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Judicial DEPARTMENT

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No. 46. Read the following letter from H. A. BRETT, Esq., Magistrate of Salem; to EDWARD MALTBY, Esq., Acting Chief Secretary to Government, Fort St. George, dated 3rd September 1857, No. 228.

SIR,

With reference to an Extract from Minutes of Consultation, dated 21st August 1857, Judicial Department, No. 1059, I have the honour to submit copy of a Report* from Mr. Dykes, the Joint Magistrate of Salem, acting as Justice of the Peace, explaining what further evidence has been obtained in regard to the charge preferred against Messrs. W. Henderson, C. E. Pardon, and Thomas Lovell, Engineers of the Railway Company; also translations of additional depositions taken by Mr. Dykes, copy of a correspondence which has passed between that officer and myself on the subject of this further investigation, with other documents entered in a list annexed to this letter.

* Dated the 31st August. Received 1st September.

2. Mr. Dykes proceeded to the village in which the cause of the complaint arose, and examined 14 witnesses (produced before him by the head of Police,) of whom 10 deposed to the Para. 3. felonious assault, and 4 to other points. He has observed in his report that these witnesses corroborated the statement made by the prosecutor; and that if their evidence could be taken without reference to what had gone before, it would *justify* the committal of the case.

3. He afterwards refers to certain facts (or supposed facts) as sufficient to discredit the testimony of these witnesses. These facts may be briefly stated as follows:

Para. 10. *First.*—Up to the time of the deceased's death, no complaint was made either by himself, or on his behalf, as to the assault.

Secondly.—The persons who were "most likely, after the death of the deceased, to know all about the alleged assault," denied having seen any assault committed.

Thirdly.—The charge was not pressed by the father, who was not forthcoming; and the additional evidence had been collected by the Native head of Police.

Fourthly.—The new witnesses, with three exceptions, were workmen employed on the lines; and of the three exceptions 2 were village servants.

Para. 5. 4. Mr. Dykes has also explained why he made no further enquiry after the first investigation held at his office. He gave "much anxious thought" to this point; and thus came to the conclusion, that no additional evidence would satisfy "any man who Para. 6. were aware of the ease with which any amount of false evidence can be obtained in this country." This conclusion was based mainly on the fact, that the charge Para. 7. "when first brought forward, and supported by the best evidence attainable, had broken down."

As noted under the 30th Augt. 1857. 5. On receipt of this letter, I pointed out to Mr. Dykes, that the circumstances to which he referred as sufficient to discredit the second batch of witnesses, Para. 10. whose evidence he described as "in itself very strong and so hanging Para. 3. well together, had no such effect, for reasons explained in my letter. Para. 12 of my letter, dated 30th August. I then urged on him that it was obviously his duty to proceed with the enquiry, and commit the accused parties.

Letter dated 31st August para. 3. 6. In reply, he informs me that I had misunderstood him, in supposing that his report expressed his own views as to the value of the additional evidence. He writes on this point; "The question, permit me to repeat, is not what Para. 5. I think, but what a *Jury* would." It therefore seems that Mr. Dykes and a Madras *Jury*, are not guided each by the same principles in estimating the value of evidence.

Para. 6. 7. In the next place, he expresses himself as dissatisfied with my reasoning, to the effect that the witnesses examined at the first investigation were not in the natural order of things, the "most likely" to know what passed during the assault, nor more likely to know than any other of the persons who were present.

8. He then refers to the fact that the deceased never said, before he died, who had struck Para. 4. him; which he describes as "a most important fact." (Though those to whom the unfortunate deceased might have spoken, if he were capable of speaking, were themselves eye-witnesses of the assault.)

9. Finally, he can see no reason to change his opinion, to wit, "that the first witnesses having signally failed, any further *direct* testimony would be discredited." He has "therefore again to request that legal evidence" (meaning, I presume, the opinion of the Law Officer) may be taken, before he proceeds further as regards the accused.

Para. 4.

10. The remaining part of the letter refers to other points not immediately connected with the evidence. In para. 3 he states that he will now lose no time in having the Medical officers examined; and he offers to take additional evidence from them on any points which I "may be good enough to specify," as in my opinion requiring "to be brought out more fully."

Para. 5.

11. Mr. Dykes has since taken the informations* of the Medical officers. They were taken a few hours after I received the above invitation to specify any point, &c., as stated in the preceding para. I should certainly have attended at the examination, to watch the proceedings, if I had been informed at what time it was to take place, no notice was sent to me at this stage of the case there was no occasion to take these statements. The accused ought to have been present.

* Forwarded with the other documents.

12. Previous to making my first report to the Government, I made a point of questioning the Zillah Surgeon as to the precise interpretation to be put on his certificate. He then informed me that there could be no doubt that the man died from the effect of blows. His evidence, as now recorded, raises a doubt on the subject, nevertheless, there is still evidence (European and Native) regarding the cause of death, sufficient to warrant any Magistrate in sending up the charge against the accused for Judicial enquiry.

