

The Courier.

No. 425

Friday, November 29, 1793.

Vol. IX.

CIVIL DEPARTMENT

Fort St. George, November 11th, 1793.
IT has been ordered, that all Advertisements which appear under the OFFICIAL SIGNATURE of either of the SECRETARIES of this GOVERNMENT, or of any other Officers of Government, properly authorized to publish them, in the MADRAS COURIER, are meant, and must be deemed to answer official and sufficient Notification of the Board's Orders and Regulations, in the same Manner as if they were particularly specified to the Secretary of the Company, or others, to whom such Orders and Regulations have a Reference.

ROBERT CLERK, Secretary.

GOVERNMENT ADVERTISEMENT.

NOTICE is HEREBY GIVEN, that Sealed Proposals will be received until Friday the 10th Instant, at 12 o'clock in the Forenoon, for the purchase of the whole or any part of the undermentioned Cains.
Pondicherry Rubbers, 200,000
Ropes of Sorts, 200,000
Already paid Mofurs, 1750
Seddy's Salt, 1750
For more Particulars see the Public Notice in the Courier of the 10th Instant.

ROBERT CLERK, Secretary.

Fort St. George: 10th November, 1793.

GOVERNMENT ADVERTISEMENT.

NOTICE is hereby given, that Sealed Proposals will be received, at the Office of the Secretary, in the Public Department, until the 1st December next, at ten o'clock in the Forenoon, for the delivery of six Lacs of Maunds of Cash Salt in Bengal, under the following Conditions.

I. The Proposer may undertake for the whole Quantity, or a proportion not less than one hundred thousand (100,000) maunds; of eighty two Sicca Weight to the Seer each.

II. Whatever Quantity is engaged for, must be delivered at the Risk of the Contractor, on or before the 1st November 1794, on Shore at the Salt Golahs at, or near Saltah, in the neighbourhood of Calcutta, and a Penalty of 25 per Cent shall be forfeited upon the Quantity first delivered, unless the Contractor shall make it appear, that it had been actually embarked for the purpose of fulfilling his engagements, and afterwards lost on the Passage to Bengal.

III. The Salt to be delivered, at an even Scale, of 84 Sicca weight per Seer and 40 Seer to the Maund.

IV. The Proposals to specify the Rate in Star Pagodas, at which each 100 Maunds of Salt is to be delivered in Calcutta, the Proposer advertising in the following modes and periods of payment, viz. one third of the value of the Quantity engaged to be advanced to the Contractor, on the Execution of the Contract, as per the Bill of Lading, and the remaining two thirds, on the Production of Certificates of the whole Quantities engaged for having been delivered in Calcutta. It is left in the option of the Contractors (and which they are to declare) whether to receive payment for the whole in Bengal, by Promissory Notes bearing six per Cent Interest, from the periods above alluded to, or at Madras in Money or in Promissory Notes bearing six per Cent Interest, at the Discretion of Government.

V. In Order to induce the Contractor from dis-appointment in his delivery, an allowance of 5 per Cent will be advanced over and above the price Quantities engaged for, but any surplus attempted to be impounded beyond the allowance will, on discovery, be confiscated.

VI. Two good securities to be named in the Proposal, who are to be bound for all the Sums advanced severally and jointly with the Contractor and for the Penalty on all short deliveries.

N. B. No offers will be attended to, which differ from any of the above Conditions.

By Order of the Governor in Council

ROBERT CLERK, Sec.

Fort St. George: 30th September, 1793.

GOVERNMENT ADVERTISEMENT.

WHEREAS it is stipulated in the above Advertisement, that the payment (if required) by the Contractor to be made in Bengal shall be issued in Promissory Notes, bearing six per Cent Interest—Notice is hereby given, that the Governor General in Council has referred to him the Option of issuing such Notes, or Money in lieu thereof, should it suit his convenience.

By Order of the Honorable the Governor in Council

ROBERT CLERK, Sec.

Exam. J. Falconer.

Fort St. George: 2d Nov. 1793.

GOVERNMENT ADVERTISEMENT.

IN Order to obviate, in future, all difficulties in the Collection of Quit Rent at the Presidency—This is to give Notice that the Proprietors of Houses and Gardens paying Quit Rent to the Company, who may be in possession at the time the Annual Quit Rent falls due, being on the 30th April of each Year, will be held answerable for all Arrears outstanding, and may receive from the 30th Instant, without reference to any preceding Proprietor, any Sums due on this Account should be settled between the Parties.

Published by Order of the Board of Revenue, with the Authority of Government.

Fort St. George: W. HARRINGTON, Sec.

20th April, 1793.

MAYOR'S COURT AT MADRAS PATNAM.

IN the Ecclesiastical Side,
NOTICE is HEREBY GIVEN, that an Application was this Day made for Letters of Administration to the Estate and Effects of Paul Englebert Van Halbe, deceased, by Thomas De Lange a principal Bond Creditor to the Estate of the said Deceased.

J. S. HALL, Proctor.

Town-Hall: 12th November 1793.

ADVERTISEMENT.

THE Paper writing purporting to be the Will of the late Mr. John Hall, having been set aside by the Honorable the Mayor's Court, and the said John Hall pronounced to have died Intestate—Notice is hereby given, that an Application was this Day made before the King's Ordinary in the said Honorable the Mayor's Court, for Letters of Administration to the Estate of the said John Hall, to be granted to Marianne Hall the Widow and Relict of the said Deceased, and in Connection with Henry Chickley Michell, and John De Fries, Bond Creditors of the said Deceased, and for the Interest of others the Creditors, by their Attorneys Henry Chickley Michell, John De Fries, Thomas Stephens, and Edward Watts, as well as for the Interest of such other Bond Creditors as might hereafter come and claim the Benefit of the said Administration.

GILB. RICKETTS, Proctor.

Fort St. George: Nov. 26th 1793.

ADVERTISEMENT.

NOTICE is HEREBY GIVEN, that an Application was this Day made before the King's Ordinary in the Honorable the Mayor's Court at Madras for Letters of Administration to the Estate and Effects of Lieut. Alexander Campbell, of His Majesty's 70th Regt. Deceased, to be granted to William John Chater, as a Creditor to the said Deceased.

E. SAMUEL, Proctor.

Fort St. George: 19th November, 1793.

ESTATE OF THE LATE JAMES FELL.

LETTERS of administration having passed the Seal of the Honorable the Mayor's Court, to John Card, of the Estate and Effects of the late James Fell, deceased. It is requested that all persons indebted to the said Estate, do make immediate payment of the same to the Administrator, and all persons having any claims on the said Estate, are requested to deliver their Claims to the Administrator at his House in North St. Fort St. George, on or before the first day of January 1794, after which no Claims will be attended to.

Fort St. George: November 1793.

FOR OSTEND.

THE Genoise Ship IL NEUTRO, will be in Madras Road on or about the 4th December, on her way from Bengal, has very excellent accommodations for Passengers, who will be landed in England—The well known character of the IL Neutro, in having made such very quick Passages, and the Genoise Flag being perfectly neutral, together with her being one of the fastest sailing Ships in the East, are strong Recommendations for Passengers being equal to any Ship in the India Trade; and renders her a most eligible opportunity for Gentlemen or Ladies, that may be inclined to return to Europe in the early part of the Season.

For further particulars apply at the Printing Office.

Madras: 27th November, 1793.

ADVERTISEMENT.

THE Rate Committee for the last Session present their Compliments to the Subscribers, and beg leave to inform them that the Account of the Receipts, and Expensiture of their Subscription are open for their Inspection at the Exchange Room, between the Hours of eleven and one—As the Season for this favorite Amusement is now approaching, it is proposed to open the annual Subscription, which the Committee make no doubt will meet with the usual Encouragement.

Fort St. George: 7th November, 1793.

ADVERTISEMENT.

IN the Library of the late Col. Maule several Volumes of different Authors are deficient: If lent to any Gentlemen in the neighbourhood, the lending them to Messrs. Henderson's will be esteemed a favor.

E S T A B L I S H M E N T

OF THE LATE

CAPTAIN JOHN HARKER.

LETTERS of Administration having passed the Seal of the Honorable the Mayor's Court, to Benjamin Bishop and Alexander Melvin, of the Estate and Effects of the late Captain John Harker, deceased. It is requested that all Persons indebted to the said Estate, do make immediate payment of the same to the Administrators, and all Persons having any claims on the said Estate are requested to deliver their Claims to the Administrators at Fort St. George, on or before the first Day of January 1794, after which date no Claims will be attended to.

Fort St. George: 31st October 1793.

WANTED.

AN Uphair Dwelling House, either in the Fort, or in an eligible situation in the Black Town—Address to A. Z. at the COURIER Office.

ADVERTISEMENT.

FOR PUBLIC SALE ON THE 26th, OF NEXT MONTH.

AN Uphair House opposite to the Armenian Garden at St. Thomas; also a House and formerly belonging to Captain Andrew Carr, and now in the possession of Colonel George Campbell—both the above being the property of Mr. Miguel Johannes Deceased.

The Sale to be between the Hours of 9 and 10 o'clock in the Forenoon, at the Dwelling House of the said Deceased, in Armenian Street, Black Town.

ADVERTISEMENT.

ALL Persons having Claims on the Estate of Mr. John Butler deceased, are requested to make known the Same to Mr. G. P. Cook, of Fort St. George, Attorney for Mr. Peter MacLaren, the Administrator, and all Persons indebted to the Estate are requested forthwith to pay the Amount of their several Debts into the Hands of the said Attorney, who is duly authorized to receive the Same, and to give proper acquittances for the Amount received.

SALES BY AUCTION.

BY R. AND J. HENDERSON,

ON Monday the 3d December at Chockapah Chetty's Bankhall in the 3d line near the Company's Redwood place, at 4 o'clock in the Afternoon.

THE UNDERMENTIONED DAMAGED CRAIN

870 Bags of Rice,
71 Bags of Wheat,
75 Bags of Gingley Oil Seeds,
9 Bags of Peale,
23 Bags of Cummin Seeds,
55 Bags of Mustard Seeds,

BY ORDER OF THE EXECUTORS.

BY R. AND J. HENDERSON

AT THEIR AUCTION ROOMS.

near the Walajah Gate,

On Saturday 4th December, next:

AT 10 O'CLOCK IN THE FORENOON

A Valuable assortment of Diamonds belonging to the Estate of the late Mr. Miguel Johannes,—to be viewed at the Auction Room for three days previous to the Sale.

LIBRARY.

OF THE LATE COL. GEORGE MAULE,

TO BE SOLD BY ORDER OF THE ADMINISTRATORS.

BY R. AND J. HENDERSON

AT THEIR AUCTION ROOMS

near the Walajah Gate

On Monday the 16th December next:

And the following days to begin at 12 o'clock in the forenoon, and continue till 2 each day.

THE Library consists of upwards of two Thousand Volumes of valuable Books, in various Languages.

The Catalogue is now Printing, and will be ready for delivery in a few days.

BY R. AND J. HENDERSON

AT THEIR AUCTION ROOMS.

near the Walajah Gate

On Friday the 30th December next:

AT ELEVEN O'CLOCK IN THE FORENOON.

THE Undermentioned Articles saved from the Ship Relocation.

Main-Mast Spars,
3 Top-Masts Planks,
3 Bombay built Boats Yards,
Chain Plates &c.

N. B. The above Articles are lying near Sadras, and a particular List may be seen at the Auction Rooms.

ON COMMISSION.

BY R. AND J. HENDERSON

A SMALL Quantity, of Exceeding Good Hy-

son Tea

TO BE RENTED, OR SOLD.

A Small House with an extensive and well cultivated Garden, stocked with a variety of Choice Fruit Trees, &c. situated at Kilpawek a near and pleasant distance from the Fort, known by the name of Captain Towns's Garden.

For the terms and further particulars please apply to Messrs. R. and J. Henderson.

JAMES DOBBIN begs Leave to inform the

Gentlemen and Merchants of the Settlement,

that he has taken the large and commodious House

in the North Street, formerly known by the Name

of the Noah's Ark, or Mr. Card's Tavern, which

is now open as a Commission Ware-house, and for

the reception of all sorts of Goods for Public Sale,

which will be conducted by E. Bent, for him, and

who is authorized by him to advance Money to

any Amount, upon Houses, Goods, Ships or their

Cargoes; that are to be sold by public or private

Sale.

N. B. The Terms of the Auction to be the

Same as those of others.

BY JAMES DOBBIN,

At his House, in North Street,

ON SATURDAY, 30th INSTANT.

A QUANTITY of China Ware.—Chintz.—

Boglopore.—18 Punjam Hankerchiefs.—and

a variety of other Articles.

ALSO

Eighty Casks of fine Brandy to be sold without

reserve.

Musters to be seen in the Auction Room.

MADRAS EXCHANGE LOTTERY.

THE Madras Exchange Committee beg Leave to inform the Public, that they have fixed on the undermentioned Scheme for their Lottery for this Year:—viz.

LOTTERY SCHEME.

STAR PAGODAS 100,000.

To be divided into 10,000 Shares, or Tickets, at

10 Pagodas each.

1 Prize of Star Pagodas 10,000

2 Do. Star Pagodas 2,500 each 5,000

3 Do. Star Pagodas 1,000 each 3,000

4 Do. Star Pagodas 500 each 2,000

5 Do. Star Pagodas 250 each 1,250

6 Do. Star Pagodas 100 each 600

7 Do. Star Pagodas 50 each 350

8 Do. Star Pagodas 20 each 160

9 Do. Star Pagodas 10 each 90

10 Do. Star Pagodas 5 each 50

11 Do. Star Pagodas 2 each 20

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ADVERTISEMENT.

APPLICATION was this Day made in the Honourable the Mayor's Court of Madras for Letters of Administration to the Estate and Effects of *James Buchanan, Esq.* deceased, to be granted to *Michaela Venkay, a Native of the said Deceased's Family.*

WILKINSON, Proctor.

Town Hall, 26th November, 1793.

PROPOSALS

FOR A PRINT FROM A PAINTING, BY MR. DEVIS, THE SUBJECT, THE RECEPTION OF THE PRINCES: DECATED BY PERMISSION TO THE MOST NOBLE MARQUIS CORNWALLIS, AND THE ARMY UNDER HIS COMMAND.

THE Size of the Engraving not to be less than the Death of Lord Chatham, but so much larger as the Artist (who shall be of the first Ability) will undertake for.

Another Print will accompany this with an outline of each Head, and a reference, expressing the Name and Rank of each Individual, at the scene delineated. This will be included in the Subscription, which is twenty-five Pagodas; half to be paid at the time of Subscribing, and the other half on Delivery of the Print, which will be so soon as the Extensive Nature of such an undertaking will Admit of. Those Subscribers who wish to receive their Copies in Europe, will be kind enough to signify such Intention at the Time of Subscribing. Subscriptions will be received by Messrs. Forster, Rastell and Company, who will grant accountable Receipts for the delivery of the Prints; or, in Default thereof to return the half Amount of the Subscription to be Advanced.

TO THE PUBLIC.

THE sole and exclusive management of the MADRAS COURIER PRESS having been committed by Us, the undersigned Proprietors thereof, to Mr. G. P. COOK, this is to give notice that he alone is authorized by Us to sign Receipts, and grant Discharges for Money due to that Concern from the Seventh of October last past.

(Signed) B. JOHNSTONE.
For St. George: — E. SAMUEL.
26th Nov. 1793. — V. CORBETT,
— W. PURSER.

Having by an Arrangement with Mr. COOK, authorized that Gentleman to receive the amount Subscriptions to the COURIER, Commencing from the 1st of June, 1793; I therefore beg leave to inform the Subscribers that the Receipts for the last half yearly Subscription will be issued on the 1st of December next and signed by him.

(Signed) P. M. CASSIN.
late Agent for the COURIER PRESS.

THE COURIER.

MADRAS,

FRIDAY, NOV. 29, 1793.

IN our last Courier, we had the pleasure of announcing the arrival of an Indian at Calcutta; and by the Betsy, Captain Lennon, since arrived from thence, we are informed, that three others have passed up the River—the names of two, of the three, are all that we can learn—the Northumberland, and the Kent.

By the Betsy we are also informed, that a Danish ship, commanded by a Captain Christman, was lately arrived at Calcutta, from Copenhagen—the ship is said to have left the English Channel on the 6th of June last, and to have brought intelligence of a general action having taken place, between the Allied army, and the French—Victory is given to the former; and much praise to the British troops, commanded by the Duke of York.

Amongst the various reports of Privateers, we are glad that there are not even rumours of any in our latitudes, and that it does not appear there is any danger from them in the passage between this port and Bengal. But accounts from Bombay mention that some vessels had been seen in the offing, though which had not come into harbour; some suspicions were therefore naturally entertained that they were cruising there with no friendly intention.

Capt. Floyd and Family left the Presidency, on their way to Pondicherry, on Monday last. Messrs. BONDAM and DUNCAN, the Commissioners, after adjusting the long subsisting, and disputed claims of the Mysore Government, and the original and native Princes, on the Coast of Malabar, arrived at the presidency on the 23d instant—they proceeded to Bengal, it is said, on the ship Henry, Captain Wheatley—the falls in the course of a few days.

The Landowne, Hillsborough, and William Pitt, which left the Roads on the 2d ultimo, arrived at Diamond Harbour, on the 2d instant; having been exactly a Month on their passage.

The Bengal Government have directed the Pigot, Houghton, and William Pitt, Indianmen to be fitted out as Privateers, they were expected to be ready to sail by the 24th instant, and were to Cruise in the Bay, and to the Eastward.

THE WARLEY, ROYAL CHARLOTTE, and TAYLOR, sailed from Pulo Penang, for Calcutta on the 24th of October.

HEAD QUARTERS.

CHOUTRY PLAIN:—23th November, 1793.

THE Commander of the Army, publishes to the Army, the following part of the proceedings of the GENERAL COURT MARTIAL lately assembled at PONDICHERRY, on the application of Capt. COCKBURN of the Royal Artillery.

At a General Court Martial, assembled at Pondicherry on Monday the 11th November, 1793, at ten o'clock in the morning, under authority of a warrant from COLONEL BEATHWAITE, Commanding the Army on the Coast, bearing date at the Head Quarters, at Madras, 5th November, 1793.

PRESENT,

Lieut. Colonel THOMAS TRENT, — President.

MEMBERS.

Major Child H. M. 19th — Capt. Barlett H. M. Dragoons — 73d Regiment.
Capt. French H. M. 73d — Captain. Muat H. C. Regiment — Infantry.
Capt. Vigor H. C. 16th — Capt. Bordes H. M. 73d Capt. Pateron H. M. — Captain. Finnes H. C. 10th Dragoons — Regiment.
Lt. M. Leod Junior H. — Lt. M. Pherson H. M. M. 73d Regiment — Lt. M. Pherson H. M. Lt. Sutherland H. M. 73d — Lt. Hall H. C. Infantry Regiment.
Lt. Kennedy H. M. 19th — Lt. Boardman H. C. Dragoons — Infantry.

Judge Advocate.—Capt. Andrew Wight Judge Advocate of His Majesty's Forces in the East Indies.

Capt. John Cockburn of the Royal Regt. of Artillery, a prisoner, was brought into Court. The Court adjourned till next day at nine o'clock in the morning.

Tuesday 12th November, 1793. The Court met at nine o'clock in the morning, pursuant to adjournment.—Members present, Capt. Cockburn also present: proceeded on the Charge.

CHARGE.—That Capt. Cockburn, being a Senior Officer to Capt. Carlisle, and not having come forward in compliance with the Artillery Brigade Order, of the 19th August, 1793.

“The duties of the Batteries to be carried on according to the seniority of Officers in their respective ranks, preceding all other ‘‘tours of duty.’’ at that juncture, to open the enfilading Battery, has not shown that spirit and zeal for the honor of the Corps, that he belongs to, and which it is the opinion of the officers of the Detachment of the Royal Artillery, that he ought to have done.

The prisoner pleaded—NOT GUILTY

SENTENCE.—The Court after maturely deliberating on the whole matter at issue, is of opinion, that the prisoner Capt. Cockburn, having been a Member of a General Court Martial, at the time when the Artillery Brigade Order, of the Nineteenth day of August last, was issued, and at the time when the enfilading Battery was opened on the twentieth day of August, was not subject to the directions of said order not intended to be held subject thereto, that therefore he, the prisoner, although he did not come forward in compliance with said order, wherein he was neither named nor intended, to open the enfilading Battery at the juncture alluded to, is NOT GUILTY of having shewn a want of zeal and spirit for the honor of his Corps, and ACQUITS him FULLY and HONORABLY, of the charge exhibited against him.

