaul to have been extorted from him. It begins thus:—"I am desired "to give an account of what passed between me and "Mr. Fowke: I do here declare upon the faith of my "religion the truth of this transaction." It goes on with the long detail of conversation already referred to, ending with an account of the way in which Hastings compelled him to accuse Fowke, and ends by protesting the writer's integrity. "I have here related the truth and shall "intrude no further." It is difficult to see why Commaul should volunteer all this. It did him no good. It contained no request by him. It [1] purports to be a statement made at the request of some one. No one but Fowke could make such a request, and Fowke did, and no one else could benefit by it. That Commaul should be frightened into signing it, and should upon consideration do his best to get it back, and on failing to do so should at once complain to Hastings, is all natural and in the common course of things. Why he should first wish to sign it and then demand it back, and even make a disturbance in the street in order to get it, is unintelligible. Nuncomar's explanation appears to be childish. If Commaul had persisted in his statement, and had wished only to have the other petitions presented first, he never would have been so violent as he was.

Again, Commaul's version of the scene with Fowke appears to me much more natural than Fowke's account of it. Why should Fowke threaten to knock him down

[1] "I *am desired* to give an account of what conversation passed between "me and Mr. Fowke."

with a folio volume except for purposes of intimidation, and why should Commaul grovel at his feet except in abject supplication for which, upon Fowke's account of the matter, there was no occasion? Lastly, why should Commaul rush off to Hastings with his complaint in the manner related unless what he said was substantially true?

As to the furd the matter is different. Commaul affirmed it; Fowke denied it, and it is no easy matter to determine between them. There was, however, one circumstance which strongly corroborated Commaul. One of the bribes which Commaul said he was required to say he had given was 45,000 rupees to Barwell. [1] It is said that before the justices Fowke, "addressing himself in a "very earnest and pointed manner to him (Barwell) said, "'Will you, sir, declare upon your honour and your oath "'that you never received that money?'" (meaning the 45,000 rupees said to have been mentioned in the furd as received by Mr. Barwell). Mr. Barwell replied that "he did deny it upon his honour and oath. 'Then,' said "Mr. Fowke, 'I must acquit you.'" This shows that at the time when, according to Commaul, Fowke told him to say he had bribed Barwell, Fowke believed that he had done so, and that to the amount which Commaul stated.

I need not here enter further into the details of this matter, though I shall have to return to the subject. It is enough to say at present that the judges discharged Fowke the son, and asked Hastings, Barwell, and Vansittart if they meant to prosecute the others, giving them a night to decide whether they would do so or not. On the 23rd Hastings, Barwell, and Vansittart declared

[1] 20 *St. Tr.* 1093. See, too, the evidence of Mr. Alexander Elliot to the same effect, p. 1205; also Barwell's evidence, pp. 1203, 1204.

their intention to prosecute Fowke, Nuncomar, and Radachurn for conspiracy, and bound themselves over to do so, the defendants being admitted to bail.

The prosecution of Nuncomar for conspiracy was regarded by the Council, and was afterwards represented by Burke and Elliot, as a counterstroke to Nuncomar's attack upon him, and no doubt it was so, but why with Commaul's evidence before him Hastings was not to take the matter into court I cannot understand. He had no other legitimate mode of self-defence, and this was perfectly legitimate. It excited however the strongest indignation in the majority. The meeting of the judges was on the 20th April. They allowed the persons accused to be at liberty without bail till the [1] 23rd, when Hastings and Barwell were to say whether they meant to prosecute or not. The majority of the Council treated this as a failure of the prosecution, and all three of them with other persons well-known in Calcutta went on the evening of the 21st to visit Nuncomar and afford him all the countenance in their power. Clavering avowed this on the trial of the indictment for conspiracy. [2] He said in substance that he considered the fact that the defendants were allowed to be at large without bail for two days after the hearing was a proof that it was an unjust accusation, that he "had reason" (apparently independent reasons) "to "consider this as an attack made on Nuncomar, who had "produced an accusation in Council, and to prevent his ap- "pearing as an evidence to maintain his charge. It was on "that ground, considering him as an innocent man and the "victim of State policy, I went to see him." It cannot be denied that the act showed hot partisanship and considerable disrespect to the administration of justice. It is

[1] The 22nd was Sunday.

[2] 20 *St. Tr.* 1223.

incredible that Clavering could believe that the inquiry was at an end, when he knew (as [1] he admitted he did) that the inquiries had not ended favourably to the accused, and the visit could have no other object, especially in such a place as Calcutta, than to intimate strong disapproval of the prosecution and a belief in Nuncomar's innocence. It is clear that the object was to interfere with the due course of justice, and the visit was quite as improper an act as it would be for the Viceroy and Chief Secretary in Ireland to pay a similar visit to a political adherent under a criminal charge. This, however, was only part of a series of acts done by the majority of the Council all in the same spirit and with the same tendency. I shall mention them in the order of time in which they occurred, but I must now turn to the circumstances leading to the arrest of Nuncomar for forgery, which took place on the 6th May.

In order to understand this matter fully it is necessary to go back for a considerable time.

[2] There was in the Diwani Adalat, or Civil Court of Calcutta, a suit in which Gungabissen the executor of Bollakey Doss, was plaintiff, and Nuncomar defendant. An account of the proceedings in it was given by Mr. Boughton Rouse in his evidence before the Impeachment Committee. It is essential to understand its position as far as is now possible. The suit had been originally instituted in the Judicial Cutcherry, and was transferred to the Diwani Adalat, when that Court was instituted in December, 1772, at which time the case "stood high on the register." The plaintiff

[3] "Mr. Fowke certainly did acquaint me that he was to appear before "you on Monday" (1223).

[4] See evidence of Mr. Boughton Rouse before the Impeachment Committee.

claimed against Nuncomar R129,630 7a. "stated to be "due to the estate for Company's bonds" without further description. Mohun Persaud was attorney for Gungabissen. Nuncomar set up an account said to be adjusted between himself and the representatives of Bollakey Doss, showing a small balance in his favour. The account had been signed by the plaintiff and Mohun Persaud, but they denied that it was an account with Nuncomar. The Court being in doubt "found it necessary to in- "vestigate the antecedent transactions which related "to the deposition of Company's bonds in the hands of "Nuncomar, and called on the plaintiff for a more "minute explanation of his demand." He accordingly sent in an amended bill of complaint in February 1774, in which "the circumstance of three fictitious bonds was "alleged." This must mean to refer to fictitious bonds from Bollakey Doss to Nuncomar, which if genuine would give Nuncomar a right to retain the Company's bonds which he had received from Bollakey Doss. "Copies of the "several bonds were exhibited but not the originals," the court proceeded to hear evidence "which, however, went "rather upon the acquiescence of the plaintiff in the "payment of the bonds, and the allowed retention of a "certain number of the Company's bonds by Nuncomar "than either to establish or repel any specific charge of "forgery against Nuncomar, and considered as a criminal "charge it did not fall within the province of the Diwani "Adalat." The Court recommended arbitration for several reasons: 1. The plaintiff desired it. 2. The cause was intricate, depending materially on accounts in Nagree which no member of the Court understood. 3. "If a "decisive opinion had been adopted in favour of the "plaintiff it would have been an implied charge of

"forgery against the defendant Nuncomar, which perhaps "occasioned a more than usual degree of hesitation and "wariness in the proceedings of the Court. 4. One of "the native members of the Court was known to have "been recommended to his office by Nuncomar." Nuncomar at first made a difficulty about referring the case to arbitration, but consented at last, but even then the parties as far as Mr. Rouse remembered, could not agree about arbitrators, "and whilst matters were in this "suspense the Supreme Court of Judicature arrived in "Bengal" (October 19, 1774). In a word, litigation which had lasted for upwards of two years was brought to a standstill by the reluctance of the Court to proceed in a course which might cast upon Nuncomar the imputation of forgery, and by Nuncomar's refusal to agree upon arbitrators after a reluctant consent to refer the matter had been obtained from him. It is not at all surprising that in these circumstances the attorney for the plaintiff should recommend his client to adopt the shorter and sharper course of prosecuting Nuncomar criminally. His conviction for the criminal offence would not indeed operate as a verdict in his adversary's favour in the civil action, but if his goods were forfeited it would give him practically an irresistible claim on the Government, and if the law of forfeiture was not applied, the claim after Nuncomar's execution would practically be established against his representative.

At this point the story is taken up by[1] Mr. Thomas Farrer. Mr. Farrer, as I have already said, was the first person admitted as an advocate of the Supreme Court, and arrived in India two or three days before the arrival of the judges.

[1] Evidence before the Impeachment Committee, 1-30.

Before he had been a month in Calcutta, Mr. Farrer was applied to by Mr. James Driver, who had been an attorney in the Mayor's Court and had been admitted an attorney in the Supreme Court. Farrer said that Driver mentioned the suit just referred to, and Farrer added, "it "appeared, from the information he (Driver) had received "from his client, that Nuncomar, though proceeded against "in a civil suit in that Court, had committed a forgery, that "he had advised his client to proceed criminally against "him as for a forgery—by his client I mean Mohun "Persaud—and that Mohun Persaud had acquiesced in "that advice, that all the papers of the late Bollakey Doss, "[1] Seat, were then in deposit in the Mayor's Court; that "in order to enable him to prefer a bill of indictment as for "a forgery it was necessary for him, first of all, to possess "himself of the original instrument charged to be forged, "that he had[2] *accordingly*, in March, 1774, moved to have

[1] Seat means banker.

[2] In his speech on Impey's impeachment, Sir Gilbert Elliot commented at great length on this passage (*Parl. Hist.* 357-363), and argued (pp. 359, 360) that if this single word "accordingly" were struck out, Farrer's evidence would not show that Driver had said that he had entertained an intention of prosecuting Nuncomar criminally in 1774. Sir Gilbert admitted that the expression at the end of this part of the extract "confirmed the "meaning" of "accordingly," but he added: "It is even to be observed "that the words 'at that time' are also, to a certain degree, equivocal," as they might refer to the time of the conversation between Driver and Farrer. I quote this to show the straits to which Sir Gilbert Elliot was driven in the attempt to get rid of Farrer's evidence. Elliot says (357): "Their early intention of indicting Nuncomar for forgery was never "suggested to the world till Mr. Farrer acquainted this Committee with "the communication between Mr. Driver and him on the subject." No doubt, and this showed that it was true, and was not a false suggestion by Impey's friends. It also shows the falsehood of what had come to be, from a party point of view, the orthodox faith as to the prosecution, which was, that upon the alleged failure (for it never did fail) of the prosecution for conspiracy, Hastings and Impey brought forward a charge of

"all these original papers, amongst which was the instru-
"ment in question delivered to him or to his client, but
"that his motion had been refused, and that the Mayor's
"Court had only offered him attested copies to make
"such use of as he should think proper, that an attested
"copy would by no means answer his purpose of preferring
"a bill of indictment, and that therefore he had been
"prevented from proceeding further in that mode at
"that time."

"He told me," [1] added Mr. Farrer, "that the Mayor's
"Court had not been so entirely free from influence as
"could have been wished when proceeding against men
"of a certain description, such as Nuncomar, but that
"now that a more independent Court was come out he
"should advise his client (Mohun Persaud) to authorise
"him (Driver) to instruct me to make the same motion
"before the Supreme Court of Judicature, to wit, for the
"original papers, that he had himself made before, with-
"out effect, before the [2] Mayor's Court." Motions were

forgery never before heard of. The interminable verbal quibbles by which Elliot tried to get rid of Farrer's evidence clearly prove, first, how strongly he felt its force as "immediately affecting a capital point in the trial of "Nuncomar, and on the subsequent imputations made on the characters "of the Governor-General and the Chief Justice for their shares in the "proceeding;" and secondly, the weakness of the reasons against it which he was able to produce. Right or wrong, it is impossible for any candid person to put any meaning but one on Farrer's statement. Mr. Beveridge says (*Calcutta Review*, vol. lxvi. p. 285), "There is so "far as I know no evidence that he (Mohun Persaud) tried to prosecute "Nuncomar for forgery till 1775." The evidence of Farrer was given at the same time, and is quoted in the same documents as the evidence of Tolfrey which Mr. Beveridge quotes (incorrectly) below. It is also largely discussed by Sir Gilbert Elliot. It is odd that it should have escaped Mr. Beveridge.

[1] P. 2.

[2] A copy of Driver's petition to the Mayor's Court, dated March 25, 1774, is printed in the report of Nuncomar's trial. 20 *St. Tr.* 1032.

accordingly made by Farrer on the 25th and 30th January, 1775, for the delivery of the papers to Gungabissen, but there was a delay in obeying the order, and accordingly, again on Mr. Farrer's motion, it was peremptorily ordered on the 24th March, 1775, that the Registrar should examine the papers, with the assistance of persons named, or, if these persons did not attend, by himself, and deliver to Gungabissen those that belonged to the estate of Bollakey Doss within one month.

When the papers were delivered does not appear. The month would expire on the 24th April, and the delivery was probably enough delayed till then. At all events, Nuncomar was brought before Le Maistre and Hyde on the 6th May, and was by them committed on that day to the common gaol to be tried on a charge of feloniously uttering a forged writing obligatory with intent to defraud the executors of Bollakey Doss. Of the proceedings before the justices no record which I have seen remains, but there is a reference to the matter in a [1] letter from Le Maistre and Hyde to the Court of Directors, August 2, 1775, which not only remonstrates against the burden which this duty imposed on them, and described the invidious position in which it placed them, but incidentally and unintentionally illustrates the objections to it.

The letter says:—"When the charge of the forgery "was exhibited against the Maha Rajah Nuncomar, Mr. "Justice Le Maistre happened to be the sitting magis- "trate. He requested the assistance of Mr. Justice "Hyde, who attended with him the whole day upon the "examination, which lasted from nine in the morning "till near ten at night; when, *no doubt of his guilt*

[1] Touchet's petition, General Appendix, No. 3, inclosure 19.

"*remaining in the heart of either of us* upon the evidence "on the part of the Crown, a commitment in the usual "form was made out."

The importance of these details lies in the fact that they show that whatever connection Hastings and Impey, or either of them, may have had with the prosecution of Nuncomar, it originated in the usual way. There had been a litigation of long standing, in which an imputation of forgery had been cast upon Nuncomar. His antagonist decided to prosecute him criminally, and tried to do so many months before the Supreme Court was established, but was unable at that time to get the necessary materials. When the Supreme Court was established these efforts were renewed, and succeeded; and as soon as the forged document was obtained Nuncomar was brought before the magistrates and committed for trial in the ordinary course. In his defence before the House of Commons, Impey [1] stated, upon what grounds I know not, "It was in evidence on the trial that "Mr. Palk, the judge of the Adalat, had confined him "(Nuncomar). It was notorious that Mr. Hastings had "ordered him to be released. This of itself was sufficient "to prevent any native inhabitant of Calcutta from "commencing a prosecution against him." Palk's evidence, if he gave any, is not in the report of the trial. The evidence of Farrer and Boughton Rouse given before the Impeachment Committee after Impey's defence does not mention this, and is hardly consistent with it. I think, therefore, that Impey must have been mistaken in his assertion.

The day after the commitment Mr. Farrer was applied

[1] *Parl. Hist.* xxvi. p. 1377, and see p. 1365.

[2] Ev. Impeachment Committee, p. 4.

to by Jarrett, Nuncomar's attorney, and informed of what had passed. Presumably, though he does not say so in so many words, he was then retained for the defence. His first step was to direct Jarrett to apply for a habeas corpus to bring up Nuncomar, in order that when he was brought up Farrer might move either that he should be admitted to bail, or that his place of confinement should be changed from the common gaol to the New Fort. The application was grounded on a suggestion that Nuncomar could not, for fear of breaking his caste, take proper food or perform religious ceremonies. Impey and Hyde, to whom the application was made, at Impey's house, refused it, saying, according to Jarrett's memorandum endorsed on the warrant, "That, should "this man be admitted to bail, ever after there would be "no law for a Brahmin; but was he" (Impey) "applied "to as sitting in court, he should absolutely object to "the Sheriff's confining him in any other house or place "than the prison."

Upon Nuncomar's imprisonment he petitioned the Council, stating that his caste would be injured by the restrictions put upon him. The Council sent for the Sheriff and examined him as to the merits of the case, and they sent a verbal message to Impey, requesting that Nuncomar's petition might be attended to. [1] Impey sent his own physician, Murchison (the father of the late Sir Roderick Murchison), to examine Nuncomar, who had declared, amongst other things, that he was nearly dead, having fasted for fear of breaking his caste for more

[1] Affidavits to these facts were sworn afterwards, viz. in January, 1776, in order to be sent to England by Impey in a letter mentioned below. They will be found in Touchet's Report, General Appendix No. 3, inclosure 29, sub-inclosures 2, 3, and 4.

than eighty hours, namely, from Saturday, 6th May, the day of his commitment, to Wednesday, 10th May. Murchison thought he was shamming. He says in his affidavit that "he does not mean to say that he had not "fasted that length of time, but if he had really fasted "so long it was an extraordinary case, and inconsistent "with the symptoms which, in the best of his judgment, "he" (Murchison) "believes must have appeared." Yeandle, the gaoler, said "that during the five days" (for he did not ostensibly eat till 10 or 11 A.M. on the 11th) "Nuncomar was frequently in private with his own "servants, and had water taken to him, but he did not "see any food taken to him," but "his usual diet was "sweetmeats, which might have been easily conveyed to "him without his" (Yeandle's) "knowledge."

[1] As to the injury done to Nuncomar's caste by his imprisonment, Impey consulted various Pundits, who pointed out means by which it might be avoided, which were taken (building a hut of straw in which he could eat, &c.), and who declared that at worst it would involve a small money fine to feed Brahmins. Nuncomar said that these Pundits were not the right kind of Pundits. Probably he would be hard to please on such a subject.

While pointing out his anxiety to be as lenient to Nuncomar as possible, Impey suggested that the judges and not the Council were the proper persons to apply to. "I am happy," he said, "that the Board has given 'me an opportunity of vindicating the judges from any "surmise of rigour or want of humanity, but must make "it my request that the Maha Rajah may be acquainted "by the Board that if he has any further application to

[1] Touchet, Gen. App. No. 3, encl. 22. Impey—Council, May 16th, 1775.

"make for relief that he must address himself im-
"mediately to the judges, for should he continue to
"address himself to the Board, that which will and
"can only be obtained from principles of justice may
"have the appearance of being obtained by means of
"influence and authority; the peculiar turn of mind
"of the natives being to expect everything from power
"and little from justice. I know I shall be pardoned
"for this observation, being clearly convinced that the
"Board would be [as] cautious in furnishing ground
"for as the judges can be zealous in incurring the
"imputation."

I have not found the answer made by the Council to this letter, but Impey's reply to it is worth notice.

[1] "It gives me infinite concern," he says, "that anything
"in my former letter could by any constrained construc-
"tion be interpreted to question the authority of the
"Board. I went no further than the case before me.
"The bounds between the authority of the Supreme
"Court and the Council are of too delicate a nature to
"be discussed without there should be (which I trust
"there never will be) an absolute necessity to determine
"them.

"I did not, nor do I, question the authority of the
"Board in receiving petitions. I carefully restricted
"what I said to this individual prisoner. I did not desire
"his petitions should not be received, but when received,
"if they were to require anything from the judges of the
"Court, that the answer given to the petitions should be
"that he must apply himself directly to the judge. This
"I did to avoid the imputation I then alluded to, which

[1] Impey—Council, May 15th, 1775. Printed in the Gen. App. No. 3, encl. 22, Touchet's petition.

"would be equally derogatory to the character of the "Council as to that of the judges.

"The particular reason which called upon me in this "case to make that requisition was the reports publicly "circulated in this town that, if the judges could not be "prevailed upon to release the Maha Rajah, he would be "delivered by force.

"These reports I knew to be groundless; but was "apprehensive of the effects of their gaining credit, "especially in the infant state of the Court, before its "authority is sufficiently understood or established. It "is not sufficient that courts of justice act independently; "it is necessary for the good government of a country "that they should be believed and known to be above "all influence."

These letters are curious proofs of the feelings which the committal of Nuncomar excited. The report referred to in Impey's last quoted letter, that Nuncomar would be released by force if the Court insisted on detaining him, was obviously a popular exaggeration of, and comment upon, the fact that the members of Council had visited him after his first examination for conspiracy, and had after his commitment on the charge of forgery received his petition, examined the sheriff and the under-sheriff, and expostulated with the Court. Its existence is proved by an affidavit of Mr. A. Elliot, who said that as superintendent of the Khalsa, or native exchequer, he knew much of native opinion, and that such reports were at that time current in Calcutta. [1] The Council answered that the reports referred to were wholly untrue, and Clavering, Monson, and Francis inclosed affidavits in which they denied that they ever entertained any such intention

[1] Touchet, Gen. App. No. 3, encl 30.

They added (Hastings objecting to the addition), "We "do not agree with you in opinion that the bounds "between the authority of the Supreme Court and the "Council are of too delicate a nature to be discussed "without there should be an absolute necessity to deter- "mine them; we think that the lawful powers of every "branch of government should be fixed and determined, "and particularly that the limits of the jurisdiction of "the Supreme Court should be ascertained, that it may "be known to the people and to the government what "persons are, what persons are not, within their "jurisdiction."

The feelings of the majority of the Council on these motions are strikingly displayed in a minute recorded by Clavering, Monson, and Francis on the 16th May. [1] It is remarkable on account of the confidence with which it expresses opinions on matters still under judicial investigation; on account of its rash insinuations, and also of its inaccuracies and misrepresentations.

"The prosecutions lately instituted against the Rajah "Nuncomar are attended with circumstances that deserve "the attention of the Court of Directors. If it be observed "that he is the principal evidence against the Governor- "General, the measures taken to compass his destruction "may be easily accounted for. The first prosecution was "for a conspiracy formed by him, in conjunction with Mr. "Joseph Fowke, Mr. Francis Fowke, and others, to force a "man called Comaul Uddien Khan to write a petition against "the Governor-General, Mr. Barwell, Mr. Vansittart, the "[2] Roy Royan, and Cantoo Baboo, the Governor-General's "Banyan. After a long and strict examination before the

[1] See 11th report, Select Committee (Reports, vol. vi. p. 719).

[2] The head native revenue official.

"judges, Mr. Francis Fowke was discharged. [1] Mr. Barwell, "the Roy Royan, and Cantoo Baboo declined prosecuting. "At last the Rajah and Mr. Fowke were obliged to give "bail, to appear at the suit of the Governor and Mr. Van- "sittart only. The truth is, as we have reason to believe "on the above circumstances, and on the faith of Mr. "Fowke, [2] that there never existed such a paper as has "been sworn to; and that every particular said to be con- "tained in it is an imposition invented by Comaul Uddien "Khan, because Mr. Fowke and Nuncomar had refused "to deliver to us three other petitions which he had "written, two of them against the Dewan of the Calcutta "Committee, whom we have since dismissed, and one "against Mr. Archdekin, a salt agent. [3] This attempt to "discredit the evidence of the Rajah not answering the "purpose it was intended for, he was, a few days after "again taken up, on a charge of forgery, and committed to "the common gaol. The Rajah is not only a man of the "first rank in the country, but a Brahmin of a very high "caste, and, according to the tenets of his religion, enter- "tains an opinion that he would lose his caste, or suffer an "indelible stain, were he to eat where he cannot perform "his ablutions. He desired only, that, since they had "thought proper to dishonour him in the eyes of all India, "and contaminate him by such an infamous confinement, "they would at least permit a tent to be pitched without "the circuit of the prison, or suffer him to be led every day "to the side of the Ganges, to perform his usual ablutions

[1] This is incorrect. Barwell was bound over to prosecute, and did prosecute Nuncomar and Fowke to conviction.

[2] The jury afterwards seem to have found that there was such a paper. See below.

[3] This imputation was wholly unsupported by evidence, and, I believe false in fact.

"and say his prayers. [1] This request was denied him, "though the consequence of it was generally known and "expected. [2] He remained eighty-six hours without taking "any sustenance whatever, or drinking any water.

"Representations were made repeatedly [3] to the judges, "who contented themselves with taking the opinion of "Pundits, provided and instructed by the Roy Royan. "Even these men, however, were obliged to declare that, "if the Rajah eat in the place where he was confined, he "must perform various penances before he could be absolved. "The old man did not think life worth preserving on these "terms. [4] At last the judges were obliged to give way, "and permitted a tent to be pitched for him, where he "performed his ablutions. As for ourselves, though we "may have strong reasons to believe him innocent of the "charges brought against him, we shall not urge [5] an opinion "in his favour, which would be useless to him and might "be charged with partiality. If he be subject to the "jurisdiction of the Court, we do not doubt that, notwith-"standing the power and influence of his persecutors, [6] an "English jury will give him a fair trial."

Thus matters stood between the Council and the Supreme Court when Nuncomar's case came on for trial, at a session of the Court of Oyer and Terminer, which

[1] This is false, and malignantly suggests that the judges wished to drive him to suicide.

[2] This is doubted by Murchison, and denied absolutely, as far as water is concerned, by Yeandle.

[3] There was only one representation, which was instantly attended to.

[4] This is a misrepresentation. The judges were not "obliged," but observe the admission which the word implies that pressure was brought to bear on them.

[5] Then why express it?

[6] Observe the insinuation that the judges would not.

appears to have begun on the 3rd June, 1775, and which sat till towards the end of the month. Nuncomar was put up to plead on the 8th June. The proceedings on his arraignment occupied the whole of that day, and the Court adjourned till the 9th, when the actual trial began. [1] It lasted till 4 A.M. on the 16th. The Court sat continuously for the whole seven, or, if the day of arraignment is counted, eight, days. During the seven days of the actual trial they never adjourned, sitting on Sunday, the 11th, as well as on the other days, from 8 A.M. till late at night and on the last day till 4 A.M. [2] "The judges wore their "heavy wigs, and (tradition says) retired three or four "times daily to change their linen." One of the judges was always in Court or in an adjacent room open to it. The jury from time to time retired to another adjoining room to take refreshment or sleep. It must be remembered that in those days [3] punkahs were not invented, nor had the importation or manufacture of ice been thought of.

In my next chapter I shall give an account of the evidence produced at the trial. Elsewhere I shall discuss the principal legal questions involved in it, and in particular the question of the applicability of the English statute law as to forgery to Nuncomar.

I have spared no pains to understand the case and to give a fair and full account of it, and I hope I have, after great labour, succeeded in doing so as regards the greater part of the evidence. Some of the accounts and other

[1] Farrer, Impeachment Committee, p. 14.

[2] See a most amusing and careful book, *Echoes of Old Calcutta*, by W. E. Busteed. Calcutta, 1882.

[3] I have somewhere read that swinging punkahs were invented early in the present century. Lord Minto mentions them in 1807. *Lord Minto in India*, p. 27.

exhibits have fairly baffled me. It is difficult to imagine a more confused and intricate matter. There is every reason to believe the report to be fair and practically complete. Its principal author was Mr. Tolfrey, the under-sheriff of Calcutta, who, before the Impeachment Committee, gave an account of it. He said, "The materials "from which I copied the trial were the judges' notes; "[1] a copy of the trial; notes that had been taken at the "time by the sheriff and myself; and notes that had "been taken by Mr. Foxcraft, who then acted as assistant "to Mr. Farrer, advocate for the prisoner." Tolfrey had the notes of all the judges before him except, perhaps, Sir Robert Chambers's. Mr. Justice Hyde's notes were in shorthand, but were referred to. Tolfrey was also assisted by Mr. Alexander Elliot, who was interpreter on the trial, and a young man of extraordinary promise,[2] the younger brother of Sir Gilbert Elliot. He died young. The copy of the trial appears to have been accepted as fair and correct by Mr. Farrer, who was counsel for Nuncomar.

It is obvious to me that the counsel for the Crown were[3] as the judges said, unequal to their task, that the case was ill-got up, and that the judges had to cross-examine the prisoner's witnesses for themselves, and to recall the witnesses for the prosecution and further examine them. The result was that several of the witnesses were recalled many times, and examined on the same subjects on different occasions. Mohun Persaud was called nine times, Kissen Juan Doss fifteen times, and it requires

[1] I do not understand these words.

[2] *Life and Letters of Sir Gilbert Elliot*, i. 30.

[3] See below.

great labour and patience to compare their various statements to see how they qualify each other. I think I may claim to be the first writer (except Mr. Adolphus) who has really studied the matter fully. Most of those who have written upon it have not, as I believe, ever read the trial at all. Mr. Beveridge's attempt to give an account of it is altogether inadequate, as will appear hereafter.[1]

[1] The original MS. Notes of Hyde, J., in many cases are at the Calcutta Bar Library. "The first of the existing volumes commences on "the 6th of July, 1775, that is, after Nuncomar's trial for forgery." (Note by Mr. Belchambers.)

CHAPTER VI.

OF THE EVIDENCE IN THE TRIAL OF NUNCOMAR.

THE [1] parts of the indictment on which Nuncomar was tried, which turned out to be material, were the 19th and

[1] The indictment consisted of twenty counts. It was framed on the Statute 2 Geo. II. c. 25, which enacts, amongst other things, that it shall be a capital felony to forge or publish any bond, promissory note, or writing obligatory with intent to defraud. The following is an abstract of it:—

Count 1.—Forging a bond with intent to defraud Bollakey Doss.
Count 2.—Publishing ,, ,, ,, ,,
Count 3.—Forging ,, ,, ,, the executors.
Count 4.—Publishing ,, ,, ,, ,,

Counts 5—8.—Similar to counts 1—4, the instrument being described as a writing obligatory purporting to be sealed by Bollakey Doss.

Counts 9—12.—Similar to 1—4, the instrument being described as a promissory note.

Counts 13—16.—Similar to 5—8, omitting the averment that the writing obligatory purported to be sealed by Bollakey Doss.

Counts 17 and 18.—Similar to 13 and 14, but stating an intent to defraud the trustees of the will of Bollakey Doss.

Counts 19 and 20.—Similar to 17 and 18, but stating an intent to defraud Gungabissen, the surviving executor of Bollakey Doss.

The reason why so many counts were introduced was that, by the rules of criminal pleading, each count must charge one offence and no more. Down to very recent times it was necessary in indictments for forgery to state the person said to be intended to be defrauded, and this greatly conduced to the multiplication of counts, as there might be an intent to defraud various persons. In the present day an intent

20th counts, which charged him respectively with forging, and with publishing, knowing it to be forged, a certain to defraud may be averred generally, and in such a case as Nuncomar's the indictment would contain six counts, namely, two for forging, and two for publishing a bond, a promissory note, and a writing obligatory with intent to defraud, without saying who was intended to be defrauded.

Before the Impeachment Committee a question was raised as to who drew the indictment. It was suggested that Lemaistre drew it, as Mr. Tolfrey, the under-sheriff of Calcutta, had an idea that he had seen a copy of it in Lemaistre's handwriting. Durnford, Lemaistre's clerk, being examined, said he knew nothing about it. Sir G. Elliot suggested that the indictment must have been drawn by one of the judges, because no one else at Calcutta could have drawn it. "Had it "been the work of a counsel, its acknowledged merit would have drawn "forth its author and made his fortune" (27 *Parl. Hist.* 420). The obscurity, therefore, in which the real truth was involved led Sir Gilbert Elliot to something more than mere conjecture as to who was the author. Pitt (p. 486), on the contrary, affirmed that any attorney's clerk who had a "Crown Circuit Companion" (the Archbold of the day) might draw it. The indictment, as printed in the *State Trials*, is signed Ja. Pritchard, Clerk of the Crown—W. M. Beckwith, Clerk of the Indictments. I should think they or one of them had drawn it. Indictments on circuit and at the Old Bailey are drawn by the Circuit Officers—the Clerk of Assize, to whom the Clerk of Indictments is subordinate. Impey, in his summing-up, refers to a 21st Count. There are only twenty in the printed copy in the *State Trials*. "The record itself," says Mr. Belchambers, "is not forthcoming."

Mr. Beveridge (*Calcutta Review*, vol. lxvi. p. 283) says, "Tolfrey the "under-sheriff, a partizan of Impey, afterwards stated in his evidence be-"fore the House of Commons that the common report in Calcutta was that "the indictment had been drawn by Justice Lemaistre, and that he had "seen a copy of it in his handwriting." This is incorrect, Tolfrey never said he saw a copy of the indictment in Lemaistre's handwriting. What he did say was: "*Q.* Do you know who drew the indictment against "Nuncomar? *A.* I have some idea that I have seen it in the handwriting "of Mr. Justice Lemaistre, but I cannot at this distance of time (thirteen "years) recollect when I did see, nor am I so clear of the fact as to "speak positively to it." He was cross-examined at great length, and in, I think, an unfair way about it, the unfairness consisting in the circumstance that the form of several of the questions assumed that he had actually seen the paper, but the effect of his evidence was not varied. Tolfrey did not say that the common report at Calcutta was that the

writing obligatory in the Persian language with intent to defraud one Gungabissen, the surviving executor of one Bollakey Doss, of Rs. 48,021, principal, and other sums, as interest and batta. The facts were as follows:

Bollakey Doss, a Hindoo shroff or native banker at Calcutta, finding himself in 1769 in a bad state of health, wound up his affairs. [1] He recommended to Nuncomar, his wife, his daughter, and Pudmohun Doss [2] an intimate friend, though no relation. He made a will [3] dated June 12th, 1769, and appointed Gungabissen and Hingoo Lall his trustees, leaving to Pudmohun Doss a quarter (four annas) of his property, and the management of his business. Before making his will he gave a power of attorney (which is referred to in the will) to Pudmohun Doss and Mohun Persaud, who was afterwards the prosecutor of Nuncomar. He died in June, 1769, and [4] probate of his will was granted to Gungabissen, as executor in the Mayor's Court at Calcutta on the

indictment had been drawn by Lemaistre. What he did say was as follows:—"*Q.* Do you think that the circumstance of your having seen "the indictment in the hand of Mr. Justice Lemaistre" (this was an unfair question, for it assumed what was not proved) "did furnish an "inference to the Committee relative to the drawing of the indictment? "*A.* It furnished an inference in my mind because I coupled it with a "report that Mr. Justice Lemaistre had drawn the indictment." Mr. Beveridge's inaccuracy thus converts a doubtful into a positive statement, and "a report" which may as likely as not have been a report in London in 1788, into "the common report at Calcutta," apparently at the time of the trial.

[1] In Assar, 1826, or June, 1769 (949), "Six or seven years ago" (Kissen Juan Doss, in 1775, p. 1026). The references are to the pages of volume xx. of the *State Trials*.

[2] "Was Pudmohun Doss any natural relation of Bollakey Doss? No; "nor was he of the same caste, but he had a very great liking for him. ". . . . He called him his son, but he was not his adopted son" (Kissen Juan Doss, 1029). He appears to be the same as "Prodromone Doss" named in the will.

[3] Copy printed at 966-968.

[4] 949.

8th September, 1769. [1] A considerable part of his property consisted of bonds of the East India Company, and [2] about five months after his death (*i.e.* near the end of 1769), [3] Nuncomar, Gungabissen and Pudmohun Doss went to [4] Belvidere at Alipore, close to Calcutta, to get the bonds to which Bollakey Doss had been entitled. They obtained them and took them to the widow, who said that Nuncomar had been the means of obtaining them for her and had been very generous to her, that she would settle accounts with him first and afterwards with the other creditors of her husband. [6] Pudmohun Doss gave her an account or statement, showing that after the payment of all the creditors, including Nuncomar, a balance of 60,000 rupees would be due to her, [7] and he mentioned on the same evening to Mohun Persaud the receipt of the bonds. [8] The day afterwards Mohun Persaud saw Nuncomar, who told him the Company's bonds were received, and there would be some "durbar expenses" upon them. The expression "durbar expenses" is explained in the glossary to the trial to mean "money paid to persons in power;" and in [9] another part of his evidence Mohun Persaud said that from the time when they were mentioned he had doubts, as no durbar expenses were paid upon this account. [10] He knew, he said, that Verelst Cartier and Russel had not received any. [11] His doubts, he said, became suspicions

[1] This appears from his will, p. 967. It is not distinctly referred to in the power of attorney (944).

[2] 950, evidence of Mohun Persaud. [3] 1025.

[4] 1025. Then the residence of the Governor, and now the residence of the Lieutenant-Governor of Bengal.

[5] Kissen Juan Doss, 1025. [6] 1026.

[7] Mohun Persaud, 950. [8] Mohun Persaud, 950.

[9] 1044. [10] 955. [11] 950 and 1046.

when four or five days afterwards Nuncomar said that he and Pudmohun Doss had "drawn out three papers" (meaning apparently statements of their claims against Bollakey Doss); "the amount of one is Rs. 48,021 (sicca)," the "amount of the other two together is Rs. 35,000 (arcot) "rupees." The suspicion was no doubt founded on the circumstance, that [1]the power of attorney already referred to, given by Bollakey Doss to Mohun Persaud, contained a statement of his affairs, in which he stated his debts to Nuncomar at 10,000 rupees and no more. I shall refer to this paper more fully hereafter.

[2]"Fourteen or fifteen days" after this statement of Nuncomar's, Mohun Persaud went to Nuncomar's house to receive the Company's bonds, and apparently to settle, or see settled, accounts between him and Bollakey Doss.

Mohun Persaud's account of the settlement is somewhat confused and intricate. [3]The result of it seems to be that eight of the Company's bonds for amounts not stated were delivered to Nuncomar's agent, Choiton Naut, after being indorsed by Bollakey Doss's agent, Kissen Juan Doss. Nuncomar in exchange for these gave Pudmohun Doss a nagree bond for 10,000 rupees, also the potta or lease of "the" (it is not said what) "house," also three Persian papers, the bond and Persian papers being cancelled by tearing them at the top. One of these documents was the bond alleged to be forged. It was delivered with the rest to Pudmohun Doss, who filed them all in the Mayor's Court, whence the bond was produced at the trial. This was the publishing complained of. It was common ground that the bond was published, and that 48,021 rupees plus 25 per cent. premium were paid

[1] 944. [2] 950.

[3] 950. 951, and see 957.

to Nuncomar out of Bollakey Doss's estate in respect of it. Nuncomar gave a [1] receipt to Gungabissen, the executor of Bollakey Doss, stating the sum paid to him for the bond as "69,630 rupees in bonds of the English "Company, which is the amount of my demand as "principal interest and batta."

[2] The bonds was in the following words:

"I who am Bokalley Doss.

"As a pearl necklace, a twisted kulghar, a twisted "serpache, and four rings, two of which were rubies and "two of diamonds, were deposited by Rogonaut Roy Geoo, "on account of Maharajah Nundocomar, Behader, in the "month of Assar in the Bengal year 1165 (1758), with me, "in my house at Moorshedabad, that the same might be "sold; at the time of the defeat of the army of the Nabob "Meer Mahomed Cossim Cown, the money and effects of "the house, together with the aforesaid jewels, were "plundered and carried away. In the year 1172 Bengal "style (1765) when I arrived at Calcutta, the aforesaid "Maharajah demanded the before mentioned deposit of "jewels; I could not produce the deposit when demanded, "and on account of the bad state of my affairs, was unable "to pay the value thereof; I therefore promise and give it "in writing, that when I shall receive back the sum of "two lakhs of rupees, and a little above, which is in the "Company's cash at Dacca, according to the method of "reckouing of the Company, I have agreed and settled, "that the sum of 48,021 sicca rupees is the principal of "the amount of the said deposit of jewels, which is justly "due by me, and over and above that, a premium of four "annas upon every rupee. Upon the payment of the

[1] Set out, p. 958. [2] 934.

"aforesaid sum from the Company's cash, I will pay that "sum, without excuse and evasion, to the aforesaid Maha- "rajah. I have, for the above reasons, given these reasons "in the form of a bond under my signature, that when it "is necessary it may be carried into execution.

"It is witnessed,

"MAHAB ROY.

"SCILAUBUT (the Vakeel of Seat Bollakey Doss).

"ABDEHOO COMMAUL MAHOMED.

[1]"ALABD. BOLLAKEY DOSS.

"Written on the seventh day of the month of Bhadoon, "in the Bengal year 1172."

The question in the case was whether the deed was really forged. There could be no question that it was published, or that if it was a forgery Nuncomar knew it.

The evidence to prove that it was a forgery consisted of three parts. First it was said that the attestation by Abdehoo Commaul Mahomed was a forgery; secondly, that the attestation by Silabut was a forgery; thirdly, there was evidence that Bollakey Doss never owed the money, and some evidence that he did not execute the deed; and fourthly, that the statements contained in the bond as to the consideration for it were false.

The most important witness to prove that the attestation of Abdahu Mahomed Commaul was a forgery was the alleged witness himself, known at the time of the trial as Commaul O Dien Ali Khan. He denied that he had ever witnessed the deed, and gave the following account of the reasons why his name should be forged He had [2]known Nuncomar and had been [2]protected

[1] ALABD. Form of countersigning by a subordinate clerk, or officer. Literally, "the slave, or servant." (Wilson.)

[2] 939.

by him from ten years of age. He [1]desired in 1763 [2]or 1764 to present an arzee or petition to "the Nawab, Mir Jafir." As he had no connection with the vizier, Commaul O Dien wished to present the petition through Nuncomar. Nuncomar asked Commaul O Dien for his seal to seal the petition, and accordingly Commaul O Dien sent the seal, together with a nazzer or present of a mohr and eight rupees (twenty-four rupees) to Nuncomar for presenting the petition, and a similar nazzer to the Nawab to accompany his petition. Nuncomar acknowledged by [3]letter the receipt of Commaul O Dien's letter containing the seal, and the nazzer for the Nawab, though he did not expressly acknowledge the receipt of the seal itself. [4]The seal was never returned, though Commaul O Dien applied for it several times. Commaul O Dien was corroborated to some extent by his servant, [5]Hussein Ali, who said that he with his own hand sewed up a bag containing his master's seal, three gold mohurs and eight rupees, and delivered it to Commaul O Dien who said he meant to send it to Nuncomar.

Hussein Ali was cross-examined as to Commaul's credit, though upon incidents on which as far as appears Commaul had not been cross-examined, which would now be regarded as irregular and unfair. It was suggested that Commaul had tried to suborn one Cordan Nowas Hussein Ali said that Commaul had applied to this person to give evidence, but had not, so far as he knew

[1] 939 and 936.

[2] "At the time when the war between Jafir Ali Khan and Kasim Al "Khan subsisted" (936).

[3] 935, 36. Dated 2nd Rubbee ul Akher, in the fourth year of the reign. Shah Alam succeeded Alamghir II. in January, 1760. The fourth year of his reign would therefore begin in January, 1763.

[4] 937. [5] 963.

offered him any corrupt inducement to do so. He also said that Commaul asked a seal cutter if he had cut a seal which Commaul showed to him, on which occasion he said, "Tell the truth, and do not throw your religion to the wind." This cross-examination came to nothing, but it shows how closely the characters of the witnesses were inquired into on the part of the prisoner.

It seems probable that Commaul's seal was in fact used in sealing the bond, for Commaul produced a paper sealed by himself at an earlier period with the same seal. The impression on that paper had a flaw in it, which he said existed in the seal itself, and the mark of a similar flaw was on the seal affixed to the bond in question. The words "it is witnessed" written over the seal on the bond in question were denied by Commaul O Dien to have been written by him.

His account of his own conduct in connection with the matter was, that [1]some time in the year 1772 [2]Mohun Persaud applied to him for payment of 600 rupees, which he owed to the estate of Bollakey Doss, [3]and which he paid seven or eight months afterwards, and on his saying he was a poor man out of employment, asked him if he was a witness on behalf of the Maharajah to a bond of Bollakey Doss, or if his seal was affixed to it? Commaul O Dien replied that he knew nothing about it, and on a statement made by Mohun Persaud that a seal with his name of Abdahu Mahomed Commaul was on the deed, he suggested that the name was not uncommon. In consequence of this conversation, Commaul O Dien said he

[1] "About two months before I got my post" (farmer of Hidgeley), "which is three years since" (937).

[2] 937, 938. [3] 940.

went to Nuncomar and told him what Mohun Persaud had said, to which Nuncomar replied, "It is true I have "fixed your seal, which was in my possession, to the "bond of Bollakey Doss. Having sworn you will give "evidence of this" (*i.e.* will you swear to this), "before "the gentlemen of Adaulut, I answered, How shall I be "be able to take a false oath? He answered, I had "hopes in you. I answered, Men will give up their "lives for their masters, but not their religion; have "no hopes of me." He added, "I then went and in-"formed Coja Petruse and Munshi Sudder O Dien of "what had passed." He said that he told no one else, and that the conversation with Nuncomar took place about two or three months before a question rose between them as to Nuncomar's giving security for the revenue which Commaul O Dien had farmed at Hidgeley.

Coja Petruse and Munshi Sudder O Dien were called to corroborate Commaul O Dien as to the statements which he alleged he had made to them. [1] I do not think that by the present practice such evidence would be considered admissible, though the propriety of excluding it may admit of discussion. At all events it was admitted without objection, and it appears to throw some light on the subject. Each of the persons named gave substantially the same evidence, and each in a material point varied from

[1] "Though hearsay be not allowed as direct evidence, yet it may be in "corroboration of a witness's testimony to show that he affirmed the "same thing before on other occasions, and that the witness is still con-"sistent with himself" (Gilbert's *Law of Evidence*, 135). Gilbert was regarded in 1775 as the great authority on evidence. He quotes a long string of authorities for the proposition quoted.

Commaul O Dien. [1]Coja Petruse said, that on one occasion, Commaul O Dien told him that his seal was in Nuncomar's possession, and that he had sent it to Nuncomar to put it to a petition to the Nawab; and that he subsequently told him that he had a dispute with Nuncomar as to being security for his farm; that Nuncomar had at first agreed to be his security, but that he afterwards refused, unless Commaul O Dien would give evidence in support of the bond. [2]Sudder O Dien's evidence was to the same effect. He said that Commaul O Dien had said, "I shall probably not "be able to get him (Nuncomar) to be my security "because he has affixed a seal of mine to a bond of "Bollakey Doss, and he says to me It is necessary for "you to give evidence, but I have refused it, saying, "I will not give up my religion. I asked him in what "manner the seal had come into Maharajah Nuncomar's "hands, and how he had fixed it? He answered, I "formerly sent him my seal to be fixed to an arzee to "be presented by Maharajah Nuncomar to the Nawab "Jaffier Ali Khan, and that seal is with him. He now "has affixed that seal to a paper of Bollakey Doss's "without my knowledge. I do not therefore now desire "him to stand my security." Sudder O Dien also said that on a later occasion Commaul O Dien told him that upon Nuncomar's insisting on his giving evidence in favour of the deed, he got other persons to be security for him.

Upon this, it is to be observed, first, that the statements alleged to have been made by Commaul O Dien to Coja Petruse and Sudder O Dien as to what passed between himself and Nuncomar, are more unfavourable

[1] 941. [2] 942.

to Nuncomar than the account given in Commaul's evidence on Nuncomar's trial, which shows that at the trial he was not disposed to exaggerate matters against Nuncomar. Moreover, the accounts given by Coja Petruse and Sudder O Dien of what Commaul said to them are more complete than his evidence at the trial. The account given by Commaul O Dien in his evidence supplies no reason why Nuncomar should make a confession to him. The accounts given by Coja Petruse and Sudder O Dien explain this. Commaul O Dien wanted Nuncomar's security, and Nuncomar wanted Commaul O Dien's evidence. [1]In reference to this, it should be observed that, in 1772-4, the suit in the Mayor's Court already referred to was going on, and that the authenticity of this bond was in question in it. This would account for Nuncomar's anxiety to secure the evidence of Commaul O Dien, which might have been conclusive in his favour.

This was the evidence to show that the attestation by Commaul O Dien was a forgery.

The evidence as to Silabut's attestation was as follows. [2]He was a servant of Bollakey Doss's, and lived in his house, but died in [3]1767 or in [4]1769, but apparently before Bollakey Doss. Two witnesses were examined as to his handwriting. One, Saboot Pottack, [5]had known

[1] See evidence of Mr. Boughton Rouse before a Committee of the House of Commons, February 20th, 1788, p. 30.

[2] 955. [3] Mohun Persand, 955.

[4] Saboot Pottack, "Six years and three months ago," March, 1769.

[5] 959-962. Pottack was thirty-nine at the trial, *i.e.* in 1775 (961). He first saw Silabut when he (Pottack) was ten years old (960), and knew him till he died (959), which was in 1767 (955). Pottack must have been ten years old twenty-nine years before the trial, *i.e.* in 1746, and must thus have known Silabut from 1746 to 1767 or 1769.

him from the tenth year of his own age till Silabut died, which appeared to be either twenty-three or twenty-five years. He constantly saw him write, knew his handwriting perfectly well, and swore that the attestation was not in his handwriting. He identified certain papers, probably forming part of the papers in Bollakey Doss's estate, as Silabut's handwriting.

Saboot Pottack was cross-examined at length as to the different places at which he had lived with Silabut, but nothing of importance occurred in his cross-examination.

Rajah Nobkissen was the other witness examined to Silabut's handwriting. His evidence [1] on the subject is characteristic.

"*Q.* Did you know Silabut?

"*A.* Yes, he was a vakeel and moonshee of Bollakey "Doss.

"*Q.* Are you acquainted with his handwriting?

"*A.* I am, I have seen him write many times. (*Bond "shown him.*)

"*Q.* Is this the writing of Silabut?

"*A.* The words Silabut, Vakeel of Bollakey Doss, are "not of his handwriting; it is not his common writing. "I have seen several papers of his handwriting.

"*Q.* Can you take upon you to swear it is not his "handwriting?

"*A.* Silabut has wrote several letters to me and Lord "Clive, and has wrote several things before me; this is "not the kind of writing I have seen him write, but God "knows whether it is his handwriting or not.

"*Q.* What is your opinion about it?

"*A.* The prisoner is a Brahmin, I am a Coit; it may

[1] 962.

"hurt my religion; it is not a trifling matter; the life of "a Brahmin is at stake.

"*Q.* Do you or do you not think this the handwriting "of Silabut? Remember you are upon your oath to tell "the truth, and the whole truth.

"*A.* I cannot tell what is upon my mind on this occasion "about it.

"*Q.* Why not?

"*A.* This concerns the life of a Brahmin. I don't "choose to say what is in my mind about it."

He said that Silabut did not write so good a hand. The papers were shown to him which were shown to Saboot Pottack, for the purpose of selecting those which were Silabut's writing, and "he immediately fixed on "the three papers before proved to be the handwriting "of Silabut." He could find no other of his writing among them. Being asked if he had ever seen them before, he said, "Never in my life. I never was in "such a cause. I would rather lose a great sum of "money than be in such a cause."

This witness was not cross-examined. Both the reluctance and the obvious conviction with which he spoke are very remarkable.

A good deal of evidence [1] was given as to the contents of the books of Bollakey Doss, with a view of showing that they contained no reference to the bond or to the debt secured by it. It is difficult to judge of the effect of this evidence. Its weight would obviously depend on its completeness, and I think the fair result of it is that in the books which were kept in Calcutta and filed in the Mayor's Court there were no traces of such a debt; that he had had other books which were lost or not produced

[1] Kissen Juan Doss, 946, 947, 949, 953, 954, 964, 966, 967.

but that balances from these books were carried on into the books which were produced, and that if the bond had really been due these balances must have been larger than they were. This, however, is only my reading of a complicated, obscure, and fragmentary mass of evidence, to which, in all probability, imperfect justice was done by the report.

The simplest and most prominent piece of evidence on the subject is supplied by the power of attorney already referred to. [1] Shortly before his death Bollakey Doss prepared to go to Benares, and by way of preparation for his journey executed a power of attorney [2] to Mohun Persaud and Pudmohun Doss "to transact any business and to "receive and pay, and to answer and make, any demands "for me." It contained also a statement of his debts and of the sums due to him. In this account (said, however, to be "wrote by guess") the first debt mentioned was "Maharajah Nuncomar, Rs. 10,000." Nuncomar's name was not otherwise mentioned in it. It was dated in 1768.

This account was apparently put in as evidence that at its date 10,000 rupees and no more was due to Nuncomar from Bollakey Doss. It does not appear to have been objected to by the prisoner's counsel, and I suppose if it had been it might have been regarded as a statement against interest, [3] but the law of evidence was by no means as clearly settled then as it is now, and there is at least one instance in the course of the trial in which

[1] Mohun Persaud, 943. [2] 944, 945.

[3] After much study of the law of evidence, my opinion is that the greater part of the present law came into definite existence (after being for an unascertainable period the practice of the courts, differing by the way to some extent on different circuits) just about 100 years ago.

evidence was admitted without objection, which I think would now be objected to and rejected, namely, the corroboration of Commaul O Dien already referred to.

However this may have been, some observations arise upon the account put in. It purports to be witnessed by several witnesses, of whom Kissen Juan Doss and Gherub Doss Puttick [1] (apparently the same person as Keree Doss Puttick) were two. Each of them was called at the trial. [2] Kissen Juan Doss had been in the service of Bollakey Doss thirteen or fourteen years, and had himself prepared the paper from the books kept by Bollakey Doss, but the books from which the account was made up began in 1823 Sumbut, or 1766 A.D., which was a year later than the transaction inquired into. Kissen Juan Doss said that though he witnessed the power he did not actually see Bollakey Doss sign it. [3] It was carried by Pudmohun Doss to Chandernagore (twenty miles from Calcutta), "signed there by Bollakey Doss and brought "to me, and I, knowing his handwriting, witnessed it." The other witness, Keree Doss Puttick, [4] said that he saw Bollakey Doss sign the paper in his own house at Calcutta, and he got into considerable confusion as to whether

[1] The name is spelt "Gheerub Doss Puttick" (945), "Keree Doss Pullock" (945), and "Keree Doss Pottack" (962), but the same person seems to be referred to in each case.

[2] 946. The report of the trial has several mistakes as to the year. Mr. Elliot, the interpreter (brother of Sir Gilbert Elliot, afterwards Lord Minto), is made to say (947): "There are 750 years difference between "the Nagree and Bengal years. The present year (1775) is 1832 Nagree, "and 1182 Bengal." 1832 – 1182 = 650, not 750. Also on p. 948 it is said that the bond said to be forged "appeared to bear date in the month "of Badoon 1182 Bengal year, which answers to the Nagree year 1823." The copy of the bond at 934 is dated Bhadoon 7th, 1172, which is obviously right.

[3] 945.

[4] 946.

Kissen Juan Doss was present or not. [1] It appeared, however, as to this witness, that the interpreter (Mr. Jackson) did not perfectly understand him. He was regarded by the Court as having contradicted himself to such an extent that his evidence must be discredited.

The evidence to show the falsehood of the introductory recital of the deed came out in the course of the prisoner's defence. The deed states that certain jewels were deposited by Rogonaut Roy Geoo for sale on account of Nuncomar with Bollakey Doss in 1758, at his house at Moorshedabad, and that "at the time of the defeat of the "army of the Nabob Meer Mohamed Cossim Khan" (this must refer to the battle of Buxar fought in 1764) "the money and effects of the house, together with the "aforesaid jewels, were plundered and carried away." The value of the jewels is stated at Rs. 48,021. Upon this subject Bollakey Doss's gomastah, or head agent, Kissen Juan Doss, was cross-examined during the evidence for the defence. [2] Having said that Bollakey Doss had been plundered of all he had at Buxar, he was questioned as follows:—

"*Q.* Do you know of his having jewels at that time?

"*A.* He was not plundered of any jewels at "Buxar. I have heard that at Muxadavad (Moor- "shedabad) he lost a small quantity of jewels mortgaged "to him. I was not there myself.

"*Q.* How long since did you hear it, and from whom?

"*A.* The gomastah who had absconded from "Muxadavad during the troubles came in to Bollakey "Doss and informed him of it. I was present when "the gomastah said they were plundered.

"*Q.* What quantity did he say, and whose property?

[1] 962. [2] 1023, 1027.

"*A.* A very small quantity, not above 2,000 or 3,000 "rupees' worth. A shroff at Muxadavad had taken a "small quantity of money from Bollakey Doss and "pledged these jewels.

"*Q.* Do you know of Bollakey Doss's having been "plundered of any jewels at any other time?

"*A.* I have heard of no other jewels; I have "told you all I know about jewels. I never heard any "word of his being plundered of any other jewels."

He was afterwards further questioned :—[1]

"*Q.* Do you believe that jewels to a very great amount "could have been taken from that house without your "hearing of it?

"*A.* I must have known of it in case any jewels to a "great amount had been plundered; a thousand people "must have known it."

Kissen Juan Doss[2] further said he never knew Bollakey Doss give a Persian bond. "If he had bonds to give he "ordered a writer to write them in Nagree and signed "them with his own hand." He was unable to recognise the impression of the seal on the bond said to be that of Bollakey Doss, saying fairly enough that though he remembered the seal he could not speak to the impression. He was then asked this question, which is by no means a bad specimen of the argumentative questions formerly not uncommon in cross-examination :—

"*Q.* You hear there are several witnesses that have "seen the seal of other people two or three times upon "their fingers that are able to swear to the impressions. "Cannot you recollect, that have seen it so much "oftener?

[1] 1027. [2] 1028-1030.

"*A*. They have excellent memories. I am not blessed "with such a one."

The evidence that Kissen Juan Doss knew of no important robbery of jewels at Moorshedabad seems to me very strong, and his evidence as to the comparatively unimportant one is also strong, because it proves a fact which may have suggested the fraud said to have been perpetrated.

The evidence as to Bollakey Doss's habits as to bonds, and as to his seal, is of less importance, though it should not be altogether overlooked.

I may observe that the deed itself is, on the face of it, a suspicious document. It is dated in 1172, which is equivalent to A.D. 1765, and sets forth a deposit of jewels to the value of Rs. 48,021 in 1165 or 1758, seven years before. If Nuncomar had really deposited such a quantity of jewels with Bollakey Doss, would he not have taken some receipt or acknowledgment at the time, instead of leaving them in his power for seven years without any voucher? Besides, even if Bollakey Doss was so singularly honest as to give such a document on demand, why did he not question his liability to pay? According to the account given by the document, [1] Nuncomar's title to

[1] According to English law, a depositary "shall stand charged or not "charged for the loss of the deposit, according as default or no default "shall be in him" (quoted from Doctor and Student in *Addison on Contracts*, p. 356). The Mohammedan law as stated in the Hedaya is the same. "If a deposit is lost or destroyed in the trustee's hands "without any transgression on his part, he is not in that case responsible "for it, because the prophet has said, 'An honest trustee is not "'responsible.'"—(Hedaya, Book XXVIII. of widda. Grady's Edition, p. 471). Bollakey Doss may probably have been ignorant of law of all kinds, but he would feel without any technical knowledge that it would be very hard to call upon him to make good the misdeeds of the people who plundered his house at a time of confusion. On the other hand, if

recover the value of the jewels would have been extremely questionable. There is something suspiciously complete in the whole document. Why was it necessary to enter into such a long story in order to explain what the bond treats as an absolute liability? Besides the promise to pay, "when I shall receive back "the sum of two lakhs of rupees and a little above which "is in the Company's cash at Dacca" looks as if a foundation were being laid for the demand being made on the payment of the Company's bonds at Belvidere through the intervention, as was said, of Nuncomar. Probably something of this sort was in the mind of Mohun Persaud [1] when in answer to a question as to the time when he was so far certain of the forgery as to prosecute, he said: "When I saw the amount "of jewels, the name of Rogonaut" (the alleged depositor as to whom nó account was given), "and the mention of "plunder, I knew it was forged, and from the nature of "the bond, which is not regular in itself, being conditional: "bonds are not commonly made out so when money is "received."

To finish the evidence for the prosecution:

[2] Gungabissen, the executor, was not called, it being proved that he was so ill that it would probably kill him if he were brought into court. Pudmohun Roy, co-attorney

Nuncomar forged the bond and wanted to make out a plausible story showing Bollakey Doss to be liable to him, it would not, even in imagination, appear strange to him that, if Bollakey Doss could not return his jewels, he should pay for them. The deed is one which Nuncomar might naturally forge, but which Bollakey Doss would hardly execute without remonstrance.

[1] 1046.

[2] 965, 966. Mr. Williams said: "The man could not be brought here "and carried back again without imminent danger of expiring from "fatigue."

with Mohun Persaud, [1] died three years and a half before the trial.

[2] The counsel for the prisoner submitted at the end of the case for the prosecution, "that there was no evidence "of the forgery and publishing of the bond." The Court unanimously held that there was. In this I think they were clearly right. There was certainly nothing that could be called direct evidence of the actual forgery of the name or seal of Bollakey Doss himself, but there was direct evidence of the forgery of two of the attestations, namely, that of Commaul O Dien and that of Silabut. There was evidence that the amount secured by the bond was not due, and there was evidence of the uttering of the deed—indeed it was not denied. I think this would be evidence from which the forgery of the deed might be inferred. No notice of the difference between the forgery of the deed and the forgery of the attestations appears to have been taken either by the counsel for the prisoner or by the judges.

The evidence for the defence was intended to prove that the whole transaction was genuine, that the deed was really witnessed by the persons by whom it purported to be witnessed, and was actually executed by Bollakey Doss, as appeared not only from persons present on the occasion, but by admissions on the part of Bollakey Doss himself.

The first witness to the bond was [3] Mehal, Maital, Matoo, or Matheb Roy. He had not been mentioned by any witness for the prosecution except Mohun Persaud, who said he never knew, saw, or heard of him.

[1] 1021, and see 1031.

[2] 968.

[3] "Mehal" in the copy of the bond, 934; "Matoo," 955; "Maital," 969; "Matheb," 970-974.

The first witnesses called for the prisoner were to prove the existence of such a man. One [1] Tage Roy said he had had a brother of that name, who if living at the time of the trial would have been in his thirty-seventh year, and in this he was corroborated by [2] Roopnarain Chowdree. Other witnesses, [3] Huzrey Mull and [4] Cossinaut, were called, who spoke of two other Matheb Roys, but their ages differed to some extent from each other, and irreconcilably from the age of the brother of Tage Roy. In the course of their evidence it appeared that there were two distinct persons each called Bungoololl, each of whom had a son called Saheb Roy. There was some confusion in the evidence about them, but the matter was of little importance, as none of the witnesses connected the Matheb Roy, to whose existence they swore, with the witness, or alleged witness to the deed. Tage Roy, said to be the witness's brother, said he was acquainted with his brother's seal, and [5] said in cross-examination that he had it and could produce it. He does not appear to have been asked to produce it, and this, as far as it goes, indicates that it did not correspond with the seal of the bond.

With respect to the seal of Commaul O Dien, it was not alleged on the part of the defence that Commaul O Dien, the witness for the prosecution, was also the witness to the deed. The witness to the deed, [6] they alleged, was Mahomed Commaul, of Moorshedabad, who died nine years before the trial; but their evidence on this point cannot properly be separated from their evidence as to the execution of the bond. This was

[1] 969. [2] 973. [3] 970.
[4] 971. [5] 970.
[6] Joydel Chowbee, 974.

deposed to by four witnesses, who declared that they were present at the time, and gave a minute account of what passed. They were [1] Joydeb Chowbee, [2] Choyton Naut, [3] Lollau Doman Singh and [4] Shaik Ear Mahomed. Their story was that Bollakey Doss came to Nuncomar's house. Nuncomar pressed him to pay a debt. He asked for time, and offered to sign a bond, to which Nuncomar agreed. Bollakey Doss then went to his own house, to which he was followed by the four persons named, Mahomed Commaul, and Silabut. He then gave orders to a mohurrir, or writer, to draw up a bond, which was done. He then sealed it, Mahomed Commaul sealed next, then Matheb Roy, and then Silabut signed his name. Bollakey Doss then gave the bond to Mahomed Commaul, and told him and Silabut to take it to Nuncomar. There were some few inconsistencies in their evidence. For instance [5] Joydeb Chowbee said that there was no particular conversation at the sealing of the deed, and that the inkstand used was before Bollakey Doss when he and the others came into the room. [6] Lollau Doman Singh said that Bollakey Doss told Silabut that he had settled with Nuncomar about the jewels, that Nuncomar was his patron, and it would not be proper to have a difference with him, and that the inkstand was brought in by the khidmatgar; but in speaking of such a transaction from memory ten years after it happened, discrepancies are natural. The suspicious part of the evidence of these witnesses was their extraordinary and unnatural agreement in a number of matters of minute detail which they could have no

[1] 974-980, 983. [2] 983. [3] 991.
[4] 1008. [5] 978. [6] 997.

special reason for remembering.[1] I give in a foot-note the evidence of two of these witnesses in parallel columns

[1] JOYDEB CHOWBEE (975).

"He (Bollakey Doss) came to "the house of Maharajah Nun- "comar, where I was sitting. "Maharajah Nuncomar said to "Bollakey Doss, 'Money has long "'been due from you to me; now "'pay it.' Bollakey Doss said in "answer, 'I have lost everything "'by plunder at Dacca. I have "'not now the power of paying; "'a great sum is due to me from "'the English. When I receive "'that I will pay you first of my "'creditors.' Having said this he "added, 'I will now write out a "'bond.' Bollakey Doss in this "manner pressed Maharajah Nun- "comar a good deal, and put "his hands together in the atti- "tude of praying, and at last "Maharajah consented. Bollakey "Doss then said to Maharajah, "'Send Mahomed Commaul with "'me to my house; I will there "'write out the bond immediately.' "Having said this, Bollakey Doss, "in company with Mahomed Com- "maul, left Maharajah's. I like- "wise obtained dismission from "Maharajah. Having gone down "stairs, Bollakey Doss said, 'Come "'along with me to my house, and "'I, having executed a bond be- "'fore you and Mahomed Com- "'maul, will send it to Maha- "'rajah.' After this Bollakey "Doss and I went to the house of "Baboo Huzree Mulli in the Burra "Bazaar. Being arrived there he

SHAIK EAR MAHOMED (1009).