THOMAS TRENT
ANDREW WIGHT
Lt. Col. and President
Judge Advocate.
Approved JOHN BRATHWAITE.

THE public curiosity has been eager for European intelligence since the arrival of the Betsy, from Calcutta, which brought accounts of three Indianmen having been arrived in the river: and it were perhaps but a natural supposition, from what the posture of affairs in Europe, by our latest advices, gave us to expect, and from the period, at which these ships are thought to have left England, that they may bring information highly important and interesting, so as to justify the expectation excited.

It has been announced through the Supplemental Hircarrab, under some degree, it is true, of hesitation, that intelligence had been received of the capture of certain West India Islands, which are not named, or otherwise specified; though it is stated, that the circumstance seemed highly probable. Now we should have been inclined to have shown the report more respect, if it had originated from any other quarter, rather than that described—for advertising to the credibility of the informant, whom the Hircarrab ought, as a matter of course, to have supported, as having been brought forward on his behalf, we are afraid, that little, very little regard or credence can fairly be challenged by it; for, speaking of the source, whence he derived his information in his last Paper, the Hircarrab complained—that the incertuous Betsy had brought not any further intelligence, than what was said to be extracted from a Danish Gazette, the particulars of which as received from the said Betsy, were treated as matters, conducive rather to ridicule, than any well founded reliance in their authenticity.

By the next arrival from Calcutta, it is hoped that we shall have it in our power to lay before OUR READERS the whole of the intelligence received by the Northumberland, and Kent; but till we are in possession of it—on better Faith than at present, we should hold ourselves incalculable in adventuring even a conjecture.

MILITARY INTELLIGENCE.

Fort St. George, 25th November, 1793.

G. O.

The Honorable the President in Council, having come to a Resolution of Establishing an Hospital at the Presidency, for the Reception of Lunatics; all Officers Commanding Companies, Stations and Corps, are directed to transmit to the Adjutant General, without delay, a Return of Insane Europeans within their respective Commands.

27th November, 1793.

Lieut. John Lee, to be Capt. of a Company, vice Hope, deceased—date of Commission 14th November, 1793.
Ensign Ben. Newton to be Lieut. vice Lee promoted, date of Commission 14th Nov. 1793.

Capt. Alexander Cuppage, appointed to the Command of the 5th Battalion of Native Infantry, vice Lee.

The Office of Military Pay-master at Madraspatnam to be abolished, and the Military Payments at that Station, to be made in future by the Pay-master at Ellore.
All Commanding Officers are hereby directed to transmit to the Adjutant General along with their Monthly Returns, correct Lists of the Marriages, Births, and Burials of Europeans occurring within their respective Commands, and the Adjutant General is directed to send such Lists to the Senior Chaplain in the Presidency, for the purpose of being entered in a General Register, to which reference may be had when occasion requires.

SOUTHERN SPORTING INTELLIGENCE

TRICHINOPOLY, 15TH NOVEMBER, 1793

On Monday the 6th January, 1794. A Sweep stake of Twenty Pagodas each (P. P.) will be run for over the Course of Trichinopoly free for all Horses Mares &c. Weight for Inches, fourteen hands high Carrying ten Stone; Seven Pounds for an Inch under or over the best of three Heats twice round. Starting from the distance post.

ON WEDNESDAY THE 8TH,

The hunters plate of two Hundred and fifty Pagodas for all Horses Mares &c. Carrying twelve Stone, the best of three Heats twice round, starting from the distance post.

ON FRIDAY THE 10TH,

The Tanjore purse of two Hundred and fifty Pagodas for all Horses Mares &c. (winning Horses and Arabs excepted) Carrying ten Stone, the best of three heats twice round, starting from the distance post.

N. B. All fair riding: three pounds allowed to Mares or Geldings. The Horses &c. to be entered six days before running, five Pagodas Entrance, the Name and Colours of the Horse to be sent with the Entrance money to the Clerk of the Course.

THEATRE.

The highest expectations are formed, from the known ability and taste with which the Theatrical Entertainment has been prepared, or, if it were not too good for the common theatrical phrase, has been got up, for exhibition this Evening. There is little doubt of its giving the complete satisfaction so generally expected; and the judicious arrangement of the House is so well contrived as to be capable, we understand of accommodating perfectly the numerous audience who are to favour it with their presence. It is supposed that the theatre can contain about 300 persons.

CALCUTTA THEATRE.

THE Entertainments of the evening of the 8th instant, at the Calcutta Theatre, were the CRITIC, and the RECRUITING SERJEANT. Report announces the merit of the Actors, and the delight of the Audience, in the happiest terms.

Mr. LEWIN at the Calcutta Bar, in Sir Pretful, is spoken of with particular discrimination of general excellence; and as “an eminent, and important acquisition,” to the Calcutta Stage.

The school for SCANDAL, was announced for the 23d instant.

A CARD.

The intemperate Commander of the Betsy, begs leave to inform the Author of an Advertisement in the Hircarrab, that his Profession is not that of a News Monger—although the Public may have been disappointed in their anxious expectation of Europe News, he conceives the fluctuation of the Rice Market, of more consequence to him than the gratification of this Settlement.

BENGAL CIVIL APPOINTMENT.

Lieut. Henry Fox Colcraft, Judge Advocate General, vice Captain Kirkpatrick, appointed Resident at Hyderabad.

Lieut. Charles Gladwin, Deputy Judge Advocate in the field, vice Colcraft.

The Bombay fleet, we are informed are safely arrived at Malacca, where they found the ship Sydney Meadows; having a valuable Cargo of Tin, on board.

BOMBAY.—GEORGE DICK, Esq. Senior Member of Council, at that Presidency, has succeeded Sir Robert Abercromby in the Government.

The Command of the army devolves upon COLONEL HOWSON, the Senior Officer. A POST OFFICE—which it is said, will facilitate the communication between this Coast, and Bombay is established at Calicut, under the direction of J. Agnew Esq.

By a CORRESPONDENT account of the Proceedings of the HONORABLE THE MAYOR'S COURT OF MADRAS, on Friday last, the 22d day of November, relative to the Will of the late JOHN HALL—whether the Points there discussed be regarded in a quide consideration, as in respect to Testaments general, or at in the single Testament, then determined—from the magnitude of the question, involved in its public relation—and the importance of the private Interest to be affected in the event of the Decision—the EDITOR perhaps, could not have excused himself to his Readers, if he had suffered an object of such moment to escape without a comprehensive investigation into the attendant Circumstances, and the Particulars of its Issue.

That the EDITOR has it in his power to lay before his READERS, a simple Detail, or that which is substantiated, is owing to the friendly Communication of his obliging CORRESPONDENT; which he hath before—but which, perchance, he cannot sufficiently acknowledge.

MAYOR'S COURT.

On Friday the 22d Instant, came on to be heard before the KING'S ORDINARY, the matter which had so long agitated the Public mind, relative to the WILL and TESTAMENT, of JOHN HALL, Deceased; or, what might be better understood by the generality of the READERS of the COURIER, whether WILLIAM BOGGIE should continue in the discharge of the Office of Executor, under such Will—or, that the Will should be set aside, and Administration granted to certain others, in behalf of themselves, and the Body of the Creditors.

THE BENCH, before whom this interesting Case came to be argued, consisted of—

MR. MITFORD, MAYOR.

MR. ALD. CALL, MR. ALD. ROSS, MR. ALD. WEBB, AND MR. ALD. ROSS, MR. ALD. ABBOTT.

After the Allegations, and Answer had been read, and the evidence in support of them respectively—

MR. CHALMERS, as Junior Proctor, on the part of the Creditors, addressed the Bench, and observed, that from the great object which the question embraced, it had become a matter of much importance, and had been rendered so, by a variety of peculiar circumstances, which had excited the curiosity of the Public, and had particularly drawn their attention to the decision which would that day be given—that the Opponent had loudly complained of harsh and oppressive treatment, because the Court had from the well-grounded representations of a numerous body of people, materially interested in the Administration of Mr. HALL'S Estate, called in the probate which had been granted to him, and had suspended those powers which it was proved he had grossly abused. That as the natural guardians of the Estate and property of those who die in the factories, the Court were bound by every principle of justice to interfere, and that he had no doubt, that interference would be considered as well timed; when it was shewn, that the Prbate was obtained upon the oath of a subscribing witness, who now appeared to have perjured himself; and that this Paper writing was not the Will of Mr. Hall.

THE PROCTOR then proceeded to state the proceedings that were had from the time the Paper Writing was introduced into Court, to the granting of Probate, the circumstances which had induced the Court to issue a citation, requiring the Opponent to return it into the Registry, and to show cause why it should not stand revoked. He would advert first to the substance of the allegations filed, on the part of Propponents and the substance of the answer given thereto on the part of the Opponent.

The allegations on the part of the Propponents, the Proctor observed, consisted of five articles, and that the substance of them tended to shew, that the Testator was not capable of making or dictating a Will at the hour of nine o'clock on the morning of the day, on which he died, the time when it is pretended to have been executed, and that probate had been obtained upon false pretences. That to these allegations an answer of much length was put in by Mr. BOGGIE, upon oath, but instead of entering fairly into a discussion of the merits of the Will, the greatest part of the answer had been filled up with laboured and disingenuous arguments tending to preclude all investigation of this important question; for that, what the Opponent attempted to establish was; that the Will having been proved in solemn form of Law, namely, by the oath of a subscribing witness, the Court had not authority to call its merits again into question. MR. CHALMERS then observed; that more extraordinary arguments than those which the Opponent had introduced in his answer, had never been offered to that, or any other Court of Judicature.

For upon the principles, which the opponent had endeavoured to establish, the most fraudulent Wills would pass as good ones—Forgeryes go undetected, and the most nefarious acts unpunished: and yet the Court were told this was Law and that this Will, of Mr. Hall's, was proved in solemn form of Law and therefore its validity never could again become the subject of discussion.

THE PROCTOR said he trusted that he should be able very easily to controvert a doctrine founded in absurdity, not only by citing cases in direct opposition to the assertion of the opponent, but also by pointing out the facts

Nov. 29, 1793.

and particular solemnities which the Ecclesiastical Courts require—and which must be scrupulously adhered to, before a Will could be said to be proved in solemn form of Law.

Mr. Chalmer, then from Books shewed, that a Will to be proved in solemn form of Law, an executor must have in judgment all parties, who would have interest in case of intestacy, by serving them with a citation, and that if that form was not attended to such Executor could at any time be cited himself to bring the Probate in, and that upon sufficient proof the Will might be set aside notwithstanding a sentence before obtained for it.

He then observed that this form was not attended to in the present instance. The Executor having cited no party whatever, and therefore what had been done regarding this pretended Will, could only be considered as an *Interlocutory* sentence, which the Court had a right to revise.

The Proctor then proceeded to shew that even the mode of proof by solemn form of Law was only definitive, when there had been no fraud, for when that happened a Will might be set aside at any time, and in support of this position he cited 2 cases. One from equity cases abridged, where a Will was set aside, after 40 years possession under it, upon account of the insanity of the testator, and another from Strangers reports, where a Commission of review had been granted after a Will had been confirmed by the Court of delegates, the parties engaged in cooking up the Will having fallen out amongst themselves, by which means the forgery was detected, as well as the perjury of the witnesses. Mr. Chalmer, then observed, that he trusted he had removed those obstacles which the opponent had thrown in the way to prevent the discussion of the validity of the Will, and that the question now opened lay within a very narrow compass. It was whether Mr. Hall did Execute this Will, and if he did, whether he was capable from the derangement of his faculties of making a disposition of his Estate.

The opponent in his answer, had sworn, that on the 20th day of May at 9 o'clock in the morning, when the Will is said to have been made, the Testator was of fine mind, and memory and remained so until 6 o'clock in the evening, and that Dr. Baillie had acknowledged the same. But what was Doctor Baillie's evidence, when interrogated by the opponent. "That he attended Mr. Hall in his Professional Capacity the greatest part of the day, on which he died, between the hours of 7 o'clock in the morning till 8 or 9 o'clock at night. That when he first saw him he was in a very high fever with a tendency to Delirium. That diseases of that nature tended to derangement of the Faculties, particularly in that instance, where Mr. Hall was within a few hours of his Death; that on the morning of that day, he the Deponent required Mr. Hall to recount the nature and Symptoms of his Disorder that he was not collected, for the answers, which he gave were indistinct. He further said that the family or attendants of the deceased did not note the times in which the Paroxysms of his Disorder returned; for that Mr. Hall was in the last Paroxysm, when he the Deponent first saw him, and he further deposed that it was usual for Gentlemen of his Profession to observe and note the state of the Patients mind and understanding, and that he found the deceased very much disturbed in his mind, which on the same day he mentioned to Doctor Betty.

Mr. CHALMERS then stated that the next Witnesses on which the opponent seemed to depend was Mootoo Comaroo a black Doctor; but from him he derived very little support, his Testimony being contradictory of the answer delivered in upon Oath: for the opponent therein swore "that Mr. Hall was in his senses till 6 in the evening, whereas Mootoo Comaroo swore "that he was insensible at 2 o'clock."

The next four Witnesses produced in support of the Will are Pondicherry Soobaroy, Venkatafawmy a Writer, Sawmy a Maty Boy, and Ponnappa a Peon, who, in their several depositions contradicted each other most grossly.

Pondicherry Soobaroy said "that he first saw the deceased about 9 o'clock on the day of his decease, that he was called by Yagambrum, who said Mr. Hall wanted him, that Yagambrum and one Venkatafawmy were then present, and that he was deposed by Mr. Hall to sign his name as a Witness to the Will." He then deposed "that he was not present when the two signatures of John Hall were put to the said Will, but that he was present when the two seals were affixed, and that they were done at one and the same meeting."

Here the Proctor observed there was manifest perjury on the part of Pondicherry Soobaroy, for on the record of the Court on the 28th of May when the Will was proved, the following Oath is entered: "That he, Pondicherry Soobaroy saw Mr. Hall sign this Will." But in his deposition now given. He says "He only saw him Seal it." The Proctor then proceeded to contrast the evidence given by Pondicherry Soobaroy, Venkatafawmy, Ponnappa and Sawmy, and pointed out several flagrant contradictions and gross inconsistencies in their depositions and from which he inferred that no Credit could be given to their Testimony.

Mr. CHALMER then said that he would not trespass on the time of the Court by entering further into the evidence, convinced that he had stated sufficient to establish that part of his Clients case, on which they principally depended. And which was, that Mr. Hall, did not execute this Will nor was he capable of making a Will, at the time when it

pretended to have been executed he being then deranged in his faculties.

The Conviction of this truth, the PROCTOR said he hoped had fastened itself strongly upon the mind of the Court; not only from the evidence which had been adduced, but from the utter improbability of Mr. Hall making a person his executor whom he scarce knew, or leaving to great a legacy to a person of Yagambrum's description—who but a little time before he accused, as being the cause of deranging his affairs, and whom he cursed in the literal terms as appeared by the evidence of Sailer.

Mr. CHALMER then observed, that Mr. Hall, was known to this community to be a good man, one strongly attached to his family, and therefore that if he had had a lucid interval on the morning of his death, and had determined to make a disposition of his estate, it was naturally for us to suppose that he would have done it as beneficially to them as possible; and with as much solemnity as circumstances would admit of. But how had he done it? certainly not beneficially to his family. For he had appointed a person his Executor, who was almost a stranger to him—when if he had made his wife Executrix, it would have been forming a provision for her out of the usual commissions which Executors—and Administrators are by custom in this Country, allowed to charge. True estate should prove insolvent. And again, if there should be any little reversion after his debts were paid, that reversion became subject to the payment of two unnatural legacies, before his wife and Children could have any thing.

Then as to the solemnity in making the Will—There appeared to have been present in the adjoining Room at the time, when it is said to have been executed; Mrs. Hall, her Sister, her Father, and Doctor Baillie—and yet they knew nothing of what was going on. Although by the Opponents shewing it was so publicly done—that no less than five Black Men were concerned.—All these concurring circumstances the PROCTOR observed, carried such weight and conviction with them, that in themselves they would have been sufficient to set aside the Will without the aid of Evidence.

The PROCTOR then said, that he would fit down with expressing his hope, that from what the Court had already heard, and would hear, that they would pronounce against the Will, and declare Mr. Hall to have died Intestate.

Mr. WILKINSON, Proctor for Mr. Boggie, the opponent, arose and observed that the situation, into which his client had been wantonly called had subjected him to adopt a somewhat peculiar mode of defence, partaking of the nature of plea and answer—and he requested the Judgement of the Court, first as to that part which resembled the Plea, and went to the ability of the Court to enter on the merits of John Hall's Will; as it had already established the same, by granting the opponent a probate thereof in solemn form.

To warrant this position he read the Case of Hills versus Mills from Swinburn page 435: which established that the Probate of a Will once made was not revocable, the power of the Ordinary being executed. He then quoted the Case of Sheffield versus the Duchess of Buckinghamshire in Atkyns page 619. The complainant exhibited a Bill for a perpetual Injunction for controverting the Will and Decrees of John Duke of Buckinghamshire after the determinations already had, in which "the injunction before granted was made perpetual."—In the Adjudication of this Case, the Lord Chancellor Hardwick took occasion to advert to the Case of Paine and Streeton when the Court had voluntarily given time to try the validity of a Probate; but said he, "this was from an apprehension of the Probate differing from the original Will." He therefore urged as a variance was not alleged between the Probate and Will, and the opposite Party being far from disavowing it, as appeared by the withdrawing the Caveat, this litigation could owe its origin only to motives, clearly not honorable, and which that or any other Court would not, he was persuaded, lend their aid to sanction. He next quoted the Case of Price versus Parks Sidons page 280 and 2d Levens 157. Cartwright 153 and other authorities from Coke, Raymond, Sidons, and Levens, to the same Point. He continued, that it would be as much for the convenience of the Court, as due in Justice to his Client, to decide on the matter in the way he proposed; as the object would come before them in a more simple form; and perchance, if the Court would take the question in such shape, it would not be necessary to trouble them further, as to the other matters alleged in the allegations. For himself he had little, if any doubt, but the Court would spare him the trouble of entering on the general grounds of the allegations at all, by determining at once that the Will, under the peculiar circumstances that attended it, could not now be tried.

(It seeming to be the opinion of the Court, that the Proctor should go into the Evidence, and meet the case at large.)

Mr. WILKINSON proceeded, and said, as the word *surprise* had been often mentioned and advantage taken of it in the allegations; and as it had been strongly affected by the Propponents, that the Probate had been fraudulently obtained, and under false pretences, and would therefore be revoked, he considered it his duty to free his Client, from these injurious, and unfounded imputations, by shewing that the Probate had been granted by the express desire of the Widow, the Residuary legatee of the deceased, by consent of the Propponents, who had voluntarily withdrawn their Caveat, filed to prevent Probate passing in favor of his Client, who had proved his Testators Will in solemn form—and with the express privity and knowledge of the Court itself, from the circumstance of the Caveat—that therefore, he should boldly assert, fearless of contradiction, that there was no *surprise* on the Widow, no *surprise* on the Creditors—no *surprise* on the Court.

First as to the Widow—for he would read them from Evidence, at which imputation dared not to glance, for he alluded to the Evidence of

Messrs. Lantour and Dupuy; and the first deposes that, after the present dispute began, he had conversation with the Widow of the deceased, on the subject of the Will; who (with tears in her Eyes) said, that she was very much hurt and furnished that the Creditors should undertake to set aside the Will—for that Mr. Hall, on the morning of his demise, was in his perfect senses, and as much so, as any person could be—that she expressed herself to him, the Witness, that she was *easy* and *perfectly satisfied* with the appointment of the Executors named in the Will, and of the Probate being granted to Mr. Boggie.

And Mr. Dupuy, in his Evidence, says, "that he attended Mrs. Hall, the Widow of the deceased, by her own desire, that she expressed herself greatly satisfied that an accommodation had taken place between the Creditors, and Mr. Boggie—by their withdrawing the Caveat they had filed, and that he saw her twice afterwards, and previous to the return of the Citation issued, on behalf of those Creditors, for calling in the Probate; at both which times, she expressed herself, greatly concerned at the report she had heard, of the Creditors undertaking to set aside the Probate granted to Mr. Boggie and her expression on this occasion was, "what? the Will aside?"—Having read from these depositions, he contended, it was a known Rule of Evidence that—"admission by a party concerned in matters of fact, is stronger than if it had been determined by a Jury, and Facts are as properly concluded by admission, as by Trial!"—from this it would appear, more than ordinary presumption to say, that the Widow, at least, could have been taken by *surprise*. Next as to the Propponents, or Creditors—he begged leave to advert to the Proceedings of the Court, on the 28th of May last, and with which the Bench, could not be unacquainted, and they would shew, that the opponent brought into Court, the Will of Mr. Hall, where it was proved in solemn form—that a Caveat was then filed by the Creditors—that on the next Court-day, on the 4th day of June, the Creditors had withdrawn their Caveat,—were these the men, who charged solemnly in their allegations that they were taken by *surprise*? and that the Probate granted to the opponent had been obtained under fraudulent Pretences?—Thus, in this open way had he obtained the Probate, and could any *surprise* be attached to this proceeding? *Shame! Shame!*

The conduct of Mr. Boggie, had been so fair, and open on the occasion, as had made the Creditors who opposed him blush at their own; and had led to the withdrawing of the Caveat. And after what had been advanced on the head of *Surprise*, he observed, it was apparent on the very Countenance of the Court, that it would repel all idea of their having been taken by *surprise*—it would be needless to say that they were not.