"Bollakey Doss likewise came "in and sat down by us; Maha- "rajah Nuncomar lived in that "house; having sat down, Maha- "rajah Nuncomar said to Bollakey "Doss, 'You have for a long time "'had my money; it shall re- "'main no longer with you; now "'pay it.' Then Bollakey Doss "answered Nuncomar, 'My money, "'which was in the house of "'Muxadabad and Dacca, has "'been plundered. I have not "'now the power of paying the "'money. A great sum of money "'is due to me from the English "'Company; having received that "'money I will pay you first, "'and after that will pay others; "'I will now give you a bond for "'that money—do you take it "'from me.' He then pressed "Maharajah very much with his "hands joined to take the bond. "Maharajah consented and said, "'Very well; write a bond.' He "then said, 'Give me Maho- "'med Commaul with me, and "'I, having gone to my own "'house, will write out a bond, "'seal it, and get proper wit- "'nesses, and send it back by "'Mahomed Commaul.' Maha- "rajah Nuncomar said 'Very "'well.' Bollakey Doss, taking "Mahomed Commaul with him, "obtained dismission. Maharajah "then got up, and we three "likewise took our leaves; when

for the sake of comparison. Ear Mahomed had obviously learnt his evidence by heart, for upon cross-examination

JOYDEB CHOWBEE (*contd.*).

"sent for his writer. The writer "came, and was ordered to write "out a bond in the name of the "Maharajah. The writer made "out a Persian bond and put it in "the hands of Bollakey Doss "Seat. Bollakey Doss Seat, "having seen the bond, took the "ring off his finger and sealed it, "and said to Mahomed Commaul, "'Be you a witness to it.' Ma-"homed Commaul affixed his own "seal with his own hand as a "witness. He said to Matheb "Roy, 'Be you also a witness to "'this.' Matheb Roy sealed it "with his own hand. He said to "Silabut, 'Be you also a witness "'to this,' and he signed it with "his own hand. Silabut having "put it into the hands of Bol-"lakey Doss Seat, he put it into "the hands of Mahomed Com-"maul and said, 'Carry it with "'Silabut to Maharajah Nun-"'comar's.'"

SHAIK EAR MAHOMED (*contd.*).

"we went into an outer house, "Seat Bollakey Doss said to me, "'Do you likewise come along "with me, and I, having gotten "'a bond written out and sealed, "'you will see it done.' He "having said this I agreed. He, "having got into his palanquin, "went away. We four people "followed him, he, having gone "into his palanquin, half a gurry "after we followed him. We "likewise arrived at his house. "We saw Bollakey Doss sitting, "and along with him Matheb "Roy, Silabut, Lollau Doman "Singh, and a mohurrir. We sat "down. Bollakey Doss said to "his writer, 'Write out a bond "'for 48,021 sicca rupees in the "'name of Maharajah Nuncomar.' "He wrote out a bond in Persian, "and the mohurrir having read "it, Bollakey Doss heard it and "took it in his hands, and having "taken it in his hands he took "off a ring which was on his "finger, and when he had taken "it off he dipped it in a sicca "dewat (inkstand) which was "lying before him, and affixed "the seal to the paper which was "lying before him, and having "sealed it he said to Mahomed "Commaul, 'Do you likewise be "a witness to it,' and gave the "bond into his hands. He having "likewise taken the seal off his finger, affixed it to the bond as a "witness. Bollakey Doss then said to Matheb Roy, 'Baboo Matheb

he said, [1] "If I begin at the beginning I can tell. I cannot "begin in the middle," and on being told to begin again he repeated what he had said before word for word. It is also extremely suspicious that he should remember for ten years the exact number of rupees (48,021) for which the bond was given, and without any special reason. The evidence of [2] Choyton Nauth and [3] Lollau Doman Singh is similar, though not so nearly identical as the evidence of the other two. [4] All the four witnesses gave the same evidence as to the order in which the witnesses sealed the bond, and as to Silabut alone signing. [5] Three of the four professed to know the seals from having seen them on the fingers of their owners, and they identified them accurately when the bond was shown to them.

Another circumstance bearing on their credit was that they all swore to the Commaul Mahomed who they said had witnessed the deed, and that no one else attempted to prove that any such man had ever existed, although two of them, [6] Joydeb and [7] Shaik Ear Mahomed swore to his having been buried from Nuncomar's house, Shaik Ear Mahomed giving the names of seven other

"'Roy, do you likewise witness it.' Matheb Roy likewise having taken 'the seal from his finger affixed it and was a witness. He then said "to Silabut, his vakeel, 'Do you likewise be a witness to this bond,' "who, having taken the inkstand in his hand, wrote his name in Persian "as a witness. Bollakey Doss then took the bond in his hand; then "Bollakey Doss put the bond into the hands of Mahomed Commaul and "said to Silabut, 'Do you likewise accompany Mahomed Commaul "'and deliver this bond to Maharajah Nuncomar.' Mahomed Commaul "and Silabut, having taken the bond, went to the house of Maharajah "Nuncomar. I likewise went to my own house. Of the bond being "sealed and executed I know this."

[1] 1010. [2] 987. [3] 994.

[4] *Cf.* 975, 987, 995, 1009.

[5] Joydeb, 997-979; Choyton, 991; Doman, 996, 997.

[6] 983. [7] 1012.

persons who were present, none of whom were called as witnesses. Each of these four witnesses was [1] a dependant of Nuncomar's.

There were other circumstances tending to throw doubt on the evidence of these witnesses, or some of them, which, for the sake of brevity, I do not notice.

Evidence was also given on behalf of the prisoner to show that the seal of Bollakey Doss attached to the bond was genuine. For this purpose a [2] witness, Meer Ussud Ali, was called, who produced a receipt, which he said was given to him by Bollakey Doss, and which was sealed with a seal corresponding with that which purported to be the seal of Bollakey Doss to the bond. [3] Ussud Ali said that he was carrying treasure from Rotas to Mir Cossim, that Mir Cossim ordered him to carry it to Bollakey Doss, at [4] Doorgotty, that he went with 150 horse and 150 foot, and delivered the treasure to Bollakey Doss in a tent at Doorgotty, and took the receipt for it.

[1] "*Joydeb.*—I was formerly a servant of Maharajah Nuncomar. He "is now without employment; his employment is gone and so is "mine (975).

"*Choyton Nauth.*—I was formerly a servant of the Maharajah; I "am not now. He is out of employment. I am yet in hopes.

"*Q.* What are your hopes?

"*A.* That I shall obtain some employment.

"*Q.* What reason have you to hope for an employment?

"*A.* I have no reason. Maharajah is a great man; a man of conse- "quence. I am in hopes he may get me employment.

"*Q.* How long have you had these hopes?

"*A.* From the time Maharajah has been out of employment. I have "gone every two or three days to his house. He says, 'Very well; "'when I am in employment I will get something for you' (988). *Lollau Doman Singh* was in the employment of Radachurn, Nuncomar's son-in-law (992).

"*Shaik Ear Mahomed* said he was no one's servant, but had been "'always with the Maharajah' for ten or fifteen years" (1009).

[2] 998-1002. [3] 1000, 1001.

[4] Called also Doorgolly, Dues Gauty, and Doorgauty.

At the time of the trial this witness was out of employment, and [1]" said he had had an interview with Maharajah " Nuncomar, who promised me that, God willing, when " he got employment I should." He gave an unsatisfactory and not altogether consistent account of his being called as a witness and bringing the receipt from Patna to Calcutta; but apart from this he was contradicted in many particulars.

[2]The receipt was dated 28th Assum, 1174, which corresponds to 8th October, 1764. It was proved [3]that Mir Cossim retreated from Behar for the last time in May, 1764; [4]that Rotas was taken from him apparently earlier in the year, though the date is not given; [5]that the battle of Buxar was fought October 23rd, 1764; [6]that for some weeks before the battle Mir Cossim was cantoned at Buxar; that, by the means of Sujah Dowlah, the Nabob Vizier, Bollakey Doss was confined in his tent for a month or six weeks before the battle, in order to extort money from him; and that Mir Cossim was confined at the same time by the same authority and for the same purpose. All this was proved by [7]Kissen Juan Doss, who was with Bollakey Doss at the time as his [8]chief gomastah or agent. Kissen Juan Doss declared that he knew nothing of Ussud Ali, that he remembered nothing of treasures being brought down to Bollakey Doss by a party of soldiers, and that if such treasures had been brought at the time of the date of the receipt they must

[1] 999.

[2] 1004. The interpreter, Mr. Elliot, spoke very positively as to the date, which does not seem to correspond with some others in the case.

[3] Mr. Hurst, 1004.

[4] Colonel Goddard, 1003. [5] 1004.

[6] Major Auchmuty, 1004; Captain Carnac, 1005: Kissen Juan Doss, 1005, 1006.

[7] 1006, 1007. [8] 1020.

have been seized by Sujah Dowlah's treasurer, who had charge of Bollakey Doss and plundered him. [1] Kissen Juan Doss also swore that there was no notice of any such transaction as the one referred to by Ussud Ali in any of the books containing the accounts between Bollakey Doss and Mir Cossim.

All this appears to prove, first, that Meer Ussud Ali's evidence was false, and secondly, that he had got possession of an instrument which produced an impression similar to that of the seal on the bond alleged to be Bollakey Doss's. Such an instrument would be required for the purpose of forgery.

The next piece of evidence given by the prisoner was much the strongest part of his defence. [2] Kissen Juan Doss swore that when, after the death of Bollakey Doss, he drew up the accounts of his roz-nama or journal, no mention appeared in it of the jewels to which the bond related. Upon this, he said, he asked Pudmohun Doss for an account of the jewels. Pudmohun Doss produced a [3] "karar-nama" or correct statement in the handwriting of Pudmohun Doss, and signed by Bollakey Doss. From this document Kissen Juan Doss made an entry in the books of Bollakey Doss, giving credit to Nuncomar for a [4] sum of Rs. 69,630 7a. with particulars

[1] 1002-1004. [2] 1020-1023.

[3] The word is spelt in the report of the trial "corra-nama," "curranama," "kursanama," "kursinama," and in one place (probably a misprint) "canatama." The true word is no doubt Karár-nama. KARAR, fixedness, stability, confirmation; it is loosely used for a written engagment. *Karar-nama*, a written contract or engagement (Wilson).

[4] The sum was made up as follows:—

Due on bond	48,021	0
4 annas in the rupee in lieu of interest	12,005	4
	60,026	4
16 per cent. per sicca rupee as above	9,604	3
	69,630	7

for which credit was given.

exactly corresponding with the provisions of the bond alleged to have been forged. If this evidence was true, Nuncomar was clearly entitled to an acquittal, as it proved that the money for which the bond had been given was actually due from Bollakey Doss to Nuncomar. This entry was made long after the bond had been paid—about four years before the trial, and six or seven months before the death of Pudmohun Doss. The books were made up for the purposes of the suit relating to Bollakey Doss's estate. [1] The witness said that Pudmohun Doss, the executor, and Mohun Persaud, the prosecutor, must have known ultimately of this entry in the books, and that he mentioned it to them. He did not say, and at first was not asked, whether Mohun Persaud saw the paper signed by Bollakey Doss. It is obvious that if he had seen it his prosecution of Nuncomar would have been a most wicked action, as it would show that he prosecuted him for a forgery when he was aware of his innocence. At the very end of the case, and after much other evidence had been given, Kissen Juan Doss was [2] by Nuncomar's wish recalled and asked whether he had explained the karar-nama to Mohun Persaud? He said that Mohun Persaud and Nuncomar and he were together at Nuncomar's house, and that he (Kissen Juan Doss) read the karar-nama in the presence of Mohun Persaud. Upon cross-examination, he added that Mohun Persaud took the paper in his own hand and read it. He was asked why he had not mentioned this before, to which he replied, "If nobody asked me about it, why should I "tell the bad actions of Mohun Persaud?" He afterwards said he had forgotten the fact, then repeated that he was afraid of Mohun Persaud, and he fell into the greatest confusion in attempting [3] to give a clear account

[1] 1023. [2] 1060-1062. [3] 1047.

of the matter. Mohun Persaud was not recalled and questioned on this subject, but he had, in an earlier part of his evidence, denied that he knew of the alleged entry.

The paper itself was not produced at the trial. [1] If Kissen Juan Doss was to be believed it was, when he saw it, under the control of Nuncomar, for he said that the Maharajah sent for it from his house; but another witness, [2] Mohun Doss, said (if his evidence refers to this document, as I think it does, though it is by no means clear) that he made a copy by Nuncomar's desire of the original paper, gave the original to Pudmohun and kept the copy himself, which copy appears to have been produced at the trial.

The result of the whole of this evidence is that Pudmohun showed Kissen Juan Doss a paper purporting to be signed by Bollakey Doss, admitting his liability for the debts secured by the bond said to be forged which signature of Bollakey Doss was declared by Kissen Juan Doss, his former agent, to be genuine. This was declared by Kissen Juan Doss to have been shown to, and read by, the prosecutor of Nuncomar. He denied having seen it, and Kissen Juan Doss fell into contradictions upon the subject which considerably shook his credit. It is possible that Pudmohun may have been a party to the fraud. The karar-nama was alleged to have been in his writing, though signed by Bollakey Doss, or purporting to have

[1] 1061.

[2] 1049. It is difficult to make out what this evidence refers to, as no copy is given of the paper to which it relates; but one Sango Loll (1052), who was said by Mohun Doss to have attested the copy made by him says, "I did attest a copy of a karar-nama." I may observe that though I have made many attempts to understand them, several of the exhibits in the case are to me unintelligible, as it is impossible (to me, at least) to understand what they profess to be.

been so signed. If he either forged the signature, or fraudulently wrote the statement over a genuine signature, the matter would be explained. It is difficult to understand why the paper, if genuine, should have been kept back so long, and why after being used to quiet Kissen Juan Doss's scruples, it should have disappeared, a copy only being produced in proof of it. [1] Mohun Persaud's evidence reflects strongly on Pudmohun in the following remarkable passage:

"*Q.* Did you ever mention your apprehensions of "forgery to Pudmohun Doss, and advise him to prosecute?

"*A.* When Pudmohun Doss brought the bond from "Maharajah Nuncomar in the night and read it to me. "I asked him the following morning if he had brought all "the bonds. He showed me the three papers and had the "Persian read to me: I said nothing was due on those "papers; what did they mean? Pudmohun Doss said, "'Remain quiet, and I will inform you of the circumstances "of it.' After that the widow of Bollakey Doss com- "plained to Mr. Russel through Cossinaut; Goshein "likewise complained in the adalat (*i.e.* Mayor's Court), "and made Mr. Mayer one attorney and Mr. Seely his "law attorney.

"*Q.* Did Pudmohun Doss ever give you satisfactory "accounts of these bonds?

"*A.* No, he always put me off by saying he would "inform me of the circumstances.

"*Q.* Did you apply often to him for that purpose?

"*A.* I did not press him much, Goshein did, and "Pudmohun Doss in consequence was thrown into con- "finement."

These are the principal topics which were discussed

[1] 1045.

upon the trial. There were some others, as to attempts alleged to have been made by Mohun Persaud to suborn evidence, which were of no great interest or importance, and which I omit to save space. But the matters which I have examined were those upon which no doubt the verdict turned.

As the only question which now possesses much interest is whether Nuncomar had or had not a fair trial, I shall, before making any observations on the probability of his guilt, print at full length the summing up of Impey. It furnishes the best possible comment upon the charge afterwards made against Impey in the articles of impeachment against him of summing up "with gross and scandalous partiality." It was as follows:—

"The prisoner stands indicted for forging a Persian "bond, with an intent to defraud Bollakey Doss; and "also for publishing the same knowing it to be forged. "The offence is laid in several manners, by different "counts in the indictment; sometimes calling it a "'writing obligatory,' and sometimes a 'promissory note,' "and it is laid to be with an intent to defraud different "people, differently interested.

"I shall lay out of the case all those counts to which "I think no evidence can be applied, and shall only "mention those to which it may, and shall point out "those to which it most particularly applies. I lay out "of the case the counts where the publication is said to "be to defraud Bollakey Doss, as the publication which "is proved was after his death; as also those which "charge it to be to defraud Pudmohun Doss and Gunga-"bissen as joint executors, there being no proof that "Pudmohun Doss ever was an executor.

"The only counts to which any evidence, in my

"opinion, be applied, are the first, fifth, ninth, and "thirteenth, [1] which charge this instrument to be forged "with intent to defraud Bollakey Doss; the eighteenth, "which charges it to be forged with intent to defraud "Gungabissen and Hingoo Loll, nephews and trustees "named in the will of Bollakey Doss; the nineteenth, "to which the evidence most forcibly applies, for publish- "ing the same knowing it to be forged, with intent to "defraud Gungabissen and Hingoo Loll; the twentieth "and twenty-first, which charge the forgery and publica- "tion to be with intent to defraud Gungabissen, the "surviving executor.

"There has been no evidence at what time the instru- "ment was actually forged; and therefore it may be "difficult for you to ascertain whether it was in the life "of Bollakey Doss, and consequently whether to defraud "him, or such persons as had interest in his estate after "his decease.

"The publication was clearly after his decease; and "therefore, if you should think the prisoner guilty of "that, you would not have the same difficulty as to "whom it was to defraud, as it must be his executors, or "other persons who took benefit by his will. As the "estate was distributed according to the division of the "rupee, which is a custom in this country, similar to that "of the Romans dividing the as, there is no doubt it "must have been to the prejudice of his nephews "Gungabissen and Hingoo Loll.

"I will, however, after I have gone through the whole "evidence, point out that part of it which applies to the "actual forgery, and then what applies to the publication, "knowing it to be forged.

[1] This seems inconsistent with what he said just before.

"As the trial has now taken so many days and the "evidence is so long, notwithstanding you have given an "attention that I have never before seen in a jury through "so long a trial; it will be necessary, for the purpose of "bringing it together, to refresh your memories as to "those parts which passed early in the trial, to recapitulate "the whole of the evidence."

[1](Here the Chief Justice read over the whole of the evidence, and then proceeded.)

"By the laws of England the counsel for prisoners "charged with felony are not allowed to observe on the "evidence to the jury, but are to confine themselves to "matters of law; but I told them, that, if they would "deliver me any observations they wished to be made to "the jury, I would submit them to you, and give them "their full force; by which means they will have the "same advantage as they would have had in a civil case.

"Mr. Farrer has delivered me the following observa-"tions, which I read to you in his own words, and desire "you to give them the full weight which, on consideration, "you may think they deserve.

"'It is no forgery on Bollakey Doss, because it is not "'proved to have been forged in his lifetime.'

"He is certainly quite right in the observation, that "there is no proof adduced of the time of the actual "forgery.

"'No forgery on the executors, because the prose-"'cutors' evidence prove that they were previously "'informed of the forgery, and voluntarily paid the "'bond. Pudmohun expressly knew it.'

[1] Mr. Busteed describes the summing-up as short. He must have overlooked this line of it—the report of the evidence fills 131 pages of the *State Trials*.

"This will depend on the evidence, which I shall "observe upon hereafter, whether Gungabissen was so "informed. I think there is great reason to suspect that "Pudmohun Doss was privy to the fraud, if any fraud "has been. But I have laid those counts out of the case, "which charge either the forgery, or the publication know-"ing of the forgery, with an intent to defraud Pudmohun "Doss and Gungabissen as joint executors, because the "prosecutors have failed in this proof of Pudmohun "Doss's being an executor. They produced no probate "to Pudmohun Doss, and would have proved it by his "having signed an account delivered into the Mayor's "Court. This we did not think sufficient to prove him "executor; Mohun Persaud by that means might like-"wise have been proved an executor; for he has signed "an account which was delivered in to that Court.

"'No forgery upon the trustees, or residuary legatees, "'because they had only a contingent interest at the "'time of the publication, and not a vested one. It "'was not an interest, *debitum in præsenti, solvendum* "'*in futuro;* had they died before the contingency "'happened, the interest would not have gone to their "'representatives as such, and as claiming under them, "'but to the next of kin of Bollakey Doss; therefore "'they could not be defrauded.'

"This is a point of law, and I cannot help differing "from Mr. Farrer in it, for in my opinion, and in all our "opinions, the interests of the nephews and residuary "legatees is a vested interest, and would, whenever the "money due to Bollakey Doss from the Company should "be paid, go to the representatives. The receipt of that "money is, I suppose, what is understood by Mr. Farrer "to be the contingency.

"This objection seems to be made from mistaking an "observation made early in the cause by my brother "Chambers, and which I was at first struck with: which "was, that neither the appointment of executors, nor any "part of the will, was to take place till after the pay- "ment of the debt from the Company; that is, that "Bollakey Doss considered himself worth nothing but "that debt, and meant only to make a will in case that "money should be recovered. But on looking into the "will, I pointed out to my brother Chambers that there "were dispositions of other moneys; and we were both "satisfied that the appointment of executors would have "taken place, and the will had sufficient to operate upon, "though that money had not been paid; and that, if it "was not, Bollakey Doss did not mean to die intestate. "But however, there is evidence that it has been satisfied "by Company's bonds.

"Mr. Farrer has likewise given me these further "observations.

"'Persian letters, sealed in the usual mode of the "'country, not allowed to be given in evidence; by our "'laws, letters sealed in the usual mode in England "'would.'

[1] "You cast your eyes on these letters, and observed on

[1] Mr. Beveridge remarks in criticising the trial: "The temper of the "jury may be judged of from the fact that during the progress of the trial, "when a paper was produced by the defence and shown to the jury, "their foreman observed that it was an insult to their understandings to "offer such papers in evidence as being of the date they professed to be." The report of this incident occurs at p. 998, and corresponds generally with the remarks in Impey's summing-up. If the papers were really wholly unauthenticated except in the circumstance that they were inclosed in an envelope which had been opened, and which bore the seal of Bollakey Doss, surely it was an insult to the understanding of the

"the recency of the writing. You thought them an "imposition; but as they were not given in evidence, "I desired you would not suffer it to make any im- "pression on you. I have no apprehension the laws of "any country would permit them to be given in evidence. "They were letters inclosed in a cover, sealed with the "seal of Bollakey Doss; but were separated from the "covers, which had been opened. Any writings might "have been put into those covers. There was no signa- "ture to the letters. There was no attempt to prove "that the direction of the covers were of the same "handwriting with the letters themselves, or that they "were in the handwriting of Bollakey Doss, or of any of "his writers. If this was allowed, any evidence might "be fabricated, to serve all purposes. Letters in England "have the signature of the writer, and his handwriting "may be proved; it is impossible these could be given in "evidence.

"'The witnesses are dead, the transaction is stale, and "'long since known to the prosecutor.' [1] These are ob- "jections of weight which you, gentlemen, ought carefully "to attend to, when you take the whole of the evidence "into consideration, for the purpose of forming the "verdict; and I have no doubt you will attend to them.

"'No evidence of defendant's having forged Bollakey "'Doss's seal, for which he alone stands indicted.'

"There is clearly no evidence of his actually having "forged the seal. But Mr. Farrer is mistaken when he "says the prisoner stands only indicted of forging the

jury to offer them in evidence, and what harm was there in their saying so? Mr. Beveridge quotes only what the jury said, without giving the reason why they said it.

[1] Does this show scandalous partiality against the prisoner?

"seal; he is inaccurate in saying he stands indicted of "forging the seal; it is for forging the bond. But he "does not stand indicted of that only; he is indicted "for publishing it knowing it to be forged; and as I "shall hereafter show, it is to that the evidence chiefly "applies, and to which I must require your more imme- "diate attention.

"'The absurdity of the defendant's confessing a "'circumstance, which would endanger his life, to "'people with whom he was not in terms of confi- "'dence; his refusing, three months after, to become "'security for Commaul O Dien in his farm—a thing "'trifling in its nature, when contrasted with the conse- "'quences which might naturally be expected from a "'refusal; the small degree of credit due to a confession "'made only once, and nobody present but the party and "'the witness, which are the words of Commaul's "'evidence.'

[1] "It is highly proper you should take these things into "consideration; you will consider on what terms they "were at the time of these conversations. Confessions "of this nature are undoubtedly suspicious, and to which, "except there are matters to corroborate them, you "should be very cautious in giving too much credit.

"'Nothing any ways extraordinary in Commaul's "'mentioning the circumstance of the defendant's con- "'fession; as it is well known that in the most common "'occurrences the natives of this country form the most "'iniquitous schemes which are not brought to maturity, "'or disclosed to the public, for a much greater period "'of time than the present; and that their truth and

[1] This is strongly in the prisoner's favour.

"'falsehood are so artfully interwoven, that it is almost "'impossible to come at the truth.'

[1] "My residence in this country has been so short, and "my experience so little, that I can form no judgment of "the truth of this observation; it is an appeal to the "notoriety of the dispositions of the natives. You have "been resident long in the country, some I see who were "born here; you know how far it is true; therefore I "leave it entirely to you.

"Mr. Brix has communicated to me the following "observations:—

"'Improbability of the bond's being forged, from its "'being conditional only; for which there could be no "'necessity if it was forged, as it rendered the obligation "'less strong, without any apparent reason.'

"It certainly would have been as easy to have forged "an absolute bond. But there is no evidence when the "bond was forged, if it was forged; it might have been "after the payment of the debt due to Bollakey Doss; it "might be to give an air of probability to it. But this "is matter proper for you to judge upon.

"'From the circumstance mentioned therein of the "'jewels being robbed, as that very circumstance lessens "'the value of the obligation, it might entitle the "'deceased or his representatives to relief in equity.'

"The circumstance of mentioning the jewels is un-"doubtedly one that makes the transaction very suspicious, "as there is no evidence given of any loss of jewels; and "indeed the evidence that has been produced on that "head goes a great way to prove that no such jewels had "ever been lost. It is ingenious to turn this to the

[1] How could this have been put more fairly?

"advantage of the prisoner. You will determine whether "it can be so applied.

"These are the observations made by the prisoner's "counsel. You will consider them together with the "observations I have submitted to you upon them.

"I shall now make some few observations on the "evidence, both on the part of the Crown and the "prisoner; desiring, as I have frequently during the "course of the trial, that you will not suffer your judg- "ments to be biassed, or the prisoner to be in any way "prejudiced, from anything that has passed, nor by any "matter whatsoever which has not been given in evidence.

"The evidence on the part of the Crown to support "the actual forgery, is that of Mohun Persaud, who says "that Maharajah Nuncomar declared that he had pre- "pared, or drawn out three papers, the amount of one of "which was Rs. 48,021, which is the amount of the "present bond, and is applied as a confession of the actual "forging;[1] but as the confession may bear a different "interpretation, there being no distinction in general "made in the interpretation of the evidence between "writing or causing to be wrote, drawing or causing to "be drawn, it may mean that he caused Bollakey Doss "to draw or prepare the bond, and therefore I think the "first would be a hard and rather a forced construction "of his words; and indeed he did not specify this bond. "Commaul O Dien also gives evidence that will apply to "the forgery. Maharajah Nuncomar told him that he "had himself fixed Commaul O Dien's seal to the bond; "and he proves a requisition from Maharajah Nuncomar "to give evidence that he was witness to the bond, and "makes him promises if he will. This is the evidence of

[1] This is in the prisoner's favour.

"the forgery; but I think it will be more necessary to "attend to the evidence in support of those counts which "I have said the evidence applied to, and which charge "the publication with an intent to defraud.

"The evidence which applies to the actual forgery "applies likewise to the knowledge of its being forged. "Mohun Persaud proves the bond produced by Maha- "rajah Nuncomar, a receipt of Maharajah Nuncomar "for the Company's bonds, paid in satisfaction of the "bond in question, and the actual satisfaction received "by Maharajah Nuncomar.

"Two witnesses depose that the name purporting to "be in the handwriting of Silabut is not of his hand- "writing. Sabboot Pottack swears positively to this; "he says he was well acquainted with his writing, and "speaks as to the usual manner of his attesting, which "he says is different to that on this paper.

"Rajah Nobkissen, on the paper being shown to him, "swore positively that it was not the handwriting of "Silabut, but afterwards retracted the positiveness of "his opinion; but the circumstance of his immediate "fixing on the three papers, which were proved to be of "Silabut's writing, is a stronger proof of the knowledge "of his handwriting than any positive oath.

"[1] I must again caution you against receiving any "impression unfavourable to the prisoner from the "hesitation and doubts or exclamations of this witness, "or from any other circumstances except what he actually "deposed to.

"Both these last witnesses agree that the hand to this "bond is better than Silabut's hand.

[1] Is this hard upon the prisoner? It appears to me to err on the lenient side.

"Other circumstances are adduced to draw an imputa-
"tion on this business. An account subsequent to the
"date of this bond, which is in 1772, is produced to show
"that Bollakey Doss was at the time indebted to Maha-
"rajah Nuncomar only in the sum of Rs. 10,000,[1] but
"I think no great stress can be laid on that, as it
"contains a reference to such other debts as may appear
"by his books.

"[2] The counsel for the Crown have proved that a draft
"for a large sum of money was paid at Benares, about
"the time of the bond given, on the credit of Bollakey
"Doss, in favour of Lord Clive. This was adduced for
"the purpose of showing Bollakey Doss to be at that
"time in good circumstances, and to infer from thence an
"improbability of his entering into this bond; [3] but I
"think it proves no such thing; a much larger sum would
"no doubt have been paid on Lord Clive's credit alone;
"and it is certain that Bollakey Doss was at that time a
"debtor to Maharajah Nuncomar.

"There is another circumstance: that Bollakey Doss
"had never mentioned either the deposit of the jewels, or
"the loss of them, and that there is no entry of it in his
"books.

"Commaul O Dien produced a paper with the impression
"of his own seal, which he swears to be in the possession
"of Maharajah Nuncomar. You before said you thought
"it to be the same with that to the bond; you will
"accurately examine it; I have not. I am told there is
"a flaw in both the impressions.

[1] This remark also is favourable to the prisoner.

[2] This evidence is not given in the report.

[3] This is in the prisoner's favour.

"Commaul O Dien accounts for his seal being in the "possession of Maharajah Nuncomar, and swears he "has not received it back; his evidence is supported by "Coja Petruse, whose character you all know, and "Moonshy Sudder O Deen, to whom he repeated the "conversations with Maharajah Nuncomar when they "had recently passed; you know the practices of the "natives, and whether it is probable, as the counsel for "the prisoner has suggested, that this is a deep laid "scheme of villainy.

"The character of Commaul O Dien was inquired into "from [1] Coja Petruse, and you have heard his answer.

"Subornation of perjury was endeavoured to be fixed "on him by the evidence of Hussein Ali; but as to "Cowda Newas nothing was proved; as to the seal cutter, "his conversation with him seems rather to strengthen "than impeach his credit.

"This bond was found cancelled among the papers "delivered into the Mayor's Court as belonging to the "estate of Bollakey Doss, but the papers of Pudmohun "Doss and Bollakey Doss were mixed.

"This is the substance of the evidence for the Crown, "and no doubt, if the witnesses are believed, whatsoever

[1] It was inquired into by the jury with the following singular result:—

"*Jury.* You have known Commaul O Dien Khan twenty years. "What is his general character?

"*A.* I never heard he had a bad name.

"*Q.* Has he a good name?

"*A.* I never knew anything bad of him. The world is apt to give "bad or good names with very little reason. Some speak well, some "speak ill of him; I never knew any harm of him.

"*Q.* What is his general character?

"*A.* Ten people speak well of him to four who speak ill of him" (940).

"you may think of the forgery, there is evidence of "publication with knowledge of forgery.

"On the other hand, if you believe the witnesses "for the prisoner, a most complete answer is given to "the charge.

"There are no less than four witnesses present at the "execution of the bond by Bollakey Doss, three of whom "had been privy to a conversation at Maharajah Nun- "comar's, when the consideration of the bond was "acknowledged by Bollakey Doss; the same persons "prove the attestation of the bond by the three witnesses "thereto, who are all dead.

"The brother of Matheb Roy is produced, who says "that Matheb Roy was well known to Huzree Mull and "Cossinaut. Huzree Mull and Cossinaut did know a "Matheb Roy; but it is clear, from their description of "the person, that it is not the brother of the witness at "the bar. However, Cossinaut gave an account of the "family of the man he knew, whose father was Bungoo "Loll, but said there was another Bungoo Loll. It "seems extraordinary that there should be two Bungoo "Lolls, two Saheb Roys, and two Matheb Roys in two "different families; however, there is no doubt of the "existence of two Bungoo Lolls and two Saheb Roys; "the improbability then decreases, and both Taje Roy "and Roopnerain swear to the existence of the other "Matheb Roy. It is extraordinary, however, that this "man, who is described by his brother to be a poor man, "and servant to a prisoner in the gaol, and was not known "to Cossinaut or Huzree Mull, should be described by "the counsel for the prisoner as a man of note and "family, and as being acquainted with Cossinaut and "Huzree Mull.