It was not contended either in the papers produced in the matter, or hinted at by the Advocate who had preceded him, that there was in Mr. Boggie, any of the disabilities, that could have disqualified him from the office of an Executor—on the contrary it was established by the pleadings and the evidence they had heard, that this obscure man, as he had been called, and unknown to the Testator, stood yet recommended to him for his integrity, ability, disinterestedness, and disengagement from commercial dealings, which left his attention free and entire for the important trust and management of a very embarrassed estate. Where could the Testator, at that late hour of his life, turn his mind to look for an Executor, who could unravel his intricate affairs—for his disease was of short continuance, indeed of a few days—and he never till then suspected but that his disorder was temporary—but on the moment that nature pointed out he was in error, and that he perceived his last glass was running out, and the thought of his family pressed on his recollective faculties, which warned him, that he had named no kind and intelligent friend to protect their interests against the rapacity of Administrators, too frequently influenced in this part of the world—and feeling that it was too late to attempt an arrangement of his extensive and perplexed concerns—what should he do in such a case, but what he did do—to name honest Executors—one his schoolfellow, and long approved friend; for the management of his affairs in England—and the other, the Opponent; with whose integrity as a man, and with whose abilities as an accountant, the deceased was acquainted and which were, besides, truths so well known amongst those who heard him, that he believed there would be no one found, who would have the hardihood to deny them.

But he had been called on to speak to the making of this Will, as well as to the validity, and he would shew, for it was in proof, that the Will exhibited, was the Will of John Hall, and that William Boggie was the Executor.—He then turned to the depositions, and slightly touched on such selections therefrom, as he considered to bear on the making of the Will, and the sanity of the Testators faculties about the hour of nine o'clock in the morning, on the twentieth day of May last, and contending from them, that the Will was fairly executed. But he said, he did not consider it necessary at that time to go more largely into the evidence on the part of his Client, than to shew that the evidence brought against him was totally insufficient to support the premises. And in doing this, it must be observable from the depositions read, that none could have any weight, save that of Doctor Baillie, and he would advert on his evidence, confident that on *that* alone could be

founded any expectations that the Proponent could form from that days decision. And here he affirmed, that he would not leave it to the opposite party to remark, that he had not stated to the Court the *whole* that was against him in this deposition—for he would do it, and he had been cautious to mark and undercore every syllable of it that could seem to bear against his Clients case—wishing it no other success than its own merits claimed. Mr. Baillie's evidence on the part of the Propponents he said, first advanced with declaring that the deceased appeared to labour under the last stage of an ardent fever when he first saw him, about seven o'clock on the morning of the 20th of May, the day on which he died. That he was at times inconsistent in his expressions—and that he shewed appearances of an approaching delirium—that he was with him again about the hour of nine, and that his disease was more increased than when he first saw him, and his intellects thereby more deranged—that he did not believe, that John Hall was altogether of sound disposing memory, at the hour of nine o'clock, but that his faculties appeared to be impaired by the violence of the fever—that he saw him once more between the hours of ten and eleven, and continued with him till three o'clock, and returned in the afternoon, and remained till his death—that on every visit he observed the symptoms of his disorder increased, and the derangement of his intellects in proportion—that Mr. Rudiman was called in by his desire, between the hours of five and six, and that the deceased was totally deprived of his reason and speech before Mr. Rudiman arrived.—The Proctor said, he would now read from the same Gentleman's deposition on the part of the Executor, and therein he deposed that the deceased seemed to be in a very high fever with great debility and a tendency to a delirium—that almost every disease he had been acquainted with, had a tendency to a derangement of the faculties of the patient suffering under it, particularly before death—that the disorder did not attack the deceased in paroxysms, but was a gradual approaching delirium or derangement of his faculties.

From the whole of the evidence of Dr. Baillie, it appeared, that the deceased suffered under a gradual approaching delirium brought on by debility—Of delirium brought on by debility, nothing further could be understood, than that gradual decay of intellect, which almost always when they appear, marks their end.

This definition is indeed confirmed from what Dr. Baillie all along had said—that from time to time, from his first visit to his last, there was an apparent alteration in his Patient gradually approaching to delirium. If the Testator had been in any other stage, where the mind is deprived of reason, he would have said that he was wild, frantic or would have described the nature of his situation in stronger terms. By delirium therefore, as intended to be described by Dr. Baillie, was meant an impairment of the mental faculties by disease, which implies not that activity, which the mind should have, when the body should be in sanity—when, "fit mens sana, in corpore sano" and this under all its shades and gradations, according to the violence and acerbity of the disorder. This, what he would describe, must have been felt by some of those whom he had the honor to address; if ever, unhappily they had been afflicted by severe sickness, and, if so, they would have a stronger internal conviction of what he would impress, from such sad experience, than from any thing he could urge. But perhaps it might be a principal question to be considered—how much possession of mind was necessary to the making of a Will? and as to the Testator in this case, it had been asserted, that between eight and nine o'clock at night, that he was incapable; and this he was not inclined to deny.

But on the evidence of Comaroo and Yagambrum, it appeared, that he was in possession of his understanding between four and five in the afternoon, and they mention the circumstance of his turning his back with readiness to permit the application of a blister, on its being requested of him. And in the outset of his deposition, Dr. Baillie had deposed, that at each of his successive visits, he had found his Patients derangement more visible than at the preceding one.—But when he visited the Testator at eleven, he has this strong emphatic expression, that he was *much worse* than at nine. And the first time that he pronounces him *totally* deprived of his reason, and to his, Dr. Baillie's recollection, also of speech, was at six o'clock in the evening, when Dr. Rudiman was called in. At six o'clock in the evening, then was the point, agreeable to the evidence, when the Testator could be deemed, and only then deemed incapable of making a Will. At three he was competent, for he is not then pronounced void of rationality—nay between four and five, it is absolutely in proof, that he performed a rational act—and as the progress of the delirium was progressive, at eleven he was more competent than at three—but he made his Will at nine, and at eleven, he was *much worse* than at nine—at nine therefore, so far remote from the point, when he was legally unable to make a Will, it was as clear as evidence could be, that he was qualified to execute his Testament, and this was what he contended for. This however he would wish principally to impress on the Court—that nothing less than a total deprivation of reason, and entire derangement of intellect are sufficient in law, to deprive a man of that last sacred right, universally acknowledged, to bequeath and direct his property.

Could there be any doubt on the mind of the Bench, from these Depositions, taken in the most extensive point of view against the Will, that the Testator could have suffered that complete deprivation of reason which the Law inflicts on to invalidate a Testament? But should a doubt remain, he would remove it by reading from the best authority, Swinburne on last Wills, who says—"that when a Man is extremely Sick and that he is nigh dead, yet if it appears by his Gestures and sensible speeches that he is of good understanding and sound memory—In this Case there is no doubt but he may make his Testament—for the integrity of the mind, not the sanity of the Body is required: if the Testator be not able to pronounce his words so plainly and distinctly as he had been accustomed, but scarcely, and with difficulty be understood of such as be present, his Tongue being swollen or become stiff, and he unwell or otherwise disturbed by means of his sickness, yet doth not the Testament therefore lose its force and virtue—"and again, every Person is presumed to be of perfect Mind and Memory unless the contrary be proved. And therefore if any Person go about to overthrow the Testament by reason of Infancy of mind, or want of memory, he must prove that impediment."

"Seeing then that the whole Intent is grounded upon the Madness and Lunacy, must prove the same, it shall not be amiss to set down some observations concerning the manner of Proof thereof."

"First therefore, it may be delivered for a rule, that it is sufficient for the party which pleaded the insanity of the Testator's mind, to prove that the Testator was beside himself before the making of the Testament, although he do not prove the Testator's madness at the very time of the making of the Testament. The reason is, it being proved that the Testator was once mad, the Law presumes him to continue still in the same case, unless the contrary be proved. For like as the Law presumes every man to be an honest man, unless the contrary be proved and being proved, then he which is evil, to be evil still, concerning fury, the Law presumes every man to have the use of reason and understanding, unless the contrary be proved accordingly, then he is presumed in Law to continue still void of the use of reason and understanding. Unless the Testator were besides himself but for a short time, and in some peculiar actions, and not continually for a long space, as for a Month or more; or unless the Testator fell into some frenzy upon some accidental cause, which cause is afterwards taken away; or unless it be a long time since the Testator was afflicted with the madness. For in these cases the Testator is not presumed to continue in his former furor or frenzy."

"Another observation is this, that it is a hard and difficult point, to prove a man not to have the use of reason and understanding; and therefore it is not sufficient for the Witnesses to depose that the Testator was mad, or beside his wits; unless they render or yield a sufficient reason to prove this their deposition, as that they did see him to do such things, or heard him speak such words, as a man having reason would not have done or spoken; namely they did see him throw Stones against the windows, or did see him usually to spit in mens faces, or being asked a question they did see him hiss like a goafe, or bark like a dog or play such other parts as mad folks use to do. This or the like reason (whereby the judge may be induced to esteem the Testator not to be sound of mind) ought the witnesses to yield, although they be not interrogated of the cause of their knowledge. And some there be which hold this for a sufficient reason, if the witnesses do say, I know he was mad, for I did see him mad, although he do not express any particular act whereby such madness may be collected. Further, this Furor or madness may be proved by singular witnesses; so that the witnesses be not singular in time. For if one witness depose of the madness of the Testator at one time, and another witness of his madness at another time, this doth not sufficiently prove that the Testator was mad; but when the witnesses agreeing in time, one depose of one mad prank, another witness of another mad act at the same time, these prove that the Testator was there mad, though they do not both depose of one and the same mad act. If some witnesses depose that the Testator was of perfect mind and memory, and others depose the contrary; their Testimony is to be preferred which depose that he was of sound memory, as well for that their testimony tendeth to the favor and validity of the testament, as for that the same is more agreeable to the disposition of nature; for every man is a creature reasonable."

"It is a Lunatic, or one that is beside himself at sometimes but not continually, make his Testament, and it is not known whether the same were made, while he was of sound mind, and memory, or no; then, in case the Testament be so conceived, as thereby no argument, of Frenzy, or Folly can be gathered, it is to be presumed that the same was made during the time of his calm and clear intermissions, and so the Testament shall be adjudged good."

He appealed to the common understanding of the Court, whether what had been depose to did convict the Testator of any of these melancholy, degenerating acts, which characterize Lunacy? But Mr. Baillie depose that he was not altogether, of sound mind, and understanding about the hour of nine A. M.,—and saying this, he has depose to all, that has been considered injurious to the Testators capacity to make a Will.

But did that evidence convince the Court of the Testators Infancy? Did Mr. Baillie depose that, to the questions he asked him, the Testator said at him? Did he on being interrogated "Eg like a Geese, or bark like a Dog." Did he say that he saw JOHN HALL, breaking windows, or playing those pranks that Mad-men are guilty of? And which are enumerated in the authority cited.—On that part he conceived that he had said enough to destroy the only grounds the Proposers stood on, and on which they relied as tending to incapacitate the Testator.

Mr. WILKINSON then stated, that it was in evidence, on the testimony of four witnesses, whom he named, that the Will had been duly made at nine o'clock in the morning on the day he did.—He trusted that he had satisfied the Court, that the Will could not be shaken—he should however, reserve a right to reply to any other matter that might be urged by the Senior Prosecutor, on the behalf of the Proposers.

* * * The Remainder of the READINGS on this INTERESTING CASE will be given in a SUPPLEMENTARY COURIER of this Evening.

ADDRESS.

TO THE MOST NOBLE

MARQUIS CORNWALLIS,

CALCUTTA:—5TH, NOVEMBER, 1793.

A meeting of the inhabitants of Calcutta, previously convoked by the High Sheriff, was held at the Theatre, when the following proceedings took place:

Mr. Smout, High Sheriff, addressed the Meeting, and explained the purpose for which he had solicited their attendance; in these words:

"GENTLEMEN,

"It is my duty to inform you, that you are convened for the purpose of considering of an Address, to be transmitted to the late Governor General Marquis Cornwallis.—I have no doubt, from the general attendance at this Meeting, that the business of the day will be conducted with cheerfulness and unanimity: And I have only to recommend it to you, Gentlemen, to proceed to the election of a Committee, in whose ability you can confide to determine on the most proper Address for the occasion."

Mr. Briffow being unanimously called to the Chair: Mr. George Johnstone then rose, and spoke to the following effect:

"When I survey this respectable assembly, I feel much diffidence in presenting myself to your notice. Whether I look among those whose valour acquired, and now maintains this extensive empire; or turn my eyes to that Class, whose wisdom has advanced, by such rapid strides, the civilization and happiness of this flourishing Country; I observe persons far better suited to the Talk of Addressing you. Nor should I have ventured on such an undertaking; but from a confidence in your candor, your liberality, and your indulgence."

Happily, to assume courage to address you, is the chief difficulty to be surmounted; for such is the subject on which we are convened, that every generous mind must glow with the same sentiments, every heart throb with the same feelings. Who is blind as not to perceive? Who is unjust as not to acknowledge the merits of that man, by whom we have been so long governed, and through whose genius and virtue, we have seen our enemies humbled, our reputation exalted, our subjects happy?"

To trace the various operations of Lord Cornwallis's wisdom would exceed the limits to which I must confine myself. You have all been sensible of its effects, and many perhaps have observed its progress, with more accurate discernment than I can pretend to; but there are some truths, that repetition cannot render ungrateful, and some actions on which admiration shall never die.

You cannot be unimpressed, that at the time of his arrival among us, our empire was yet in its infancy. The efficient management of the Country had only devolved to us in the year 1770; and tho' the genius of Mr. Hastings, was undoubtedly qualified to devise a permanent system of rule, yet whether from the factions that pervaded our Councils, or other causes, his Government was only distinguished by the fluctuations and changes it exhibited. The talents of Sir John Macpherson likewise, rendered him eminently fitted for his situation; but the dishonesty and infidelity of his power, prevented even an attempt at a permanent system. At this period our finances were also in the utmost disorder. Difficulties reflowed from every quarter, and three years of peace had brought no return of wealth or credit. Abroad our reputation was sunk by the loss of three armies;—and by the peace we had suppliantly sought from Scinde, from the Marattas, and from Tippoo. And tho' perhaps, we have been unjustly reproached with direct violations of the national faith, it cannot be denied, that we had afforded the most reasonable cause of jealousy to every power in Hindostan; and tho' they had granted us a peace, being like ourselves exhausted by the war, that they waited only for an opportunity to overwhelm us."

* The Bombay army, and those of Colonels Baillie and Brathwaite.

Under such circumstances, it might well have been supposed, that to wield the Sceptre of India, exceeded the faculties of a man, who had every thing to learn, at an age when the mind is slow to receive new impressions; but it is the prerogative of genius to make every thing its own, and we soon beheld a splendid instance of its powers.

Though the happiness of mankind depends on the excellence of their civil institutions, our attention is unwillingly bestowed on a recital of their progress; while it dwells eagerly on victories, and on conquests. I will not therefore enumerate the loss, the vexation, and the injury, the people suffered from those impositions, which the rapacity of Eastern Despotism, had established; nor will I dwell on the intuitive manner in which Lord Cornwallis, discovered their tendency, and nobly made a sacrifice of a large revenue to the benefit of the community. Neither will I remind you, how many were the impediments to your commerce, which the narrow spirit of monopoly had authorized. None escaped the discerning eye of this great man; and feeling the substantial interests of the Empire, and the little gains of Monopoly, to be incompatible, and forming the clamours of the interested, he bade you shake free from these judicious measures, to the freedom from the impositions of Eastern rapacity, and the impediments of European avarice; you are indebted for the spirit of commerce, which now reigns among you. Your Indigo Manufacture was matured under the fostering hand of Lord Cornwallis. To him are you indebted for your Sugar trade; that trade which has so rapidly risen to such a height, and promises to rival the skill and wealth of Europe, so long employed in the Western hemisphere. Nor unless he had tempered the severity of the Law, and used his endeavours to break the bounds of the former narrow spirit, would your shores have been visited by those fleets, which now annually enrich you.

But the greatest benefit he has conferred on Bengal, is by giving a property in the land to the Zemindars. Perhaps, it may be alleged, that some rights of this kind were allowed him even by Eastern despots. But of what benefit is a property annually taxed to the utmost of its produce at the arbitrary will of another? Nor, whatever were the abstract rights of the Zemindar, did he reap the fruit of his labour or derive benefit from his possession, until the decennial settlement. The terms of that agreement having now been rendered immutable, he has obtained an indefeasible property in the soil; a measure that will extend happiness and prosperity to the remotest generations, and cause the name of Lord Cornwallis to live in the grateful memories of the people of this country, while time endures.

To complete the great plan his genius had conceived, one thing only was wanting, the establishment of Courts of Justice, which should equally control the Prince and the peasant. This we have now happily seen effected, and in a manner, that leaves us lost in equal admiration of the simplicity and efficacy of the system. How ever the learned may celebrate that spirit which pervades the Shaster or the Hedaya, in practice they were scarcely known to the body of the people. In the annals of the East, we uniformly find the Sovereign exercising despotic power, and delegating the same to each of his officers, and even such as are renowned for their Justice, we behold issuing arbitrary sentences, regardless of the law, and seldom anxious to complete the great plan his genius had conceived. But the great duties of the Father of his people are to enact wholesome Laws, and fill the tribunals with men of wisdom and integrity: so that while he himself seems without motion, Justice shall revolve around him with the silence and order of the Planetary system. Such a phenomenon it was reserved for Lord Cornwallis, to exhibit to the Eastern world.

Equally to be admired, have been his political measures. Such is the lustre which attends the Statesman or the Soldier, who by policy or valour has increased the power and possessions of his country, that the means have been hitherto little regarded. In the East especially, the Justice of that measure whose termination was fortunate, was never questioned. But, Lord Cornwallis, feeling that the ambition best worthy of a great mind was to excel in moderation and justice, determined to leave an example to mankind, of a Statesman conducting the complicated affairs of a great Empire, upon the same rigid principles of honour, which regulated his private conduct. From these principles he resisted every sollicitation to take part in the contests, that had so long wasted the fruitful Provinces of Agra and Dehly, and had left them at our mercy. To the same motives we are to attribute the settlement of the Nizam's ancient claim of tribute for the Circars, after it had been forgotten for twenty years by four successive governments: whilst by the determined and vigorous manner, in which he preferred our claim to the Guntur Province, we proved that a love of justice alone dictated the former measure; and that we were equally determined, to obtain our own rights, as to respect those of our neighbours.

But great as these merits, they are lost in the superior lustre of his conduct of the late war. Here indeed the Politician and the Hero are equally conspicuous. What praise can equal that, which dictated the Treaties of Poona and Hyderabad; or emulate that Prudence, which defeated the practices of one artful adversary, and preserved the confidence and regard of States, hitherto known to us by their treachery only? What reward can compensate the generous resolution to brave the hardships and dangers of an Indian campaign; or how shall a grateful country repay the services, which have enriched and aggrandized her?"

† The Sair, and Gunge duties and the internal customs were abolished by Lord Cornwallis. The last though imposed by Mr. Hastings, were a commutation for the Rahadary duties, a still more oppressive and vexatious Tax.

† In Lord Cornwallis's regulations for the Company's revenues, may be seen how much he has done to lay the trade open to private Merchants.

Events so recent it is needless to detail. The efforts of our troops, and the gallantry of General Meadows, are fresh in the memory of all. Yet our affairs were the most gloomy aspect; a campaign had produced no beneficial effect; the enemy was in our country; and the devastations of the former war had been renewed. The genius of one man was sufficient to produce a total change; and at once to lead us to victory and conquest; and at once I dwell on these scenes, when I behold him placid sipping every indulgence which the season did not refuse, saving the turbulent, encouraging the disheartened, restraining the impetuous; speak for me, and tell how ye triumphed!