"In contradiction to what Commaul O Dien had said "the defence introduces another Commaul; and all the "four witnesses swear positively as to his attesting the "bond. He is proved by two witnesses to be dead; one, "Joydeb Chowbee, saw a man going to be buried, and "was told it was Commaul.

"The other, Shaik Ear Mahomed, actually attended his "funeral.

"Commaul O Dien swears positively it is his seal, and "these witnesses swear to the attestation by another "Commaul. Joydeb Chowbee mentions a circumstance by "which he knew it to be the funeral of Commaul; he "asked whether it was a funeral of a Brahmin or a "Mussulman. It seems the mode of carrying out "Mussulmans and Brahmins differ. You must judge from "his evidence whether he must not have known whether "it was a Mussulman or Brahmin without inquiry; indeed, "he has said that he did; and the observation was so "strong that he positively denies he ever said he made "such inquiry.

"As Commaul is said to have died in the house of "Maharajah Nuncomar it seems extraordinary that no "one but Shaik Ear Mahomed is brought to prove his "actual death; it must have been easy to have brought "many persons of Maharajah Nuncomar's family, "especially as he mentions five persons by name that "attended his funeral besides coolies; three, indeed, he "has buried since, but there are two still alive. This "must have been known to be very material, [1] for this "is not the first time that Commaul O Dien has given "evidence concerning his seal.

[1] I suppose he mentioned it in his deposition made May 6th.

"It is admitted on both sides that Silabut is dead. "It is remarkable that no account whatever is given of "the Moor who wrote the bond; he would have been a "material witness. There is no proof whose writing it is; "it is proved that Bollakey Doss had at that time a writer "whose name was Balkissen, who is dead; there is no "evidence that it was of his hand; he was, I think, known "to one of the witnesses to the execution of the bond.

"A witness says Silabut was a Persian writer as well "as vakeel to Bollakey Doss, and Kissen Juan Doss "seems to confirm it. Being asked what Persian writer "Bollakey Doss had at that time, he answers, 'He had "'one named Balkissen, and Silabut also understood "'Persian.' It is not said to be of his writing; and if "Silabut acted in that capacity, what occasion had "Bollakey Doss to call for another writer?

"There is no evidence of any particulars being men- "tioned to the writer who made out the bond, though "it contains very special matter, except by one witness; "all agree that no directions were given in the room "before the people came from Maharajah Nuncomar to "Bollakey Doss's; and all the witnesses except one deny "any specific directions being given after. [1] It is possible "he [Bollakey Doss] might have spoken to the Moor "before his coming into the room, which the other "witnesses at this distance of time may have forgot.

"Though there are some variations in their evidence at "the time of the execution that is not at all extraordinary; "what is most striking is the very accurate memories "which they preserve as to some circumstances, and their "total forgetfulness as to others.

[1] This is a suggestion in favour of the prisoner, which would not have occurred to every one—certainly not to me.

"The most remarkable instance of their memory is "the knowledge of the seals, which some of them swear "to positively only from having seen them three or four "times on the fingers of the owners, from which (though "the seals must be reversed when applied to paper, "and though some of them do not understand Persian, "and consequently not the characters engraved on the "seal) they swear positively to their being able to know "the impressions—and it is true, for they do point out to "whom the impression on the bond does belong. Kissen "Juan Doss, who must have seen Bollakey Doss's seal "oftener than any of the witnesses, does not take "upon him to remember the impression; and on being "told the other witnesses did, he said they had excellent "memories, he was not blessed with such.

"They are likewise uniformly accurate in describing "the order in which the witnesses sealed and signed.

"I make no observation on the variances of the "witnesses to the execution; [1] for except in two instances,

[1] The word "for" seems superfluous. The first witness referred to was Choyton Nauth, one of the witnesses referred to by Nuncomar in his charge of bribery against Hastings. The part of his evidence referred to is as follows (989):—

"*Q.* Do you know the sum of the bond you saw executed?

"*A.* It was above 40,000 and under 50,000 rupees.

"*Q.* How do you know that?

"*A.* When the bond was read before Bollakey Doss in the house of "Bollakey Doss, I asked Bollakey Doss, as I did not understand Persian, "what was the amount? He told me between 40,000 and 50,000 rupees.

"*Q.* Was it mentioned in the house of Bollakey Doss at the time "of executing the bond that it was for that sum?

"*A.* I cannot say. I do not remember well. It was between 40,000 "and 50,000 rupees.

"*Q.* Was it mentioned at that time?

"*A.* I don't remember; I do not know.

"*Q.* How came you then to know it?

"one of the witnesses, who remembered the sum in the "bond, from its being explained in a language he did not "understand; the other, Shaik Ear Mahomed, is the only

"*A.* Bollakey Doss ordered the writer to read it. I heard it and "remembered that.

"*Q.* Did the writer read the whole bond?

"*A.* He read it from beginning to end.

"*Q.* Was it only from hearing it read that you knew the amount?

"*A.* I knew it from no other reason. I heard of the bond at Maha-"rajah's before.

"*Q.* Did you hear the sum at that time?

"*A.* No.

"*Q.* In what language was it read?

"*A.* In Persian.

"*Q.* Was it read more than once?

"*A.* I remember no more than once.

"*Q.* Was it read in any other language?

"*A.* I do not remember that it was.

"*Q.* What is Persian for 40,000?

"*A.* How should I say? I do not understand Persian.

"*Q.* If you did not understand Persian, and only knew the sum of "the bond from its being read in Persian, then how can you tell the "amount of the bond?

"*A.* You have sworn me upon the water of the Ganges; how can "I tell you more than I remember?"

Mr. Elliot afterwards said, "'chekill hazuar' is the Persian, and "'chális hazar' the Moors (Hindoostani); fifty thousand is 'pinjaw "'hazuar' in Persian, and 'putchees hazuar' in Moors." A friend informs me that these words would now be written 'chehil hazár' (40,000 in Persian), 'panja hazar' (50,000 in Persian), 'chális hazár' (40,000 in Hindoostani), 'pacház hazár (50,000 in Hindoostani). As to the remark on Shaik Ear Mahomed's evidence, there are in it more passages than one which may have been referred to. For instance, he gave part of an answer as to the amount of the bond in Persian, and said he did it for the information of Mr. Elliot the interpreter. On being asked why then he did not give his whole evidence in Persian, he said, "I happened to say it. I did not say "it for your information." He got into a good deal of confusion as to whether he had seen other bonds witnessed or not (1013-1016). It is impossible, from a mere report, to form any opinion as to the importance of this. It may have been nervousness, want of memory, obstinacy, temper, or it may have been falsehood. This is very much what Impey suggests in the next sentence. If Impey had been on the watch for

"witness that spoke with precision as to the sum. You "heard him deliver his evidence and will form your own "judgment on that, and on his whole evidence, in which he "affirms and denies the same thing in the same breath.

"As to the other, it was suggested that the same words "expressed the same sums in Moors and Persian, which "drew on an inquiry, and we had the Persian and Moor "words for the sums mentioned delivered in evidence; "you will see how far you think they agree or disagree.

"Nor shall I observe on the manner in which the wit- "nesses on either side gave their testimony. You saw "and remarked them. The jury having the opportunity "to make their observations on the conduct of the wit- "nesses, and of hearing the questions put as circumstances "arise,[1] is the great part of the benefit of a *vivâ voce* "examination.

"The defence does not attempt to prove either the "deposit or the loss of jewels. And indeed Kissen Juan "Doss, on whose evidence I shall hereafter observe, says, "'That he never heard of such a loss; had it happened "'he must have heard of it; and a thousand people "'must have known of it.' He speaks of the loss of "jewels to a trifling amount, but those belonged to "another person. This, as I said before, is a suspicious "circumstance. But if the jewels were actually deposited, "of which there is no evidence (except what I am going "to take notice of, the karar-nama);[2] though they were "not lost, Bollakey Doss might have told Maharajah

remarks against the prisoner, he would surely have observed here upon the unnatural agreement between the evidence of Joydeb Chowbee and that of Shaik Ear Mahomed (see pp. 130, 131, *supra*).

[1] "The" is superfluous.

[2] This is a suggestion in favour of Nuncomar, and by no means an obvious one. It certainly did not occur to me.

"Nuncomar that they were; and the Maharajah might "give credit to Bollakey Doss, or might chooserather to "take a bond than inquire further into the matter. "It might possibly have been a fraud on Maharajah Nuncomar.

"Meer Assud's evidence may be very material. He "produces a paper purporting to be a receipt given by "Bollakey Doss to him, for valuable effects of Cossim "Ali, delivered by the witness to Bollakey Doss, which "had the seal of Bollakey Doss to it. The impression "you will examine: you will find it to be the same as is "on the bond. This was for the purpose of proving the "correspondence of the impression of the seal on this "receipt, with the seal on the bond, and by that means "to prove that the seal to the bond was the identical seal "of Bollakey Doss, not one that was forged. This trans- "action was said by the witness to be when Bollakey "Doss was with the army at Durghatty. It seems clear "beyond doubt, from the date of the receipt, from the "place the army was then in, and from the circumstances "that both Cossim Ali and Bollakey Doss were in at the "time the receipt bears date, that the receipt could not "have been given by Bollakey Doss, and that the whole "is a fiction.

"A very striking observation arises from this; it may "account for the witnesses remembering the seals so "accurately. Taje Roy says he is in possession of "Matheb Roy's seal. The seal of Commaul O Dien is "proved to have been in the possession of Maharajah "Nuncomar; and the person who fabricated this "receipt must have had that seal which made the im- "pression on the bond and the receipt. If the witnesses "by any means have seen those seals, it is no longer

"surprising that they should be well acquainted with the "impressions. This is a strong observation; but it is an "observation I would have you consider deliberately and "maturely before you adopt it.

"Kissen Juan Doss delivered all his evidence till this "morning with such simplicity, and with such an air of "candour and truth, that I gave full assent to everything "he said; and I am extremely chagrined that there has "arisen any cause to suspect any part of his evidence. "He mentioned a paper, which he calls a karar-nama, "in which the whole of this transaction was wrote, and "which was acknowledged and signed by Bollakey Doss. "Though the entry made in the book after the death of "Bollakey Doss, by order of Pudmohun Doss, and pur-"porting to be in the lifetime of Bollakey Doss, carried "marks of suspicion with it, yet I own Kissen Juan "Doss had so completely gained my confidence that

[1] This passage, and the matter which it relates, appear to me inconsistent with the notion that Nuncomar was judicially murdered by Impey. Impey had only to insist upon a rigid application of the rules of evidence, and he would have shut out the strongest part of Nuncomar's defence. According to the strict rules of evidence, the entry made by Kissen Juan Doss in Bollakey Doss's books after his death on the report of Pudmohun was no evidence. It was a mere record of Pudmohun's statement, which would not be evidence. As to the karar-nama, the necessary preliminary proof to make secondary evidence of its contents admissible was not given. It was traced to the possession of either Nuncomar or Pudmohun, but Nuncomar did not produce it, and there was no evidence as to any search amongst the papers of Pudmohun. Notwithstanding this, Nuncomar was permitted to give secondary evidence of its contents, and the judge tells the jury that, if they believe the paper ever existed, it would be the height of injustice not to acquit Nuncomar. What judge could do more? Is it conceivable that a man who had entered into a compact to commit a judicial murder would not have excluded the evidence, contenting himself with telling the jury that it was highly suspicious that the existence of such a document should be suggested, and the document itself should not be produced?

"gave implicit credit to him. Many attempts were made "to establish it in evidence, which failed of legal proof; "but as I thought so well of Kissen Juan Doss, and as it "would have been extremely hard, if such a paper had "existed, the prisoner should be deprived of the benefit "of it, I said (having first asked the consent of my "brethren) that though it was not strictly evidence, I "would leave it to you to give such weight to it as you "thought it deserved. I still leave it to you, and if you "believe that such a paper ever existed, it would be the "highest injustice not to acquit the prisoner.

"Attempts were made to bring this to the knowledge "of Mohun Persaud; and if it did exist and was in the "knowledge of Mohun Persaud, this prosecution is most "horrid and diabolical.[1] Mohun Persaud is guilty of a

[1] In his speech on Impey's impeachment, Fox observed upon this: "In particular let the Committee consider the Chief Justice's artful "declaration to the jury that the question before them was whether "the prisoner was guilty of forgery, or his accusers guilty of a crime "worse than murder? What was likely to be the effect of such an intima- "tion? It would necessarily operate upon the mildness natural to the "human mind, and incline them of course to prefer the most lenient "opinion, and think it was better to find the prisoner guilty of forgery "than by his acquittal to pronounce his accusers guilty of a worse "crime than murder" (*Parl. Hist.* xxvii. p. 461). This remark seems to me shamefully unjust. I read Impey's observation simply as meaning what it says, namely, that if Mohun Persaud, knowing of Nuncomar's innocence, prosecuted him, his prosecution was "most horrid and "diabolical," as it certainly was. Surely the natural effect of this would be to make the jury anxious not to give effect to such a proceeding. Fox entirely misrepresented Impey in saying that he put it to the jury that either Nuncomar must be convicted of forgery or Mohun Persaud of a crime worse than murder. It was quite possible that Nuncomar might be entitled to an acquittal, although on the particular point of the karar-nama Mohun Persaud was believed and Kissen Juan Doss disbelieved. The jury might have acquitted him on the ground of the length of time since the alleged forgery, the death of the most important witnesses, &c., all of which Impey

"crime, in my apprehension, of a nature more horrid "than murder.

"But I own what passed after the counsel for the "prisoner had closed his evidence, has very much weak- "ened the confidence I had in Kissen Juan Doss. The "counsel did not desire that he should be called, assigning, "as is usual, for their reason, that they had forgot to "examine to any particular point which was contained in "their instructions; but we are (? were) informed that the "Maharajah had something to say. All that he says is, "that he desires Kissen Juan Doss may be further "interrogated as to the karar-nama. The question then "is immediately put to him, whether he ever explained "the karar-nama to Mohun Persaud? and then he gives "an account of Mohun Persaud's having seen it at Maha "rajah Nuncomar's.

"[1] When he is examined as to the reason of his not having

carefully points out. It appears to me extravagant to suggest that a humane jury would agree to a capital conviction because an acquittal would be consistent with, though it would neither imply nor even render probable, malice of the very worst kind on the part of the prosecutor. What comparison could exist in any reasonable mind between the actual conviction for a capital crime of one man and a possible reflection on the character of another?

[1] Before the Impeachment Committee evidence was taken on this point. Mr. Farrer (p. 29) was asked, "Do you now think that the "question persevered in by Nuncomar, after the suggestion from the "Bench, contributed very materially to his conviction?"

"*A.* From what appears to have been said by the Chief Justice in his "summing-up [Farrer did not hear it, see p. 187], it certainly appears "very much that it must have had that consequence, but what operation "on the minds of the jury it is impossible for me to say."

Farrer produced in an earlier part of his evidence (15) a letter from his junior, Mr. Brix, written immediately after the trial was over to inform Farrer of its result. "How unlucky," said Brix, "is the "Rajah to have brought this misfortune upon himself, by desiring the "last examination of Kissen Juan Doss, which hath overset all the "weight of his former evidence. Sir Elijah, in summing up the

"told it before, all that simplicity, all that air of truth "and candour which we had remarked in him, instantly "vanished; his looks were cast down, his tongue faltered, "he prevaricates, he contradicts himself, he did not seem "the same man. 'He did not tell because he was not "'asked. He did not mention it to Maharajah Nun-"'comar in his letter, because he was afraid of Mohun "'Persaud. He did not mention, because he did not

"evidence, observed that, having proved from the first moment of his "examination till the time the evidence was closed a fair and candid "witness, he would have directed the jury to find him not guilty, "as he looked upon the existence of the karar-nama clearly proved "by him till the moment he prevaricated in his examination after the "evidence was closed." It is impossible to have better evidence than this of the impression made by what passed. The letter was written by the junior counsel for the defence to his leader immediately after the verdict was given. If Brix was accurate, the report rather understates than exaggerates the importance attached by Impey to Kissen Juan Doss's evidence in favour of the prisoner. He can hardly, however, have said he should have directed an acquittal. Mr. Tolfrey (Impeachment Committee, 32, 50, 51), Under-Sheriff of Calcutta at the time, and afterwards an attorney (he was Francis's attorney in Grand *v.* Francis), was examined as follows:—

"*Q.* Whether, during the trial of Nuncomar, you remarked any "instances of partiality in the Chief Justice in favour of the prosecu-"tion, or any leaning against the prisoner?

"*A.* No.

"*Q.* Do you recollect the circumstance of the witness Kissen Juan "Doss being called in at the particular request of the prisoner at the end "of the trial?

"*A.* I do.

"*Q.* Do you think, from the manner in which that witness gave his "last evidence, that the observations of the Chief Justice on the witness's "testimony were well founded?

"*A.* I presume the question is confined to the difference of conduct "in the witness when he was last called and on his former examination. "It was so remarkable that it could not escape the observation of any "person who had seen him give his former evidence, and I think the "Chief Justice's remarks were well founded."

Tolfrey at the time was only "twenty and a half."

" 'recollect, it. He did not deliver it in evidence, because " 'afraid of Mohun Persaud.' Mohun Persaud is a great " man. He was not afraid to write the letter.[1] He did " not show the letter to Mohun Persaud; why should he be " afraid to insert this circumstance? If he now stands " in so much fear of Mohun Persaud as not to mention " this in his evidence, was he so much afraid of him when " he voluntarily and directly confronted him as to the " army books?

"All this fear arises from no recent threat; it is in " consequence of a conversation at the distance of some " years.

"It is for you to determine how far he really stands " in awe of Mohun Persaud, and what the effect of that " intimidation was when he delivered his evidence.

"It is strange, as the witness was so often examined, " and so particularly to the karar-nama, that Maharajah " Nuncomar never before suggested this matter to his " counsel.

"If this latter part of Kissen Juan's evidence is true, " he must be either guilty of perjury or very strong pre- " varication in his former evidence. Being asked as to " Mohun Persaud and Gungabissen's knowledge of the " entry made from the karar-nama, he says,[2] 'I cannot " 'say that Mohun Persaud and Gungabissen knew of it

[1] I do not know what letter is here referred to. The question about the "army books" was this: Mohun Persaud said he never saw certain books relating to Bollakey Doss's transactions with the army. Kissen Juan Doss swore he had himself taken the books out of a chest by Mohun Persaud's orders and left them at his house, and that he knew what they were (948).

[2] 1022, 1023. The last phrase, "I should tell," &c., does not occur in the report. Impey no doubt read from his notes, and the earlier part is a little abridged from the report (which is in question and answer), though to the same effect.

"'at the time of the entry; they knew of it afterwards.
"'How can I tell when they knew of it first? They
"'must have known it from the papers in the Dewannee
"'Adalat; they were all called for there. I should
"'tell if I knew Gungabissen or Mohun Persaud knew
"'of the entry.'

"He must have known it was more material to prove "that they knew of the karar-nama itself, in which "the particulars of the account which formed the sum "in the entry were wrote, and which Bollakey Doss had "signed. [1] But he presently afterwards positively says "that Mohun Persaud and Gungabissen were not "acquainted with the accounts.

"[2] In another part of his evidence he says to Pud-"mohun Doss, 'Make my mind easy about the bond we "'are now paying,' or (for there was a doubt in the "interpretation), 'which we have paid.'

"The time that this explanation was made at Maha-"rajah Nuncomar's is not ascertained, but it must "have been before the payment of the bond, for "afterwards it could be of no use. If, then, Kissen "Juan Doss had before seen this karar-nama, and "explained it to Mohun Persaud, why did he demand "that his mind should be made easy about the bond? "and how was it made easy only by the production of "a paper that he had seen before?

"I am much hurt to be obliged to make these obser-"vations on the evidence of a man that I entertained so "good an opinion of. I must desire you to recollect, 'with regard to this observation, and every one that I "submit to you, that you are to make no further use of

[1] See 1023, end of answer to fourth question from the top.
[2] 1020.

"them than as they coincide with your opinions and "observations; and when they do not, you should reject "them; for it is you, not I, that are to decide upon "the evidence.

"Attempts were made, by means of Monohun and "other witnesses to impeach Mohun Persaud by par- "ticular facts of attempts to suborn and by general "character. You must judge how far they have suc- "ceeded. They totally failed in the same attempts as "to Commaul O Dien.

"It is to be observed likewise that no person has "been called to impeach the witnesses brought by the "defendant.

[1] "There are many observations to be made in favour "of the prisoner; and I am sure your humanity will "prompt you to enforce them, as far as they will bear.

"I have before said that the defence, if believed, was a "full refutation of the charge; it is not only so, but it "must fix an indelible mark of infamy on the prosecutor.

"There are four positive witnesses of the execution of "the bond by Bollakey Doss.

"In opposition to Commaul's evidence there are "many to prove that the witness attesting was another "Commaul.

"Matheb Roy was not mentioned by the evidence for "the Crown. Four witnesses saw him attest it; and two "other witnesses, one of them his brother, likewise prove "that there was such a person.

"In opposition to Rajah Nobkissen and Puttock, "who swear the name of Silabut to the bond is not of

[1] It seems to me that it would be impossible to put these points more strongly, more concisely, or in a way better calculated to impress the jury.

"Silabut's handwriting, four witnesses swear positively "to the having seen him write it.

[1] "Much depends in this prosecution on the evidence of "Mohun Persaud; you must judge how far his credit has "been shaken; most of you know him, you must deter- "mine how far he deserves credit, and how probable it "is that he would, through malice, or any other corrupt "motive, accuse an innocent person of a capital crime. "If you think him capable of it, you should not give the "least attention to his evidence. [2] He positively swore "to the bond produced by Maharajah Nuncomar, and "for which the Company's bonds were given, being the "same bond that was produced in evidence; he said he "knew it from circumstances, but did not explain what "those circumstances were. This I mention as going "to his credit only; for the whole defence proceeds on "identifying this bond, and proving it a true one.

"You will judge how far he is contradicted by Kissen "Juan Doss as to the army books, and which of the two "are to be believed.

"An imputation was attempted to be thrown on "Mohun Persaud for preventing [3] Gunga Visier from

[1] Would the man who thus summed up have discouraged any cross-examination tending to show malice in Mohun Persaud? Is it credible that Farrer knew or expected anything tending to show his connection with Hastings which he nevertheless kept back?

[2] This is an acute observation in favour of the prisoner.

[3] Obviously a misprint for Gungabissen. As to this, the following passage occurs in the report, (965): "Mr. Justice Le Maistre, having "suggested that Dr. Williams had informed him that Gungabissen might "be brought into court on a cott to give his evidence, and the jury "being very desirous to hear it, the Court declared their opinion that "Gungabissen, having a great interest in the estate of Bollakey Doss ". . . . . the counsel for the Crown would not be entitled to call him; "the prisoner was therefore told to advise with his counsel whether he "wished to have him called. The Court at the same time acquainted

"attending, who was said to be able and willing to "appear as a witness; but that has been cleared up to "the full satisfaction of us, and, I do not doubt, to your "satisfaction likewise. He could not be called by the "prosecutor on account of his interest, and no prejudice "should accrue to the prisoner for not calling him, for "the same reason.

"The counsel for the prisoner have urged the hard- "ship of this prosecution being brought at this distance "of time. You have heard when Mohun Persaud first "suspected the forgery, and when, by Commaul's de- "claration he had reason to be confirmed in his "suspicion.

"You have heard when the papers were delivered out "of the court; if there had been any designed delay, "and if you think Mohun Persaud had it in his power "to carry on an effectual prosecution before he has, it "is a great hardship to Maharajah Nuncomar, especially "as the witnesses to the bond are all dead, and you "ought to consider this among other circumstances "which are in his favour. Though, to be sure, this "hardship is much diminished, as there were so many "witnesses still alive who were present at the execution "of it.

"There are two pieces of written evidence which are "relied on by the prisoner; one, the entry in the book "from the karar-nama, on account of the agreement of "the sums; and you will find that the sums said by

"the jury that, as Gungabissen was a witness who could not be called on "the part of the Crown, they must receive no prejudice if the prisoner "declined to call him." The prisoner wished him to be called, but it was proved by Mr. Williams that Gungabissen could not be brought to the court without imminent danger to his life (966).

"Kissen Juan Doss to be contained in the karar-
"nama; viz.

	Rupees.
"Durbar expenses	6,000
"Bond, batta, and premium	69,000·7
	75,630·7

"which is the sum in the entry.

[1] "The other is the account delivered by Mohun "Persaud and Pudmohun Doss, in which Pudmohun Doss "had taken credit for this sum; and the subsequent "account likewise contains it.

"I do not think much can be drawn from this, for "the sums had, as Mohun Persaud says, been paid, and "therefore they certainly would take credit for them. "to prevent their being charged with them; this they "would do, were the moneys properly or improperly paid.

"There is certainly a great improbability that a man "of Maharajah Nuncomar's rank and fortune should be "guilty of so mean an offence for [2] so small a sum of "money.

"It is more improbable, as he is proved to have "patronised and behaved with great kindness to Bolla-"key Doss in his lifetime, that he should immediately "after his decease plunder the widow and relations of "his friend. There does likewise appear to have been "a suit in the Adalat, which must have been a civil "suit; but it does not indeed appear that Mohun "Persaud was a party; and, indeed, for what reason

[1] I have not encumbered my account of the trial with these papers for the reasons given by Impey.

[2] It was over £7,000, and was, if Pudmohun's statement as to the widow of Bollakey Doss was correct, more than half her property.

"I know not, [1] neither side thought fit to produce "the proceedings.

"I have made such observations on the evidence as "the bulk of it, and the few minutes I had to recollect "myself, would allow me to make.

"You will consider the whole with that candour, "impartiality, and attention which has been so visible "in every one of you during the many days you have "sat on this cause.

"You will consider on which side the weight of "evidence lies, always remembering, that in criminal, "and more especially in capital cases, you must not "weigh the evidence in golden scales; there ought to

[1] The reason why these proceedings were not put in for the prisoner were thus stated by Mr. Farrer in his evidence on the Impeachment Committee (Farrer, p. 121):—

"It is true that the proceedings in the court of Diwani Adalat "were not given in evidence at the trial of Nuncomar by either party. "The reasons why I did not give them in evidence are as follows:—

"(1) That in these proceedings Nuncomar's witnesses in several "material points contradict each other.

"(2) That the plaintiff there, when peremptorily called upon by that "Court to set forth specifically the nature of his demand, expressly "charged the instrument in question to be a forgery.

"(3) That when Nuncomar had this alternative offered him by the "plaintiff, either to leave the matter to arbitration or to make oath that "his demand was just, and that the instrument in question was actually "executed by Bollakey Doss, he appears to have declined both the one "and the other.

"(4) That when he found the Court, in consequence of such his refusal, "were proceeding to judgment, and that he would no longer be allowed "to protract the decision by introducing from time to time new witnesses, "he then agreed to arbitration.

"These were my reasons for not producing these proceedings in "evidence."

These reasons amply justify the course taken by Farrer, and go far to show that his client was guilty. He did not know why the prosecution did not put in the proceedings. Probably it was because their case was not at all well got up.

"be a great difference of weight in the opposite scale "before you find the prisoner guilty. In cases of pro- "perty, the stake on each side is equal, and the least "preponderance of evidence ought to turn the scale; "but in a capital case, as there can be nothing of "equal value to life, you should be thoroughly convinced "that there does not remain a possibility of innocence "before you give a verdict against the prisoner.

"The nature of the defence is such, that if it is not "believed, [1] it must prove fatal to the party, for if you do "not believe it, you determine that it is supported by "perjury, and that of an aggravated kind, as it attempts "to fix perjury and subornation of perjury on the "prosecutor and his witnesses.

"You will again and again consider the character of the "prosecutor and his witnesses, the distance of the prose- "cution from the time the offence is supposed to be "committed, the proof and nature of the confessions, "said to be made by the prisoner, his rank and fortune. "These are all reasons to prevent your giving a hasty "and precipitate belief to the charge brought against "him; but, if you believe the facts sworn against him "to be true, they cannot alter the nature of the facts "themselves. Your sense of justice, and your own "feelings will not allow you to convict the prisoner "unless your consciences are fully satisfied beyond all "doubt of his guilt. If they are not, you will bring "that verdict which from the dictates of humanity you "will be inclined to give; but, should your consciences "be convinced of his being guilty, no consideration,

[1] I think this goes too far. To bolster up a good case by perjury is not an uncommon thing in India.

"am sure, will prevail on you not to give a verdict "according to your oaths."

Such was the trial of Nuncomar. Before giving my own opinion upon it I will mention some matters connected with it which do not appear upon the report. The first point to be noticed is the view taken of Impey's conduct on it. He was impeached in 1788. The impeachment alleges that, instead of acting as counsel for the prisoner, Impey [1] "became in effect the agent and advo- "cate of the prosecutor, and pronounced a charge when "he summed up the evidence on the said trial with the "most gross and scandalous partiality, dwelling on all the "points which appeared favourable to the prosecution, "and either omitting altogether or passing lightly over "such as were favourable to the prisoner, and mani- "festing throughout the whole proceeding an evident "wish and determined purpose to effect the ruin and "death of the said Maharajah." Every word of this appears to me to be absolutely false and unfounded, but the account which I have given of the trial and Impey's summing up speak for themselves. The point to which I now direct attention is the way in which this charge was dealt with by Sir Gilbert Elliot, who preferred it. Sir Gilbert Elliot's speech on Impey's impeachment was revised by himself up to a [2] certain point only. Up to that point not a word had been said in support of the allegation just quoted. An abstract of the rest of the speech is given, which covers nearly [3] fifteen columns of the *Parliamentary History*. It does not contain a single reference to any argument or suggestion of Elliot's in support of the charge. He appears, as far as the report

[1] Impeachment, Nuncomar charge, p. 5.

[2] *Parl. Hist.* xxvii. 364 and note.

[3] 427-442.

goes, to have left this part of the case entirely untouched, for no reference whatever is made to any part of Impey's conduct at the trial. The great charges against him made by Elliot are his alleged conspiracy with Hastings; the alleged iniquity and illegality of trying Nuncomar at all, and especially of trying him as for a capital crime; and the alleged refusal to respite him after conviction. That so bitter and passionate an enemy—a man who had put forward such a grievous charge of judicial misconduct in such emphatic language—should have abandoned it entirely on the motion for impeachment, is as strong proof as could well be given of its entire falsehood. There is, however, a doubt whether this was the case.

Sir Richard Sutton, who [1] replied to Elliot, expressed surprise at Elliot's insisting on "the innocence of "Nuncomar," and observed: "I cannot pretend to "keep pace with the honourable member in a critical "examination of the evidence of each witness. I have "never indeed thought it necessary to go into such "a minute disquisition. I was satisfied with the "general conviction I met with—that Nuncomar was "found guilty upon the clearest evidence after a very "long trial, during the course of which the Court, par-"ticularly Sir Elijah Impey, showed the greatest in-"dulgence towards the prisoner." If Elliot did discuss the trial in detail, the report of his speech does him great injustice. I think it more likely that Sutton referred inaccurately to the prolonged and minute disquisition about Farrer's evidence, already mentioned, than that all reference to a large head of Elliot's speech should have been entirely omitted from an apparently careful report. However this may be, Sutton said: "I have

[1] *Parl. Hist.* xxvii. 444.

"in my hand for the inspection of any gentleman the "[1] original notes of Sir Elijah Impey. No mutilated "book. They may see in every page memorandums of "questions to be asked, and observations made all in "favour of the prisoner."

It is remarkable that one matter which might have been urged against Impey was omitted in Sir Gilbert Elliot's attack upon him, though it is noticed in a speech of [2] Colonel Fullerton's. It is related in Farrer's evidence before the Impeachment Committee in the following passage:—

[3] "Our principal witnesses all, generally speaking, "underwent very long and very severe cross-examinations "by all the judges, *seriatim*, Sir Robert Chambers ex- "cepted; by Mr. Justice Le Maistre principally, Mr. "Justice Hyde next, and Sir Elijah Impey least of all, "except Sir Robert Chambers, who asked very few "questions indeed. One day, just previous to the rising "of the Court before dinner (I think it was the second or "third day, I am not sure which), after the prisoner had 'entered on his defence, Nuncomar desired leave to 'retire from the Court, and to speak to me in private. 'Leave was given, and we retired to the further end of "the then court-room, which is a very long spacious "room, at other times used as an assembly room. We "were surrounded at a distance by the sheriff's people. "I could not speak the language of the country; he "spoke no English. We conversed together through the "medium of an interpreter, whose name was Occermanna, "a person in whom he placed confidence, and who after-

[1] This is not amongst Impey's papers at the British Museum.

[2] *Parl. Hist.* xxvii. 475.

[3] Farrer, Ev. 11-13.