Yet what were these triumphs or these victories? Where the glory of others ends, his commences; for, victories are but vulgar achievements compared to the magnanimity and generosity displayed in his subsequent conduct. How exalted that magnanimity which shewed him amidst victory, and spared the prostrate foe? How captivating that generosity which drew acknowledgements even from the savage breast of Tippoo?

Thus, in place of the dark prospect that presented itself seven years ago, we now behold our credit restored, our reputation in arms higher than in the days of Lawrence and of Clive! our alliance courted, and our faith relied on. If we look to the external state of Bengal, we find the contrast still greater: on the one hand, a declining cultivation, a wretched people, destitute of property and of rights, groaning under the stripes and blows of a merciless extortioner; on the other, a smiling country, a peasant happy in the secure possession of their cottage and their field, joyfully rendering to its sacred authority, the price of protection and safety.

I have hitherto dwelt on Lord Cornwallis's actions. I would willingly make a few observations on his character; but the time will not permit. Yet to his Patriotism, that grand and sublime virtue, which disdaining to address our feelings, addresses our admiration; let me offer my homage. Different ages are assumed to different pursuits; and the minds of the present race are turned towards the milder virtues. In him alone are united, the magnanimity and patriotism of the ancients, with the generosity and benevolence of the moderns.

Such is the man of whom we have been deprived.—Yet, while the world is full of his fame, and every tongue is fond to dwell on his achievements, he himself is studious only to excel in generosity and beneficence, in humanity and gentleness; and could he now behold us deploring the misfortune that has befallen us, and enumerating his great and splendid qualities, his victories and conquests, he would exclaim with a Hero of antiquity: "My friends, you forget the most eminent of all my praises, while you dwell on these vulgar advantages in which fortune has so principal a share. You have not observed, that my power was never directed to the injury of an individual, and that no citizen ever had cause to mourn on my account."

If therefore you feel that lively approbation of virtue, which ever dwells in noble and generous minds, and if you admire this rare combination of gentleness and firmness, of moderation and decision, of benignity and patriotism—if you are grateful to the man who has broken the power of the hereditary enemy of your name, who has restored the national character by the exemplary purity of his conduct, who has established a government of Law, where he found only despotism and caprice, you will hasten to present to Lord Cornwallis a cordial tribute of affection and respect. Nor by this act will you reap less honour than you bestow: for with his character and with his actions, it is the just and the good alone that can truly sympathize.

I therefore beg leave to move, that an address be presented to Marquis Cornwallis expressive of the high sense this meeting entertains of his conduct, during his administration of the Government of Bengal, and of its veneration for his private character.

Mr. Johnstone's motion passed unanimously.

Resolved unanimously, that the Chairman be requested to order the draft of the address to be engrossed in duplicate; and that the same shall remain at the Theatre for signature until the 1st day of December next.

Resolved unanimously, that the Chairman transmit the address to the Governor General in Council, requesting that he will be pleased to forward the same to the Honourable Court of Directors; and that they will be pleased to deliver the address to the Marquis Cornwallis, in such manner as they may judge best suited to the occasion.

Resolved unanimously, as a further testimonial of the grateful sense entertained of the conduct of Marquis Cornwallis, during his administration in Bengal, that a STATUE of his Lordship shall be placed in some conspicuous part of this city.

Resolved, that the Gentlemen, who formed the Committee for preparing the address, be appointed a Committee, to superintend and carry the foregoing resolution into effect.

Resolved, that Mr. Bebb be added to the Committee.

Resolved unanimously, that the thanks of this meeting be presented to William Smout, Esq. High Sheriff.

Resolved unanimously, that the thanks of this meeting be presented to the Chairman, John Briffow, Esq.

(For the remainder vide Supplement.)

The Courier.

EXTRAORDINARY.

30th NOVEMBER, 1793.

MADRAS.

SATURDAY, NOVEMBER, 30th, 1793.

We are concerned, that it is not in our Power, to give a more detailed Account of European Affairs, than that which follows—but we have been anxious to put our Readers in possession of the Material Intelligence brought by the GENERAL COOTE, though in the limited and hasty manner that we have been obliged to give it, than to suffer them to wait in suspense for a more ample Communication until another Day—If we have followed a wrong Course, we hope that the rest may be something palliated by the Intention.

The Honorable Company's Ship the GENERAL COOTE, Captain Williams, arrived yesterday, from ENGLAND, which left on the 8th of July—she touched at the Cape of Good Hope, for the necessary refreshments, and failed thence on the 8th of October.

PASSENGERS FOR MADRAS.

Ensign Simpson, 72d Regiment.
Ensign Parr, 73d Regiment.
Mr. A. Fair } Cadets.
Mr. T. Pollack }

FOR BENGAL.

Colonel Popham,
Mrs. Popham
Miss Popham
Mrs. Wade,
Lieutenant J. Wade,
H. Williams } Writers.
J. Donnothorne }

A detachment for His Majesty's 19th Dragoons are also arrived.

The COOTE, and a fleet of ten Indiamen, viz. DEPTFORD, NORTHUMBERLAND, KENT, WARREN HASTINGS, and EARL CORNWALLIS, for Bengal; EARL FITZWILLIAM, and BELVIDERE, for Bombay; and the HAWKE, WALSHINGHAM, and HENRY DUNDAS, for China, were conveyed by the REASONABLE Man of War, and the THALIA Frigate, so far as the Canary Islands.—When from under the protection of the convoy, the whole were left to pursue their several destinations. These Indiamen are what have been so often described and spoken of under the term of the Sugar Fleet.

The accounts brought by the GENERAL COOTE, whatever might have been expected from them, have by no means proved so satisfactory as it had been thought they would.

Continental affairs, from the best information received—appear to have been almost stationary, since the period of the sailing of the *Lansdowne*, and the Ships which accompanied her, from England.

The Prospect of Peace seemed distant, if it were expected to be obtained by subduing FRANCE!—for although the whole Continent had sent forth an Army, reinforced by TEN THOUSAND BRITISH TROOPS, under the Command of the Duke of York; yet had not the Combined Forces been able to penetrate with any marked, and considerable success, into the Country of the Enemy.

The Quota of Troops to be furnished by England, in the proportion of the Confederates, it is said will altogether amount to 36,000 men—of which 12,000 are to be British—12,000 Hanoverian, and 12,000 Hessian.

The National Convention of France, we are given to understand, had been pervaded by new doubts and jealousies; and the Executive Government of course had been retarded in necessary operations. But notwithstanding the prevalence of parties, and the defection of certain of the Provinces, though the event were anxiously to be wished, yet had not the general mind of the Republic undergone any important change—Men, and not Measures, it appeared, were the objects of Distrust—the Levies for the Army being supplied, on all occasions with much alacrity, though the Field, it was known, held out no profit lure and little in expectation.

England, a happy contrast to devoted France, by the general concurrence of accounts, was never more flourishing, never more felicitous than at the time the *Coote* failed—an object of Admiration, if not of Envy to the European World.

The King, enjoyed a full and perfect state of health—the happiest Monarch, in the universal love of his People, of any Sovereign in the World—and in his Kingdom the happiest Man.

That the MINISTER, though it had been said, he was not a War Minister, possessed the voice of the People, in a very extraordinary Degree—and his Majority was increased so much, that the Opposition could scarcely reckon Forty Members on their Benches—and this without the assistance of brilliant victories, not at all times to be insured—but on a confidence of his Virtues, and Talents, which must eventually conduce to them.

LORD HOWE, with fifteen Sail of the Line, completely manned and equipped; lay at Spithead, when the *Coote* left.—There were seven Admiral's Flags flying in the grand Fleet. It was expected that his Lordship would be shortly joined with a Fleet of nine Sail of Portuguese Ships of the Line, and for the arrival of which he waited.

The India-fleet fell in with and spoke the nine Portuguese Ships, on their way to join Lord Howe, which confirmed the circumstances of the report with respect to his Lordships detention at Portsmouth.

NAVAL ACTION.

No general Naval Engagement, we are given to understand, had taken place: a smart action had happened however, between a French and English Frigate, the *Cleopatra*, of forty guns, and the *Nymph*, of thirty eight.—The action was close, the ships being within Pistol-shot of each other during the whole of it, which continued about fifty minutes, and was gallantly and obstinately fought on both sides. The slaughter on board the *Cleopatra*, the French Frigate, was very great, and she did not strike to the British Flag, until her Captain, most of her Officers, and a considerable part of her Crew had fallen. She commenced the action, her Band playing the popular and favorite tune of "Ca ira;" the English with the no less celebrated than loyal tune, of "God save the King!" with three Cheers!

The *Cleopatra* was brought into Portsmouth, and CAPTAIN PELLEW, who commanded the *Nymph*, was afterwards knighted for his bravery and skill in the action. On his landing he was carried honorably through Portsmouth on the shoulders of his Crew.

The French Captain was buried soon after the arrival of the *Cleopatra*, at Portsmouth, with all the martial honors due to his Rank, and demeanor; for the British Tar "wears not with the dead."

LORD HOOD continued in the Mediterranean with a considerable Fleet.

The Dutch, it is said, had only one ship ready for sea, and that not well manned.

Admiral Gardner, with a Squadron, had arrived in the West Indies in the month of April, and favourable expectations were entertained of his success in that Quarter; and information had been received in London, immediately previous to the COOTE's departure, of the Capture of Tobago. From the Knowledge of the Enemy's Naval weakness in the West-Indies, it was expected, that intelligence would shortly be communicated of the capture of several other of the French Islands.

A public subscription had actually been set on foot for the great Leader of the opposition, CHARLES FOX—who had, it is said, condescended to accept of it. The sum subscribed was 70,000 pounds.

The subscription was not spoken of, but in a light the most honorable, both to the proposers, and to the object of it—it was intended as a voluntary tribute for vigilance and

activity in the public service—for an uninterrupted attention for a series of years, to the general safety of the state, and the personal liberty of the subject. A happier testimony to public merit was never exhibited, and perhaps but once equalled; we allude to the well-expressed gratitude of the Irish towards their zealous, firm, and distinguished countryman, Henry Grattan.

PAUL BENFIELD, Esq. is elected Member of Parliament, for the Borough of Shaftesbury, in the room of W. Grant, Esq.

DUMOURIER, the French General, was in England in the month of June; but had been ordered to depart the Kingdom at a short notice. While that extraordinary man remained there, public curiosity had been much excited to see him, and which at some times subjected him to unseasonable intrusions. It is not added, to what place he had retired.

PROMOTIONS.—Lord Auckland, created a Peer of Great Britain, the Earl of Hertford is created Marquis of Hertford, also Lord Portchester, Earl of Portchester. George P. Ricketts is appointed Capt-General and Commander in Chief of the Island of Tobago.

The Earl of Dalkeith elected Member for Marlborough, Lord Viscount Stopford for Great Bedwin, and Alderman Newnham for Luggershall.

The *Phoenix*—Sir Richard Strachan had Captured La Paulin, a French West-Indiaman, valued at 30,000 Pounds.

With respect to New Asiatic Arrangements, Rumour even, had been silent—It was generally credited, that none would be projected, or meditated, until the arrival of the Marquis Cornwallis—an Event anxiously anticipated.

A New Governor for the Presidency of Bombay, though a Gentleman, as nominated to that Office, had been spoken of with seeming certainty, in reality had not been appointed, at the End of June; when we have respectable communication to that point.

It is with peculiar satisfaction, having it in our power, to announce the Arrival of the *Porpoise* and the *Contractor*, in England—the latter passed the General Coote at St. Helena working up for Spithead.—As far as we have been able to learn, the passengers, on both Ships, were all well.

Those, who are well acquainted with the private worth and the integrity of the man—His bold, and politic Government of the East—and here it is not unknown, or unfelt, will be concerned to learn, that the Trial of WARREN HASTINGS yet remains incomplete, and, that he is condemned for another Sessions, and perhaps one after that, for who shall now prescribe an end to the prosecution?—to bear, as he hath borne—"the Law's Delay"—the Influence of Office—and, "the Spurs, which patient merit, &c. &c. &c."

From Amsterdam we learn, that several foreign loans have lately been opened in that city.—One of five millions of Dutch florins for Prussia—one of six for the Emperress—one of two for the Emperor—and one of three for the United States of America, all at the interest of five per cent. except that of America, for which six and a half is stipulated, during a period of ten years, besides a premium of one per cent.

INDIA CHARTER, &c.

On the 28th of May, the Honorable Mr. Jenkinson, the Son of Lord Hawkebury, and Lord Mornington, were nominated, as the two additional Commissioners for Indian Affairs, under the provisions of Mr. DUNDAS's Bill.

The Bill for the renewal of the Charter to the East India Company, passed the House of Commons, on the 28th day of May last—and received not, as we are informed, any material alteration in the Committee, or the subsequent Stages: so that we may recognize it, when it arrives, from the sketch of the features, we have already received.

INDIA ARRIVALS IN ENGLAND.

IN addition to the India arrivals we have to add the Names of the MELVILLE CASTLE, EARL OF WYCOMBE, DUKE OF BUCCLEUGH, DUBLIN, AIRLEY CASTLE, WALPOLE, NOTTINGHAM, ROCKINGHAM, THETIS, MIDDESEX and LORD MACARTNEY.

PASSENGERS ON THE DUKE OF MONTROSE.

Mr. and Mrs. Todd, Lieutenants Reid,
Mrs. Hatley, Brown,
Mrs. French, Doolan and
Capt. Cumming, Gibson;
Mr. Lawrence Shaw quitted her at St. Helena, and embarked for England in the *Eliza*, an American ship.

ON THE NOTTINGHAM,

Mr. C Walker, AND
Lieut. Edmondson Cornet Wymore.

ON THE MIDDLESEX,

Thomas Freeman Esq. late Super-Cargo, —and
Lieut. Bridgewater.

ON THE THETIS,

Henry Crathorne, Esq. who was permitted by the Directors to go out on this Ship to China.

ON THE WALPOLE,

Captain Drummond.

ON THE LORD MACARTNEY,

Lieutenant Mudge, of his Majesty's Navy.

ON THE ROCKINGHAM,

Mrs. H. Cockburn, Mr. B. Terin,
Mrs. H. Kinderley, Mr. Nath. Kinderley
Senior Merchants of Madras.
James Scouler, Richard Kinderley,
Thomas Greenhill, Francis Kinderley,
Eliza Greenhill, Emma Chamier,
Thomas Cockburn, Caroline Chamier,
Children.

The above quitted the *Porpoise*, at St. Helena,

ON THE PONSBORNE, FROM BENGAL.

Master Wm. French, Master Black,
Miss C. French, Miss E. Johnson,
Miss D. Wroughton, Miss A. I. Maxwell,
Master & Miss Hinckman, Capt. S. Cox,
Master & Miss Rutledge, Miss Cox,
Mr. C. Fitzherbert.

ON THE CONTRACTOR,

Colonel Stewart, Rev. Mr. Holfcher,
Capt. More, Mrs. & Miss Darvall,
Lt. Gomond & Lady, Miss Hamilton,
Lieut. Hill, Two Miss Chafes,
Ward, Two Miss Hawkus
Campbell, from Bengal,
Valency,

PRICE OF STOCKS.

JULY 2. 1793.

4 per Cent. Cons. 91½	India Stock	213
3 do. do. 78	do. Scrip.	209
3 do. Red. 77½	Navy Bills	83 dis.

THE CAPE.

When the *Coote* was at the Cape, there were great marks of preparation, against an expected attack in that quarter, by an expedition from the Mauritius. Whether the Governor at that place, had received any authentic intimation of such a plan being agitated, or not, is not known with certainty; it is true, however, that he was more than commonly anxious to put the place in a posture of strong defence.

The state of the inhabitants of the Mauritius, it was reported at the Cape, was very deplorable, from the want of provision.

DEATHS.—Capt. JAMES DUNDAS, of the Earl Fitzwilliam Indiaman.—On the 14th of June, Capt. G. ANSON DUNN, of his Majesty's Navy and Lord Moleworth.

GENERAL CONTINENTAL
INTELLIGENCE.
From late English Prints.

LEYDEN—June 17th. Our accounts from Flanders confirm the report that the besiegers of Valenciennes began their fire against the place on the 13th, at ten o'clock in the morning; and that 278 pieces of cannon are playing against the works. Valenciennes is commanded by General Ferrand, who has with him one of the ablest engineers in France, named Laft. Never were preparations for a siege more formidable than those against the above place. General Ferraris (known to be one of the first engineers in Europe) has the principal direction of them; and under him M. de Frecheville, a French Emigrant artillery officer. The opening of the trenches cost but few lives. Condé is still blocked up, and the commandant has been permitted to send an officer to the camp at Famars to convince himself that the French have abandoned it, and that there is no succour to be expected from that quarter. Life is surrounded, and the principal part of the French army is between Bouchain and Cambray; but whilst the combined armies are in force on that side, which forms the center of their position, the right, where the Dutch army is posted, is continually attacked; and the French increase towards West Flanders, into which province they are continually endeavouring to penetrate by surrounding and turning our troops.

Brussels, June 21. The fire against Valenciennes commenced on the night of the 17th and 18th, with the utmost violence, and was returned with equal warmth by the besieged. The garrison on the 17th made a sally, but were repulsed. The city of Condé follows its example, and is continually firing on our advanced posts. Lille is blocked up by a corps of 30,000 men. The French, in the interim, are fortifying themselves in the strongest manner: the following is the present position; General Cuffine is posted between Douay and Bouchain, his camp is covered by the rivers Scheldt and Confe, which strengthens his positions, and serves to cover all the places of his second line; a second entrenched camp is forming under the walls of Cambray, at which 20,000 pioneers work night and day. This post is known by the name of Caesar's camp; this is the most advantageous of all, and in fact the last resource for the French; this obstacle once removed, the road to Paris is clear. A camp of 20,000 men is also forming under Dunkirk.

London, July 2. No intelligence had at this date been received, of the capture of Valenciennes or of any further progress than noted in the extract from Brussels of the 21st June.

The situation of parties in Paris stands precisely thus: that of the Girondists is deranged at present by the imprisonment and dispersion of its chiefs. The violent party in the Jacobins is at present in possession of all the power, but are deterred from using it by the late rising of the people, and the arrest of their Commissioners.—The forces on their way from the Departments will certainly crush the power of the Jacobins, and restore the authority of the Convention.

The continental papers contain accounts of a numerous series of successes and repulses from Mentz, attended with various kinds of success. But upon the whole, the besiegers do not seem to have made any impression upon the place; further than depriving it of fresh provisions, notwithstanding this, the besieged lately contrived to get two vessels in, out of three, that had come up the Rhine.

From Vienna we learn, that the division of Poland, especially the large share of it that has fallen to the Empress of Russia, is so little relished by the Ottoman Porte, that it seems only to be watching the first opportunity of breaking with her. Others ascribe these new symptoms of dislike to the jealousy entertained by the Turks of having the Empress for a neighbour in the Mediterranean.

The cannonade heard at Mannheim on the 31st of May, was in consequence of an attack made by the French upon the Prussian camp at Eindhoven.—The Prussians, it seems, having been informed of the enemies approach by a deserter, were prepared for them. The contest was long and obstinate.—The loss of the French is not known, but that of the Prussians is said to exceed 1000 men killed, and that of the Austrians 400.—The French made good their retreat to Weissenburg and Laudau.—And as

the armies of the Moselle and the Rhine have since approached each other, their object is thought to be an attack upon Treves.

PARIS.

The capital of France presents a scene the most distressing, from the violence of the parties that agitate it; who are denouncing each other with an almost brutal ferocity. Marat has obtained an ascendancy, and his authority has been upheld in by much bloodshed.

On the 18th of June, twelve public executions took place—greater part of the sufferers were young women, of interesting and engaging demeanour, whose crime it was to have been attached to the Royal cause, or to have supplied money to their Emigrant friends or relatives.

The fortitude of the Demoiselle THERESA MOREAU, a young lady of the most exquisite beauty and mental endowments, was universally admired. The blood-thirsty Jacobin Emisaries, who insulted the last moments of this unfortunate young lady and her fellow sufferers, were answered by her, that *their turn would soon come!*—She refused to receive the Sacrament from the hands of the Constitutional Priest; and, seeing the fatal instrument, made the air resound with the cries of *God save the King!*

It is added, that the *ci-devant* Duc D'Orleans had also suffered by the Guillotine—and the report generally credited.

Cuffine, it was said, was on his road to Paris, having been recalled from the command of the army.

The Populace assemble in great bodies, and become more and more riotous and importunate. They express their detestation of the present state of things, call out for Laws and Government; and in the Hall of the Convention the Legislators are at each sitting insulted by the Gallies.

Yesterday two thousand of the Rioters were apprehended by an Armed Force—a measure which appears to have roused the Citizens of all ranks, who find an immediate decision necessary.

Boulanger, the new Commander General, has resigned, foreseeing too much difficulty and danger, at the present crisis, in the Post of honour assigned to him.

The Departments are in a state little better than of the Metropolis. Marat seems to have renewed the plan of a Federate System of the Southern Provinces. The Sections of that City have got the better of the adverse Party, and co-operate with those of Bourdeaux: many of the Citizens have fled, and a greater number are apprehended and imprisoned.

CONVENTION—June 17th. Marat appeared and declared, that he resumed his functions! (Some applause from the remotest corner of the Hall.)

DUCOS—"I have facts of equal importance to announce to the Convention. The Contractor-General of Marcellis announces, that a whole Austrian regiment went over to us with arms and baggage in Italy; and that 24 ships are just safely arrived in the port of Marcellis." (Applause.)

June 29.

The last accounts from the camp, before Valenciennes, dated a few minutes before the departure of the Courier, mention it as a report, that the French were advancing in force; but that certainly the preparations were general through the camp, either for an offensive or defensive operation.

Advices have been received from the Havannah, that the Spanish Governors of Cuba, Hispaniola, and Porto Rico, were preparing a naval force, with fourteen or fifteen hundred landmen, to attack the French Islands of Guadaloupe and Martinico, where there are powerful parties in favour of a counter-revolution. The people of colour, that is, negroes, mulattoes, mestizos, and other castes, between black and white, would be Royalists to a man, on condition of their being secured in the privileges of free citizens.

THE LONDON GAZETTE
EXTRAORDINARY.

Monday May, 27th 1793.

WHITEHALL, MAY 27TH,

Captain Craufurd, Aid de Camp to his Royal Highness the Duke of York, arrived here yesterday evening, with a despatch from Sir James Murray, Bart. Adjutant General to the forces under the command of His Royal Highness, of which the following is a copy.

"SIR, FAMARS, May 27th, 1793.

"I am happy to have the honour of informing you, that the combined forces, under the command of the Prince of Saxe Cobourge and of his Royal Highness, have defeated the enemy, and driven them from the strong Camp of Famars.

"A body of sixteen Battalions; viz: the Brigade of British, two Battalions of Hanoverian Guards, two Battalions of Hanoverian Grenadiers, and eight Battalions of Austrian Infantry, with six squadrons of British Light Dragoons, four of Hanoverian, and eight of Austrian Cavalry, with a great proportion of heavy Artillery assembled very early in the morning of the 23d, under the command of his Royal Highness. They were to arrive at day break, on the Bank of the Ronelle, near the village of Orrie, to establish bridges to pass the river, and turn the right of the enemy. Another Column of nearly equal force, under General Ferraris, was destined to attack the works, which had been thrown up on the right bank of the Ronelle, and after carrying them to second the operations of his Royal Highness, as circumstances might direct: A column, under the command of General Colledero was employed to observe Valenciennes; another, under General Otto, to cover Quesnoy. The enemy attempted an attack upon the latter, in which they were repulsed, with the loss of three pieces of cannon: two were taken by a detachment of Hussars. A thick fog occasioned some delay in the advance of the troops. Upon their approach to the Ronelle, several batteries were opened from the opposite side, but from such a distance as to produce little effect."

"They were answered, and kept in awe, by the Austrian and Hanoverian heavy Artillery. After some time spent in cannonading, two divisions of Hussars passed the river without opposition, at a Ford in the village of Merthe. His Royal Highness ordered the Brigade of Guards, two battalions of Austrian infantry, six squadrons of British and two of Hanoverian light Cavalry, to pursue the same route, in order to take the Batteries in flank, and secure a passage for the rest of his troops. This movement had the desired success; the enemy retreated from all their posts, falling back upon a redoubt, which they had thrown up upon the commanding heights behind the village of Famars."

"General Ferraris after cannonading for some time, attacked upon his side, and carried the entrenchments by assault.—The troops of the different nations displayed the utmost firmness and intrepidity in this arduous undertaking. The British troops, who had this opportunity of distinguishing themselves, were the brigade of the line; viz: the 14th and 53d regiments, with the battalion formed from their infantry and grenadier companies, commanded by Major General Abercromby.

I enclose a return of their loss. Seven pieces of cannon and near two hundred prisoners were taken in the redoubt. Some squadrons of French Cavalry appearing at this time, and threatening the flank of the infantry, though superior in number, they were attacked with the greatest valour by the regiment of Hanoverian Garde de Corps. The contest was of the severest kind;—the squadrons mixed with one another and the French were defeated though not without considerable loss to the garde de Corps; the regiment had upon that and other occasions three officers killed, and one taken and four wounded, and 67 killed and wounded, non commissioned officers and privates. The rest of the Hanoverian troops lost about thirty five men killed and wounded."

"His Royal Highness advanced with a part of the troops, to a hollow way, within a small distance of the works; but observing from the

disposition of the enemy that they could not be carried at that time without considerable loss, from which no proportionable benefit would arise, he thought it better to defer the attack, till next morning at day break, approaching and turning them in the night.

"The enemy apprehensive of the consequences of such a movement, abandoned the works as soon as it was dark, and withdrew into Valenciennes. This important position is now occupied by His Royal Highness, who has been joined by the rest of his columns.

"It appears, that the French General, foreseeing that they could not defend the passage of the Ronelle, and unwilling to risk the event of a decisive engagement in so confined a situation as that between the Ronelle and the Scheldt made early preparation for a retreat. They passed the Scheldt and were seen marching towards Denain. Capt. Craufurd, Aid-de-Camp to his Royal Highness, observing a column of baggage, which was proceeding towards the river, took two squadrons of the 11th regiment of light dragoons, though the convoy was at that time rather in the rear of their own works, and attacked and dispatched the troops who escorted it, killed and wounded between fifty and sixty, took fifty-six prisoners, and eight waggons and thirty horses. The enemy advanced in force from the Camp, and attempted to cut off this detachment; they however, effected their retreat: with the loss of only three men killed, and three horses. The enterprise and good conduct of Captain Craufurd on this occasion, as well as the behaviour of the men and Officers of the 11th regiment of light dragoons, has been highly approved of by his Royal Highness.

"General Clairfait, upon his side, attacked and carried the heights of Anzain, a post of the utmost consequence, which to a certain degree overlooks the citadel of Valenciennes, and which completes the investment of the place.

"In this manner with a loss of men, which must be deemed very inconsiderable, when compared with the object which has been attained, have the enemy been obliged to abandon a position upon which they had placed great reliance, which they had occupied long, and fortified with care, and to leave Valenciennes and Condé to their fate."

"In the variety of attacks which took place I cannot at this moment wait with precision the loss upon either side; that of the combined armies is very small upon this side of the Scheldt, not above 250 men killed and wounded: that of General Clairfait's corps by Anzain, was more considerable than any other, and equal perhaps, to the whole. That of the enemy was unquestionably much greater."

"Captain Craufurd who carries this letter will explain any further particulars of which you may be desirous to be informed."

"I have the honor to be, &c.
(Signed) "JAMES MURRAY."

THE RIGHT HON. HENRY DUNDAS, &c.

MADRAS THEATRE.

The THEATRICAL REPRESENTATION last Night, corresponding with our anticipation, went off with unusual *Eclat*—The *Comie Scener* of Sheridan, received every possible interest and heightening from the Effect of happy delivery and appropriate action—and it might be added, from the assistance of some of the prettiest Scenery that an Indian Theatre had been accustomed to.—Our leisure at this time, we are sorry, will not permit us to speak of the separate merits of the *Dramatis Personæ*, but in a general word, we do not believe that, "out of London", the Characters could have been more happily sustained.

Previous to drawing up the Curtain, Mr. Lindley delivered an apposite Prologue, with very peculiar Address.

The Audience was brilliant as well as numerous—and Sir Charles and Lady Oakley the *Hoflage Princes* honored the Theatre with their Presence.

Before the Audience retired, the "Road to Ruin" was announced for the next Representation.—on the 18th of December.

The PUBLICATION of the SUPPLEMENTARY COURIER, from the Length of the LAW REPORT, and from the Urgency of the Occasions, is unavoidably postponed until TO-MORROW.

FOR the retarded PUBLICATION of the SUPPLEMENT, until this day, some explanation may seem due from the EDITOR to the SUBSCRIBERS; and he requests, that their indulgence will lead them to look for his apology in the COURIER EXTRAORDINARY, and the length of the subsequent Report.

LAW REPORT.

(Continued from our left.)

Mr. Hall, the Senior Proctor for the Creditors, entered the audience of the Court while he spoke to the question before them, and entered somewhat at large into the various points that branched from it, and he would take them up as they presented themselves with all their combinations and inferences. He conceived it the most important question that ever was agitated in that Court, and from a variety of considerations required more than common attention. It had been the subject of much public discussion, and reports, unfounded in truth, and which had been industriously circulated with a view to raise a prejudice against his Clients. He had therefore to hope that the Court would consider it both equitable and just that he should by fair and candid arguments, drawn from facts, and supported by reason, endeavour to shew in the full and most particular manner in his power, that his Clients had been under an indispensable necessity of adopting the measures they had pursued, in appealing to that Court, in order to secure and protect their property and to demonstrate, which he should be able to demonstrate to the perfect conviction of the Court that the Opponent was not, as he pretended, the Executor of the late Mr. John Hall, and that the paper writing which he had brought forward, as Mr. Hall's Will, was a mere fabrication of deceptions.

The Court had the paper writing before them, which was declared to be the Will of Mr. Hall, may a witness had come forward on the 8th of June last, and upon his oath, taken in open Court, had averred that he saw the deceased sit on the 1st and upon such Testimony the Court were pleased to grant probate to the Opponent. This circumstance had been declared to the world, and doubtless carried with it great weight; people concluded from it that the proceedings of the Creditors against the Opponent were arbitrary and illegal, and that the Opponent was an oppressed and injured man—they imagined that a Will thus established ought not to be set aside, and the attempt was big with various consequences. They could not have entertained an idea that the Court were not to be deceived by fraud, and that the witnesses could have been supposed to fallhood for the purpose of giving it validity; but such was the fact.

A Will, he said, was, and trusted ever would be, regarded as a most solemn act; and an Executor appointed under it, claimed indulgence, and the Law gave him particular privileges. A Will was frequently the last act of a dying person, by which he disposed of his property, and by which means he made a provision for his family; for those who were dear to his recollection, and entwined round his heart to his last moments—whilst memory and reason held their fair. And it was a consolation in those agonizing moments, when he felt he was about to be severed from them for ever, to know that he had arranged his affairs in the best possible manner for their benefit, and as far as his power would extend, secured to them the possession of their respective rights and guarded them against the interruption or interference of strangers. And to give effect to his benevolent intentions, and secure the object of his wishes, he appointed some one from amongst his nearest relatives, his most particular friends, or intimate acquaintance, to discharge the important duty of an Executor—some one in whom he knew he could confide, one whom he was fully persuaded would act for his benefit, and who was no more. And, impressed with these sentiments, and feeling their utmost force and effect, he hoped it would never fall to his province to disprove a Testament that contained the Will and intentions of a deceased person, executed at a time when in the full possession of his intellectual faculties, and capable of knowing what he said or did. He, Mr. Hall, might be led into the adversariously but never from design; no interest, no consideration should ever prevail with him to pursue a measure so highly obnoxious to every man possessed of the smallest degree of feeling.

Thus, he proceeded, whilst even a partial regard was shewn to the Will of a deceased person, from principles of tenderness and humanity, and when Law and Nature had taught us to regard as a thing sacred and inviolable; on the other hand the indignation of the Court must be raised to the utmost height when they beheld an instrument brought forward with all the solemnities of a real Testament, and declared to have been duly executed by the Testator at a time when, he was deprived of his senses; in that melancholy situation, immediately preceding his dissolution, when he was no longer enabled to recognize those whom he had tenderly loved, from those who were different to him, or those whom he detested—an instrument framed by the behest of men, to answer the vilest purposes, to enrich themselves at the expense of the Widow and Children of the deceased, to conceal perhaps some infamous transaction in which they had been concerned, and by which the Estate of their deceased master had been greatly injured. The Court must shudder at and reprobate the very idea—as all good men must execrate the atrocious act—the Law abhorred it, and must severely punish the abominable perpetrators of it—and were such acts to be passed slightly over—who would be safe in his property?—a man could never be assured that his dearest connexions would, after his death, enjoy the fruits of his labours or that they might not be reduced to a state of misery and wretchedness. He would be led into

apprehensions, that men who had reasons to imprecate as the cause of a train of misfortunes, he had experienced, would nominate themselves his legatees, and that strangers with whom he had held no manner of intercourse would be appointed his Executors—Such reflections would imber his last moments, and add poignancy to the pangs of death. Such a Will—such Legatees!—and such an Executor! you have now before you—and I am convinced that if we had not examined a single Witness, the Fact would have been sufficiently apparent, from a concurrence of circumstances, to secure the judgment in our favor—circumstances, that I must entreat your permission to bring forward before I speak particularly to those parts of our allegations that are supported by the clearest testimony of unexceptionable Witnesses.

The paper he continued which had been let up as the Will of Mr. Hall, was in the hand writing of one Yagabrum, one of the Legatees therein named, and it was by way of argument to be supposed that it was dictated by the deceased: may an attempt had been made to shew that such was actually the case. But Mr. Hall, although a man not possessed of brilliant talents, possessed as it was well known a good understanding, and of considerable portion of abilities—and of this there were the strongest proofs—by his having raised himself by his merits to some consideration in the community, and his offensive concerns amounting to many Lacks of Pagodas shew, that he must have been a man of Business. And that he was a man in whom men of judgment and amongst the first characters in the settlement placed the greatest confidence, and of whose honesty and integrity they entertained the highest opinion was indubitable, or it should be disputed the Bonds then before the Court will stamp the necessary conviction, and was it to be supposed that such a man would dictate such a Will, as this?—[shewing the Will]—The most ignorant man, one who was scarcely able to write his own name, could not have dictated greater nonsense. It was in the past tense—it was absurd, it was inconsistent. It was in the English Language and of something like form, to enable him to perform the bungled task. But Mr. Hall's Wife, his Father in Law, and Sister in Law were in the next room to him, and all of them could write English, his Wife writes it remarkably well, taught by himself, and to whom could he so properly commit the secrets of his bosom and the wishes of his breast? He the Proctor was his next door neighbour, and with whom he had always lived in terms of civility—Doctor Baillie, his Physician, was in the room with him when Yagabrum brought in the ink and the paper then in question, and if he had been disposed to make the Will, and capable of doing so, he would have asked Doctor Baillie to write it for him, and he had been attended to a Physician, this certainly would have done, as he must have known the importance of Mr. Baillie's testimony to a Will made at such a moment,—again there was nothing in the paper, except the legacies to Yagabrum, and his confederate Saway, but might not only have been made known to his family, but to all the world—where then was the necessity, for the clandestine manner in which this Yagabrum appeared to have acted—and was it reasonable or probable that Mr. Hall would call in a native Malabar to make his Will in a language which he must have known he did not understand, when he might have had the assistance of those, who could have given him every satisfaction and have expressed his intentions accurately to his willies.

If Mr. Hall could have been desirous of making his Will at such a time and in such a hurry, as the Deponent pretended he did, it must have been from a conviction that his end was fast approaching, and under a presentiment that he should have time only to write a few words. It is his a fair conclusion, let the Premises be examined. Mr. Hall was a tender husband, and a tender affectionate parent, and his Wife and Children, as the dearest objects of his thoughts, would of course have been the first objects of his consideration. But here, it was to be observed, that his whole time and attention, contrary to reason and nature, was taken up in making specific bequests to two native servants: His Wife barely noticed, at the bottom of the paper as his residuary Legatee, and no mention whatever of his Children. Mr. Hall must have known that his Estate would do very little more than discharge the claims on it, and the surplus, if any, would be very trifling, and yet he appears anxious, only, to provide for two servants, and leaves his Widow and Children to Chance, making her the residuary Legatee to Nothing!

He next said, that he had endeavoured to shew to the Court, that Mr. Hall was acquainted with men of worth in the Settlement—Men of business in whose honor and probity he well knew he might fully rely—Men, with whom he had been in the habit of dealing. With Mr. Lantour, in whose office the Opponent is a Clerk, he had long lived in close intimacy and friendship. And was it then within the limits of probability that he should have declined nominating any one of those Gentlemen—that he should have declined nominating his intimate friend Mr. Lantour as his Executor, and should have fixed upon the Opponent, a person with whom he had no manner of acquaintance or connexion—one who, as a servant to another, he might have concluded could not spare the time necessary to the management of his Concerns, even although he might be inclined to undertake it, which he by Mr. Hall had no right to expect would be the case. As an honest man, Mr. Hall would not have appointed such a person his Executor, over a property of many Lacks of Pagodas, in which the fortunes of numbers of his Creditors were involved—A man, unknown to himself, and unknown to the Settlement! an obscure Clerk in a mercantile Office—And again it was to be supposed that Mr. Hall would have joined his Wife in the Execution, whoever he might have appointed for the active part of the duty—by such means he would have secured to her half the commission, which would

have been some kind of a certain provision for her and a numerous family, and upon 350,000 of Pags. It would have been something handsome, and it was the whole he could have reasonably calculated on, that would come to her hands from his Estate. As things were, it would appear that Mr. Hall's only thoughts, in his last moments, were to enrich Mr. Saway, whom he knew nothing of, and two native Servants, for whom he could have had no more than a common regard, at the expense of his Wife and Family, whom he tenderly loved, exposing them to the risk of suffering poverty and distress—The whole transaction was too absurd, and preposterous, to be reconciled with reason, too inconsistent and unnatural to gain the least credit. It was a delusion, all planned and well executed, by persons who seemed capable of designing any infamy but who fortunately, were deficient in those abilities, necessary to ensure success.

Mr. Hall observed, that having thus taken up the Will, and shewn he trusted, without the aid of a single Evidence, that it was a fraud practised by that wretch Yagabrum, and his confederates, with a view to plunder the Estate of his deceased master, and wrong his widow and children, He should proceed to the Allegations of the Proponents, and the answers of the Opponent, and shew how each had been supported by the respective witnesses, brought forward upon the occasion, and in doing so, he might perhaps have some time to spare on the arguments he had already made use of, as the matter of suspicion, and matter of fact were closely connected with each other that they rested on the same grounds, and were governed by the same circumstances.

Much had been said and great stress had been laid by the opponent on the conduct of the Creditors of Mr. Hall, in withdrawing a caveat which they had filed at a very early period, to prevent probate from passing the Seal, and an inference had been drawn, that they had so drawn their caveat upon a conviction, that there was no defect in the will. This was indeed a weak and very immaterial opposition to the allegations of the proponents, his clients, something in substance similar to the *Prope*, which for a long time past had blurred the pages of the *Hincarrab*, and libbered with the name of the opponent; but as it might be expected that some notice should be taken of it, all that seemed to him, that could ought to be suggested, might be comprised in a very few words, and were it not that there were numbers around him, who might have received an unfavourable opinion of the cause of his clients, founded on the artful insinuations of the opponent, and as he wished that every one, who heard him should be convinced, that neither his client nor himself, acted either injuriously or illegally; but on the contrary they might have pursued the beaten paths of custom and precedent, and that taking the Caveat off the file upon a former occasion, had nothing to do with the present contest.

When the Creditors filed the Caveat, it was not in all probability to dispute the validity of the Will: They had no connexion with Mr. Hall, or his family, further than lending their Money to him, and they were altogether strangers to the opponent. How then were they to know the secret transactions of his last moments? Or whether he had not appointed the opponent his Executor, as his warmest Friend, and most intimate acquaintance, or that he was not in the full possession of all his mental faculties at the time when the pretended will was said to have been executed? The obvious reason, then, which governed the creditors in filing their caveat, and which he would presume to aver was the true reason, was to oblige the opponent to give security for the due performance of the duty which he was about to enter on. And when it is considered that the Estate was indebted in the enormous sum of three hundred thousand Pagodas, and that the opponent was a person whom no one had ever heard of—a writer in the office of Mr. Lantour, and consequently not supposed to be a man of any property: it surely could not be held unreasonable or extraordinary that the Creditors, so deeply interested as they were, should have pursued every legal measure to secure their fortunes from ruin. The opponent did not then appear violent, he did not then hold the Creditors at defiance. He was all submission, humility, and entreaty, in short he was all means by his artifice and plausibility, by his fair promises and sanctified exterior, to cajole the Creditors, they with draw their caveat and he then treated them with derision and contempt.