"wards acted as General Clavering's banyan. He began "by thanking me in strong terms for the pains I had "taken to serve him, but told me he was convinced from "what he saw that it would be of no avail, as it appeared "to him that the Court were decidedly his enemies: "assigning as a reason for such his opinion, the different "treatment his witnesses had met with from the Court "from that which the prosecutor's had: that therefore it "was his intention not to give either the Court or me "any further trouble, but submit at once to his fate. I "advised him strongly by no means to give way to any "such idea; to rest assured that the Court would do him "justice; and that though some things might appear "somewhat extraordinary to him, who was unacquainted "with our courts, yet that I had seen nothing that could "warrant any such conclusion as he had drawn. He "put it very strongly and very solemnly to me, Whether "I did not think his witnesses had been very differently "treated by the Court to what the prosecutor's had been? "and whether, in my opinion, the Court did not seem "against him? I avoided giving him a direct answer, "but told him, since it seemed to have made so deep an "impression on his mind, I would think of some means "of communicating the substance of what he had said to "the judges; but that it was a very delicate point, and that "I was at a loss at that moment how to do it. I begged "of him, at all events, to make his mind easy, and that "when he was brought back into Court after dinner, I "would let him know what I had determined upon, or "done. This was the whole that passed between us. "He returned back into Court, and shortly afterwards the "Court rose for dinner. I felt the extreme impropriety "that there would be in mentioning anything of this

"sort in Court, according to my ideas of it; and I had "also great delicacy, as well as considerable apprehen- "sions, as to doing it in private. However as I thought "the prisoner's coming into Court, giving up his defence "at once, and assigning those publicly for his reasons, "which I was really apprehensive he would do, would be "the worst and most disagreeable thing that could "happen, I therefore determined on communicating in pri- "vate to the judges what had passed between him and me. "I accordingly, immediately after dinner, without having "then, or at any time since, to the best of my remem- "brance, mentioned a word of the matter to any one, "directly or indirectly, not even to Mr. Brix, joint- "advocate with me in the cause, went up stairs to the "judges' room (the counsel dined below, the judges on "the same floor with the court-room), sent in a message "to the Chief Justice by his chubdar. He came out to "me. Before anything particular was said, the other "three judges, at his desire as well as mine, were sent "for out, and all came. I began by begging that no "degree of blame might be imputed to me for what I "was going to mention, solemnly averring, as the fact "was, that the idea of it had not, directly or indirectly, "originated with, or been encouraged by, me; but that "it had originated with the prisoner himself, and been "communicated to me when we retired from the Court, "that day before dinner; that it was of a very delicate "nature, and by no means, in my opinion, fit to be men- "tioned in Court, and that I must again beg not to incur "their displeasure by communicating it in the manner I "then proposed, which appeared to me the least exception- "able, and that I would not have offered to do that, was it "not through the apprehension that something, which I

" conceived would be more disagreeable, might otherwise " follow. After a short consultation amongst themselves, " the judges determined to hear me. I then stated to " them, as near in substance as I possibly could, what " had passed as before mentioned between Nuncomar, " and me. The following was the substance of their " answer to the best and utmost of my remembrance and " belief: 1st, That the nature of our defence, after the " plain tale told by the prosecutor and his witnesses, was " in itself suspicious. 2ndly, That they found the pro- " secutor's advocates wholly unequal to the task of cross- " examining witnesses, prepared as ours appeared to have " been, and that, had they not acted, and did they not " continue to act, in the manner they had done, it would " be in effect suffering the purposes of justice to be " entirely defeated. 3rdly, That as to any difference of " treatment by the Court between the prosecutor's wit- " nesses and the prisoner's, in the first place the prose- " cutor's case did not appear in so suspicious a light as " ours did. And in the second, that, generally speaking, " I had cross-examined the prosecutor's witnesses as far " as the case seemed to them to require ; and that they, " the judges, had in fact, where I had left anything " deficient, put to them every question which appeared " to them necessary to elucidate the business, and answer " the ends of justice. In all I have here said of the " judges' answer to my communication I do not mean to " include Sir Robert Chambers, but only the three " others ; and as to them, I beg leave again to observe, that " I only state a fact, and that not partially, but fully and " fairly, the whole of what passed on both sides, to the " best and utmost of my remembrance and belief, and " which I should not have thought myself justified

"(standing in the light I at present do) in concealing. "I do not remember that Sir Robert Chambers said "anything at that instant. He stayed behind when "the other judges returned into the room, or took "another opportunity almost immediately afterwards, "and before the Court sat again that day (I really am "not sure which, but think the former), of speaking to "me, nobody present but himself and me. He said that "the communication I had made gave him great uneasi- "ness; that he had been apprehensive some such idea "might prevail; and particularly desired me to com- "municate to Nuncomar, in his name, that every question "that he had, or should, put to any of his witnesses had "been, and should be, as much in support of as against "them. That he would ask but as few as possible—none "but what should appear to him absolutely necessary in "elucidation of any point made by the respective advo- "cates and left by them in a state of uncertainty. This, "as well as I recollect, is the whole that passed.

"Previous to the sitting of the Court that day, after "dinner, I communicated to Nuncomar what I had "stated to the judges, suppressing, however, a great part "of what the majority of them had said in answer; "stating fully what Sir Robert Chambers had desired "me; and endeavouring by every means in my power to "make his mind as easy as possible. As a presumptive "proof, at least, that the judges were convinced of the "propriety of their conduct, I declare I think that the "prisoner's witnesses fared worse afterwards than they "had done before. Sir Robert Chambers, I think, "strictly adhered to the terms of his communication."[1]

[1] Mr. Beveridge observes (*Calcutta Review*, vol. lxvi. p. 286): "It is "moreover not true that the trial was quite fairly conducted. Sir

This is a very remarkable statement, and shows several things. In the first place it shows what Farrer thought of his client. The only supposition which can reconcile his conduct with good faith to Nuncomar and truth in what he said to the Court is that he believed, as I have no doubt he did, first that the Court were not unfair, and secondly that their questions had broken down the evidence of Nuncomar's witnesses by proving that they were perjuring themselves. If he thought the Court unfair he told a falsehood to Nuncomar. If he did not believe that Nuncomar's witnesses were perjured, why did he suppress a great part of what the judges had said when he related his interview to Nuncomar? He obviously suppressed their unfavourable remarks upon the witnesses. Farrer's evidence shows for another thing the weakness of character on the part of Chambers, for which [1] his political friends afterwards reproached him.

"Elijah's manner was bad throughout." I have no idea what is referred to here. There is nothing in the report or in the evidence before the Impeachment Committee which in the smallest degree supports this statement, and there is no other evidence, so far as I know, as to what passed. Mr. Beveridge continues, "and Mr. Farrer, the prisoner's "counsel, stated before the House of Commons that his witnesses were "badly treated by the judges, and that when he remonstrated they were "treated worse." This can only refer to the passage in the text, but it completely inverts its meaning, and actually represents as a complaint on Farrer's part that which he puts forward as a "presumptive proof, at "least, that the judges were convinced of the propriety of their conduct." Besides, the rest of the statement is incorrect; Farrer neither stated before the House of Commons that his witnesses were badly treated by the judges nor that he complained. He said, on the contrary, that he told Nuncomar he "had seen nothing to warrant the conclusion which "Nuncomar had drawn."

[1] In reference to quite a different matter Fox said "he was far from "approving the conduct of Sir R. Chambers; he thought he had acted "very weakly" (*Parl. Hist.* xxvii. 461). Elliot spoke of him as "a man "of mild and flexible character, although of great knowledge and "integrity" (*Ibid.* 433).

If Chambers thought Nuncomar's remark well founded he ought to have said so openly, and if necessary objected in open Court to what was done. If he thought it right, he ought to have stood by his brethren. If he could not make up his mind he ought to have held his tongue and taken no part at all, but to say nothing before his brethren, and to send a separate message to Nuncomar behind their backs was timid, not to say sneaking.

Another remarkable thing is that Le Maistre and Hyde made themselves much more prominent than Impey in the conduct which alarmed Nuncomar. This is no doubt to be attributed to the fact that they were the committing magistrates; but it is remarkable that they who took the principal part in the only proceeding which struck Nuncomar as being harsh should have passed wholly uncensured, while all the blame was laid on the head of Impey. Le Maistre died in Nov. 1777, about two years after the trial, so that his memory only could be attacked in 1788, but Hyde held his office till July, 1796, when he died, and no one made any charge against either him or Chambers.[1]

The main question, however, which this statement of Farrer's raises, is whether the trial really was fair, or whether the judges were really prejudiced against the prisoner and hard upon his witnesses. My own impression is that the true explanation of their conduct is the one which they gave at the time. No one who has not been in that position can understand the difficulty into which a judge is thrown when the counsel do not understand their business. If a man accused of a crime is powerfully defended, and is able to set up a fraudulent defence,

[1] Chambers became Chief Justice, and died at Paris in 1803 (*Echoes of Old Calcutta*, p. 71, note).

such for instance as a false alibi, and if (as occasionally happens) the brief for the prosecution falls into the hands of an inexperienced timid man, there is sure to be a failure of justice, unless the judge tests the defence by what amounts to a cross-examination, and this must necessarily give the prisoner a feeling of being harshly treated, especially if the cross-examination brings out the truth. I may observe by the way that a judge in cross-examining has an immense advantage over the most able and experienced advocate. It consists not so much in the authority which his position gives him, as in the circumstance that he is not hampered as counsel always must be by the fear of injuring his own cause by injudicious questions. It is a comparatively easy matter to frame questions intended only to bring out the truth, whatever it may be, but it is extremely difficult to put such questions only as will bring out so much of the truth as will serve your client's cause, and to avoid such questions as will injure it. The questions put by Nuncomar to Kissen Juan Doss, which had so serious an effect upon his fate, is an excellent illustration of this.

I see not the smallest trace in the report of the trial of any improper cross-examination of Nuncomar's witnesses, but one of the defects in the report is that it scarcely ever states by whom the witnesses were called, nor does it distinguish between examination in chief and cross-examination. It altogether omits the opening and the reply of the counsel for the Crown, if such speeches were made, and it does not even give their names, though it once or twice incidentally mentions that of Mr. Durham.

One of the most remarkable matters connected with the trial is the nature of the defence. In his evidence

before the Impeachment Committee,[1] Farrer said, "My "original plan of defence was to take as broad a ground "as possible, to make the prosecutor fight his way inch "by inch, and to interpose every objection I could possibly "interpose." He carried out this plan by passing apparently the whole of the first day in raising technical objections.[2] He objected to the original indictment being quashed on the motion of the prosecutor, because it contained an erroneous date. This was overruled. He objected to the prisoner being put in the dock and made to hold up his hand. This was overruled. He objected to the jurisdiction of the Court in a hesitating, indecisive way. This raised a question of the first importance, which I have discussed by itself elsewhere, but Farrer appears to me not to have appreciated its importance at the time. It is enough to say here that his objection was rather withdrawn than overruled. He put in a protest by the prisoner against being tried. This was rejected,[3] "the Court answering that he must be tried as "any other person must, by the laws and provisions of "the charter, and that they could see nothing particular "in the case." He then put in a second protest, upon which "the Court became impatient, saying that I must "very well know" (as indeed he must) "that claims or "protests of this kind could not be received or paid any "attention to."

Mr. Farrer replied that the circumstances were peculiar, and without pleading to the jurisdiction went over again some of the arguments which he had used when he made his abortive motion towards doing so; but "The

[1] P. 5.

[2] Such a motion was a matter of course. It was not uncommon in days when indictments could not, as they now can be, amended.

[3] P. 8.

"Court cut me short, and the prisoner was called upon "peremptorily to plead, Mr. Justice Le Maistre, to the "best of my recollection, adding, under the pain of being "considered as standing mute,"[1] that is, as the law then stood, under the pain of being convicted. He then pleaded not guilty according to the forms then in use.

These preliminary skirmishes on the taking of the prisoner's plea have now gone entirely out of use, partly because the ancient technicalities have been abolished or superseded by the powers of amendment intrusted to the Court, partly because more convenient methods of raising real points of law have been devised, and partly because the prisoner can make his defence by counsel. They were discreditable exhibitions, for even if a prisoner's case was good, he was put in an absurd position by raising a number of futile objections. None of the objections taken by Mr. Farrer were serious except the one about the jurisdiction of the Court, and that he did not stand to. As the law then stood the counsel of a prisoner charged with felony could not address the jury. This rule was so far relaxed in Nuncomar's favour that his counsel's observations were put in writing and read by Impey from the bench, with the comments already quoted. The rule was essentially bad, and it is a pity that the judges did not hold that it did not apply to India; but great allowance must be made for the influence of technical rules and professional practices

[1] The consequence of standing mute was pressing to death till 1772, when by 12 Geo. III. c. 20 it was enacted that to stand mute should be equivalent to a conviction (see my *History of the Criminal Law*, i. 298). One of the odd turns in Nuncomar's case is that if the arguments to prove that the statute of 2 Geo. II. c. 25 was not in force in Calcutta are sound, it would follow that if Nuncomar had refused to plead he ought to have been pressed to death.

over men's minds. The Court, however, [1] told Farrer that any defence Nuncomar chose to make should be interpreted. It does not appear that Nuncomar said anything at all. [2] Farrer, at the close of the case for the Crown, mentioned in a very few words the points to which his evidence would be addressed.

Whether Farrer was, as a young, inexperienced man, more or less afraid of the Court, it is difficult to say. Certainly few men have had a case of such magnitude and difficulty so early in their career. If he really was a "master of his profession," and a man of common independence and courage, the course taken in reference to his client's defence must be regarded as in the highest degree significant, and as proving that at the time of the trial no fact was known to, or suspected by, Farrer, which would warrant the imputations afterwards cast on Hastings. From first to last he never suggested, either directly or by a single question in cross-examination, that the accusation against Nuncomar was a malicious prosecution got up to silence the accuser of Hastings. Nothing could have been more urgently to the purpose, nothing, if the fact were so, could be more easy to prove. Mohun Persaud was not only the prosecutor, but one of the principal witnesses for the prosecution. He was recalled eight or nine times in the course of the trial. Nuncomar (as I have already said) stated as the principal occasion of his accusation of Hastings, the favour which he had shown to Mohun Persaud. Questions asked with common skill might have brought out Mohun Persaud's intimacy with Hastings, his knowledge of Nuncomar's having accused Hastings of corruption, the fact (if it was a fact), that he had held communication with Hastings

[1] 20 *St. Tr.* 940. [2] *Ibid.* 968.

on the subject—in a word, anything which was known or suspected as to the origin of the prosecution. Not a question of the sort was asked, and surely this proves that Nuncomar and his attorney had no definite knowledge or distinct suspicion on the subject. Commaul O Dien, again, was not asked whether he was benamidar for Cantoo Baboo, the banyan of Hastings, which Mr. Beveridge says he was. If this was the fact, it must have been known or suspected. The same remarks apply, though with less force, to Driver, the solicitor. He too was called as a witness. Why was not he cross-examined as to the origin of the prosecution? Farrer's evidence before the Impeachment Committee supplies one reason. It was because Farrer himself knew what the origin of the prosecution really was, and how damaging it would have been to his client to go into the proceedings in the earlier litigation, or to give the prosecution an opportunity of going into them. In his defence at the bar of the House of Commons, Impey long afterwards said [1] "By rumour, and by rumour "only, it was known that Nuncomar had preferred some "accusations against Mr. Hastings for corruption in his "office. . . . The particulars of the accusations, the "opinion of the majority of the Council, of their truth, "the proceedings on them, the conduct of Mr. Hastings, "the grounds on which the majority thought the accusa-"tions could be maintained, were all matters capable of "easy proof; they were proper subjects to go to a jury; "they certainly would have been given in evidence, and "had it been true as is [2] averred 'that they were such as "'could leave no doubt in the mind and opinion of any

[1] *Parl. Hist.* xxvi. 1380.

[2] In the articles of impeachment against Impey.

"'person acquainted therewith, that the prosecution "'was set on foot with a view to defeat the accusa- "'tion against Hastings,' why was the evidence kept "back? Why were not the Court and jury acquainted "therewith? If they could leave no doubt in the mind "and opinion of the jury, the jury could not have "hesitated to acquit the prisoner. If the judges must "have been convinced, it would have been their duty "to [1]direct an acquittal. They were not thought "sufficient to produce that conviction when the trans- "actions were recent; if they had been they would have "formed a material part of the defence. Why then is it "averred they must produce such conviction now, at the "distance of thirteen years from these transactions?"

These remarks appear to me to be as weighty as the language in which they are made is pointed and energetic.

A similar observation arises on the fact that Nuncomar himself did not state them in his own defence. Of course his ignorance of English laws and courts put him at a disadvantage, but he must have consulted with his counsel as to his line of defence, and if he told Farrer that he confidently believed that the prosecution was planned by Hastings, and stated to him any reasonably plausible ground for saying so, Farrer must have advised him to make a statement to that effect to the jury. A statement of such weight and interest would require no art or eloquence to set it off. If he was not accustomed to speak, Nuncomar might, in accordance with a practice then very common, have written his defence, or Farrer might have written it for him. In either case, it must have been read to the jury, and if (as the impeachment

[1] Hardly so; but, at least, to suggest and advise one.

alleged) the "circumstances aforesaid could leave no "doubt in the mind of any person acquainted therewith "that the said prosecution was set on foot with a view to "defeat the accusation of Hastings," the statement would have convinced the jury.

Putting all these matters together,[1] my own opinion is

[1] Mr. Beveridge (*Calcutta Review*, vol. lxvi. p. 280) says, "Some legal "authority or other has said that he has read the proceedings, and that "Nuncomar had as fair a trial as he would have had in England. "Perhaps this is not saying very much." Perhaps also it is saying very much, especially when the presiding judge is charged with a judicial murder. Were Lord Mansfield and his brethren habitually guilty of judicial murders? Has Mr. Beveridge studied the subject of the administration of criminal justice in England in the eighteenth century or in the present day? Can he say in what particulars it is now unfair, and in what respects it was still less fair in 1775 than in 1885? I have studied the subject theoretically and practically for thirty years and upwards, and for reasons assigned at large in several works I wholly differ from Mr. Beveridge. Mr. Beveridge goes on to give what may be meant as reasons to show why Nuncomar's trial was not fair. "The bond was "in Persian and the witnesses were Bengalees, and it is not easy to see "how a case which presumably turned a good deal on a comparison of "seals and signatures in a foreign language could have been satisfactorily "determined by a British jury however intelligent." The "presumably" admits that Mr. Beveridge either had not read or did not understand the trial. It did not turn, as the preceding account shows, to any extent on the comparison of signatures. As to seals, the only point for the jury was whether the impression produced by Commaul O Dien bore the mark of a flaw which also appeared in the seal to the deed. I do not see why any man with good eyes might not satisfy himself on such a point, whether he knew Persian or not, but this point, though one of importance, was only one small point in a case, intricate no doubt and wearisome, but made up of such matter as is usually submitted to juries. Besides, what has this to do with the fairness of the trial? Fairness means impartiality, the absence of passion and partisanship. Would Mr. Beveridge say there are no fair trials in British India now, because such trials presumably turn a good deal on matters with which English judges cannot be as well acquainted as natives would be? It is just worth while to notice the style in which Mr. Beveridge writes. "Some legal "authority or other" is slightly contemptuous, as if it did not matter who he was or what he said. It may be a mere affectation of smartness,

that no man ever had, or could have, a fairer trial than Nuncomar, and that Impey in particular behaved with absolute fairness and as much indulgence as was compatible with his duty. In his defence at the bar of the House of Commons, he said, "Conscious [1] as I am how "much it was my intention to favour the prisoner in "everything that was consistent with justice; wishing as "I did that the facts might turn out favourable for an "acquittal; it has appeared most wonderful to me that "the execution of my purpose has so far differed from "my intentions that any ingenuity could form an objec-"tion to my personal conduct as bearing hard on the "prisoner." My own earnest study of the trial has led me to the conviction that every word of this is absolutely true and just. Indeed, the first matter which directed my attention to the subject was the glaring contrast between Impey's conduct as described in the *State Trials* and his character as described by Lord Macaulay. There is not a word in his summing-up of which I should have been ashamed had I said it myself, and all my study of the case has not suggested to me a single observation in Nuncomar's favour which is not noticed by Impey. As to the verdict, I think that there was ample evidence to support it. Whether it was in fact correct is a point on which it is impossible for me to give an unqualified opinion, as it is of course impossible now to judge decidedly of the credit due to the witnesses, and as I do not

from which Mr. Beveridge is not free. For instance he says, "The "'intelligent native,' who is to us in India the political Frankenstein "that 'the intellectual foreigner' is to our countrymen at home." Does Mr. Beveridge think that Englishmen in India and Englishmen in England are monsters created respectively by intelligent natives and intellectual foreigners?

[1] 26 *Parl. Hist.* 1393.

understand some part of the exhibits. I may, however, say that if no evidence at all had been called for the prisoner, and the case had rested solely on the evidence for the prosecution, I should not have convicted Nuncomar. Commaul O Dien's evidence as to his seal, and as to Nuncomar's admission, and the evidence about the handwriting of Silabut, were not, in my opinion, strong enough to justify a conviction after so great a lapse of time. The mass of perjury brought forward on the other side, and the evidence to disprove the assertions made in the bond, extracted from Kissen Juan Doss, turned the scale the other way. Farrer's statement of his reasons for not putting in the proceedings in the civil suit are a strong corroboration of the truth of the verdict.

The following short extract from Farrer's [1] evidence as to the verdict itself may be just worth giving :—

"As soon as I [2] had closed our defence, being quite "exhausted, and very ill through the unremitting fatigue "which I had undergone, both in mind and body, as well "in court as out of it, both night and day, for a consider- "able length of time, in the hottest season of a Calcutta "climate, I immediately withdrew from the Court, went "home, and got to rest; so that I did not hear the sum- "ming-up of the Chief Justice, or any part of it. The "first intelligence I had of the verdict was from Mr. "Jarret, the defendant's attorney, who came into my bed- "room about four o'clock in the morning, waked me, and "told me that the jury had brought in their verdict "'Guilty.' When I got up in the morning, I found on "my table the letter which I now hold in my hand, from "Mr. Brix, joint advocate with me in the cause. I am "well acquainted with Mr. Brix's handwriting, having

[1] Impeachment Committee, p. 11. [2] Farrer, 15.

"often seen him write. I believe it to be all in his hand-
"writing. Mr. Brix, I have been informed, and believe,
"is now dead."

Brix's letter was as follows:—

"DEAR SIR,—It is with infinite concern I communicate
"to you what you may probably already have heard from
"Messrs. Jarret and Foxcroft, that the Rajah hath not
"only been found guilty, but Mr. Durham, on behalf of
"the prosecutor, hath undertaken to prosecute Meer
"Ussud Ali, Shaik Ear Mahomed, and Kissen Juan Doss
"for perjury at the instance of the Court. How unlucky
"is the Rajah to have brought this misfortune on himself
"by desiring the last examination of Kissen Juan Doss,
"which hath overset all the weight of his former evidence.
"Sir Elijah, in summing up the evidence, observed that
"having proved, from the first moment of his examination
"till the time the evidence was closed, a fair and candid
"witness, he would have directed the jury to find him
"not guilty, as he looked upon the existence of the
"karar-nama clearly proved by him till the moment he
"prevaricated after the evidence was closed. I inclose
"the notes you gave Sir Elijah, of which, as well as of
"mine, he made use. After having taken some rest,
"which I am much in want of, not having slept more
"than two hours since three o'clock yesterday morning, I
"will wait on you to consult what steps are necessary to
"be taken, in which I will with pleasure afford you
"every assistance in my power, as I really pity the old
"man's case.

"I am, Dear Sir,

"Very truly yours,

"C. F. BRIX.

"*Friday Morning*" [*June* 16, 1775.]

I have made several references to Mr. Beveridge's remarks on the trial, because he is the latest writer of any importance who has discussed the subject with any knowledge of the original materials, which he seems to me to have examined laboriously though unskilfully and incompletely. He adopts and attempts to defend Burke's opinion that Hastings murdered Nuncomar by the hands of Impey. It must, I think, be admitted that when a judge is charged with a judicial murder at the instigation of a Governor-General, the most important part of the evidence must consist of the trial alleged to have constituted the murder. It is conceivably possible that some one might overhear the Governor-General and the Chief Justice plotting such a crime, or that letters might come to light constituting a conspiracy, but in the absence of such evidence, which in this case is not alleged to exist, the fairness or unfairness of the trial must be the most important branch of the evidence. To say that a man could be judicially murdered by a fair trial is like saying that a man might be murdered by a physician who skilfully administered to him proper remedies. If a prisoner is hanged after a fair trial ending in his conviction, or if a patient dies after being treated by a doctor with perfect propriety, it seems to me monstrous to say that the judge or the doctor must be a murderer because he was interested in the death of the prisoner or the patient. The proper inference in such cases would be that, in spite of any adverse interest, the judge or doctor was not a murderer. Far greater is the injustice if the judge or the doctor has no interest at all in the matter.

Even if there were proof of a conspiracy to murder supplied by letters intercepted or conversations overheard, the fairness of the trial, or the propriety of the

treatment, would show that the conspiracy had not been carried out. A agrees with B, a physician, that B shall poison C, to whom A is heir. B treats C with perfect propriety. C dies. Has B poisoned him? and could it be said that B had poisoned C, if it were shown that he did not do so because he rightly thought that C's case was desperate and that he would die without the poison, and would it make any difference if B rejoiced in C's death? In the present case there is no evidence of any conspiracy except what may be inferred from the trial, no interest on Impey's part in Nuncomar's death, no proof that he rejoiced at it. Thus the fairness of the trial is the very essence of the whole matter. Let us see then how Mr. Beveridge has handled this part of the subject. His account of the trial fills eighty-eight lines, or rather more than two pages. They are to the following effect: First comes a reference to the indictment, followed by a reference to the translation of the bond. Then comes a reference to the evidence of Mohun Persaud. Then a short account of the evidence of Commaul O Dien, and a bare mention of the names of a few other witnesses. The account of Commaul O Dien's evidence does not refer to his account of Nuncomar's statement to him, nor to its corroboration by Coja Petruse and Munshi Sudder O Dien, nor to the flaw in the two impressions of the seal said to be Commaul's, one produced by the witness the other impressed on the deed, nor is the evidence as to the handwriting of Silabut hinted at. The rest of the evidence for the prosecution, and in particular that part of it which is to be found in the evidence of the witnesses for the defence, is wholly unnoticed.

The account of Nuncomar's defence consists of the following words: "Nuncomar's defence was that

"the bond was true. He produced witnesses but they "did not help his case. Indeed the evidence of one of "these, Kissen Juan Doss, seems to have been fatal to "him. When he was first summoned the Chief Justice "was favourably impressed by him, but he was recalled "at Nuncomar's request, and examined about a Khursi-"nama (genealogical tree), and broke down." No account whatever is given of the testimony of the witnesses who "did not help" Nuncomar's case. Nothing is said of the reasons for believing that the witnesses to the deed were perjured, or that Ussud Ali (who is not mentioned) committed perjury and forgery and had possession of the very seal which had been impressed on the bond said to be forged. Nothing is said as to the nature of the evidence of Kissen Juan Doss or how it came to be fatal to Nuncomar. If Impey really was a judicial murderer, it is odd that he should have been at first favourably impressed by a witness for the prisoner; and if the evidence ultimately "proved fatal" to the prisoner it would be natural to suspect some unfair dealing in the matter, but nothing is said beyond the few words I have quoted. The most curious instance of the want of attention which this passage shows is to be found in the remark that Kissen Juan Doss was "examined "about a Khursinama (genealogical tree) and broken "down." It is quite true that the word "Kursinama" [1] means a genealogical tree. It is also true that the word "Kursinama" occurs in the report of the trial, particularly in the summing up, but in other parts of the report the word is generally spelt "Curra-nama," which is no doubt an imitation of the word "Karár-nama" or

[1] "KURSI," a chair, a throne. *Kursi-nama*, a pedigree, a genealogical tree. (Wilson, p. 305.)

agreement. Now there was no question in the whole case about any genealogical tree, nor would any one acquainted with the circumstances suppose that there could be, whereas the "Curra-nama" or signed account between Bollakey Doss and Nuncomar exactly corresponds to that form of agreement which an English lawyer would call an account stated, and which if not in the strictest sense of the term a contract, is a memorandum of an agreement closely resembling a contract.

Such a mistake could be made only by a writer who, when he wrote, was unacquainted with the facts of the case.

Upon the whole, the mistakes which I have pointed out in Mr. Beveridge's elaborate and laborious articles are I think sufficient to show that his criticisms are rash and often unjust; and that he did not when he wrote them possess the knowledge of judicial affairs requisite to make him a competent critic of the matter on which he wrote. Still, with the single exception of Mr. Adolphus, he is the only writer who seems to me to have tried even unsuccessfully to study the original authorities.

CHAPTER VII.

FROM THE CONVICTION OF NUNCOMAR TO HIS EXECUTION.

BETWEEN Nuncomar's conviction and his execution several incidents took place which are deserving of notice.

The first of these was an interference of the Council with the proceedings of the Court. In the evidence given before the justices on the charge of conspiracy, the evidence of Commaul O Dien implicated, not only Nuncomar and Fowke the elder, but also Nuncomar's son-in-law, Radachurn Roy, who had, or was said to have, acted as an intermediary between his father-in-law and Mr. Fowke. He was vakeel to Mobarick ul Dowla, the titular Nabob of Bengal, and was as such paid a salary, and entitled to various marks of official distinction. Nothing appears to have been said about his public character when the case was heard before the justices, or upon his committal for trial, but on June 20th, some days after Nuncomar's conviction, the majority of the Council addressed the following letter to the Supreme Court.

[1] "GENTLEMEN,—Inclosed we have the honour to "transmit you the copy of a memorial which has been

[1] 20 *St. Tr.* 101.

"presented to us by Roy Radachurn, the vakeel of the "Nabob Mobarick ul Dowla, representing that a bill "of indictment has been presented and found against "him in the Supreme Court of Judicature. As this "person is the vakeel or public minister of the Subah "of these provinces, we conceive him to be entitled to "the rights, privileges, and immunities allowed by the "law of nations,[1] and the statute law of England to the "representatives of princes. We therefore claim these "rights in his behalf, and desire that the process against "him may be void, and that the persons suing out and "executing such process may be proceeded against in "such a manner as the law directs.

"We have the honour to be, Gentlemen,

"Your most obedient humble servants,

"JOHN CLAVERING,
"GEORGE MONSON,
"PHILIP FRANCIS."

The inclosed memorial set forth Radachurn's office, stated that he considered himself "noways subject or "amenable to the laws of Great Britain," and explained his appearance before the justices by his ignorance of the privileges to which he, "as ambassador or minister "as aforesaid," was entitled by English law.

This letter was resented by the judges of the Supreme Court warmly, but in my opinion naturally and properly. The concluding words of the letter "and desire," &c., can hardly be described otherwise than as a peremptory order to the Court as to the course which they were to take.

[1] This is a reference to the statute 7 Anne, c. 12, passed in 1708, on the occasion, as recited in the preamble, of the arrest on civil process of the Russian ambassador.

The Court accordingly directed one of the masters in equity to acquaint the Governor-General and Council, "that it is contrary to the principles of the English "constitution for any person or persons to address a "Court of Judicature by letter missive, concerning any "matter pending before such Court, and that the higher "the station is, the act is the more unconstitutional; "that the style of the letter now before the Court seeming "to be of the nature of an order rather than petition, "is a style in which no Court of Justice ought to be "addressed."

It seems to me, that to such a letter no other answer could be given, and that it would be difficult for the majority of the Council to have displayed, in a more striking way, their determination to find an opportunity of attacking, and if possible, of humbling, the Court.

[1] Further communications passed of which I need only say, that the Court pointed out to the Council that their application ought to be made by motion by counsel, and supported by affidavits. After some little delay this was [2] done, and it was argued before the Court by Farrer, that Mobarick ul Dowla was a sovereign prince, that the East India Company could receive ambassadors, and that Radachurn Roy was such an ambassador. The Court held unanimously that Radachurn Roy was not an ambassador, but at the most a mere agent, who was not even in the employment of Mobarick ul Dowla, when the offence with which he was charged was committed.

Impey, Le Maistre, and Hyde, held that Mobarick ul Dowla was not in a position to send ambassadors, as he

[1] 20 *St. Tr.* 1103-1106.

[2] The motion was made on June 28th.

was not in any real sense of the word a sovereign prince. They expressed no opinion on the question whether the East India Company was sufficiently in the nature of a sovereign to receive an ambassador.

Chambers held that the East India Company could receive ambassadors, but expressed no opinion on the question whether Mobarick could send one. He agreed with the rest of the Court that Radachurn was not an ambassador at all. Upon this last point some curious matter arose. What were described as "credentials" were put in to show that Radachurn was an ambassador. They were, first, a letter of appointment dated September 23rd, 1772. Next, a letter from the Nabob to the Governor, received May 22nd, 1775, saying: "As Roy "Radachurn has for some time past been an idle person, "and considering his being retained as my vakeel entirely "useless, I have dismissed him from that 1st of Sulter in "the 16th Sun (April 2nd, 1775). I write this for your "information." The third was a letter from Mobarick to Hastings, received May 30th, 1775, announcing that he had reinstated Radachurn. The alleged offence was committed a few days before April 19th, and Radachurn was bailed on the 23rd. He was therefore at that time not even in the service of Mobarick, and there can be little doubt but that, having been dismissed as a useless expense on April 2nd, he was re-appointed in May, merely that he might be enabled to set up a claim to be treated as an ambassador when the trial came on. In this state of facts he made an [2]affidavit, on June 28th, that he had been public minister or vakeel to Mobarick for two years and upwards, "except about the space of "ten days in the month of May last." The affidavit was

[1] 1109, 1110.