Some time afterwards when the Creditors found that the opponent had eighty thousand Pagodas in his hands, assets belonging to the Estate of Mr. Hall, and that he refused to divide it amongst the Creditors, and laughed at every representation they made to him upon the subject, they began to entertain very serious apprehensions for their property, and judged it expedient to call in the assistance of professional men, and they then were informed for the first time—that the pretended will, under which the opponent had acted so despotically as a nully, and might, and ought to be set aside.

There were the reasons that induced the Creditors to withdraw their Caveat, and those which prevailed when they appeared before the Court, praying that the probate might be called in, and the Will be set aside, and he trusted they would appear to the Court, and to the world very different to the cause assigned by the

opponent in his malevolent and groundless representations to the public.

The opponent had said that he entered on his office of Executor in the most notorious and public manner (to wit) by public and private advertisement that he received a considerable sum of money and did a number of other acts and things, and therefore, and as he had obtained his probate in solemn form by the Oath of the subscribing Witnesses to the due Execution of the Will, he thought the probate would not be annulled.

That the opponent had acted in a notorious manner was ready to admit, and he should have chosen by and bye to treat the notoriety of his actions at large, he admitted also his public advertisements, and he thought they ought to make him blush for his conduct. And with regard to the proof of the Will by a witness, he would shew that the witness, like the Will, was all falsehood.

But what had these matters to do with the question before the Court? it was not the acts of an Executor, nor he proving of a paper called a Will, that would deprive parties, who were interested and conceived themselves injured by it, from calling it into question, nor prevent a Court of justice upon the proof of fraud, from setting it aside.

Here the Proctor quoted a variety of authorities, and said, that Wentworth, in his Executor, speaking in general terms as to making void of a Will, says in part 1st, page 48—"if there be fraud in the proof, yet may it be in a spiritual Court be undone." And *Roger*, page 68, says "A Creditor may file a caveat to prevent probate passing the seals, therefore Creditors may contest a Will and consequently, they may call in probate where fraud is discovered."

But it might, he said, that after probate, the Will cannot be questioned—Here it would be necessary to shew, that a probate is merely the proof of a Will, and to be made use of in the temporal Courts, and may be suspended—Holt 1. Raymond 745, and 1st Salked 36; and therefore if the Will is a fraud, the probate is null and void.—Approbate concludes a person from saying there is no Will; yet to plead such a Will, was proved, is no reason why it shall not be tried, and the question "Will or no Will"—is triable by Jury, 1st *Yeare Wilms*, 287, 289—2d *Vin. Abr.*, 65, In *Dorland and Bait*, page 125, acule was determined in 1780, which shewed that probate was obtained of a Will, and that the Executor acted under it, and that it was afterwards set aside as the Will was proved to be forged—Again it might be said, that a caveat was filed by the Creditors, and afterwards withdrawn, and that therefore the Will cannot be again disputed—He would read from *Vefey*, 119, and 284—In the time of Lord Hardwicke, the strongest case was determined: the next of kin had not only been cited to see the Will proved, but he gave a warrant of proxy to the granting of probate, and the Executor made conveyances of property, and did a number of other acts and things, and yet the probate was afterwards set aside, and the party reprobated in the most forcible terms, by his Lordship, and it is laid down in the Books, that a Will may be disputed after twenty years, although proved by witnesses—according to 1st Raymond, 262. And the Court, where they entertain doubts of the validity of a Will, and had been taken by surprise, granted.

And although Wills gained by fraud, and proved in the spiritual Court, are not controvertible in a Court of equity, yet if a party claiming under such a Will comes forward for aid in equity, he shall not have it, and a Court of equity will decree a Legatee to hold his legacy obtained by fraud, as a Trustee for another—and upon a plea of infancy and proof, an Executor cannot recover, Second *Vern.* 76—1st *Vefey*, 219, 284—*Vernon* 23, 76—*Jacob's Dist. Tit. non Sane*.

Now as to the interest of Creditors, he had shewn what Wentworth had said in general terms, as to making a Will void, and he had also shewn, that Creditors may file a caveat to prevent probate, and that therefore they could, as well as the next of kin, dispute the validity of a Will.

He would next proceed, and shew from 1st Raymond, page 262, that all parties entitled to administration, are to be cited, where the Court entertain doubts of a Will—The law says that Creditors are entitled, and therefore they are parties interested—and therefore if they came to the knowledge of a fraud, and the next of kin or the Legatee will not take notice of it, surely the Creditor may and ought to do so. In insolvent Estates, the Legatee or next of kin, may judge it, both improper and imprudent to interfere in a Will, although he may be convinced, that it is a forgery, for this very good reason, that he might lose, without a possibility of gaining by it—and in such cases, and as an Executor might be an out-law or a felon, the Creditors alone are the interested persons, and it is a duty they owe to themselves, and to the community at large, to see aside such a Will, and prevent the administration of such Executors, and to this point, 2 *Morgan*, 301—and what holds good in one

case, as to the abstract question, of who are interested in disputing a Will, must hold good in all cases—and the Legislature seem to have considered Creditors to be the most interested, for in taking an inventory, the Executor is required to call in two Creditors, and where there are no Creditors, then the next of Kin. Twenty-first of Henry, 8, c. 1, and 2d Morgan § 9.

The Proctor remarked, that he was sorry to have taken up so much of the time of the Court in citing the Cases preceding, nor should he have done so, had not the Proctor for the Opponent, laid so much stress upon the Subject. The Proctor then resumed.—It was not therefore whether the Proponents ought to have contested the Will when the Caveat was on the file, but whether the paper writing, set up as a Will, was or was not a true Will—that was the question to which the judgment of the Court was required. And if the Opponent had failed in his proof, that it was duly executed, and that Mr. Hall was at the time found and disposing mind, memory and understanding—and if on the other hand it was proved that Mr. Hall was delirious at the time the pretended Will is said to have been executed, and that the Opponent in his attempts to support it, had brought forward witnesses, who had perjured themselves, and that at himself in the Eye of the Law perjured, the Proponents then with justice on their side, would look forward to the Courts decision in their favor and not otherwise.

The Opponent had said, that upon the receipt of the exemplification of his probate, Mr. Bird, the pretended Executor in England, would proceed upon the Trust reposed in him. He did not know what Mr. Bird might attempt; but he would tell the Court what he could not do. He could not make use of the exemplification issuing under the Seal of that Court in any of the Ecclesiastical Courts in England, and were he to produce it in any other Court, for a legal purpose, he would be considered, as an unfortunate person deprived of his senses.

The Opponent had referred to the Court for proof, that the witness, deposing to the Execution of the Will, did declare that he did see the paper writing signed, sealed, published &c. by the said John Hall, as and for his last Will and Testament, and the opponent had told the world so, and upon this ground had most unfairly and illegally endeavored to create a prejudice against the proceedings of that Court. However the Court would perceive that the witness had himself declared, that his Deposition was a bare falsehood, an errant imposition, and that in his endeavors to promote the views of his Patrons, he had committed a crime against the Laws, and perjured himself.—Had not the Opponent been conscious that his cause was rotten at the core, he would not as he had done, have appealed to the public; but have waited patiently the determination of that Court upon the full evidence to be brought before it: he would not by sinister means, and groundless assertions have attempted to prevent a trial.—He now meets his just reward, the shame of having asserted untruths, and the disgrace of having brought forward a perjured witness to support them.

The Opponent in answer to the Proponents first Allegation had said, that his Testator was of sound memory and understanding &c. at nine o'clock in the forenoon of the 20th day of May, the day on which the pretended Will is said to have been executed, and declared in the most unqualified and positive manner that he continued to be and remain of sound and disposing mind, memory, and understanding until the hour of six o'clock in the afternoon of the same day.

Here was a palpable falsehood, established by the Opponents evidence; but he must premise with suggesting, that when a man declares positively to a fact, not within his own knowledge, although it might be that the fact is deplored to be really true, and when such fact is material to the matter at issue, it is held to be perjury.—In the present instance, the Opponent could not have known the fact of his own knowledge, as he was not present at Mr. Hall's House at any time of the day on which he died—and that it was false, is in proof by the Testimony of his own witnesses. Doctor Baillie, deposes that Mr. Hall was delirious from seven o'clock in the morning, and that the delirium gradually increased until he died, without any intermission.—He was in his last paroxysm says Doctor Baillie, when "I first saw him." And Mootoo Comara says, he began to lose his senses at two o'clock in the afternoon. Nor was that the only bold assertion by the Opponent which he had just noticed—for in answer to the third Allegation he had sworn positively, that the whole of the paper writing before the Court, was the last Will and Testament of Mr. Hall.

In answer to the fourth allegation the opponent had told the Court, that the Legacy left to Yagambrum, the old and faithful Servant of the deceased, and to Samey his confidential writer, was from policy and from a probable knowledge he might have had of two Legacies, nearly similar, left by Mr. Jos. Garrow in favor of his native servants who had the care of his affairs; for his Legacies to be paid in case certain books of accounts were brought up at a given time.

Wherein the name of common sense was the similitude between these Legacies? He defied the opponent to shew it in any other manner, than that they both were Legacies given by Europeans to the native Servants. The Legacies left by Mr. Garrow were indeed wife, and political—they depended upon the express condition, that the Legates should perform a certain duty after his decease, which other persons perhaps could not have done—and

they were to perform it, that was, they were to bring up his Books, in a given time.—In the case before the Court, there was no duty imposed, nothing required of the Legates to be done, for the reward they were to receive.—Where then was the similitude? They were together left a legacy of one and an half per Cent, upon the whole of the fortune of the deceased, which taken in the gross, might have amounted to 350,000 Pags. so that the Legates would have had to receive about four thousand five hundred pags, and no person could inflict on their doing any one act for the interest and benefit of the Estate from whence so large a legacy was to be taken: Where then was the wisdom, where the policy of the Bequest?—On the contrary it was impolitic and absurd, when every circumstance was considered it would appear unjust and unnatural also. Mr. Hall when he possessed his reason, must have been well acquainted with the embarrassed state of his affairs and been thoroughly sensible that it would without the incumbrance of Legacies, do very little more than pay his debt and he took care that his family should not derive any advantage from the surplus—so that he gave specific Legacies, by way of percentage, to two Servants, so that he was intent only, as it would appear, by the opponents shewing, to provide for those Servants and leave his wife and children to beggary.

Mr. Hall went on and requested—that having examined that point, by which he had shewn the absurdity of the opponents statement, and his misrepresentation of facts regarding the Legacies in question, he might be permitted to call the attention of the Court to the Legatee, who was emphatically denominated the approved servant of the deceased. It appeared by the testimony of Salder, produced on the part of the propensors, and cross examined on the part of the opponent, that this faithful and approved Servant, and to whom so large a legacy is bequeathed, was regarded by the deceased, in his lifetime, as a base, designing wretch [and he read the deposition to that point] and that so far from being a person, to whom he could entrust the management of his accounts after his decease, he knew he had embarrassed and thrown them into confusion, during his life time, and that he had done so from intention.—The natural and only conclusion that could be drawn from the premises, was that the Will must have been forged for the purpose of increasing the fortunes of the Legatee, or that Mr. Hall must have been insane, not knowing what he did when he executed a Will, by which such Legacies were bequeathed. But he hoped the first conclusion was too well founded in evidence to be controverted.—The Will was an infamous forgery—the last effort of a set of base plunderers, in the dying moments of their master, and benefactor, to rob his Estate, and regardless of every consideration for his Wife and Family, were thoughtful only to carry their villainous designs into execution with effect—and trampling upon the Law, and in defiance of its punishments, they had brought forward witnesses who had wilfully and corruptly sworn to that which was untrue, and in doing that, they had demonstrated, that the opponent had sworn falsely also. Nor did he venture the foregoing assertion upon inferences drawn from facts; but upon the facts themselves, the evidence of Soobaroy when proving the Will in Court and afterward upon the issue—the contradictions between S. Soobaroy and Sawmy—the testimony of Dr. Baillie and Dr. Betty.

The opponent had called upon the Court to protect the Will and the Widow and Children of the late Mr. Hall.—Here was an appeal to the feelings of the Court, to their humanity and benevolence: but how different was the ostensible objects of this appeal, to those that were hidden. Were it possible, that the paper could be established as a Will, were it possible that the Opponent could again act as an Executor, what advantage would the Widow and Children derive?—She is the residuary Legatee of an insolvent Estate: there are Servants of the deceased, who, as specific Legates, would come in before her and her children, who would run away with what would have been the residue.

The Opponent should therefore have said—"Aid my own unfeeling purpose—protect my five per Cent Commission"—by which means, and the advantages of holding large sums of money for a considerable space of time, enable me to realize a fortune of twenty or thirty thousand Pagodas for the residue of the objects of the Opponents prayers; although he had not tender enough to confess it. Mrs. Hall would fortunately find a better support in herself and in the kindness of the Creditors, than in this man of sentiment and feeling—who would join in the Administration of her husband's Estate, and receive the emoluments that were to be derived from its emoluments which the Opponent would himself have pocketed.

The Opponent had declared in the most unequal terms, that he would prove, that Doctor Baillie, who attended the deceased, on the day he died, did to various persons express his belief that his Patient was collected, and in the possession of his understanding. Here the Opponent had sworn to an untruth. He had interrogated many persons to this point, but what was the result?—Doctor Betty says, that Doctor Baillie, on the contrary, informed him, that Mr. Hall, was deranged.—Doctor Baillie was examined, and declared, that Mr. Hall was in a delirious state from the first time he saw him, which was rather earlier than 7 o'clock of the morning, on which he died, and that the delirium gradually increased until he expired.

The Proctor then took up the evidence of the opponent, and contradicted the depositions of the different witnesses, to demonstrate that they had contradicted themselves, and this he did at some considerable length, after which he spoke to the deposition of Doctor Baillie; a Witness produced on the part of the opponent, wherein Mr. Baillie deposed, that he required of Mr. Hall, in the Morning of the day on

which he died to explain to him the nature and Symptoms of his disorder: that the deceased did not appear to be collected, as the answers, which he gave to the Questions asked by the deponent, were indistinct—that he was in the last paroxysm of his disorder, when the deponent first saw him, at seven o'clock in the Morning of the day on which he died.—The Proctor testified, that the Court, from the facts he had adduced would be clearly of opinion, that Mr. Hall must have been insane at the time: the pretended Will was a forgery; and that therefore he might with safety have relied the cause of his Clients, without the aid of the Testimony of the witnesses examined by them in support of their Allegations: he would however trespass upon the Court with a few passages from the depositions of Doctor Baillie, cross examined on the part of the opponents. Doctor Baillie, says he first saw Mr. Hall, about 7 o'clock in the Morning of the day on which he died, that he appeared to labour under the last stage of an adent fever, that the said John Hall, was at times incoherent in his expressions, and that he had shewn appearances of an approaching delirium from his vague, and and incoherent answers.—That he, the deponent was again present, about the hour of nine o'clock of the same Morning, and the delirium was, at that time, more increased than when the Deponent first saw him, and his intellects thereby more deranged. The Proctor then spoke to the Deposition of Mr. Goidaine, the Father in Law of Mr. Hall, as corroborating a part of the Testimony of Mr. Baillie, and establishing the point contended for, that the Will must have been a fraud, practised by Yagambrum: he spoke also to the deposition of Salder, to prove, that Yagambrum was not a confidential or faithful Servant of Mr. Hall, and that he was not confident of such by him, but on the contrary that Mr. H.—, considered him as a Villain, and one who had injured his affairs.—The Proctor then read not a word, in his own mind of the infamy of Mr. Hall, or the forgery of the paper, set up as his Will, and upon those grounds prayed the Sentence of the Court, upon the Allegations before them, in favor of his Clients.

MR. WILKINSON, in Reply to MR. HALL, commenced by observing, that the Proctor, on the opposite side had laboured to make an impression on the Court that it was the Executors view to get the Estate of the deceased into his hands—and that the Executor was an unknown and obscure character.—A Clerk in Mr. Lantours Office—and that he had obtruded himself to be an Executor—that the Will was a fabrication—a forgery of a set of base plunderers, who had deluded the public into the necessity of their support, and that the Opponent was an oppressed, and much injured man.—That a Will was a solemn act—and an Executor, of right, enjoyed great indignities—and actually possessed very particular privileges—that it would never be his province he hoped, to oppose the Will of a person executed in sanity, but that Mr. Hall's Will stood in direct contrary light—and the Proctor had exclaimed—*What Legatee? Such a Will! and such an Executor you have now before you? And again speaking of the Executor he had said?—A base character never came before a Court.*—He was glad to find that the Court had almost concluded the necessity of his comment on such Language—Language, unbecoming the character of the Bar—the respect due to the Bench, and regard to personal dignity.—He should follow no such example in supporting the Cause he had the honor to defend, or to rescue the traduced character of his Client—satisfied that the intent would be frustrated, and his own understanding and character degraded.—His Client he thanked God, stood in no necessity of an Advocate to his character—his conduct, and principles, as they were in Evidence, would speak for him, and his bell Advocate would thence be in the Breach, and the concurring sentiments of every good man. This Point, as first in magnitude to the feelings of his Client, he considered it his first duty to meet—and he would read from the Evidence of Mr. Lantour, by which the Court would learn, that when the Will of the Testator was first opened, and read by him the Proctor, in the presence of Messrs. Goidaine, Franck, Wright, Hurst, Boggie and Yagambrum, who drew the Will.—He, Boggie, observed that he was exceedingly sorry that he could not take the management of the Estate, and could not be Executor.—When Mr. Goidaine, whose Deposition had been read; and of which he relieved himself to speak hereafter particularly, for his Evidence merited peculiar consideration.—His Goidaine said, in the presence and hearing of Mr. Lantour, and of the other persons mentioned, in case Mr. Boggie would not take the management of the deceased's affairs, that the Estate would be ruined—and seemed quite miserable that Mr. Boggie should have refused to do so; but that he could not, on the account of the Will, and that Mr. Lantour then solicited and earnestly requested as a particular favor, that he would recall his refusal, and oblige him by accepting the Trust, on account of the friendship that subsisted between Mr. Lantour, and the Family of the deceased, and that he would give all the assistance in his power to the Executor in the Trust.—That Mr. Boggie then said that he would consider it, but in the mean time desired that the Will might be deposited again in the Chest, which was locked and sealed up. That he, the Proctor, then pressed him, Mr. Boggie, to come to some determination that day—for it was a Court Day, and the Will might immediately be proved; but Mr. Boggie refused. Was this the Executor, whose views were loudly directed to get the Estate into his power? Was this the man who had obtruded himself to be an Executor, under a fabricated Will? Than whom a *base character* never came before a Court? He left it to the Court to draw the inference. But he could not resist saying.—That this was no Parallell with *Caesar*, gently retiring the offered Crown—for here the act contradicted not the tongue—and he accepted it not until wearied with unfeigned solicitation at the prayer of the widow—and the importunity of his friend. But it is said that the Executor had *sworn* to get the Estate into his hands—he had *sworn*—and he would expose

them to the Court.—There they were throwing at the same time a large bundle of Bonds upon the Table; the amount of which he said, was a Lac and three thousand Pagodas.) None could contest these Bonds—and when he returned to them, and therein read the names of Obitaries, Chale, Michell, and many others as Obligees, and whose names appeared as Propensors in this Cause, he was at a loss to know with whom he was contending on that Day. He lamented that he could not speak to any original Documents which he held in his hand—but he would tell them, that they were Letters from Creditors, many of whom were Propensors, but had ceased to be so, and disapproved wholly of the proceedings of that day.

[Here the Proctor was desired to confine himself to what was in Evidence, when he proceed.]

On learning the opinion of the Court, he said, that he would not urge this matter further. He recommended by saying.—To what the opposite Proctor had objected to the obscurity of the Opponents character, and of his being a Clerk in an Office; and that the Public had been imposed upon with respect to him by Advertisements—he should reply, if the circumstance of his being a Clerk, in one of the first Mercantile Houses of Trust in the Indian World, was to be disgraceful, or to be obscure—then his Clients, indeed, had merited the Epithets which had been assigned to him. And if the Publications alluded to bore the stamp of fraud or deception, then too had the Public been imposed on, the proofs being in their own hands, and Mr. Boggie ought not to have been considered, as the Advocate affirmed he had been, an oppressed and very injured man. But the character of his Client was unimpaired, and his reputation so free, that it would stand the test with any, however fair, of those who had wanted, and he would add, disgracefully opposed him.

The Proctor said that he would not trouble the Court with any remarks on Doctor Baillies Evidence, as he had fully considered it in his reply to Mr. Chalmers—and he trusted that the Court had not suffered its importance to depend on their memory. He had at that time believed that he had not further occasion to advert to other Evidence, as it was the Opponents sole Bulwark and Defence, and should he hold it necessary to open the containing Depositions, but that much had been unfairly spoken to the character and credit of the witnesses on his Clients behalf. And he would shew that if suspicion could any where fall on the Evidences on either side in this Cause, it fell especially on that of Goidaine's the Propensors witnesses—who had deposed with a narrow and shallow understanding—too limited to embrace truth, and too ignorant for a judicious arrangement of his cunning. He said that he was happy to draw the Proofs of what he had alleged against this Evidence, by contrasting it with the fair, guarded, and circumstanced Evidence of Mr. Baillie.—And there he was obliged, though reluctantly, to trespass on the patience of the Court, by a somewhat extensive view of these Depositions in contrast—but in which he would be guilty of as little partiality as the nature of the Cause would permit.—First Mr. Goidaine says, that he was sitting on a Couch in the Hall where the Cash Chest of the Testator stood, between the hours of nine and ten in the morning, and that Mrs. Hall's Sister was sitting on another Couch near to the door of Mr. Hall's Room—that Yagambrum the Dubah came from below stairs, and they went into the deceased's Room—that he had in his hand, a sheet of common sized Letter-Paper, which appeared to him the same as the paper upon which when Yagambrum came up stairs, he was alone, and went into the Testators Chamber alone—that Mr. Baillie was sitting in the Room with the Testator when Yagambrum entered—and that Mr. Baillie, came out in about three or four minutes afterwards, and that Yagambrum remained there about six or eight minutes, when he came out holding in his Hand a Paper sealed with Red-Wax, and doubled up in the shape of a small Letter, without any Direction, that he went first below stairs with the said Paper, and returned with it in about a quarter of an hour afterwards, when he opened the Cash Chest, and threw it in, indifferently, amongst the bags of Rupees—locked the Chest, and took the key down stairs, and the deponent saw him no more.—He then begged the Court to hear a second account of the same transaction by the same witness; for his memory, it appeared, had been improved when he had travelled through long previous interrogatories, and had arrived at the last general interrogatory, of did he know any thing more to the benefit of the party in whose favor he was to depose? and then he deposed, that when Yagambrum first came up stairs, and instead of going directly into John Hall's room, as he had already deposed he did do—he makes him pull a key from his side and open this Iron Cash Chest, near which the deponent said he was sitting, and take therefrom a sealed packet, about a foot long, and four or five inches broad, and very thick.—He then locked the Chest, and replaced the key—that he held, for this witness was critically minute, the paper and packet in his left hand, and the pen and ink in his right; it must be noted that he mentioned nothing of pen and ink before, but that he had brought up a paper which appeared to him to be ready written, with all which implements he walked into the Testator's Room and when he Yagambrum came out again from the room, he had only the little paper which appeared to deponent to be a letter, but saw nothing of the large packet which he carried in with him.—He would then, with permission of the Court, state Mr. Baillie's deposition to what must be prefigured the same transaction, as they so exactly as to time agreed. Mr. Baillie says, that he saw the Dubah enter Mr. Hall's Bed-room about the hour of nine in the morning, having paper, pen, and ink in his hands, and that he then quitted the room; the witness doubtless conceiving that some concern of business was about to be done, and says, that to the best of his recollection, the Dubah remained in the room, for about six or eight minutes, and that when he came out, he brought a paper, and put it into the Cash Chest standing in the hall, that he did not see any other person enter with the Dubah, and that he left them alone in the room.—The Proctor then said, it was not needful perhaps for him to mark the contrast—but he would say, that the collected, circumstanced evidence of Mr. Baillie, bore a weight and made an impression on his mind, by which he could not but be satisfied that he had told the truth: and that if the extraordinary circumstance of carrying down the paper, remaining below stairs with it for a quarter of an hour, and then locking it up in the Cash Chest, had taken place; that Mr. Baillie would not have omitted to mention a point of evidence, knowing that the will of the deceased was in

litigation. And could not be out of place there, he said, to observe, from the known priority of Mr. Baillie, that if he had supposed the Telfair to be not capable to transfer any such concern, which he must have felt he was about to do by his leaving the room, that he would not under those circumstances have left him to go to transfer it, if he had judged him insane. He continued, that Mr. Baillie, who was in the room when Yagabrum came in, did not say a word of the large packet, a foot long, four or five inches broad, and very thick, to circumstantially deposited to by Godone, to have been then carried in with him. How came that variance? It was too narrative to escape the observation of Mr. Baillie, if it had really happened, for he was watchful, and his deposition at the depositions was not at this time altogether discoloured disposing mind and memory, but that hostilities appeared to be impaired by the heat of the fever. But it was charged, that the Telfair had neither signed, sealed nor published this Will in the presence of Witnesses and the Evidence, then commented on, it seemed intended to establish this Position. For Mr. Baillie deposes that Yagabrum came into the room alone and that he left him there alone, and Mr. Godone deposes that Yagabrum went into the room alone and that alone he came out. Thus for them to establish, that the Will was not in fact known of any other persons being in the room at that time with the Telfair, except Yagabrum, and happily then, when direct Evidence failed to establish, circumstances strong, "as per of the Court," interposed to rescue truth, and force conviction. Mr. Godone had deposed, as before remarked, that Yagabrum had come from below stairs, with a piece of common fiscal letter paper, and that he had been open for it appeared to him to be written on, and when Yagabrum brought out this paper, he Godone had sworn that it was folded up and sealed with red wax, and that no writing whatever appeared upon it. It was clear from this, that it was sealed in the room, and yet it is not deposed by Mr. Baillie or Godone, that Yagabrum brought a candle lantern or feeling Wax in his hand, nor does Mr. Baillie say, that there was any candle, lantern, or feeling wax in the room. Was it then a "Jackal's lantern" that came in aid of the fraud, of which Yagabrum is charged? kind interrogatory! But the Proctor said, he would fail the Court how the candle came: how the Will, which he held open in his hand, came to be sealed, and how the subscribing witnesses, and the other persons who have deposed to these circumstances, came at this interval of time to be in the Room. To all those who were acquainted with his late friend, the deceased Mr. Hall, and who were in the habits of visiting at his house, and his Sick Chamber during his last night, it was not unknown, that a second door, led from it to the Antichamber, which conducted to a back stair. Was it not now accounted for, how this candle was carried into the room, without recurring to supernatural agency—might not this time that he had led the witnesses to the Telfair's bed side, and that neither Mr. Baillie or Mr. Godone had been the witness of it. He then said, though he did not consider it material, save that he wished to rescue deserving Characters from reproach, that he would support the Evidence as to the due Publication of the Will by the Telfair. He then quoted from the Evidence of Soobary a witness to the Will, and the Telfair's Writer, who deposed that he was called by Yagabrum, about a nine o'clock in the morning, who told the deponent that his master wanted him, that he went to him, Venkata Sawmy, and Yagabrum being there, that he was called by the Telfair, who asked him the Will as a witness, on which he asked his Master whether or no, he should sign it; who answered "yes, sign it"—on which he set his name to it and he further deposes that he was present when the two Seals were affixed thereto by the Telfair. An objection had been taken, to the credibility of this Witness; for that he was the Telfair's Writer, who had proved the Will on the 28th of May, when he had deposed, that he had been the deceased sign seal, and publish the Will under the formal, set and usual Oath administered on such occasions to Witnesses. Whereas, in his later deposition in this matter, he had testified only to the sealing and delivery; and therefore such variance was tantamount to perjury. Against which allegation he contended, that it was very different from perjury, which implied criminal intention: it was well known that the usual oath, administered in that Court, when there was no contention about a Will, and when it is simply proved by the Oath of a subscribing Witness, was a general one—of which the party had no pre-knowledge by his giving it read to him, and often negligently hurried over as a common occurrence of the Court; widely differing from the pointed interrogatory afterwards put, to which he deponent was transferred with deliberation, part by part—an argument of all other, the most undeniably, that the Witness was an honest Man—and had more than common courage, to correct an oversight which it is contended should attach his veracity. If the Witness had intended a perjury, for it would have perished in what he had said, for it was puerile to suppose, that a man at one time will hesitate at perjury and has unpardonably committed it at another. Soobary's Testimony is supported by the concurrent Testimonies of Venkata Sawmy, the writer of the Telfair's ten years, who saw Soobary subscribe this same, by the desire of the deceased, and that his master was at the time, of disposing mind and memory: as also by Ponnappa, the Peon, who says that he was present, and saw the Will executed by the deceased; and that the Telfair desired Soobary to subscribe it as a Witness, being at the time of found mind and memory, a Servant of the deceased for nine years, says that he saw Mr. Hall put his seal to the wax, and desire Soobary to witness the Will; and that the Telfair was of disposing mind and memory.

The Proctor having gone through the evidence, to prove the due Execution of the Will by the Telfair, and of his competency to the act, by a variety of evidence, he said he next would proceed to a very strong and respectable evidence, and he alluded to Mootoo Comaroo; a native Doctor, of sixteen years standing as an assistant in the Court Dispensary, whose Employ was in the composition of medicines, under the prescription of the Faculty. Mootoo Comaroo deposes, that he had attended the deceased in the capacity of Doctor for fifteen years last past and particularly for the four last days of Mr. Hall's life: that his general complaints were head-ache, rheumatism, and gravel: that he had on all occasions administered medicines to him, that the deceased died of a fever, that he saw him on the morning of the 26th about the hour of six: that he was rational, connected, knowing both what he said and what he did, that in the

course of conversation, he told Comaroo that he had sent for Dr. Baillie, that he remained with him about ten minutes, and went out at the time that Dr. Baillie came in, and as soon as Dr. Baillie had retired, the Wife of the Telfair desired him to come into the room of the deceased again, that he afterwards went home to Breakfast, and on his return was informed by the People belonging to the Family, that Mr. Hall had made a Will, that he did thereupon observe the state of the mind and understanding of the Telfair: that he found him rational and collected: that he was backwards and forwards the whole day: that about two in the afternoon, for the first time, he observed him to begin to grow insensible, and till this hour, he was of perfect found mind and understanding: this Witness further says, that between four and five in the afternoon, he had occasion to make a further judgment of his patient's state of mind, for he applied a Blister between his Shoulders, aided by the Telfair's Wife, and Venkata Sawmy, and he relates a conversation that then took place: the Witnesses desired Mrs. Hall, to request the Telfair would turn his back, that he might apply the blister. Mrs. Hall requested the Telfair to do so, and he immediately turned his back, and said "I have turned"—Yagabrah, the Concooly, who assisted on this occasion, had given his deposition to the very same Effect. Having diminished these depositions, he said he would not advert to the evidence of Mr. Betty and Saldar, as they were mere hearsay and irrelevant. He would next recapitulate shortly the heads of his argument and apply what he had deduced from the matter he had gone through: which he did at some length, and concluded with great propriety, and considerable ingenuity as to the bearing of the various depositions on the facts he endeavored to confirm; and seemingly not without a suitable impression on the Bench, in proportion to the ability he discovered.

Mr. W. then argued, that as so much had been relied on by the Proprietors, from the advice of their Proctors, that the paper writing produced, was not the Will of John Hall, and consequently, that William Boggie could not be the Executor, he had set himself up to be thereunder, that he would refute the absurdity—in a few words—He here held up the Will, which he read, "The my Will and Testament in manner of following—I gave Yagabrum, one per cent upon what I am worth—I gave Swamy, half per cent—I gave to Mariams Hall, the remainder of my estate, (signed) J. Hall, (L. S.) C. Yagabrum, P. Soobary." The Proctor then observed, that if the Paper had ended here, it was indeed no Testament, for it appointed no Executor—for where there is no Will, there can be no Executor, and that the sole making an Executor, without bequeathing any Legacies or appointing him any duty to perform, is a good Testament: for the principal part of the Executor's office is the payment of the Testator's debts—that the very making of an Executor is constituting a person who is to pay debts, and for that end, he is to have all the Testator's Goods, Chattels, Credits, and personal Estate: and the laying upon him an obligation to pay all the Testator's debts and making him subject to every man's action for the same—and as the Law says, *quod necessarium subintelligitur non desit*. If a man's effects will but satisfy his debts, by bequeathing a Legacy is to no purpose, for it is void, and therefore in such case the appointing an Executor is of itself sufficient—and this doctrine he said, would be found in all the Books, and referred to the Law of last Wills, page 316.—But added he, observe further this paper, "I Mr. Boggie I made my sole Executor in India—Mr. Bird my sole Executor in London, signed, J. Hall, (L. S.) what did that signify, unless his reading signified nothing.—But say the opposite Gentlemen, what proof is there of this addition?—was it proved on the 28th of May—where are the witnesses, it follows too the principal intention of the Telfair, first expressed.—It is therefore, if any thing, a Codicil, and cannot bear the interpretation intended to be put on it.—He replied, that this last writing is the Testament, and that the precedent, if a Codicil is to be traced in this Testament, is that Codicil, but in truth, the whole Paper writing is one sole last Will and Testament, signed, sealed, and delivered, at one and the same meeting: all which is already before the Court by evidence, and therefore not further necessary to be then repeated. But the Gentlemen in the other behalf should have been informed when they advised the Proprietors, that this Paper was no Testament and so stated in their allegations, that the legal spirit of a Codicil is, either to add, alter, explain or subvert something from the Will and that though even for a moment, it be granted, this single undivided Paper be a Codicil, with two signatures, and two seals, set and subscribed at the same meeting, one or either of which he therefore said, was merely surplusage, an Executor cannot regularly be appointed in a Codicil, yet they may be substituted according to the Will of the Testator and the Codicil is still good.

But again the second writing is not re-attested by the witnesses Yagabrum and Soobary, and therefore it has had no proof, but the whole writing had been deposed to by Soobary on the 28th of May: for the few lines of which it consists, were on one and the same page of Paper, and were in the deposed to, and so known and understood until it became convenient to search it for a flaw.

The Proctor said, he would read the Court from authorities on the nature and requisites of attestations of Wills of personal estate, as contra-distinguished from the requisites by statute, and first quoted Blackstone's Commentaries, vol. 2, page 501, as follows:—"As to written Wills, they need not any witnesses of their publication. I speak not here of devises of lands, which are quite of a different nature; being conveyances by statute unknown to the Feodal in common Law, and not under the

fame jurisdiction as personal Testaments. But in a Testament of Chattels written in the Testator's own hand, though it has neither his name or seal to it, no witnesses present at its publication, is good; provided sufficient proof can be had, that it is his hand writing, and the written in another man's hand, and never signed by the Testator, yet if it be proved to be written by his instructions and approved by him, it hath been held a good Testament of the personal Estate, yet it is the safer and more prudent way, and leaves less in the breast of the Ecclesiastical Judge, if it be signed and sealed by the Testator, and published in the presence of witnesses. He next read from Swinburne, p. 553, as follows: "Nevertheless, where it is doubtful, whether the Testator did write and subscribe to the Testament—if he witnesses do depose, that they did see the Testator write or subscribe the Testament, and know the same to be his hand, or else that they did hear the Testator confess, that he had made his Testament, or that the same was in the hand of such a person; or if the Testament were found in the Testator's chest, amongst his other writings. In these cases, the proof made by comparing of hands, albeit the Testament be to be proved in form of Law, is a full and sufficient proof. Or if there be none of these helps, by likely circumstances: yet if on the contrary, there be no suspicion of fraud, or fear of subornation, I am of their opinion who do hold, that the circumstance justifying may allow the proof, made by comparing of hands, for a full proof but then also the writings so found in the Testator's chest, must be so written, as it may appear, not to be a draught or preparation of a Will, but the Testament itself. What if the Testator shall acknowledge, that his Testament is contained in a Schedule or writing, which he left in the custody of such a man? Now if that man bring forth a schedule, and upon his oath depose that to be the same writing which the Testator left in his custody, whether is this a sufficient proof of the deceased's Will; without any further comparing of hands. But if the Testator has said, that the schedule or Will was written with his own hand, then the aforesaid proof is not sufficient without comparison, where it may appear to have been written by the Testator; for in saying, that the schedule which he left with such a person, containing his Will, is of his own hand writing, it seemeth, that the Testator did not repose such trust in that man, as that his testimony alone should suffice, unless also it did appear, that the schedule which should be brought forth was written by the Testator; which in the former case is not necessary, where it is referred to the credit of the wit, with whom the writing was left. But what if (so) the Testament be found in the Testator's chest, or safely kept amongst other writings; which Testament is neither written by the Testator, nor by him subscribed, but altogether of another man's hand, whether shall this writing prevail as the last Will of the Testator, or not? It shall now, unless it be proved, that the same was written by the commandment of the Testator, or unless it be sealed with the seal of the Testator."

Mr. W. continued, that not only in this case of John Hall's Will, the signing, but the sealing and delivery had been incontrovertibly established; though the law itself unquestionably imposed no such obligation, and there rested that point.

The Proctor next turned to the impressions attempted to be made on the Bench by both the opposite Proctors, in regard that his Client was chargeable with perjury in his answer to the allegations. This charge he said, arose from the Opponent having in his answer, to the first allegation, said, that he admitted it to be true, as charged by the allegation, that his Testator died on the 20th of May last, having made his Will on that day about the hour of 9 in the morning, when he was of found disposing mind, memory, and understanding, and he continued to be of such disposing mind and understanding, until the hour of 6 in the evening—and herein the Proctor observed, was contained this mighty and indecent charge.—He would analyse it, and see how far it bore the bold and shameful reputation assigned it, for as to the other two inadvertencies, alluded to by the Proctors, he was unacquainted with them, or where they were to be found, unless it should be, that certain evidence, by whom his client in his answer had said he would establish certain conversations of Dr. Bailey, touching the Testator's sanity on the day he died, and to which circumstance he had exhibited his interrogatories, but which the evidences had not, as they ought to have done, came forward, and therefore not his Client's fault, to establish what they had engaged to prove, as he such matter. It was clear, said the Proctor, that there is no direct testimony, that the Testator was actually of disposing mind and memory at 6 in the evening, yet it is as clear from the evidence of the native Doctor, and Yagabrah, that he possessed his mind at a very near hour to that—between 4 and 5—at most it was but a clerical mistake, in which his Client's mind could have no participation, for no man will be presumed to swear intentionally to that, for the actual knowledge of which he must be indebted to another.—Mr. Boggie was perhaps misled by the informations he had received of this fact, but it never will, on the mind of any man—he thence inferred, that he has perjured himself—for, perjury is a deliberate wilful act of the mind, and his Client could not be guilty of this crime, for he could

not of himself know the fact of sanity at this hour of six, for he was not in the deceased's house; and next he could have no motive to commit this base crime, for he was no way interested, that the Testator's sanity should be established at any hour after 9 in the morning, when it is proved, he made his Will.

The Proctor here called on the most serious attention of the Bench, to consider gravely the importance of the decision they were about to pronounce. The day, he said, would be noted by such decision, not only by the British inhabitants of India the natives under allegiance to the same sovereign, but also by his other subjects, in that happy land, where the laws by which the Court would be guided on this occasion received their origin. And here took occasion to consider the solemnity of a last Will, and said, that referring to any observations of his own, what must and ought to have an exceeding preferable weight, that he would therefore read to them from that Book, from which he had himself reaped in the consideration of the present question, his dearest knowledge, he alluded to Swinburne, p. 3, a Testament is defined after this manner:—"Testamentum est voluntatis nostrae declaratio de eo quo quis post mortem suam fieri vult."—"A Testament is a declaration of our Will, touching that we would have done after our death."—"A Testament, then said the Proctor, was a sentence; and he went to page 9, of the same writer, on the analogy between a judicial sentence and a Testament:—"Of judicial sentences there be two sorts; the one interlocutory, the other definitive. An interlocutory sentence is a decree given by the judge, betwixt the beginning and ending of the cause, touching some incident or emergent question. A definitive sentence is a final decree, whereby the principal cause and controversy is decided, in condemning or absolving the party convicted. These two sentences have these two contrarious effects. The one of them, that is to say, the sentence interlocutory, may be revoked at any time, so long as the principal cause dependeth undecided—but the sentence definitive, cannot be revoked. The Testament of any man, so long as he liveth, may be compared to a sentence interlocutory. For it may be revoked or altered at any time, and as oft as the Testator will, whilst he liveth, even until the last breath—and of these the last Will prevaleth. But after his death, it is compared to a sentence definitive: and as it cannot be revoked by the dead man, so it ought not to be revoked by an other, but observed as a law, an executed as the sentence of a judge—and they are to be punished that do hinder the execution of the same."

The Proctor here concluded.