[2] Printed, 20 *St. Tr.* 1108.

in the regular English form, and was, no doubt, prepared by an English lawyer. In a [1] subsequent affidavit, made on July 4th, he said: "Mr. Farrer and Mr. Jarret caused "a paper (the former affidavit) to be written out in the "English language, to the truth of which I swore before "Mr. Hyde; but they never explained the words 'public "'minister' to me. They only mentioned the word "'vakeel.' I know nothing with respect to my having "been dismissed from the service of the Nabob for ten "days. The Nabob never wrote anything of it to me. "Perhaps Mr. Farrer and Mr. Jarret may have heard of "it from report." He added, "Vakeel is one thing, "elchee is another. I never before imagined I should be "exempted from punishment because I was a vakeel." These affidavits appear to me to prove clearly, not only that this claim was devised by the counsel consulted by the majority in order to enable them to make an attack upon the authority of the Court, but that they were by no means scrupulous in what they did, as they made Radachurn swear an affidavit containing one essential statement which he did not understand, and another which was untrue in fact. This conduct was commented on by the Court with great but I think not unmerited, severity.

[2] One incident in the motion was highly characteristic. The letter to the Court ended with a request that the prosecutor of Radachurn might be punished. Hastings was the prosecutor, and this is a strong indication of the violence of the majority. When the motion was made Farrer was told that he must specify the censure and punishment he wished the Court to pass. He thereupon withdrew that part of the motion. The application drew the following remarks from Impey, which should be

[1] See it, 20 *St. Tr.* 1775. [2] 20 *St Tr.* 1107, and see 1128.

borne in mind in reference to another matter mentioned below. He said: "This is treating this affair with a very "high hand. In my opinion the application is indecent "and unjust. Who are the persons to be punished? "The prosecutor and those who served the process. Who "is the prosecutor? The Governor-General, the first "magistrate in this settlement. The very persons who "apply to have him punished very well know no punish- "ment can be inflicted on him by the Court. The calling "for it is indecent in the highest degree. A punishment "can only be inflicted for a crime. It must be known "both to the counsel and his clients that, except of "treason and felony, the Governor-General and council "are exempt from the criminal justice of this Court. "Those who served the process did so by express com- "mand of all the judges. Is it decent to apply to have "them punished?"

The matter did not stop here. After the Court had delivered their judgment the majority of the Council addressed another letter and memorial to the judges. The memorial from [1] Mobarick said, "I beg leave to "represent to you that if complaints against my vakeel "are to be admitted in the Court it will reflect the "greatest disgrace and indignity upon me. You gentlemen "I hope will not approve of such a proceeding, but speak "in such terms to the gentlemen of the Court as will "prevent my affairs being impeded or disgraced." The letter which inclosed his memorial put a variety of questions to the judges on their judgment. Did they mean to throw doubt on the Nabob's power to sign warrants for the execution of criminals? It had been the practice of the Council to reply to certain complaints

[1] 1186. The judges expressed their views on it July 6th.

of the French by sheltering themselves under the authority of the Nabob of Bengal; how were they to do this if the Supreme Court denied his sovereignty? Did not the provisions of the regulating act show that no natives except those who were servants to the Company or to British subjects, were within the jurisdiction of the Court?

The above letter [1] "being altered by the Clerk of the "Crown into the form of a petition," Impey made observations on it which must have made the Council feel that they had put themselves in a most absurd position. He said that he lamented an altercation which must lower the credit of both Court and Council. He then proceeded:—

[2] "We have asserted the impropriety of this mode of "application; they give no attention to our representa- "tions, and pay no respect to our unanimous opinions. "There is no power here to decide between us; they still "persist; nothing but absolute outrage will provoke us to "appeal to his majesty, or their honourable employers; "we will not increase the embarassment his majesty's "ministers must labour under on account of India affairs, "nor add to the distress of the East India Company; "the proceedings will be sent to both; our conduct shall "speak for itself without a comment; in the meantime "we must steer between creating confusion and losing "our dignity.

"The letter from the Council incloses one of a most "extraordinary nature from the Nabob Mobarick; his "situation is such, that there is no man, either in England

[1] 20 *St. Tr.* 1136. Whether the Council agreed to this alteration is not stated.

[2] 20 *St Tr.* 37, 38.

"or in India, will believe he would be induced to write "such a letter, was it not either dictated to him by the "agents of those who rule this settlement, or unless he "was perfectly convinced it would be agreeable to, and "coincide with, their sentiments. We always have and "always shall consider a letter of business from that "Nabob the same as a letter from the Governor-General "and Council.

"He says in that letter that if complaints against his "vakeel are to be admitted in the Court, it will reflect "the greatest disgrace and indignity on him. There "never was such an idea entered into the head of an "Indian Nabob, with respect to his vakeel. The vakeel "in his memorial has no such idea; he claims only as a "new right, given to him by the laws of England, of "which right he was wholly ignorant.

"That is not all. I have an affidavit in my hand, "made by Roy Radachurn for a different purpose. He "says, 'I never heard of the word "public minister;" I "'understand vakeel; but what is the meaning of public "'minister I know not; vakeel is one thing, elchee is "'another. I never before imagined I should have been "'exempted from punishment because I was a vakeel. "'People everywhere respect the vakeel of the Nabob. "'I never before heard that if the vakeel of the Nabob, or "'even of the King himself, should commit a crime, he "'would be exempted from the punishment established "'for such a crime. Perhaps if the Nabob or King was "'to write a letter, the vakeel might be forgiven.' I "will order a copy of this affidavit to be delivered, with "the minutes of the Court, as it will give great light into "this matter. Can any one after this believe that the "Nabob himself really entertained the sentiments which

"he adopts in the letter? If this was the opinion of Roy "Radachurn, it would have been candid in the counsel "for the Company to have laid it before the Court.

"But the close of the letter is really alarming; it "is addressed to the Governor-General and Council; "speaking of complaints being received in the Court, he "says, 'You, gentlemen, I hope, will not approve of such "'a proceeding, but speak in such terms to the gentlemen "'of the Court as will prevent my affairs from being "'impeded or disgraced.' Did the Nabob ever write in "this style to the Governor and Council before? The "letter is transmitted to us after our opinions have been "given. If it is the real opinion of the Nabob that we "can be spoken to in such terms as to influence our "judgments, from whence did he learn it? We have a "right to demand of the Council that, in answer to that "letter, they do acquaint him, it is highly derogatory both "to the honour of the Council and the Court, to entertain "any idea that the Council would speak in the terms he "desires; and if they did, that the opinion of this Court "could be in the least influenced by them. We think it "necessary on this occasion to assert, if a contrary idea "should anywhere prevail, that there doth not reside in "the Governor-General and Council any authority what-"soever to correct or control any acts of the judges, "either in or out of the Court, be those acts ever so "erroneous; and that no supposed necessity whatsoever "can authorise any check or control over those acts."

I do not think any English court was ever exposed to a grosser affront than this from the executive government. Impey's remarks seem to me to prove clearly that the majority of the Council directed Mobarick ul Dowla to ask them to insult the Court and exercise authority over it. I

also think the way in which Impey rebuked their insult was honourable to his sense and spirit. What he said was drawn up, signed by the three other judges, and transmitted to the Council. These proceedings were spread over a considerable length of time. [1] The first sitting of the Court in connection with this matter was on the 21st of June, and the last on the 6th of July. [2] The trial for the conspiracy against Hastings began July 6th and ended July 10th, as appears from a MS. note of Hyde's in the Calcutta Bar Library. With regard to the conspiracy against Barwell the note is, "the next trial "begins on July 13th and ended." I must shortly notice these trials and their result, as in several ways they throw light on the trial of Nuncomar for forgery.

I have already pointed out the substantial issue in these cases. It was, first, whether the arzee or petition signed by Commaul O Dien, which reflected upon Hastings as having induced Commaul to make a false accusation against Fowke, was presented by Commaul voluntarily or under compulsion; and secondly, whether the furd or list of persons bribed, said by Commaul to have been signed by him under compulsion by Fowke ever really existed at all. Upon these questions there were two trials, one for a conspiracy against Hastings which depended principally on the credit to be given to Commaul's story as to the arzee, the other for a conspiracy against Barwell which depended mainly on the credit to be given to Commaul's story as to the furd or list of persons bribed, in which list Barwell's name stood first. The reports of these trials are even worse than the report of the trial of Nuncomar for forgery. The

[1] 20 *St. Tr.* 1101, 1135.

[2] Note by Mr. Belchambers.

speeches of counsel, and the summing-up of the judge are all omitted. The witnesses for the prosecution are not separated from the witnesses for the prisoner, and it is not always clear which is the examination in chief, and which the cross-examination. The result of the trials was singular. [1] All the defendants were acquitted on the charge of conspiring against Hastings Radachurn was acquitted, and Nuncomar and Fowke were convicted on the charge of conspiring against Barwell. I am enabled, by the kindness of Mr. Belchambers, to add a curious point which is not mentioned in the report of the trial. The sentence on Fowke was fifty rupees fine. Hyde's notebook contains the following undated memorandum: "Sir Robert Chambers told me yesterday "that the reason the punishment on Mr. Fowke . . . was "so small was that the Court were informed that "Mr. Barwell, the prosecutor, desired the Court would "only pronounce a judgment for some very small punish-"ment, and that the reason why Mr. Barwell desired the "punishment might be so mild was [2] that Mr. H-ll-nd, "who was Mr. Fowke's nephew, wrote to Mr. Barwell "that he did not like the character of an informer, but "that if any severe or infamous punishment was inflicted "on Mr. Fowke he would come to Calcutta and inform "against Mr. Barwell for his practice in taking money at "Dacca, and would carry it to the utmost by carrying it "to the Government at ———; that Mr. Holland would

[1] Mr. Beveridge (*Calcutta Review*, vol. lxvi. p. 311) says: "In "Barwell's case the accused were acquitted, and in the other Fowke "and Nuncomar were found guilty." The converse is the fact (20 *St. Tr.* 1186 and 1226.

[2] This is written in shorthand, of which Mr. Belchambers has sent me a *facsimile*, part of the note was deciphered by Mr. Nichol of the British Museum.

"go to England to prosecute the same charge." The reason for these verdicts is not easy to discover. The evidence in the two cases though not quite, was nearly identical. The theory that the jury did not believe that the arzee was extorted, but did believe that the furd was extorted, will not account for it, for Hastings as well as Barwell was said to be mentioned in the furd, and counts in the indictment for conspiracy against him related to it. I suppose, however, that Fowke's accusation of Barwell before the magistrates of having taken 45,000 rupees as a bribe, was considered to corroborate Commaul's statement as respected the conspiracy against Barwell. Evidence of his statement was however given on each trial, and if it was taken as corroborative of Commaul's statement, it was odd that the whole of his story was not believed. It is possible that the cases may have been tried by different juries.

The importance of this in relation to Nuncomar's trial is that Commaul was one of the principal witnesses against Nuncomar, and this makes it an important question what degree of credit is due to his testimony. Many of his answers in the case of the conspiracy against Hastings set this in a strong light, and at the same time give a good illustration of what the current native view at that time was (and I believe still is) as to falsehood, as distinguished from perjury.

[1] "*Q.* Did you give those sums to the Governor and the "other gentlemen?

"*A.* I never gave anybody five rupees.

"*Q.* Then why did you say to Mr. Fowke that you had?

"*A.* Mr. Fowke had taken up a book and was in a great "passion. I did it through fear. If you were to frighten

[1] 20 *St. Tr.* 1153.

"me you might make me sign an assignment of the king-"dom of Hindostan."

He was afterwards cross-examined as to the truth of the statements in his arzees.

[1] "*Q.* Was the matter of the arzees complaining of "Gunga Govin Sing true or false?

"*A.* I did not not do it as a complaint: I wrote much "to frighten him. There was some money due to me. I "put a great deal more in.

"*Q.* Was the whole of the money due demanded in the "arzees?

"*A.* It is the custom of farmers where one rupee is due "to put in four. If I complained I should specify. If on "oath I should specify. There may be money due to me "from the Company: I should if asked say there was "none due."

After some other questions he was asked again—

"*Q.* Was the matter of complaint in the arzees true or "false?

"*A.* What was wrote in the arzees was partly true, and "partly exaggerated from the enmity between us. I had "separate accounts by which part of the business was "settled.

"*Q.* Was that 16,000 rupees [2] due on account mentioned "in the arzee?

"*A.* It was not that; I wrote to frighten him. I had not "lodged a complaint. I had not taken an oath. Now I "have I will answer whatever you ask."

[1] 20 *St. Tr.* 1161.

[2] *I.e.* due from Commaul to Gunga Govin. Gunga Govin Sing owed Commaul 26,000 rupees, and Commaul claimed that amount, not mentioning that he owed Gunga Govin 16,000 rupees. I see nothing which can be described even as disingenuous in a plaintiff's not mentioning a set-off which was due from him to the defendant.

The distinction between lying and perjury was strongly insisted on by Commaul more than once. He was [1] asked—

"If Mr. Fowke had wanted you to swear to this furd "would you have done so?

"*A.* If he had killed me I would not have sworn falsely, "but if he had demanded of me to promise to swear it "another time I would have permitted [? promised] it, "but I would not have done it."

There is a kind of simple-minded good faith in these frank statements which is not without its weight. A state of mind in which a man considers common falsehood as fair play, but looks on perjury with horror, is more intelligible than rational. Moonshy Sudder O Dien was examined as to Commaul's credit in the case about the conspiracy to accuse Barwell. He said [2] "I "have known him twenty years; he is my friend, "and I believe him to be an honest man and to be "trusted upon oath. If a Mussulman takes an oath "he must be believed; if he swears falsely he must be "ruined here and hereafter, and will certainly go "to hell."

I have mentioned these matters because they obviously bear upon Commaul's credit in the forgery case. I cannot profess to draw any very definite conclusion from them. In two cases jurors acted on his evidence. In a third they did not, but what their reasons for the acquittal may have been must be matter of conjecture.

The following remarks made by Hastings in a [3] letter

[1] P. 1154.

[2] 20 *St. Tr.* 1190.

[3] Gleig. i. 522. Hastings to Graham and McLeane, April 29th, 1775. This letter hardly looks as if Hastings knew that Commaul O Dien was merely a nominal holder for Hastings's own banyan.

to his agents Graham and McLeane, after the committal of Nuncomar and Fowke, and before their trial, are curious as bearing on Commaul's credit. "Mr. Graham "knows the character of Commaul O Dien. I do not: "but do not suppose that he is possessed of a preter- "natural spirit of constancy or of integrity. I can "hardly expect therefore that he will hold out till the "next assizes. Like every other farmer he has his whole "fortune and future prospects involved in his farm. "This lays him at the absolute mercy of the majority, "who have only to encourage or invite complaints "against him and order mofussil inquiries into his "conduct. Mr. Graham knows how effectually this will "ruin him without even their interposition, which I "am certain will not be withheld. With the arts of "intimidation and caresses alternately practised upon "him, with his own fears and interests strongly operating "upon him, and the armed hand of power held for ever "over his head, I think it almost impossible for him to "stand firm to the truth against so many incentives to "desert it, and at no very great hazard, if he suppresses "or varies his evidence at the trial."

In one of his [1] answers Commaul struggled against being made to say how much he had received in a certain settlement with Gunga Govin Sing. He said "If Mr. "Cottrell" (the collector) "was to know what I received "he would upon my going away from hence immediately "imprison me." In this fear he was justified. He was "ordered into strict confinement" on July 24th. He was released on Habeas Corpus on the 28th, and various subsequent proceedings took place, of which I will only say [2] here that though they may not prove

[1] 20 *St. Tr.* 1161.

[2] See *infra*.

that Commaul was persecuted by the majority of the Council, for the evidence he gave against Nuncomar in the different prosecutions in which he was a witness, they were better calculated to convince the natives that such was the case, than the prosecution of Nuncomar was to convince them that it was dangerous to accuse the Governor-General of corruption.[1]

Mr. Beveridge says that Commaul O Dien was benamidar (the nominal farmer) for Cantoo Baboo, the banyan of Hastings, in respect of the farm of Hidgeley. No authority for the assertion is given. If correct, it is no doubt important, as if he stood in that relation to Cantoo Baboo, he must have been greatly under his influence, and Cantoo Baboo would of course be greatly under the influence of Hastings. It is, however, to be observed in reference to the evidence which Commaul gave on the two trials, that in the conspiracy case he was corroborated by many circumstances already noticed, and that he was also corroborated in the only part of his evidence in the forgery case which was disputed. He said that he had not witnessed the deed. This was not denied. It was asserted that another man of the same name had done so. He also said the seal affixed to the deed was his, and that he had lent it to Nuncomar. As to its being his seal, he was corroborated by the flaw in the two impressions. As to his having had a transaction with Nuncomar which might occasion the lending of the seal, he was corroborated by a letter from Nuncomar himself

[1] See in the Report of Touchett's Committee, Gen. App. No. 3, encl. 28 (Impey to Secretary of State, January 20th, 1776, in which several references occur to this matter; and see encl. 25, Impey to Directors, September 19th, 1775, and encl. 26, same to same, November 23rd, 1775).

and by a servant of his own. He said also that Nuncomar had confessed the forgery of his attestation, and had asked him to give false evidence. This was denied, but was to some extent corroborated by Coja Petruse and Munshi Sudder O Dien.

Part of Commaul's evidence, whatever it is worth, gives a striking picture of the operations of Nuncomar and Fowke. Commaul speaks again and again of Nuncomar as holding a "cutcherry of [1] barramuts," or court of accusations of official misconduct. Thus he was asked:

[2] "*Q.* Why did you imagine that Mr. Fowke and the "Maharajah would ask you for barramuts?

"*A.* They talked to me about barramuts. There was a "cutcherry of barramuts for all the zemindars. I alone "do not know this. All Calcutta knows it."

[3] Elsewhere he says "I saw his (Nuncomar's) house "was a cutcherry of barramuts. The [4] Radshaky man "[? men] went with a barramut, and others went with "barramuts.

"*Q.* Did you see the Radshaky men go with "barramuts?

"*A.* I saw the Radshaky people there; all the world "knows they went with barramuts. I sat in the Dewan "Khana and saw the Radshaky people there, and from "hearing one and another my own sense pointed out to "me that they went with barramuts."

A matter of much greater interest is to be found in

[1] Four interpreters were examined as to this word. They all answered to the same effect. Mr. Alexander Elliot's answer was, "An account of "the receipts of money improperly received, which may be either true or "false, proving an accusation, or reflecting a disgrace on such person by "whom the money is said to be received." [2] 1149.

[3] 20 *St. Tr.* 1180. [4] Probably men from Rajshahy.

the evidence given by Warren Hastings, Clavering and Barwell. The report is so imperfect that it is difficult to see by whom, or for what purpose these witnesses were called, but I think Hastings must have been called to corroborate Commaul, by showing that he had always told the same story. There is no distinction in the report of his evidence between examination in chief and cross-examination, but the form, no less than the subject matter suggested by the following questions, seem to prove that they formed a cross-examination.

[1] "*Q.* Had you not connections with Maharajah Nun-
"comar?

"A. I certainly had; that is to say, I employed
"him on many occasions. I patronised and countenanced
"him, it is well known. I never had an opinion of his
"virtue or integrity; I believe he knew I had not. I
"beg leave to add that when I employed him as an in-
"strument of government I might have other motives
"than my reliance on the man's integrity; motives which
"did not depend upon me. I might have other motives.
"I had. I considered it as a point of duty, which I
"could not dispense with; I have till lately concealed
"the motives, because I thought it my duty; but I think
"it necessary, for my own character, to declare that I had
"the orders of my superiors to employ this man. He
"never was, in any period of my life, in my friendship
"or confidence, never.

"*Q.* Did not you say that you would be revenged on
"him and would ruin him?

"*A.* I never mentioned revenge or that I would ruin
"him. I am clear I did not mention these words,
"because it is not in my disposition.

[1] 20 *St. Tr.* 1181, 1182.

"*Q.* Did you never tell Rajah Nuncomar that you "would withdraw your countenance and protection, and "would not be his friend?

"*A.* My friendship he never had. I certainly did "use expressions which implied that he was neither to "expect my protection [1] nor countenance, and dismissed him my house.

"*Q.* Did you ever say that you would conduct yourself "to him as he deserved?

"*A.* I never made use of the expression.

"*Q.* Did you, directly or indirectly, countenance or "forward the prosecution against Maharajah Nuncomar?

"*A.* I never did; I have been on my guard. I have "carefully avoided every circumstance which might "appear to be an interference in that prosecution.

"*Q.* Was Nuncomar never in your private friendship "or confidence?

"*A.* There was never a period in which he "was in my private friendship or confidence; I may "except the small time till I had acquired an opinion "of his conduct. There are some in this settlement "that know on what terms we were before I went to "England.

"*Q.* Would you have employed him had you not had "the orders of your superiors for so doing?

"*A.* I believe I should, but I never should have shown "him that degree of countenance, or continued it. I might "have employed him for a particular purpose. I was "directed to employ him in a particular service, and to

[1] By Nuncomar's own account this preceded, and was the cause of Nuncomar's accusation of Hastings. I cannot tell what was the cause of it, unless Hastings thought that Nuncomar was supporting the majority against him.

"make it his interest to exert himself. I never had orders "to give him particular countenance and protection.

"*Q.* At what time did you employ him particularly?

"*A.* It was about the removal of Mahomed Reza "Khan, and the making new arrangements. His interest "and inclination were contrary to Mahomed Reza Khan's, "and he was thought fittest to destroy the influence of "Mahomed Reza Khan till the new arrangements should "be confirmed."

These questions and answers appear to me extremely important. Their obvious tendency is to show malice in Hastings against Nuncomar, and to suggest that he was prosecuting him for his own protection. It is remarkable that no questions were put as to the accusations made against him by Nuncomar, or as to their truth, or as to any matter whatever tending to throw suspicion on his statement that he had no connection with the prosecution for forgery. To my mind this affords a strong presumption that no such facts were at the time known or suspected to exist, and that Hastings was not conscious of any such facts which might be brought to light. If he had been it is most improbable that he would have submitted himself to cross-examination.

In the second trial Hastings was called again, and gave some remarkable [1] evidence:—

"*Q.* Did you ever receive from Commaul O Dien the "sum of 15,000 rupees, directly or indirectly?

"*A.* I never did receive that sum, or a promise of it, "nor any other sum, directly or indirectly. I do not "believe I ever saw Commaul O Dien till he came to "make his complaint; he might have attended in the "course of business, but I did not recollect his face.

[1] 20 *St. Tr.* 1201, 1202.

"*Q.* Did you ever tell Mr. Fowke that he must get "rid of his scruples if he meant to be served?

"*A.* Never, in the sense which I understand Mr. "Fowke has given to them. I knew Mr. Fowke to be a "man of great singularity. I might have said 'I cannot "'serve you unless you part with this singularity.' I "might, out of delicacy, have said, 'You must part with "'scruples,' but that I ever meant or said anything which "could imply such a meaning that he must part with his "integrity, his virtue, or his honour, I most solemnly "deny. I have never betrayed such a licentiousness of "sentiment even to my most intimate friends, and I was "not on terms of confidence with Mr. Fowke at the "time in which this conversation is said to have "passed.

"*Q.* Did you not promise that you would serve Mr. "Fowke?

"*A.* I did; and I served him. I believe it was owing "to my not having served him to the extent of his "wishes, even to the gratification of his private re-"sentments, that he has been so inveterate in his enmity "to me."

He was afterwards asked questions as to Fowke's character, which must, I presume, have been asked by Fowke's own counsel.

"*Q.* Had Mr. Fowke any employment under Govern-"ment?

"*A.* No.

"*Q.* How long have you known Mr. Fowke?

"*A.* I have seen him some years.

"*Q.* Did you know him on the coast?

"*A.* I did not know him on the coast. I do not "know his character. I might have heard of him, but

"nothing that made any impression upon my memory.
"What I know of him I know since.

"*Q.* Did you ever know him guilty of any dishonest
"or dishonourable act?

"*A.* It is a difficult question. I will not pretend to say
"that I know him guilty of either; unless I could prove
"such acts, I should not care to mention them in a court
"of justice. He has had disputes, and those disputes
"have been referred to me; but people that dispute are
"apt to place dishonest motives to those with whom they
"dispute. I always considered him of a violent and
"morose temper; and, while under that influence, too apt
"to insinuate actions in which he is concerned to base
"and bad motives in others. I do not recollect any
"dishonest or dishonourable acts, but he is violent to the
"last degree. The disputes were personal quarrels—I
"believe never determined. I acted as a mediator,
"never as a judge."

General Clavering also [1] gave evidence, and was minutely examined about Nuncomar. He was [2] cross-examined, apparently in order to show that he was interested in Nuncomar's favour, on account of the importance of his evidence against the Governor-General on the charge of corruption. The following is a part of it:—

"*Q.* In what light did you consider the prosecution
"[*i.e.* for conspiracy] against him [Nuncomar]?

"*A.* I understood it as a prosecution to frustrate
"that ordered by the Board [*i.e.* to frustrate the pro-
"secution of Hastings for accepting bribes].

"*Q.* Are not you first in Council next to the Governor-
"General?

[1] 20 *St. Tr.* 1219-1226. [2] 1224.

"*A.* I am.

"*Q.* In case of death, resignation, or removal, are not "you to succeed him?

"*A.* I am.

"*Q.* What may your salary be as second in Council?

"*A.* Ten thousand pounds a year.

"*Q.* Don't you think that the Governor-General might "be discharged on complaints of peculation from hence "to the Court of Directors?

"*A.* I think he might.

"*Q.* Do the letters from the Council mention that the "prosecution is ordered to be carried on against the "Governor-General?

"*A.* I believe they do.

"*Q.* Is not this prosecution principally founded on the "evidence of Nuncomar and Roy Radachurn?

"*A.* No."

This last answer is extremely important. It shows that if Clavering was to be believed on his oath, Nuncomar was not the principal witness against Hastings, and this considerably diminishes the interest which Hastings is supposed to have had in Nuncomar's destruction.

I may conclude what I have to say on the prosecution for conspiracy by a quotation from a letter of Hastings already quoted, and his opinion of the case before the trial—an opinion which I think the trial itself justified.

[1] "In my heart and conscience I believe both Fowke "and Nuncomar to be guilty. It is not possible for a man "to prefer an accusation with a cheerful and contented "mind, and, without any change of circumstances, with-"out a change of place, or a friend to advise with, to

[1] Hastings to Graham and Macleane. Gleig, i. p. 521.

"repent in an hour's time, and solicit with such eager-
"ness as he is described, to retract it. It is impossible
"it could have been sealed both at his own house and at
"Fowke's. It is impossible that he could have begged
"and entreated and fallen at Mr. Fowke's feet, that
"Mr. Fowke should have threatened to knock him down
"with a great folio, and that three men, who were all at
"the time present or within hearing, should have seen
"nothing but cheerfulness, content, and composure, be-
"tween them. It is incontestably proved that Nuncomar
"dictated, at least by his own confession in part, the
"arzee. It is avowed by Fowke that Commaul O Dien
"demanded it back, and refused his consent to present
"it to the Board; that he showed such a repugnance
"to it as amounted to a conviction of the falsehood of
"the accusation; yet Mr. Fowke did present it to the
"Council without the slightest intimation of its being
"his own act and deed, in contradiction to the will and
"entreaty of the man whom he named my accuser. He
"solemnly denied having any knowledge of the furd, yet
"in the same breath he as solemnly called upon Mr.
"Barwell to deny on his oath the truth of it—the truth of
"a charge which he himself affirmed had no existence."

I now return to the proceedings consequent on the conviction of Nuncomar for forgery. [1]The first was a motion in arrest of judgment, which was made by Farrer on June 22nd or 23rd. He produced before the [2]Impeachment Committee his note of his argument and of the judgment of the Court.

[1] Mr. Beveridge (*Calcutta Review*, vol. lxvi. p. 285) says: "After "sentence of death had been passed Farrer moved for arrest of judgment, "but his application was refused on June 22nd or 23rd." To move in arrest of judgment after a man was sentenced to be hanged would be like moving in arrest of execution after he had been hanged.

[2] Evidence, 15, 16.

[1] He made three points, namely, that there was a variance between the instrument said to have been forged, and the instrument set out in the indictment. This variance consisted in the insertion in one of the counts (the fifth), of two dots called nochts which were not in the original. It was said the dots were immaterial, being sometimes used and sometimes not, and that they denoted the plural number (you for thou).

Another variance was that on the counts was written in Persian "copy," which was not in the original, but the Court thought these matters unimportant, and Farrer "only just mentioned them."

A second objection was that there was a general verdict of guilty without specifying the count to which it applied. This point also was not pressed. According, however, to Farrer's note, Chambers had some doubt about it, but thought the conviction "might be good." I think the general verdict was clearly good, because the punishment on every count was fixed by law and was the same. If, therefore, any one count was good, it would be enough to support the judgment. If the judgment had been in the discretion of the Court a general verdict would have been bad, because if any one count was bad it might be that the judgment was pronounced on that count and so bad. This I take to be the effect of [2] O'Connell's case.

[1] 20 *St. Tr.* 1029, 1030.

[2] O'Connell *v.* R. 11 Cl. & Fin. 155. The case proves rather that when one count of an indictment is bad, and when the punishment is not fixed by law, a general judgment for the Crown cannot be supported, than that where the judgment upon all the counts is fixed by law and is the same on each count such a judgment can be supported. But I think it does support the last mentioned proposition as well as the first. The subject, however, is too technical, and the judgment in O'Connell's case too long (273 pages) and the differences between the judges were too considerable for discussion here. See on "Proceedings in Error" my *Digest of the Law of Criminal Procedure*, pp. 195, 196.

The third point was that the writing was neither a bond nor a writing obligatory, sealing being essential to each; and that the instrument was not sealed, as the seals used were rather stamps than seals, having the names of the parties engraved upon them and being then dipped in ink and pressed on the paper. Upon this point Farrer said he principally relied. The Court, however, held that the instrument used was a seal, and Hyde pointed out that the seal of the Supreme Court itself was of the same sort as the one applied to the bond. I suppose no one could argue that in English law such an instrument would not be a seal.

On the failure of these various points Nuncomar received judgment. To a lawyer Farrer's note has a professional interest. It concludes "Sentence per Chief Justice—a definitive sentence. Must not expect mercy—Death." I suppose the words "a definitive sentence" to mean that the provisions of the Act left no discretion to the Court.

This appears to be the proper place to mention a matter which, though earlier in point of time, I passed over, because its special character would have interrupted my statement of the evidence.

In describing his motion in arrest of judgment Farrer said, "I did not make the inapplicability of the 2nd "George II. one of the points of this motion. I thought "that point rested better as Mr. Justice Chambers had "left it, and, moreover, I felt myself beat even in my own "opinion on that ground." In order to understand this matter to which the highest importance was afterwards attached, it is necessary to go back to a part of Farrer's evidence which I have hitherto passed over. The printed trial begins as follows: "The prisoner being "called to the bar and arraigned, and the indict-

"ment read, his counsel (Mr. Farrer and Mr. Brix) "tendered a plea to the jurisdiction of the Court, but "the Chief Justice pointing out an objection thereto, 'which went both to the matter of fact and law con- "tained therein, and desiring the counsel to consider if "he could amend it, and take time for so doing, he, after "having considered the objection, thought proper to "withdraw the plea."

This matter was more fully explained by Mr. Farrer in the evidence which [1] he gave before the Impeachment Committee. He put in a plea to the jurisdiction, the [2] draft of which he read to the Committee.

"Upon this," said Mr. Farrer, "the Chief Justice "immediately gave a decided opinion, both as to the "matter of fact and law contained therein. The fact "which he stated was that the offence was laid to be

[1] P. 5.

[2] In substance it consisted of the following averments:—

"(1) That before the proclamation of the Supreme Court Bengal was "governed, as regarded offences charged against Hindoos resident in the "province, by its own laws, and not by the laws of Great Britain.

"(2) That the offence charged in the indictment was charged to have "been committed before the proclamation of the Supreme Court.

"(3) That within the province of Bengal [the draft does not say "'within the town of Calcutta'] there was before the proclamation of "the Supreme Court, and at the time of the plea, a court called the "Phousdarry Adawlet, or Zemindars' Cutcherry, and that all crimes "supposed to be committed by Hindoo natives before the proclamation of "the Supreme Court ought to be tried there and not before the Supreme "Court.

"(4) That [blank in the original] the place mentioned in the indictment "[Calcutta] as the place where the offence was committed was in Bengal.

"(5) That he, Nuncomar, was a Hindoo born at Moorshedabad, and "resident at the time of, and before, and ever since, the alleged offence at "Calcutta, and that he was never in the service of the East India "Company."

"committed at Calcutta. The ground of law was the "Act of Parliament, I believe, the charter and the "uniform practice and the case of Radachund Metre in "particular." Le Maistre and Hyde agreed.

Chambers was present, but whether he said anything Mr. Farrer forgot. Farrer continued:—"The plea was "declared to be in no respect supportable; but I was "offered leave to withdraw the same and take time to "amend it if I thought I could *sedente curiâ*, but was "asked in the same breath if I had well considered the "nature and consequence of a plea to the jurisdiction. "To the best of my remembrance that question was "asked me by the late Mr. Justice Le Maistre. I "answered that I had given the point all the considera- "tion in my power; that I conceived the question "alluded to the prisoner's right to plead over to the "indictment in case the plea to the jurisdiction should "be determined against him. To that assent was nodded, "the answer of 'Yes, yes,' I think given; and I said I "did conceive, in clear strictness of law, in the case of a "capital felony, the defendant had a right to plead [1] over. "That appeared to me to be dissented to by a shake of "the head and a 'No, no' from the Bench—from Mr. "Justice Le Maistre, I think, in particular, but whether "from the rest I cannot say. At all events, however, I "said that the Court had a discretionary power I was 'well convinced, to allow the defendant to plead over, "and that I could not conceive a doubt of their exercising "that discretion by their allowing him to do so. That 'also appeared not to be acquiesced in by the Court."

What Le Maistre may have meant by shaking his

[1] *I.e.* a right to plead "not guilty" to the forgery, if the plea as to the Court's jurisdiction failed.

head I cannot pretend to say, but it seems to me very improbable that the Court should have given Farrer to understand that if the plea to the jurisdiction was overruled, judgment of death would be given on the indictment without any further trial. Such a judgment would indeed have been monstrous, and have justified almost anything that could be said of the Court. It is probable that they did give him clearly to understand that they were against him on the plea to the jurisdiction, and that they did not say in so many words that they would permit the prisoner to plead over if he failed on the question of jurisdiction; considering, in my opinion rightly, that he could take advantage of the objection under a plea of not guilty by way of motion in arrest of judgment. I think it would have been better to allow the plea to the jurisdiction and to permit the prisoner to plead over to the felony, but I draw no special inference from the course taken by the Court, as it did not prevent a motion in arrest of judgment on the same ground.

At all events, Farrer, after consultation with Brix, withdrew his plea to the jurisdiction. He had, however, an additional reason for doing so, arising out of a proceeding of Chambers's, much commented upon afterwards.

"Mr. Justice Chambers immediately called for the "indictment—it was handed up to him. After perusing "it for some time, he expressed himself to the following "effect, as well as I am able to recollect it: That he had "great doubts whether or not the indictment was well "laid, being for a capital felony on the 2nd George II.; "that he conceived that Act of Parliament was particu-"larly adapted to the local policy of England, and to the "state of society and manners there, where, for reasons

"as well political as commercial, it had been found neces-
"sary to guard against the falsification of paper currency
"and credit, by laws the most highly penal. That he
"thought the same reasons did not apply to the then
"State of Bengal. That it would be sufficient, and as
"far as the Court ought to go, to consider Bengal, in its
"then state, as upon the same footing that England had
"been between the statute of 5th Elizabeth and that of
"the 2nd George II. And that under the clause in the
"Charter, which empowers the Court to administer
"criminal justice in such and the like manner as justices
"of oyer and terminer and gaol delivery, could or might
"do in that part of Great Britain called England, or as
"near thereto as the circumstances and condition of the
"persons and places would admit of, the indictment
"might be well laid on the 5th Elizabeth. He there-
"fore proposed from the Bench that that indictment
"should be quashed, and that the prosecutor might be at
"liberty to prefer a new one on the 5th Elizabeth, or
"otherwise, as he should be advised. This, to the best
"of my recollection, is the substance of what fell from
"Sir Robert Chambers."

As this matter was utterly misunderstood and misrepresented afterwards upon Impey's impeachment, I must make some remarks upon it. In the first place, it is obvious that Chambers had no more doubt than Impey, Le Maistre, or Hyde, that Nuncomar was amenable to English criminal law, for he proposed to subject him to the provisions of the statute 5 Eliz. c. 14. The only question between him and his brethren was as to the applicability of the act of 25 Geo. II. c. 2. He did not doubt that the English criminal law had been introduced into Calcutta, but thought when he made the suggestion

that the act of George II. had not, and that the act of 5 Eliz. c. 14 had been so introduced. Impey's accusers on his impeachment entirely overlooked this, and that omission deprived them of any advantage they might have had from the authority of Chambers.

Impey, upon this observation of Chambers, said "that "he thought the indictment was *primâ facie* well laid on "the 2 Geo. II.; that he had always conceived India, "particularly the town of Calcutta (which was as far as "it was necessary to go on this occasion), to be greatly "commercial, and that in commercial matters, as well as "in matters of revenue and other transactions of a public "as well as of a private nature, the most important, as "he conceived, were carried on through the medium of "paper currencies and credit; that as to the state of "society and manners that country could by no means be "considered as in an uncivilised or uncultivated state, "but that, on the contrary, civilisation had made great "progress there. . . . . and that it might, perhaps, be "rather deemed to be degenerating and redescending for "want of wholesome laws to enforce a due attention to "just dealings than to stand in need of maturing and "bringing to perfection before such laws could be applied "to them."

Farrer also thought that Impey expressed a [1] doubt

[1] It did not fall within s. 2, which applies only to title deeds of lands, but it fell directly within s. 3, which applies to "obligations and bills "obligatory," and punishes the forgery or uttering of them with cutting off one ear, the pillory, and a year's imprisonment. He also said that he thought the statute of Elizabeth was impliedly repealed by the statute of George II., as the latter statute converted into felonies most of the offences which were misdemeanours under the former. In this I think he was right, assuming that the statute of George II. was in force in Calcutta. It is true (as Mr. Beveridge observes) that the 5 Eliz. c. 14 was repealed by the 11 Geo. IV. and 1 Will. IV. c. 66, § 31, but it is

whether the instrument said to be forged fell within the provisions of 5 Eliz. c. 14. However this may have been, evidence appears to have been given on the points which the judges considered as material to the question whether the statute of 25 Geo. II. was, or was not, suitable to the circumstances of Calcutta. This appears, not from the report of the trial, but from the following [1] remarkable passage of Mr. Farrer's evidence:—

"So far as my recollection serves me, evidence was "taken to these facts from all or most of the principal "native inhabitants of Calcutta who were examined "during the course of the trial, and who were certainly "persons as well qualified to speak as any in Calcutta, "being all persons who had been much conversant both "in public and private transactions of great magnitude, "to wit, Huzzerah Mul Baboo, Cossinaut Baboo, Rajah "Nobkissen, and Coja Petruse So far as my memory "serves me, their evidence uniformly went strongly in "support of the facts on which Sir Elijah Impey grounded "that part of his opinion which was founded on fact; "and if I do not very much mistake indeed, the same "facts were also corroborated by more than one of the "jury, I think two of them at least. Very old inhabitants "of Calcutta and men of great business and credit were "sworn for that purpose during the trial. By facts I "mean the state of commerce, paper currency, and credit "in Calcutta, and I find at this moment a strong

a mistake to infer that till then it was in force. One of the objects of the Consolidation Acts was to obviate all questions as to implied repeals of obsolete statutes by repealing them expressly. As long as the two statutes were in force, it seems to me that the forgery of a writing obligatory, which was felony under the later act, could not also be a misdemeanour under the earlier one.

[1] Farrer, 7.

"impression on my mind of my feeling extraordinarily "hurt at it, and of my communicating such my feelings "to those with whom I was most confidential, the late Mr. "Monson and Sir John Clavering, as this was the prin- "cipal point (independent of the merits of the case itself) "on which I depended."

The judges thus seem to have agreed that English criminal law had been introduced into Calcutta, and to have considered that the question whether the statute 25 Geo. II. had been introduced depended upon the question whether in fact the circumstances which had been considered to make it desirable that forgery should be made capital in England in 1729 existed in Calcutta, and they further seem to have satisfied themselves that such circumstances did exist by evidence which by his own admission convinced even Farrer. I think that the real point in Nuncomar's case was not as to the introduction of the English criminal law into Calcutta, but as to the time when it was introduced, whether in 1726 or 1753? This point was not raised at the time, and the rule which raises the question was not laid down till many years afterwards.

[1] The result of all this was that the Court was never formally called upon to decide the questions whether Nuncomar was liable to English law at all, and whether, if so, the statute of 25 Geo. II. c. 2 had been introduced into Calcutta and could therefore be applied to his case.

Farrer appears to have given up the question whether Nuncomar was liable to the criminal law of England, because all the Court were against him, and to have shrunk from arguing the point about the statute, partly

[1] P. 7.

because the evidence to show that it was as well suited for Calcutta as for London made him "feel himself beat "even in his own opinion upon that ground," and partly because he "thought that point rested better as Mr. "Justice Chambers had left it," by which I fancy he meant that Chambers's difficulty or doubt would so far prevail as to prevent the execution of his client, and partly because what I suppose to be the true point did not occur to him or any one else.

I have given all this in detail because it was greatly insisted on and treated as of the first importance on the occasion of Impey's impeachment.

Farrer's next step was to get Brix (for Farrer's exertions had inflicted [1] permanent injury on his health) to present to the Court a petition for leave to appeal. This petition was rejected, because it did not contain any specific reasons why an appeal should be allowed. The omission of reasons was deliberate, and was resolved upon by Farrer on consultation with Brix. He says: [2] "After fully deliberating upon and weighing "all that passed in the cause, we were both of opinion "that we could assign no legal reasons which we thought "were likely to weigh with the Court, nor could we "safely venture to arraign the verdict and say it was "contrary to evidence, after the Court had ordered several "of our witnesses to be apprehended and indicted for "perjury." The petition seems to have been presented and rejected June 24th.

Whether Impey personally had anything to do with

[1] "A violent pain in my heart and side, accompanied with spitting of "blood . . . . . from which I have never thoroughly recovered," Farrer, 18 (speaking in February, 1788).

[2] Farrer, 17.

this is doubtful. [1] He said in his defence that he had no recollection of any such appeal, but that if there was one it must have been rejected for not showing any "grounds of grievance." In reference to this, Farrer said he could not say whether Brix had told him that Sir Elijah was present on that occasion; but Farrer's account of the reasons why the application was in fact refused exactly agrees with Impey's supposition as to the grounds why it must have been refused.

Nothing appears to have been done on Nuncomar's behalf during the greater part of the month of July but in the course of that month four addresses were presented to the judges approving of their conduct. The first was by the grand jury to Impey individually, "expressing "the satisfaction we feel in possessing in your lordship a "Chief Justice from whose abilities, candour, and modera-"tion we promise ourselves all the advantages which can "be expected from the institution of the Supreme Court." The second, also addressed to Impey personally, was by "the free merchants, free mariners, and other inhabitants "of the town of Calcutta," and was signed by eighty-four Europeans, amongst whom, says Mr. Beveridge, were eight members of the jury. The compliments to Impey in this address are fulsome. They praise, in particular, the pains he "bestowed during the course of the late tedious and "important trial in patiently investigating the evidence "and tracing the truth throughout all the intricacies of "perjury and prevarication," and ask him to allow them to have his portrait painted and hung up in the Town Hall. I agree with Mr. Beveridge in thinking that part of his answer to this address was not in good taste, as he speaks of the testimony of witnesses whom he might

[1] *Parl. Hist.* xxvi. 1385, 1386.

and would probably have to try for perjury as "gross im-"positions." Certainly this was wrong. A third of a similar character was signed by forty-three Armenians, and addressed to all the judges; and a fourth was signed by about a hundred leading natives of Calcutta and the neighbourhood. This last strikes me as somewhat remarkable. It states that the King of England has "formed a new law;" that their hearts "were filled with "various doubts concerning the manner in which the 'new law would operate," but by the manner "in which "it had been administered these doubts had been removed, 'and confidence and joy sprang up in our hearts, and we "are thoroughly convinced that the country will prosper, "the bad be punished, and the good be cherished." The law, they say, may differ from their own in some points; into these they will inquire, and they wish their own law to be retained in civil matters.

These addresses jar on the sentiment which condemns the praise of persons in power during their actual tenure of it; but I am by no means sure that they do not represent the actual state of feeling, both European and native, in Calcutta at that time. That they represent European feeling there is no reason to doubt. The Europeans were quite independent of the Court, and not long afterwards bitterly attacked it. An address by natives is always open to suspicion, but the Council had at that time far greater influence over the natives than the Court, which, indeed, had none. In a letter,[1] already quoted, from Impey to the Secretary of State, there is a discussion of the value of this particular address. The majority of the Council had said, in the minute to which part of the letter in question is

[1] Touchet, Gen. App. 3, encl. 28, January 20th, 1776.

a reply, "In one of the addresses above mentioned the "famous Nobkissen takes the lead with the title of Maha-"rajah, and is followed by Cantoo Baboo and Sauterim "Sing, banyans of the Governor, and Mr. Middleton and "the whole tribe of banyans." To this Impey replied, "The address from the Hindoos I thought no ingenuity "could divert from proving the sense of the natives in "this town, but it seems it is signed by black banyans. "Every gentleman who has been in Calcutta will inform "your lordship that there is scarcely one Hindoo in the "settlement, except the banyans of General Clavering, "Colonel Monson, and Mr. Francis, and one named "Cossinaut, who has not subscribed to that paper. "Cossinaut was one of the first that proposed the address; "he had afterwards a dispute with the Governor-General "and Council about some allowance on account of a farm "as will appear on the records of the Council, and declined "signing the address." Impey also says that the grand jury which addressed him was returned by Macrabie, Francis's brother-in-law, and that he (Impey) was credibly informed and believed that "great pains were taken to "prevent such address," notwithstanding which only "two men resident in the town of Calcutta under the "description of free merchants" did not set their hands to the address. Of these one (Walker) who signed withdrew his name, and, "as I am informed, procured a contract. "The other (Mr. Lacham) has a contract much in the "nature of a monopoly for [1] chunam, and he gives out "that the gentlemen are recommending him to the Court "of Directors to be admitted high in the list of their "servants. Mr. Playdell, who has signed it, has been

[1] Chunam, a sort of plaster, or stucco. The best kind produces a surface as white, smooth, and, to the touch, as hard as marble.

"dismissed from his office of superintendent of the police." The majority had their own account of their reasons for dismissing Playdell, and were probably never put in a position to contradict the other assertions and imputations here made.

Whatever may have been the case as to these addresses, it is clear that no one at the time showed the very least disapproval of the conduct of the judges or the smallest sympathy with Nuncomar.

A curious proof of this is given by the result of Farrer's next step in his client's favour. [1] At the end of July he applied to the jury to endeavour to get them to recommend Nuncomar for a respite. This was more than a month after the rejection of the petition of appeal.

He took the petition to the foreman, Robinson, for his signature on the 31st July. Robinson took offence at his solicitation, saying that his conscience would not allow him to sign the petition, and that it hurt his feelings to be asked to do so. [2] Robinson seems to have complained to Sir Elijah Impey, for when Farrer next came into Court Impey blamed him for what he had done, and in particular for having in a letter to Robinson spoken of Nuncomar as an "unhappy victim," a phrase which Farrer explained to mean only "an unhappy man just "about to suffer an ignominious death." In this I think Impey was wrong and harsh.

One of the jurors, Edward Ellerington, afterwards signed the petition; and as far as I can discover this was the only petition for a respite which was presented to the Court in behalf of Nuncomar by any one whatever.

[1] Farrer, 18, 19.

[2] Robinson to Farrer, August 1st, 1775 (Farrer evid. 20).

[1] Farrer, however, prepared another petition, which, considering what afterwards happened, is of the greatest importance in the history of the case. It was addressed by Nuncomar to the Governor-General and Council. It set forth as reasons why the Court ought to respite him most of the considerations which were afterwards dwelt upon in Impey's impeachment.

The petition says "that it is a principle of natural "justice, and also, as he (Nuncomar) is advised, of uni- "versal law among all civilised nations and people, that "punishment for every offence, especially such as spring "from mere reasons of policy, be published to all who "are subject to the same," which he says this law never was, at least not "with that degree of certainty and "notoriety which all laws so highly penal ought to be."

The petition suggests, though not very distinctly, that the law might be regarded as practically *ex post facto.* Nuncomar urges his rank as a Brahmin, his past services, and other topics.

The suggestion of Farrer was that the Council should inclose this petition to the Court in a letter saying, "The reasons contained in such petition seem to us to "have weight, and they, together with others of a political "nature, which must be presumed from the known rank "and station of the petitioner, both in public and private "life, necessarily occur to your lordships, induce us to "comply with the prayer of the petition." The prayer of the petition was "to intercede with the judges on your "petitioner's behalf for a respite on such conditions as "might be thought proper."

The covering letter, as drawn by Farrer, does not refer to the accusations brought by Nuncomar against Hastings

[1] Farrer, 2.

but there was no reason why it should not have done so. The Council might have said that Nuncomar had charged Hastings with corruption, that it was of the highest public importance that these charges should be fully investigated, that Nuncomar's execution would prevent their due investigation, and (guarding against any imputation on the justice of the trial) they might have suggested that the execution of an accuser of the Governor-General might be misunderstood by the natives. I do not see how the judges could have given any other answer to such a letter than a reprieve. Impey, in his defence, stated, and I believe quite truly, that if such an application had been made to them they would have granted it at once. How then was it received? Farrer's evidence on it is as follows:—He had written a letter to Monson (his patron) saying, "I am so incessantly teased with applications from "Maharajah Nuncomar's people respecting the petition "to the Governor-General and Council, which they are "for ever pressing to have preferred, that I take the liberty "of sending it to you inclosed, to beg the favour of you "to give it a perusal, and just say whether or no you "would rather wish to have it sent in to you in Council "or not."

The careless tone of this letter is characteristic, especially as contrasted with the "incessant teasing" of which the writer complains. The letter, however, was never sent. On the day in which it is dated (Tuesday, Aug. 1st) Farrer was at a party at Lady Anne Monson's, where he met Clavering, Monson, and Francis. "They being all "assembled," says Farrer, "I called Mr. Francis aside, and "explained the business to him first. He had no objec- "tion to it, but approved the measure. General Clavering "and Mr. Monson were then called to us, and it was

"proposed by Mr. Francis and myself to them. The "General, without hesitation, peremptorily refused, "assigning as a reason that it was a private transaction "of Nuncomar's own, that it had no relation whatever to "the public concerns of the country, which alone he, the "General, was sent out to transact, and that he would not "make any application in favour of a man who had been "found guilty of forgery; nor indeed did he think it "would do any good. Mr. Monson concurred with him, "and therefore the matter dropped, and was no further "stirred."[1]

This contemptuous rejection by the majority of the Council of Nuncomar's petition to them appears to me to go very far to prove that the accusations afterwards brought at the instigation of Francis against Impey were not honest.

On the 1st August, 1775, they had it in their power to save Nuncomar's life by simply voting in their capacity of a majority of the Council, to send to the judges, in the name of the Governor-General and Council, the letter which Farrer had drawn, with or without an addition as to Nuncomar's accusation of Hastings. If at that time they really did believe that he was an innocent man on the point of being judicially murdered, they made themselves, by their conduct, accomplices in the murder which they believed to be in the course of being committed. If one man threw another into a river to drown him, and a third, who had seen the crime committed, refused to pull the victim out of the water when he could do so without the smallest risk or trouble, by holding out a stick or throwing out the end of a rope actually put into his hand, each would, in point of morality

[1] Farrer, 22-24.

be equally guilty of his death. But, according to Farrer's evidence, this is precisely what Clavering, Monson, and Francis actually did, if on the 1st August, 1775, they believed in the truth of the accusations which Francis supported, and no doubt suggested, in April and May, 1788. No single fact was known to Francis at the later period which was not known to him at the earlier period. He could have no reason for believing in 1788 that Nuncomar was judicially murdered which he had not in 1775, yet in 1775 he might have saved him by holding out his hand, or if he had not saved him, might, at all events, have thrown upon the Supreme Court a far heavier responsibility than that which rested on them as it was, and he acquiesced apparently without remonstrating in Clavering's refusal to do so.

Long after Francis's death a fact was brought to light which increases, as against Francis personally, the weight of these observations. In Mr. Merivale's *Life* [1] is published from Francis's letter-book a letter from Nuncomar dated July 31st, 1775, the day before the party at Lady Anne Monson's. It is a striking letter, and is as follows:—

"MOST WORSHIPFUL SIR,—In the perilous and unhappy "circumstances I am now reduced to at present, I doubt "not but what you are acquainted with. I am now "thinking I have but a short time to live, for among the "English gentry, Armenians, Moors, and Gentoos few "there is who is not against me, but those that are not "for me is continually devising all the mischief they can "imagine against me, the reason whereof is best known "to your worship, for my real intention from the beginning "tended that the revenues of the country might have

[1] Vol. ii. p. 37.

"been brought into the honourable Company's treasury "without embezzlement, for in former times, when I had "the management of the business, I took great care that "no part of the revenues were pilfered. And as you and "the other two gentlemen are sent out from England "with intent to promote the interest of the Company, "the good of the country, and lastly to spread the fame and "power of his British Majesty, and it was also my earnest "wish to serve under you, and to have been an instrument "towards this happiness to the natives. But, alas! my "best endeavours in prosecuting the salutary means have "only tended to entrap my life in this cause, of which I "have very little hopes of saving it unless your worship "will be graciously pleased to interpose in my behalf "with the justices, and all my hopes under God Almighty "is in you, therefore most humbly entreat in the name "of God you will be pleased to intercede for me and "procure a respite till his Most Gracious Majesty's pleasure "is known." After some recommendations as to Gourdass, and again begging for Francis's assistance, he adds, "As "I entirely rely on your worship's endeavour to do me all "the good you can, I shall not, according to the opinion "of the Hindoos, accuse you in the day of judgment of "neglecting to assist me in the extremity I am now in."

There is an ominous tone in the concluding words which must at least have given Francis an uneasy twinge in after life, when he thought, if he ever did think, that earnestly and unsuccessfully as he had laboured for years to wreak his deadly malice on Hastings and Impey, he had left Nuncomar to die when he could have saved him with a word, and was as false and treacherous to his friend as he was persistent in his malignity against his enemies.

In a pamphlet, referred to in detail in Chapter X., Francis gave as an excuse for not applying to the Court the complaint made by the [1] Court that it was unconstitutional to address a Court of Justice on matters judicially before it by letter, and not by petition or motion in open court. He must either have overlooked or wilfully refused to notice the broad distinction between writing a letter to the Court on a matter judicially before them, and writing on a matter in which they had to exercise an executive discretion. The latter is as natural and proper as the former is unconstitutional. The Home Secretary in England constantly corresponds with individual judges as to applications for pardons. He would never dream of writing to a judge as to the exercise of his judicial duties. Any such application would have to be made by counsel in court.

To conclude the matter of the petitions, [2] Mr. Farrer said that he believed that Radachurn, Nuncomar's son-in-law, presented to the judges a petition similar to the one which Farrer asked the Council to present, and that two other petitions were prepared, one in the name of Sumbonat Roy, Nuncomar's brother. "They called him "so to me," he said, "but it was the first time I ever heard "Nuncomar had a brother;" and the other "in the name "of the inhabitants of Calcutta, Moorshedabad, and "other places, but I believe they were neither of them "adopted and carried into effect; they were both, I "think, brought or sent to me by Mr. Fowke. That in "the name of Sumbonat Roy I remember advising "against. The other, to the best of my remembrance, "such of the inhabitants of Calcutta as wished to petition, "to whom I had been told it had been shown, did not

[1] See above. [2] P. 24.

"approve of it." This petition is printed in Farrer's evidence. It consists of praises of Nuncomar, and declarations that the charge against him was false and made by his bitter enemies.

I have now related, with, I fear tedious minuteness, all the incidents connected with Nuncomar's trial up to the time of his execution.

I have noticed the trials for conspiracy so far as they elucidate the trial for forgery. I have given an account of the motion in arrest of judgment, and have explained how it happened that the question whether Nuncomar was amenable to English criminal law in general, and in particular to the statute of 25 Geo. II. c. 2, was never fully argued out before the Court. I have noticed the fate of the petition for leave to appeal, and I have described the efforts made by Farrer to get up petitions for a respite, the result of which was that the majority of the Council refused almost contemptuously to interfere; that the jury, with a single exception, refused also, one taking offence at being asked; that other petitions fell through, and that the only one shown to have been presented was presented by Nuncomar's son-in-law, Radachurn. I shall conclude this chapter with the account of the execution itself, said to have been written by Macrabie, the brother-in-law of Francis, who acted as sheriff on the occasion. It was read, by way of peroration, by Sir Gilbert Elliot from the [1] *Annual Register* for 1788, when he impeached Impey.

It is the basis of Lord Macaulay's beautiful description, the exact history of which may be traced with curious

[1] See *Annual Register* for 1788. It was read by Sir Gilbert Elliot in Parliament, May 9th, 1788, and is printed in the *Parl. Hist.* xxvii. 438-442. See, too, *Echoes of Old Calcutta.*

completeness. I give it as an instance of the manner in which Lord Macaulay's brilliant literary efforts were often obtained. I put his description and the authority from which he took it side by side.

"Hearing that some persons had supposed Maharajah "Nuncomar would make an address to the people at his "execution, I have committed to writing the following minutes of what passed both on that occasion and also upon my paying him a visit in prison the preceding evening (Friday evening, the 4th of August), while both are fresh in my remembrance. Upon my entering his apartments in the jail, he arose and saluted me in his usual manner. After we were both seated, he spoke with great ease, and such seeming unconcern that I really doubted whether he was sensible of his approaching fate. I therefore bid the interpreter inform him that I was come to show him this last mark of respect, and to assure him that every attention should be given the next morning which could afford him comfort on so melancholy an occasion; that I was deeply concerned that the duties of my office made me of necessity a party in it, but that I would attend to the last to see that every desire that he had should be gratified; that his own palanquin and his own servants should attend him, and such of his friends who, I understood, were to be present, should be protected.

"The sheriff, with that humanity which is seldom wanting in an English gentleman, visited the prisoner on the eve of the execution and assured him that no indulgence consistent with the law should be refused him.

"Nuncomar expressed "his gratitude with great "politeness and unaltered "composure. Not a muscle "of his face moved, not a "sigh broke from him. "He put his finger to his "forehead and calmly said "that fate would have "its way, and that there "was no resisting the "pleasure of God. He "sent his compliments to "Francis, Clavering, and "Monson, and charged "them to protect Rajah "Gourdass, who was about "to become the head of "the Brahmins of Bengal. "The sheriff withdrew "greatly agitated by what "had passed, and Nunco- "mar sat composedly down "to write notes and ex- "amine accounts.

"He replied that he was "obliged to me for this "visit; that he thanked "me for all my favours, "and entreated me to con- "tinue it to his family; "that fate was not to be "resisted, and put his "finger to his forehead— "'God's will' must be "done. He desired I "would present his re- "spects and compliments "to the General, Colonel "Monson, and Mr. Francis, "and pray for their pro- "tection of Rajah Gour- "dass; that they would "please to look upon him "now as the head of the "Brahmins. His compo- "sure was wonderful; not "a sigh escaped him, nor "the smallest alteration of "voice or countenance, "though I understood he "had not many hours "before taken a solemn "leave of his son-in-law. "Roy Radachurn. I found myself so much second to "him in firmness, that I could stay no longer. Going "down stairs the jailer informed me that, since the depar- "ture of his friends, he had been writing notes and "looking at accounts in his usual way.

"I began now to apprehend that he had taken his "resolution, and fully expected that he would be found "dead in the morning; but on Saturday, the 5th, at seven, "I was informed that every-thing was in readiness at "the jail for the execution. "I came here about half "an hour past seven. The "howlings and lamenta-tions of the poor wretched "people who were taking "their last leave of him "are not to be described, "I have hardly recovered "the first shock while I "write this about three "hours afterwards. As "soon as he heard I was "arrived he came down "into the yard and joined "me in the jailer's apartment.

"The next morning, "before the sun was in "his power, an immense "concourse assembled "round the place where "the gallows had been set "up. Grief and sorrow "were on every face,[1] yet "to the last the multitude "could hardly believe that "the English really pur-"posed to take the life of "the great Brahmin.

"There was no lingering about him, no affected delay. "He came cheerfully into the room, made the usual "salaam, but would not sit till I took a chair near him. "Seeing somebody look at a watch, he got up and said "he was ready, and immediately turning to three Brah-"mins who were to attend and take care of his body, he "embraced them all closely, but without the least mark "of melancholy or depression on his part, while they "were in agonies of grief and despair. I then looked at "my own watch, told him the hour I had mentioned was "not arrived, that it wanted about a quarter of eight, but

[1] This phrase is taken from Sir Gilbert Elliot's speech on Impey's impeachment. See below.

"that I should wait his own time, and that I would not "rise from my seat without a motion from him. Upon "its being recommended to him that at the place of "execution he would give some signal when he had "done with the world, he said he would speak. We sat "about an hour longer, during which he addressed him-"self more than once to me; mentioned Rajah Gourdass, "the General, Colonel Monson, Mr. Francis, but without "any seeming anxiety; the rest of the time I believe he "passed in prayer, his lips and tongue moving, and his "head hanging upon his hand. He then looked to me "and arose, spoke to some of the servants of the jail, "telling them that anything he might have omitted "Rajah Gourdass would take care of, then walked "cheerfully to the gate "and seated himself in "his palanquin, looking "around him with perfect "unconcern.

"At length the mournful "procession came through "the crowd. Nuncomar "sat up in his palanquin "and looked around him "with unaltered serenity. "He had just parted from "those who were most "nearly connected with "him. Their cries and "contortions had affected "the European ministers "of justice, but had not "produced the smallest "effect on the iron stoicism "of the prisoner. The "only anxiety which he

"As the Deputy Sheriff "and I followed, we could "make no observation up-"on his deportment till we "all arrived at the place "of execution. The crowd "there was very great, but "not the least appearance "of a riot. The Rajah "sat in his palanquin upon "the bearers' shoulders "and looked around, at "first with some attention. "I did not observe the

"expressed was that men "of his own priestly caste "might be in attendance "to take charge of his "corpse. "smallest discomposure in "his countenance or man- "ner at the sight of the "gallows or any of the "ceremonies passing about "it. He asked for the "Brahmins, who were not "come, and showed some earnestness, as if he appre- "hended the execution might take place before their "arrival.

"I took that opportunity of assuring him I would wait "his own time; it was early in the day and there was no "hurry. The Brahmins soon after appearing, I offered "to remove the officers, thinking that he might have "something to say in private; but he made a motion not "to do it, and said he had only a few words to remind "them of what he had said concerning Rajah Gourdass "and the care of his zenana. He spoke to me and desired "that the men might be taken care of, as they were to "take charge of his body, which he desired repeatedly "might not be touched by any of the bystanders; but he "seemed not in the least alarmed or discomposed at the "crowd around him. There was some delay in the "necessary preparations, and from the awkwardness of "the people. He was no way desirous of protracting "the business, but repeatedly told me he was ready. "Upon my asking him if he had any more friends he "wished to see, he answered that he had many, but this "was not a place, nor an occasion, to look for them. Did "he apprehend there might be any present who could not "get up for the crowd? He mentioned one, whose "name was called, but he immediately said 'it was "of no consequence, probably he had not come.'

"He again desired to be "remembered to his friends "in the Council,

"He then desired me to "remember him to General "Clavering, Colonel Mon- "son, Mr. Francis, and "looked with the greatest "composure. When he was not engaged in conversation "he lay back in the palanquin, moving his lips and "tongue as before.

"I then caused him to be asked about the signal he "was to make, which could not be done by speaking, on "account of the noise of the crowd. He said he would "make a motion with his hand; and when it was repre- "sented to him that it would be necessary for his hands "to be tied, in order to prevent any involuntary motion, "and I recommended his making a motion with his foot, "he said he would. Nothing now remained except the "last painful ceremony. I ordered his palanquin to be "brought close under the gallows, but he chose to walk, "which he did more erect than I have generally seen "him. At the foot of the steps which led to the stage "he put his hands behind him to be tied with a handker- "chief, looking around at the same time with the utmost "unconcern. Some difficulties arising about the cloth "which should be tied over his face, he told the people "that it must not be done by one of us. I presented "to him a subaltern sepoy officer, who is a Brahmin, and "came forward with a handkerchief in his hand, but the "Rajah pointed to a servant of his own, who was lying "prostrate at his feet, and beckoned him to do it.