Mr. Hall then rose, he said, to refuse the deposition of Mr. Godone from the odium the Proctor for the Opponent had endeavored to throw on it and he would do so, without any difficulty.—Mr. Godone, he observed, in the former part of his deposition deposed to the particular Interrogatories exhibited to him and he did not, indeed he could not, go beyond them; but the latter part of the deposition was upon the General Interrogatory, "do you know of any other matter on thing, touching the matter in question?" and to such interrogatory he stated fully those matters and things, and whilst there was no contradiction in Mr. Godone's testimony, it remained unimpeachable.—As to the difference which the Proctor for the Opponent had remarked on, between the deposition of Mr. Baillie and Mr. Godone, the former stating, that Yagabrum came out of Mr. Hall's room, and threw the paper into the iron chest, and the latter, that on leaving the room, Yagabrum went down stairs with the paper, and on his return back again, threw it into the iron chest. The Proctor said, there was neither contradiction nor inconsistency. Mr. Baillie says, Yagabrum put the paper into the iron chest, but he did not particularize the time, when he did so, and Mr. Godone sets forth the one, and points out the other. He then took up the evidence of Doctor Baillie, to show, as he said, that the Proctor for the Opponent had not applied it properly, and that he had endeavored to give it a sense total; opposite to its true intent and meaning. Here the Court stopped him. The Proctor concluded with observing, that the Proctor for the Opponent would have done much better if he had endeavored to do away the contradictions with which the evidence on the part of the Opponent had been pointedly and particularly charged, and which stood convicted, on the face of their own depositions, and he called upon him to do so, if he thought it lay in his power.

The pleadings on both sides being finished, the opinions of the Aldermen, as to the matter in question, were severally asked, beginning from the Junior, as is the custom; and concluding with the Senior Alderman on the Bench.

Mr. Alderman Abbott pronounced against the validity of the paper writing, exhibited as the Will of Mr. John Hall.

Mr. Alderman Roebuck concurred in opinion with the Alderman who had preceded him; and remarked, that from the particular circumstances under which that writing stood, which had been brought forward as the Will of the late John Hall, he had not a shadow of a doubt on his mind, that it could not be considered in any other light than as an invalid and an illegal Testament. That he had not formed his judgment, or given his opinion hastily; but that he

had read the papers and depositions offered in the matter, with much patience, and with the best attention he had been able to give them, and from a close consideration of the whole, he was led in his confidence to believe that the paper, called the Will of the Deceased, was a *Nulley*. What induced him principally to pronounce, as he had done, against the writing in question, was the evidence of *Mr. Baillie*, who had indeed been brought forward by the Opponents.

It appeared from *Mr. Baillie's* deposition, from the first moment he attended *Mr. Hall* in his professional capacity, on the day he died, and on which day the Will is said to have been executed, that the deceased, in the customary questions being put to him, discovered certain marks of incoherence in his conversation and answers and was apparently approaching to delirium—that he was more deranged at every of his following visits, and that throughout the day he saw not any intermission, or abatement of the symptoms of delirium, remarked at his the Deponents first visit. No evidence could be more positive, none more respectable than that which he had just quoted from; and from that alone he should have no hesitation to declare, that the paper shewn, could not be taken for the Will of the deceased—it being clear that at the time, which the opponent himself had deposed that the Will was made, the deceased was insane, and incapable of executing a Testament. But he had not relied solely on *Mr. Baillie's* evidence in forming his judgment of the matter in question—for in turning over the depositions of the witnesses who had been brought forward for the maintenance of the Will, he had observed much contrariety and contradiction in parts and in the whole—some witnesses contradicting the statements of others, nay some contradicting themselves. It was a circumstance of surprise to him, that *Yagambram*, who had drawn the Will, had not been cited to attend either at the proving of the fame, or as an evidence, afterwards, to confirm it. Where a witness was kept back, who might be useful to the clearing up of any point, if he had been called, it would favor a conclusion, certainly not very reputable to the party who had omitted to call him, and he owned, that he entertained some suspicions on that account.

Soobarry, one of the subscribing witnesses to the paper exhibited, and who had deposed, at the time probate was granted, to the execution of the fame, had been detected of so manifest a prevarication in his Testimony, at different times given, so as not to permit him, with the exercise of his understanding, to allow it any credit. Where he perceived an evidence to vary materially in certain parts of what he had deposed, it was not an unfair inference to draw, that he might not be correct and true as to others. But when a witness so flagrantly deviated as *Soobarry* had done; he would not scruple to say that not an *atom* of credit ought to be given to what he had said—*Soobarry* was the evidence who at the time of proving the Will, had sworn, that he had seen the deceased sign, seal, and publish the paper writing as his last Will and Testament; but on his second Oath, had deposed and that without qualification, that he had not seen the deceased sign the paper, which was one of the material facts necessary to give it solemnity—Having remarked this, he should not add another word in that respect.

Savany, another witness, who was said to have been in the room, at the time when the deceased, was reported to have executed the writing before the Court—This witness besides speaking to circumstances inconsistent and not likely for him to know; and he would for bear to remark any thing on the improbability of a *Matey-Boy*, being called in on such an occasion, had made use of an expression in describing the person present, which was uncommon to his tongue and habit; and, therefore, it could scarcely be supposed that he of himself would have used it. For in speaking of those in the room with the deceased, he called them by the general appellation of *Natives*; a term applied only by *Europeans* in designating one another from the people of the country. It seemed from this that the witness was uttering words put into his mouth by another. He then commented on the evidence of *Poonappa* in a few words; and concluded by observing—That if there had not been such material contrariety, visible on the face of the whole evidence, produced to substantiate the pretended Will, he could not but have rejected it on a mere view. The instrument in itself contained condemning proofs against the validity; that the opponent claimed for it. Such an instrument it was impossible for the testator to have dictated, or afterwards have sanctioned by his name, except in a state of insanity.

It had once been allowed him to observe, in a matter of adjustment of some disputed accounts, on the behalf of others, the peculiar acuteness and exactitude of the deceased—his quick comprehension, his ready expression—and he should think himself doing an injury to the memory of the deceased, by imputing to him so absurd, ungrammatical, and ignorant production, as that which the Opponent had pressed upon the Court, as his the deceased's last Will and Testament. For the reasons he had assigned; and from internal conviction and confidence of the falsehood of the paper writing preferred in the matter—He must again repeat that he was decidedly against the acknowledgment of it, as *Mr. Hall's* last Will.

Mr. Alderman Ross, pronounced for the Validity of the Will—The voluntary act of certain of the creditors in filing an

oath on the same day that the will was offered, seems to be equivalent to the mode of proceeding which is recommended in the book of instructions to an Executor; (though seldom practised) of citing those who have an interest in the will to come forward and see it proved; and these creditors, by withdrawing their consent, and allowing the will to be proved by the testimony of a witness, in the formal way, and by the oath of the executor in the common form, seems to have afforded all the sanction to the will, which is required by the law. And although this was not a sufficient reason for a non-acquiescence with the citation which afterwards went to the executor for bringing in the probate, and instituting a suit, on the ground that has in some time after been said to have been discovered, that the testator was incapable of making the will: yet it seems to be a good reason, why the Court should act with so much greater caution and deliberation in judging of the validity of the will; and on the supposition that the evidence for and against it, is equal or rather equally doubtful, it would certainly seem, most consistent with law, reason, and common sense, that the decision of the Court should be given in support of the will; as it is repeatedly declared, that the law discourages revocations of wills; and therefore, it seems reasonable to allow, that nothing but a clear, positive, unbiassed, and uncontradicted evidence of the absolute insanity of the deceased, should be sufficient to set aside the will.

In the present case, the evidence of the surgeon who attended the deceased, is the principal if not the only material evidence in support of the temporary insanity of the deceased. But his declarations do not amount to any thing more than a bare opinion; as no facts or circumstances are enquired into, or alluded to in support of such opinion, which ought not to have been neglected; as it is upon such information and probability, that a proper judgement can be formed of the good or the bad foundation of the opinion which is offered. It is likewise to be observed, that this evidence was not called in to attend the deceased till the day of his death, and in two or three hours only before the time that is stated for the execution of the will; and although he still attended either in the bed chamber or in the hall adjoining to it, after the time that the will is said to have been executed, yet it is at least doubtful whether within that time the deceased, how much sicker he might have appeared to be in a disordered state of mind, might not have had intervals of reason, memory, and understanding, sufficient to enable him to dictate, or to give directions to the man, who is said to have been called in to write his will, to write the three lines and two words of which it is composed, and to sign it, and see it sealed and see it signed by two witnesses; and thereafter to dictate and sign the codicil, which consists but of two lines.

It is also to be observed, that the signature of the deceased is in a very clear hand, and will appear to be in the most perfect likeness to those who are well acquainted with the signature of the deceased, so that there is not the most distant appearance of a forgery.

In respect to the evidence that is given in support of the will, that which is given by the native practitioner of physick, seems to be the most material.

It is to be observed that from the situation and character of this witness in all respects, his testimony ought to be considered as extremely respectable. It appears that he has been in that situation which is in itself of great importance, the charge of making up the medicines and attending the Patients, for many years: which shews that he has long continued to deserve the great confidence reposed in him. I remember the person, who was in the same situation under *Doctor Paisley*, in whom the Doctor placed great trust, and had the highest opinion of him. The man who succeeded him was also much confided in, and the present witness is well known to have the same character.

He had been in the constant habit of attending the deceased in all times of sickness for fifteen years back: he also attended on the day of his death during the whole if not the greatest part of the day, and had frequent opportunities of seeing him, and seems to have had a more particular and material opportunity of communication with the deceased, than the surgeon; for the native practitioner administered a blister assisted by *Mrs. Hall*, which gave him occasion to observe the behaviour of the deceased, and even to put questions to him, and to receive dis-

tinct answers. And he says, that the deceased was not at any time under any derangement of mind; and in this, his long intimacy with the deceased in times of sickness renders him by far the best judge of the condition of the deceased. His evidence in this respect is also clearly confirmed, by several others that were attendants in business, or servants in the house of the deceased for years, which gives a stamp of veracity to their opinions and testimony.

The depositions of *Mr. Dupuy* and *Mr. Lantour*, give a very strong and particular authenticity of the will. It is next to impossible that the circumstances which are now brought forward to impeach it, could have been so long concealed from, or if known to, such men in such situations, without a discovery; to prevent their being imposed upon, or their allowing any impositions to be practised upon others.

It is also a consideration, that the probate of the will may have been sent to *Mr. Bird*, the executor, in England; and that he will see it proper to take out a probate for himself from the Ecclesiastical Court there (where it will be granted of course) to enable him to recover and pay the debts of the estate in Europe (which are probably extensive) and if now he shall have made a progress in doing so himself, he should die, and his executor (on whom the legal right of doing so will immediately devolve) or administrator are employed in that way, they shall be told that the will is set aside, upon a disputed evidence of insanity, and a forgery: will not the consequences be serious and embarrassing?

In *Burn's Ecclesiastical Law*: v. 4. p. 200.—On the subject of Revoking Administration, and granting Administration in an irregular manner without citing those who ought to have been cited: 2. *Bac. Abr.* 410. p. 204. The practice is not to issue letters of Administration till after the expiration of fourteen days from the death of the intestate; unless for special cause (as that the goods would otherwise perish, or the like) the judge shall think fit to decree them sooner. I mention this in regard to some part of the proceedings in this cause, when Administration was suddenly granted to two gentlemen of this Court, without attending perhaps sufficiently to the rule of fourteen days, or assigning special cause. But when I mention it, it is not with the least disrespect to the two respectable gentlemen: it is only with regard to the delicacy of the proceedings requisite to be observed in Courts; all whole proceedings and character ought to be not only pure and upright in themselves, but like the wife of *Cæsar*, free from all suspicion.

It is a hard and difficult point, to prove a man not to have the use of understanding or reason; and, therefore, it is not sufficient for the witnesses to depose, that the testator was mad or beside his wits; unless they render or yield a sufficient reason, to prove this their deposition; as that they did see him do such things, or heard him speak such words, as a man having reason would not have done or spoken. *Swin.* 76.

A testator ought to have a disposing memory, so that he be able to make disposition of his estate, with understanding and reason: and this is such memory, as the law calls found and perfect memory. 6 *Co.* 23.

But every person is presumed to be of perfect mind and memory, unless the contrary be proved: and, therefore, if any person go about to impugn or overthrow the testament, by reason of infirmity of mind, or want of memory; he must prove that impediment. *Swin.* 77.

In the case of *Shires and Glascock*, The question was, whether the will was made according to the statute; for the testator had desired the witnesses to go into another room, seven yards distant, to attest it, in which there was a window broken, through which the testator might see them. By the Court.—the statute requireth attesting in his presence, to prevent obtruding another will in place of the true one: it is enough if the testator might see; it is not necessary that he should actually see them signing;—for at that rate, if a man should but turn his back or look off, it would vitiate the will. Here the signing was in view of the testator; he might have seen it, and that is enough. So if the testator being sick, should be in bed, and the curtain drawn. 2 *Salk.* 688.

In the doctrine of Wills, it has always been understood that they ought to be regarded as the most solemn act and instrument that a man can execute. They are not like other acts or judgments which

may be easily revoked or repealed: but they are considered in a very serious and sacred light, like the final and upright sentence of a High Court of Justice, from which there is no Appeal.

The care which the Law provides for the real execution of the will and intention of the Testator, and the rules laid down in order to discover that intention and prevent any other being imputed, shew in what a solemn light this important, and often the last, act of a man's life, is held by the Law. I will read some material passages, declaring what the Law is, from a high authority:

Conyn's Digest, vol. 2 printed in 1792. 387. If a testator declares his will and wishes B. was present to write it, whereupon B. is sent for by his wife, without other directions, and he writes the will in the life of the testator from the mouth of the witnesses present, but the testator was senseless before the writing was finished, it is a good will.

And it shall be good for so much as the witnesses agree in, though they disagree as to another part.

Notes in writing prepared by A. which he declares to be the effect of his will, and which he delivers to Counsel, with the deeds of his estate, as instructions for his will in form; though he dies before the will drawn by Counsel is executed.

So if a will in writing be known in pieces by rats, if by collecting the pieces the particular bequests can be known, it will be good.

If a will in writing be burnt or destroyed after the death of the testator, it is not avoided.

Otherwise if it was destroyed or lost before his death.

389. A codicil is that which contains any addition to, or explanation of a will.

A codicil is part of the will.

And may be made before or after the will.

And there may be several codicils to the same will.

After statute 36. 32. & 34. H. 8. it is sufficient that a will was put in writing by the testator, or by another, with his privity and direction, without any other execution.

So if notes or instructions were taken of the testator for his will, and it was reduced into form, pursuant to such instructions, in the life of the testator, though it was never read or shewn to him, it was sufficient.

If it was not published though in loose sheets.

Notes were written for the disposition of part of his estate, it was good for so much.

390. If a testator owns his signature to the witnesses it is sufficient, though they did not see him sign it.

It is not necessary that a testator should sign in the presence of the witnesses; if he acknowledges his hand to them, thought at different times, it is sufficient.

The statute does not require that the testator should sign the will, in the presence of the witnesses, but that they should subscribe it in his presence.

So if the testator writes his will with his own hand, which begins, I, A. B. &c. and does not put his name otherwise, but is sealed, and well executed in other respects, it is good; for it suffices that was signed in the text of the will.

So if written with his own hand, though it be not subscribed, or sealed by him.

So if it is sealed by the testator and he does not write his name at all, it is good; for the seal is a signing. If a testator executes in the presence of two, who attest, and some years after goes over his name with a pen, in the presence of a third, who attests, the other two not present; it is a good execution.

If witnesses subscribe within the testator's view, it is sufficient, though it be not in the room.

Or where the testator may see them though he does not.

Desiring a codicil to be taken as part of a will, differs not from an actual confirmation; and, therefore, every codicil will do, for it is a further part of a will, whether said so or not.

If a stranger cancels or tears a will after the death of the testator, it shall not be thereby destroyed, if the pieces can be collected.

If a testator says he will revoke, this does not amount to a revocation.

406. A will shall not be avoided, if made by the impotency of others.

Or by artifice; for if it be well executed, that shall not be examined.

A Court of Equity does not favour revocations of wills, contrary to a plain intention of the testator. *Atkins* Vol. 3. P. 179.

There is no doubt but the addition of a codicil is the republication of a will; and it is not disputed at the bar. *Atkins*. Vol. 3. P. 180.

A will shall not be avoided if the disposition be imprudent.

MR. ALDERMAN ROEBUCK requested a short indulgence of the Court, to observe in a few words, to what had fallen from *Mr. Alderman Rofs*. It had not occurred to him, when he spoke before, that the paper writing or instrument, which had been exhibited in Court as the testament of *Mr. Hall*, was deficient and wanting in that sort of form, which was required by Law to constitute a Testamentary writing.

He could account, however, very easily for omitting to advert to that circumstance before as it was forgotten in the two great considerations which he had previously observed on, namely the infancy of the supposed testator at the season in which the instrument was reported to have been executed, and the after insufficiency of the evidences, who had been called to the support of it, to establish that circumstance. But in reply to what *Mr. Rofs*, had said respecting a testament and to what amounted to one, he should briefly add, that he considered a testament in a more solemn light than what his Brother Alderman seemed to do: he held it safe for those were left behind, and for the testators intention, that a Testamentary writing should be formal, as well for the confidence with which the testator would depart, in knowing that his good wishes would be infused to those he respected, when his good Offices must cease; as also for their satisfaction

who were to be benefited by the testators disposition. He was therefore far from thinking that any scroll or paper should be taken for a Will, and he was happy that he had so good an authority as that of *Wentworth* to sanction his way of thinking. He would conclude by reading a passage or two from *Wentworth* Page 23.

Mr. Alderman Rofs observed, in reply to a quotation by *Mr. Alderman Roebuck* that he had endeavoured to investigate the best authorities:—that *Cummings's Digest*, founded on the highest, was that which was now controverted; and that if the point in the passage quoted by the last Alderman, militated against the authority he had cited, he left it to be decided which was most respectable.

Mr. Alderman Rofs, in the course of his speech admitted very true, as had been observed by *Mr. Alderman Roebuck* that the testator was a man of acute and good understanding; and argued that there could not be a more convincing proof of his being so, than the will in question: that there could not be a more judicious or consistent choice than the deceased had made, in appointing such a person as *Mr. Boggie* to be his executor; a man of ability in business and fair character, and who was not too much engaged in other pursuits to be diverted from strict execution of the office;—and the propriety of his conduct, in leaving legacies to two faithful servants who had long lived with him, and had probably been of essential service in assisting him to acquire

that fortune which he was then to leave, was very striking and remarkable. As to leaving his widow the residuary legatee; that perhaps might not appear quite proper, when he had children who ought to have some certain provision; but on that point, much depended on circumstances, and the worst consequence that could arise from such a disposition would be to make children dependent on their mother.

MR. ALDERMAN WEBS could not view the paper writing exhibited, but as the Will of the late *Mr. Hall*, and he entertained not, from what was in proof, a question as to its validity. He contended, that inconveniences innumerable would ensue, if the Will should be declared void and on that ground, almost alone, if he had not been convinced to fully and thoroughly, as he was, of the execution of the instrument, he should perhaps have been inclined to favour it. But the Court, in addition to the variety of evidence brought to substantiate the Will, had given it the sanction of their Seal, and several acts had been performed under that authority. It was but a very natural conclusion, to infer that in exemplification of the Will and copies of the proceedings of the Court had been transmitted to Europe, and the executor there would be ratified in his trust, before Intelligence could be received of the decision of that day, if it should turn out unfavorable. The consequence in such case was too obvious to make it necessary for him to point it out. He concurred altogether in sentiment with the Alderman who had spoken immediately before him: and must pronounce in consequence in favor of the Will.

MR. ALDERMAN CALL agreed with *Mr. Webb* that under the circumstances of the case, and the evidence produced, the Will ought to be held of force and virtue.

MR. MITCHELL, could not acknowledge the validity of the paper, for wanting in essential forms, and in necessary and requisite proof and he could not conceive that convenience or inconvenience should be studied in matters of that description of which the will was: that he esteemed it in his conscience a bad Testament in itself, and no external persuasion could influence him to give it his concurrence or countenance: he was against the Will.

The voices being equal, three for the paper and three against it, the Mayor gave the casting voice, and pronounced — “the Paper Writing purporting to be the Will and Testament of *John Hall* deceased, to be a Nullity—and that the said *John Hall* died Intestate, and that the Probate Granted to *William Boggie*, of the said Paper Writing, be Revoked.”

* * * THE EDITOR does not consider it necessary for him to add a Word as to the Abilities of the PRAC-TICES Employed in the above MATTER: they are too well acknowledged to require any Eulogium from him, but it would perhaps be an injustice not to add, that few Legal Questions have been argued with more Ability and Learning.

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