"He had some weakness "mounted the scaffold with "firmness,

"in his feet, which, added "to the confinement of his "hands, made him mount

"the steps with difficulty; but he showed not the "least reluctance, scrambling rather forward to get up. "He then stood erect on the stage, while I examined his "countenance as steadfastly as I could till the cloth "covered it, to see if I could observe the smallest symptom "of fear or alarm, but there was not a trace of it. My "own spirits sank, and I stepped into my palanquin; "and gave the signal to "the executioner." "but before I was seated "he had given the signal, "and the stage was re- "moved. I could observe, "when I was a little re- "covered, that his arms lay "back in the same position in which I saw them first "tied; nor could I see any contortion of that side of his "mouth and face which was visible. In a word, his "steadiness, composure, and resolution throughout the "whole of this melancholy transaction were equal to "any examples of fortitude I have ever read or "heard of. The body was taken down after hanging "the usual time, and delivered to the Brahmins for "burning."

The art with which the full effect of this long description is given so as to preserve every point in it which is really picturesque, and to observe perfect accuracy whilst some pages are reduced to a paragraph of twenty-two lines, is to my mind a memorable instance of literary skill. Macaulay, however, was not satisfied with Mr. Macrabie's account. He continues as follows:—

"The moment that the drop fell a howl of sorrow and "despair arose from the innumerable spectators. Hund- "reds turned their faces from the polluting sight, fled "with loud wailings towards the Hooghly and plunged

"into its holy waters, as if to purify themselves from the "guilt of having looked on such a crime."

This is taken from Sir Gilbert Elliot's [1] speech on the impeachment, in which the following passage occurs:—

"While this tragedy was acting the surrounding multi- "tudes were agitated with grief, fear, and suspense. [2] With a kind of superstitious incredulity, they could not "believe that it was really intended to put the Rajah to "death; but when they saw him tied up and the scaffold "drop from under him [3] they set up an universal yell, and "with the most piercing cries of horror and dismay, "running, many of them, as far as the [4] Ganges, and "plunging into the water as if to hide themselves from "such tyranny as they had witnessed or to wash away "the pollution contracted from viewing such a spectacle."

Mr. Impey is highly indignant at these accounts. [5] He speaks of Macrabie's account as "a letter which was never "seen or heard of until twelve or thirteen years after the "execution, when it was produced by the enemies of Sir "Elijah Impey to strike the parliament and people of "England with horror," and he suggests that it was "written or dictated or retouched by Francis's own skilful "and experienced hand." Mr. Busteed has discovered a statement made in a Calcutta paper published in October,

[1] *Parl. Hist.* xxvii. 442.

[2] Macaulay works this into Mr. Macrabie's account. See above.

[3] Macaulay's "loud wailings" covers all this. His literary taste told him that when you have a "universal yell" you do not want "most "piercing cries of horror and dismay."

[4] Observe the love for local colour shown by Lord Macaulay's correction of "Hooghly," also "its holy waters" for "the water," and the way in which he connects the holiness of the water with purification from the guilt of seeing a Brahmin hanged. It is a much neater ending than Sir Gilbert's.

[5] P. 111.

1781,[1] referring to the late Mr. Macrabie's minutes about Nuncomar having been then published in England, but it certainly does not appear that the minutes referred to in 1781 in Hickie's *Gazette* were the same as those published in the *Annual Register* in 1788, and, if they were, Francis may have retouched them between Macrabie's death [2] in 1776 and the publication referred to in 1781. There is, however, no evidence that he did so. Mr. Impey adds, after referring to the leading points in Macaulay's description, and especially the hundreds (not mentioned by Macrabie) who ran into the Hooghly, "Those who were "in Calcutta saw nothing and heard nothing of the sort." This again is incorrect. Macaulay no doubt copied from Sir Gilbert Elliot, but Sir Gilbert Elliot did not invent; he simply ornamented by suppositions of his own as to the reason why some natives ran into the Hooghly the positive statement of an eye-witness that they did. In his evidence [3] before Touchet's committee, Captain Cowe, being asked if he had an "opportunity to make any "observations concerning the execution of Nuncomar, "said he had; that he saw the whole except the imme- "diate act of execution, from the parapet of the new fort "not quite half a mile from the place of execution. "There were eight or ten thousand people assembled, "who, at the moment the Rajah was turned off, dispersed "suddenly, crying 'Ah baup-aree,' leaving nobody about "the gallows but the sheriff and his attendants and a "few European spectators. He explains the term 'Ah "baup-aree' [4] to be an exclamation of the black people "upon the appearance of anything very alarming, and "when they are in great pain. That they did not think

[1] *Echoes of Old Calcutta*, p. 62.
[2] *Ibid.* p. 60.
[3] *Report*, p. 61.
[4] Literally "Oh, father."

"he would be put to death till he was actually executed; "that many of them even ran into the river from terror "at seeing a Brahmin executed in that ignominious "manner."

My friend Sir A. Lyall was kind enough to get inquiries made by friends of his in Bengal about Nuncomar's execution, which produced a letter from a native gentleman to one of the judges of the High Court. It contains the following curious passage: "It "is the very first time that I learn from your letter of "the tradition of Brahmin families never visiting Calcutta "by reason of the execution. I am told on inquiry that "Calcutta was looked upon with horror for several years "after the event, but the feeling died out long ago. The "statement, however, that a number of families lef "Calcutta and settled in [1] Bally in consequence of the "execution is quite correct. There are dozens of families "in Bally whose ancestors lived in Calcutta."

[1] A village on the right bank of the Hugli in the Hugli district, *i.e.* on the opposite side from Calcutta (see *Imperial Gazetteer, sub voce* Bali).

CHAPTER VIII.

FROM THE EXECUTION OF NUNCOMAR TO THE IMPEACHMENT OF IMPEY.

ONE of the most remarkable features in the whole history of the impeachment of Warren Hastings and of Impey is that the facts charged as crimes were for the most part done in the face of day with no sort of concealment, recorded in many instances in public documents in the common course of business, and never regarded as crimes till they had been publicly known for many years. The interval between the execution of Nuncomar and the impeachment of Impey is about as great as the interval between 1885 and 1871, when Lord Mayo was Viceroy. Transactions took place in Lord Mayo's days which attracted attention and excited discussion, but the mere facts that fourteen years have passed, that during the whole of that time these transactions have been well known to all the persons concerned and have been open to public discussion, would in practice present an insuperable bar to re-opening any questions relating to them. If, however, they were re-opened it would be obviously a matter of great importance to see how they were regarded in 1871 by those who were on the spot,

and who had the opportunity of observation, and the responsibility of acting on what they observed.

This is the reason why I have gone so carefully into all the incidents which occurred in India at the time of Nuncomar's trial, and which can throw any light upon the feelings which it excited. I have shown that at the time and place of the events related they excited no disapproval. No one expressed even an isolated opinion in Nuncomar's favour. The majority of the Council contemptuously refused to take the least notice of his petition or to stretch out a hand to save him when nothing could have been easier than to do so. Such public opinion as there was in Calcutta appears to have been entirely against him and to confirm the truth of his observation to Francis that all classes of people, Europeans, Mohammedans, and Hindoos, were opposed to him. No petition was presented, even for a respite, except perhaps one from his own son-in-law.

This, however, gives an imperfect idea of the state of feeling in Calcutta at the time, and of the absence of any sort of dissatisfaction with the trial and sentence. Within a few days after his execution a transaction took place which shows that the majority of the Council themselves did not then believe that a judicial murder had been committed, unless, indeed, they are to be branded as cowards, ready from irrational fear to condone such an act—a reproach which no one would cast upon them.

This incident was obviously unknown to Macaulay. It is not hinted at by James Mill, who, however, must have known of it. It is in a clumsy way put forward by Mr. Impey the younger in defence of his father. It is just hinted at, but in no detail, by Mr. Merivale

in his *Life of Francis*, and is slurred over, and its importance is, I think, not understood, by Mr. Beveridge. He notices it very shortly, and says it is not his business to defend every action of Francis, who was no saint. It is, I think, of the first importance in reference to the value and origin of the accusations made against Impey; but I shall defer the statement of its details and the observations which it suggests till I come to describe the impeachment of Impey. For the present it is sufficient to say that on the 14th of August, nine days after Nuncomar's execution, Clavering presented to the Council a petition which he had received from Nuncomar the day before the execution. This petition was ultimately directed, on the motion of Francis, to be burnt by the common hangman as a libel, and all copies of it were to be destroyed. This is recorded at length in the secret consultations, which however show nothing as to the contents of the petition. They were disclosed by Impey nearly fourteen years afterwards, as will hereafter appear, and were of the greatest importance. For the present I pass them by.

[1] On the 28th August the judges wrote to the Council stating that "a paper containing a false, scandalous, and "malicious charge against the judges of the Supreme "Court, produced at your Board, having been by you "declared a libel and ordered to be burnt by the hand of "the common hangman, we return you our thanks for "having shown so due a sense of this outrage to public "justice." They then asked for a copy of the paper and of any minutes relating to it in the books of the Council, and they inclosed for transmission by the Council to

[1] Touchet's petition, Gen. App. 3, encl. 20, 21. Court to Council, August 28th, 1775. Council to Court, September 4th.

England copies of the addresses already referred to, which they declare to be a direct and public refutation of the libel.

The Council refused to give copies of their minutes. They said that, as the libel was burnt and all translations ordered to be destroyed, they could give no copy of it, and asked the judges to say "from whom you receive the "imputed information which appears to have been con- "veyed to you on this and other occasions of the proceed- "ings of this Board in our secret department." This letter is signed by the whole Council, including Hastings.

This matter was followed by a controversy, which is the last matter occurring in India necessary to be mentioned in connection with Nuncomar. On September 15th and November 21st the majority of the Council recorded minutes which, without positively charging the judges with corruption in reference to Nuncomar's case, made insinuations of the most malignant and offensive kind to that effect—insinuations which, as it seems to me, nothing could justify except the power to support them by evidence of an amount and description which certainly was not then, and never has been since, produced. [1] They were as follows :—

"After the death of Nuncomar, the Governor [2] I believe "is well assured that no man who regards his own safety "will venture to stand forth as his accuser. On a subject

[1] Touchet's petition, Gen. App. 3, encl. 28. The minutes are quoted marginally in Impey's letter to the Secretary of State in answer to them, January 20th, 1776.

[2] It is not clear who "I" is. Impey in his letter to the Secretary of State describes the minutes thus: "The Governor-General has within "these few days communicated to me several minutes signed by General "Clavering, Colonel Monson, and Mr. Francis, one bearing date September "15th, 1775, the others on November 21st, 1775."

"of this delicate nature it becomes us to leave every "honest man to his reflections. It ought to be made "known, however, to the English nation, that the forgery "of which the Rajah was accused must have been com- "mitted several years; that in the interim he had been "protected and employed by Mr. Hastings; that his son "was appointed to one of the first offices in the Nabob's "household with a salary of a lakh of rupees; [1] that the "accusation, which ended in his destruction, was not "produced till he came forward and brought a specific "charge against the Governor-General of corruption in "his office." In a minute of November 21st the same person says, "It seems probable such embezzlements may "have been universally practised. In the present circum- "stances it will be difficult, if not impracticable, to obtain "direct proof of the facts. The terror impressed on the "minds of the natives by the execution of Maharajah Nun- "comar is not to be effaced, for though he suffered for the "crime of forgery, yet the natives conceive he was exe- "cuted for having dared to prefer complaints against "the Governor-General. This idea, however destitute of "foundation, is prevalent among the natives, and will "naturally deter them from making discoveries which "may be attended with the same fatal consequences to "themselves. Punishment is usually intended as an "example to prevent the commission of crimes; in this "instance we fear it has served to prevent the discovery "of them." In another part of the minute of Sep- tember 15th they observe, "At the same time we confess "we are not very anxious about instituting any suit "against him (Hastings) in the Supreme Court."

It is unnecessary here to quote or to abstract Impey's

[1] False, see above.

remarks on these observations, as I shall in discussing Impey's impeachment deal incidentally with the imputations made. I will observe only that he says, amongst other things, that the judges have sent home for publication the account of the trial of Nuncomar already referred to, and that he writes, to quote the first words of his letter, under "the most acute sense of unprovoked injury."

From the time of this despatch, the date of which is January 20th, 1776, down to the month of April, 1788, no steps of any kind were taken in reference to Nuncomar's trial. [1] On November 19th, 1777, the directors wrote to Lord Weymouth, then Secretary of State, a most elaborate despatch, containing thirty enclosures, in which they state all their grievances against the Supreme Court. They reserve for the last their observations on the case of Nuncomar, and they condemn the behaviour of the judges in not respiting his execution, and protest strongly and with much force of illustration against the doctrine which they incorrectly supposed to have been laid down in that case, that "all the criminal law of "England is in force and binding upon all the inhabitants "within the circle of their" (the Court's) "jurisdiction "in Bengal." They must have had before them the minutes in which Clavering, Monson, and Francis made the insinuations just quoted; but they do not suggest or hint at any unfairness in Nuncomar's trial, or at any corrupt motive in his judges, nor do they forward the minutes, but only Impey's letter to the Secretary of State, which copies part of them for the purpose of refutation.

Matters stood in the position I have described from 1776 to 1788. The whole subject of the government of India was in that interval submitted to the most rigid

[1] Touchet's petition, Gen. App. 3.

scrutiny, and no part of it was scrutinised with more severity than the administration of justice by the Supreme Court. The committee to which Touchet's petition was referred published a large folio volume on the subject. Other parliamentary committees published eleven reports on various topics connected with the subject. I have gone carefully through them all to see whether they contained any such suggestions about Impey as were made on his impeachment. I have found only two references to the subject. In the first report, published in February, 1782, [1] there is a passage which reflects upon Nuncomar's case, but it states in substance no more than that his trial and execution had shocked the natives, and that in the opinion of the Committee "it was not possible "that, combining all the circumstances together, they "should look upon it in the light of a common judicial "proceeding." They also say that the execution of the sentence should have been respited. Again, in the [2] eleventh report, dated November 18th, 1783, reference is made to Nuncomar's case, and papers relating to it are published from the Bengal consultations, but nothing is there stated which has not been referred to above. Of the contents of the reports on Touchet's committee I have already spoken.

I shall conclude this chapter with two highly curious documents, one of which has never been published before. It bears upon the principal definite accusation made against Impey, which is that even if his judicial conduct was both legal and fair, he ought at all events

[1] Edition of 1804, vol. v. p. 413. Touchet's committee reported May 8, 1781. Of the eleven reports of the Select Committee on the administration of justice in Bengal, the first was published February 5th, 1782, and the eleventh November 18th, 1783.

[2] Vol. vi. pp. 699-721.

to have respited Nuncomar, and that no explanation of his omission to do so can be given except his wish to gratify Hastings. I will not at present discuss this subject. Much is to be said on it, which I defer till I come to consider Impey's impeachment. I discovered the paper referred to amongst Impey's papers in the British Museum. It is a [1] letter addressed by Impey to Governor Johnstone in August, 1778, or April, 1779. The letter speaks for itself and is as follows :—

"As I so greatly respect your opinion, I am glad of an "opportunity of saying something with regard to the "carrying the sentence into execution against Nuncomar, "as that does not seem to be equally satisfactory to you with "the rest of the proceedings of the judges, and I thank "you more for the openness, candour, and delicacy with "which you mention it than for the compliments I am "so sensible of. My wishes to have represented him as "an object of [mercy] and to have procured the extension "of it to him, were, considering the heavy task I had on "my hands, give me leave to say, more strong than yours

[1] The paper in the British Museum is a draft of a letter apparently kept by Impey when he sent the original. There are a few verbal slips and omissions, which I have corrected in brackets or notes. It is dated thus: "Governor Johnstone, August 18, 1778 [April, 1779]." This may perhaps indicate the date when the letter was or might be expected to be received. Governor George Johnstone is frequently mentioned in Wraxall's *Memoirs*. The editor of Wraxall, Mr. Wheatley, describes him as "George Johnstone, third son of Sir James Johnstone of Westerhall, appointed Governor of West Florida in 1765, for many years Member for Cockermouth. He died 28th of June, 1787 (Wraxall, i. 382n.). Wraxall describes him as "a man with whom I was much acquainted, "and who attained a considerable degree of importance during this "portion of the reign of George III. . . . . Nature had cast his person "in a coarse but vigorous mould, and had endowed him with corre-"sponding or analogous faculties of mind." He was a naval officer of some note (Wraxall, ii. 68).

"could possibly be; and I call God to witness [1] to [it]
"was my firm intention so to do in case he should have
"been convicted, had not the conduct of that unhappy
"man, and of the gentlemen who possessed the powers of
"Government, in my opinion rendered it absolutely ne-
"cessary, both in support of the administration of justice
"and of my own honour, to pursue different measures.
"[2] The fabrication of new forgeries, the most gross per-
"juries during the time of his confinement, and even
"during the course of the trial, was an atrocious aggra-
"vation of the original offence. The eyes of the whole
"country were drawn to it, it was attended by men of all
"ranks in the service, and the principal natives in and
"round Calcutta to a considerable distance flocked to it.
"The grossness of the forgeries and perjuries were much
"more striking to those who saw the witnesses and heard
"the *vivâ voce* examination than they can be to those
"who read the trial, gross even as they there appear. No
"explanation could have made the natives (if the Euro-
"peans had inclined to think better of us) understand
"that the escape from justice, if the sentence had not
"been carried into execution, had not been occasioned by
"the artifice of the prisoner, unless, indeed, it had been
"attributed to corruption or timidity in the judges, or a
"controlling power in the Governor-General or Council.
"I leave it to your consideration the effect any of these
"considerations must have had on the institution of a
"new court of justice among inhabitants whom the weight
"and terrors of their oppression have so enslaved, bowed,
"and depraved that the most intolerable injuries cannot
"rouse them to sufficient confidence to look up to the
"purest and fairest tribunal to accuse their oppressors.

[1] Superfluous. [2] See the evidence of Ussud Ali.

"This consideration had certainly great influence on "my mind. Corruption in this country has no doubt "been in all courts of justice a most efficacious instru- "ment. The natives have thought [it], and with reason, "infallible and omnipotent. Integrity in judges is an "idea which never entered into the mind of an Asiatic. "They are the last persons that would be expected to "possess it. I much doubt, and I do not speak without "what has amounted to conviction to my mind, whether "the present Court established at Calcutta is [not] the "only one within the provinces which has existed since "the establishment of the English power totally unin- "fluenced and uncorrupted.

"Had this criminal escaped, no force of argument, no "future experience, would have prevailed on a single "native to believe that the judges had not weighed gold "against justice, and that it would ever preponderate. In "India it was universally believed that large sums were "offered to the judges, and perhaps a rumour of the "kind may have reached England. When charges were "first exhibited against the Rajah, those who ought to "have used their authority to strengthen, employed it to "insult and weaken, the administration of justice, to "overawe and even threaten the judges. Not only "affected public compliments such as never were received "by natives of a rank much above his from Europeans "were paid to him, but the prison was converted into a "durbar. Ladies of the first rank condescended to send "public condolences. Those who meant to pay court "knew they did it more effectually by an attendance at the "gaol than at the breakfasts and *levées* of their patrons. "Aide-de-camps and secretaries paid daily visits, and "publicly repeated assurances of safety and protection.

"These assurances made too great impression on the "unhappy man. They gave him and his dependents a "security and insolence ill-suited to his circumstances. "They gave out the judges dare not execute the sentence. "To this he was much encouraged by those in power "here and influence at home. The Governor-General and "Council interfered in the process, claimed a power to "protect, examined the officers of justice, and attempted to "overrule the proceedings of the judges, and some of the "members of that Board openly threatened to procure "the dismission of the judges if they did not relax the "sentence. It was afterwards confidently asserted by "[1] one member that he had effected the dismission of those "judges who were most obnoxious to him, and that it "would be brought out by the ships of this season.

"Besides what was open, many private intrigues and "insinuations were put on foot to prejudice the opinion "of the public, both with regard to the institutions "of the Court and the characters of the judges. You "may easily imagine, from the temper of the times, many "things then might pass which though strong ingredients "then to determine our judgment on the spot, would not "have such full effect now on other minds when stated "in the detail, and read at a distance from the scene of "action, and without an intimate knowledge of the habits "and manners of the actors.

"I am sure you will give me credit for sufficient com- "mon sense to prevent me from flattering myself that "the measure was likely to be either popular or service- "able to me in England. I was well aware of the [2] *late* "arguments which would be drawn from the misunder-

[1] This probably refers to Clavering.

[2] I do not understand this word.

"stood common topic of the introduction of a new law "in a country where the inhabitants differed as widely in "manners, law, and customs from England as they do in "climate, colour, and distance, and knew the explanation "depended on facts neither obvious nor well understood. "I knew the relations of what passed here would be "accompanied by partial representations, false colourings, "and even false facts and direct accusations. A paper "was introduced into Council here intended to be recorded "as an accusation personally against me, but the person "who represented it after a little consideration did not "dare to persist in his first intention. He changed it, "and [1] himself moved that it should be burnt by the "hands of the hangman, and it was burnt accordingly. "I knew the power and weight in England which that "gentleman possessed, and I knew that perseverance was "dangerous both to my fortune and character. I trust you "will give equal credit to the acuteness of my sensations "when I found myself inevitably urged to carry into ex- "ecution a sentence against a prisoner whom, taking into "consideration his original crime only, I most ardently "desired to have saved, and would have done it, even "under the aggravated circumstances, had it been recon- "cilable to the sense I had of the trust committed to "my care.

"[2] I am sure I have great reason to believe I wished "more to save him than all those who promised him "protection. I suffered much by the necessity I was "under, perhaps as much as the convict himself; but I "had a public character to support, in which a numerous "people here were interested, therefore of more conse-

[1] Francis made the motion, Clavering produced the paper.

[2] This might easily be true, considering how they behaved.

"quence than my reputation in England, where I am but "an obscure man, and could only be individually affected. "I had the dignity, integrity, independence, and utility "of that Court to maintain which I enthusiastically "laboured to make a blessing to the country. To pro- "duce that effect I knew [it] to be absolutely necessary "to convince the natives that it was superior to importu- "nity, corruption, influence, fear, or control. I thought "I did my duty, and therefore determined to sacrifice my "feelings and abide every consequence. Had I taken "the part those feelings strongly biassed me to, I had the "fullest assurances that that influence which was held "forth as a terror to me, and which in truth I had reason "to dread, would have been exerted to its utmost extent "to my benefit.

"As it is impossible to convey to you a complete idea "of the circumstances attending the whole case, I cannot "expect you should form so decisive an opinion as if you "had been in Calcutta. All I wish, which I hope I "need not much labour to persuade you, is that I thought "the measure necessary, and that I acted on principles "which appeared to be just and cogent. I am the more "convinced of the rectitude of it as it did not rest on my "opinion. Every individual judge thought it necessary, "and each of them was so clear in it that no proposition, "hint, intimation came from either of them which had "the least tendency to suspend the sentence, and as I "know great pains were taken by different behaviour to "different judges, to have it imagined here, and as I "know the judges were accused in the public consulta- "tions and the private letters which were transmitted to "England of having addicted themselves to the different "factions then raging in this settlement, a perfect union

"without hesitation on a subject endeavoured to be made "a matter of party, does in itself convey the fullest "evidence of the propriety of the proceedings."

The other document to be stated is an extract from an extremely rare book, which would well repay the labour of editing and reprinting. I refer to the *Siyyar-ul-Mutaqherin*, a history of the fall of the Mogul Empire, written by Syud Gholam Hussein Khan, a Mohammedan, and translated by a French refugee who called himself Mustapha. Accuracy is not the author's strong point. His work is confused, disorderly, and made up to a great extent of mere gossip; but as a description of native ideas, of native transactions, and of the moral and political state of Upper India in the eighteenth century, it is not only unrivalled but unique. The following extract is an excellent illustration of its strong and weak points. I quote it here both because it illustrates and confirms what Impey says as to the violence of the Council, and because it constitutes the solitary piece of evidence now available as to the view taken by any part of the native population of the whole transaction. It is true that the writer was a Mohammedan who, as Macaulay points out, would have as such a feeling against the "power-"ful Hindoo who had attempted to rise by means of "the ruin of Mahomed Rheza Khan." I may observe that the gallicisms in which the translation abounds give it a picturesque exotic appearance which has its merit. The translator, in an exceedingly curious account of himself and his adventures prefixed to the work, makes the following remark:—"that the man who has "not the honour to be born an Englishman, and is far "from being a Persian, who has never seen England, and

"never had any other master in either language but "himself, should attempt to translate from the Persian "into English, and moreover to appear in print, is such "a strange proceeding," that in short he must give an account of himself.

[1] "Men's minds were then engrossed by the dissensions "in the Council, and by the fate of Governor Hushtin. "This man, who has been endowed by nature with a keen "penetrating genius and a superior intelligence, and "whose wisdom in matters of state and in politics has "not been equalled in this age by any one, did not think "it consonant to his dignity to dispute upon small matters; "[2] and having thought it decent to adopt a system of "difference, he resolved first of all to clear himself of "the accusations brought against him, and of the infideli- "ties and misdemeanours he was suspected of; and then "to expose to publicity the General's ignorance, together "with the grossness of his behaviour and the precipitancy "and violence of his temper; he intended afterwards to "bring to condign punishment those shortsighted accusers "that had raised such a disturbance in the country, [3] and "especially Nuncomar, that man of a wicked disposition "and an infamous character who had made himself their "leader and director; he expected that after having pro- "vided for all these matters, and quelled the commotion "excited by the General's party, the General himself "would become an easy object. [4] With this view he "spent a deal of time in confuting the accusations brought

[1] *Siyyar-ul-Mutaqherin*, ii. 463-465.

[2] This, as the translator observes of another passage further on, is very obscure.

[3] This clearly shows that the writer's opinion was that Nuncomar was prosecuted by Hastings. How far this impression was correct I shall consider below.

[4] He did no such thing.

"against him by that officer on the instigation of Nun-
"comar and his followers, and he thoroughly justified his
"own conduct by exposing the falsehoods of his adver-
"saries. [1]But whilst he was exposing to publicity
"Nuncomar's infamies, and giving proofs of most of
"them, or indeed of all, [2]it came out that this man used
"to forge bills of exchange under the hands and seals of
"eminent men; and that, after having imitated their
"seals exactly, he kept them at home, ready at all times
"for manufacturing, as occasion required, bills of ex-
"change and bonds in any one's name and hand, to be
"hereafter produced at his pleasure; by which iniquitous
"practice he used to keep every one in awe of his dis-
"pleasure. Amongst these pieces of his manufactory he
"had forged an obligation bond [3]in favour of Bolakidas,
"a banker at all times of much credit, but who had
"acquired a great name in Mir Cossim Khan's time; he
"had presented it to the company's cash-keeper, and had
"received the full amount, which he had kept to himself.
"To inquire into so heinous an offence, and to decern
"the punishment due by law, it became necessary to
"have a grand jury. [4]A grand jury signifies an assembly

[1] This must refer to the prosecution of Nuncomar for conspiracy.

[2] This is obviously the exaggerated bazaar rumour of the day, but a similar assertion is made by Barwell in his letter to his sister; see the last chapter of this work.

[3] It would be in his own favour.

[4] This is an instructive instance of the strange confused ideas which natives get of English institutions. The remarkable point in it is that the jury and not the judges (who are not mentioned throughout) were the prominent persons in the writer's opinion. What he can mean by the three juries I do not know; perhaps he means the grand jury, and the petty jurymen who were challenged, and the petty jury ultimately sworn. It is possible that he may refer to the three trials, one for forgery and two for conspiracy. At all events his notion that the jury decided the punishment is noticeable.

"of twelve creditable Englishmen, chosen by lot, which "the culprit may recuse one after another, so far as to get "them changed two different times, if he should object "to them all; but at the third time he ceases to exercise "the right of recusing any of them, and they remain, "twelve in number. Their duty is to examine what is to "be his punishment; but till they have found out this "punishment they cannot be spoken to by any one, lest "they might be influenced to swerve from the dictates of "justice and equity. This grand jury was made up over "and over, and twice changed (the court of justice at "that time being full of people) until it was proved and "determined that Nuncomar was guilty and deserved "death, and that his kind of punition was to be hanging. "He was a man of a wicked disposition and a haughty "temper, and upon bad terms with the greatest part of "mankind, although he had conferred favours on two or "three men, and was firm in his attachments.

"The moment he perceived that any one had ceased "to pay him his court for a few days, either out of sickness "or because he wanted nothing from him, that instant he "became his enemy; nor did he give himself any rest "until he had run him down and demolished him totally. "At last he met with what he deserved, and his suplise "took place. It is observable that as the General "[Clavering] had given him strong assurances that none "should ever hurt him, and that were he even to be "carried to the foot of the gallows he never would have "anything to fear provided he exerted himself strenuously "in bringing to light the Governor's misdemeanours, "that man predestined to death never ceased both out of "firmness of temper and out of hatred to the Governor "to accumulate accusations against him without ever

"minding how exposed he was himself to an attack. "That man, advised and instigated by the General, and "become bolder and bolder, had of late set up a number "of new accusations against the Governor, and in the "violence of his wickedness and malice he had never "minded that he was left alone, and had remained "exposed to an attack. The Governor having refuted "all his imputations, brought proofs of Nuncomar's great "misdemeanours and crimes, and this affair made so much "noise that [1] the questions and answers of these two men "were written down in the English language and charac- "ter, and the whole being bound up together in the form "of a book, was sent to England, from which such vast "numbers of copies were drawn out that this subject is "become famous, and an object of much curiosity in that "nation. Nevertheless, the General's protection having "proved of no avail against a crime that had been fully "ascertained, Nuncomar underwent his sentence in the "manner statued; and [2] on the seventeenth of Djemady, "of the year one thousand one hundred and eighty-nine, "he was drawn up and hanged by the neck. [3] His money "and effects were registered, and then delivered to his "son, Rajah Goordass. They say that the whole amounted "to fifty-two lacs in money, and full as much more in "effects and other property in his possession. Amongst "other strange things found in his house there came out "a small casket containing the forged seals of a number

[1] A strange account of the report of the trial.

[2] August 5th, 1775.

[3] Chambers proposed to Impey to have his property seized as a forfeiture, but Impey refused (see vol. ii. p. 77). I do not know whether some rumour of this reached the author, or whether probate or letters of administration was granted to Gourdass.

"of persons of distinction. In consequence of this dis-
"covery his malicious arts were dragged to open light,
"and they met with what they well deserved."

The use made of this passage by Macaulay may be mentioned here. After referring to Nuncomar's trial he says: "The excitement among all classes was great. "Francis and Francis's few English adherents described "the Governor-General and the Chief Justice as the worst "of murderers. Clavering, it was said, swore that even "at the foot of the gallows Nuncomar should be rescued." Mr. Impey[1] observes upon this: "In reality neither "Francis nor his faction had yet ventured to give any "such description of the Governor-General and the Chief "Justice." This is perfectly true, as the account I have already given abundantly proves. Clavering's conduct and Francis's letters prove that neither of them had at the time of the execution got beyond vague suspicions, which were never corroborated by any evidence whatever; though perhaps they may afterwards have assumed in the mind of Francis the character of self-evident truths. But Mr. Impey goes on to ask: "Where did Mr. Macaulay "ever hear or read that General Clavering swore Nun-
"comar should be rescued even at the foot of the gallows? ". . . . I have read until my eyes have been nearly "blinded, and I have employed younger and keener eyes "than my own in reading whatever relates to this case ". . . . . and I have not been able to find or to get "indicated to me any passage containing this rash vow "of General Clavering." It is impossible not to sympathise with a son who defends his father, but Mr. Impey was not a skilful advocate, nor were his researches always well

[1] P. 109.

directed. Macaulay got his assertion from the passage just quoted. [1] He had read (as appears from another passage in his review) that curious book. It would have authorised him in saying: "Clavering, it was said, assured "Nuncomar, that even if he were brought to the foot of the "gallows no harm should happen to him." To say that it "was reported that Clavering swore he should be rescued "even at the foot of the gallows" is shorter, and a little more picturesque, but it comes to much the same thing. It happens, however, to be the very opposite of the truth, for Clavering did most distinctly [2] swear that he never had any intention to rescue Nuncomar at all.

The passage just quoted clearly proves that it was the impression of the natives at the time that Hastings prosecuted Nuncomar, and that he was punished for having accused the Governor-General. It also proves, if proof is needed, how vague, inaccurate and ill-informed native popular opinion is. It is my belief that the popular opinion on the subject which has been adopted by Macaulay, Mr. Merivale, and many other writers of note, is nothing but a reflection of this hasty ill-informed and utterly ignorant native prejudice promoted without proof by the malice and slanders of Francis. Many of my reasons for this opinion have already been given in detail, but in the following chapters they will be more fully developed.

[1] He speaks of Mrs. Imhoff as "a native we have somewhere read of "Archangel." He read it no doubt in the *Siyyar Mutaqherin*, vol. ii. p. 476, translator's note, "Born at Archangel," &c. It is here also that he read the story of Clavering's death being occasioned by Hastings insisting on his presence at his wedding party. Indeed on this occasion he quotes the "Mahommedan Chronicler."

[2] See above, p. 100.

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