The Zillah Surgeon made his examination of the body 12 hours after the Apothecary examined it.

13. It now remains with the Government to prescribe what further steps shall be taken in the case. Without the express sanction of the Government I do not feel at liberty to take up the investigation under my own powers as a Justice of the Peace. I have no precedents for so doing. Perhaps no case has ever before occurred in which an officer has refused to commit persons for trial on evidence so credible as that now offered, (due allowance being made for the present incomplete state of the informations); nor any case in which a subordinate officer has so disregarded the advice and given remonstrances of the principal Magistrate of the District.

14. In para. 7 of my first report to Government*, I mentioned that I should require further evidence. I submit with this letter copy of his report on the subject. A copy of the same report was put into the hands of Mr. Dykes when he went to make his investigation on the spot. If the Government refer to page 8 of that report, they will see a description of the effect that the sudden, premature, close of the investigation, has had on the minds of the Native community. In the town of Salem, where a large body of men, public servants and others, are well able to scrutinize the proceedings of the public functionaries, the case created general scandal.

* Dated 12th August.

15. As to my own opinion, I do not believe that Mr. Dykes, the Joint Magistrate, has acted a bona fide part on the occasion. No officer, with his experience, could believe that the circumstances of the case, at the time of the first investigation, precluded all hope of his procuring further credible evidence in support of the charge.

16. The crime was not committed in secret. It was perpetrated in open day before as many as 20 or 30 witnesses. It was not a case in which either the Police had any motive for forging evidence, or a prosecutor any necessity for seeking false evidence. No one had attempted to account for the man's death on any hypothesis consistent with the innocence of the accused.

17. Those who are best acquainted with the extent to which false evidence can be procured, have never yet maintained that the evil can justify the Police in forging any possible prosecution for the purpose of procuring good evidence; or exempt either Judicial officers, or Magistrates acting ministerially, from the duty of trying all testimony on its own merits.

Para. 3 of the letter from Assistant.

18. No Officer, possessing the most ordinary knowledge of his duty, can believe in the doctrine broached by Mr. Dykes, as to the ordinary distinction between what he might think of evidence, and what a Jury would think.

Para. 2 letter 12th August.

19. He has averred that, "after much anxious thought," he considered it useless to ask for further evidence. At all events, his despair of any benefit from further search by the Police for evidence, need not have deterred him from examining all the witnesses who were sent in for his first enquiry, or were then on their way to his office.

Para. 3.

20. In my letter to him of the 2nd Instant, I have asked him how it happened that he did not examine every witness actually in attendance at his first investigation, referring him on this point to the list of witnesses furnished by the Head of Police, and sent to him when the case was forwarded (one of those present was not examined; and if were to be immediately exported.)

Enclosure No. 3 to my letter dated the 12th August last, No. 108.

21. His answer in regard to this important document, which so completely refutes the idea that any difficulty existed in procuring evidence by legitimate means, was, that the document referred to escaped his notice. Though, in such a case, the facts reported by the Police form the chief subject for consideration.

Letter dated 3rd September last, para. 5.

22. Looking, therefore, at all the circumstances of the case, I cannot but believe that a crime, amounting to nothing less than murder, was treated by the Joint Magistrate as a private injury, and not as a public wrong, which called for the strictest investigation, and that this first error on his part has been followed by a second. Having once determined that any search for further evidence was unnecessary, Mr. Dykes has found in that determination a sufficient reason for rejecting evidence now that it has been obtained.

Para. 4 of letter dated 12th August.

(Signed) H. A BRETT,
Magistrate.

Translation of a Tamil deposition given on solemn affirmation in evidence by Chinna Gounden, aged 45, son of Pully Gounden, and residing at Punnaigoudal Kaleyampatty in the Woraiore Taluk, of Vellala caste, and living by profession a bricklayer, before J. W. B. Dykes, Esq., Joint Magistrate of Salem, and Justice of the Peace, on the 26th August 1857, at Ahmbur station.

Question.—What do you know of the case in which Cundasamy Mindelly died, from having been beaten?

Answer.—As I had to perform a religious ceremony, I went to Paulmade for fruit and vegetables, and at 7½ o'clock, when I was standing by the bridge where work was going on, the deceased Cundasamy, who putting in a stone piece to set the other stones tight. Then Mr. Henderson first beat a mistry, whose name I know not, and then flogged the said Cundasamy with a whip. The whipping having fallen on the testicles, he fell down. At this, all the bricklayers took stones in their hands, and made loud cries, and the above gentleman got into a tent that had been pitched between this Bungalow, where enquiries are now held, and the road. Then all the bricklayers put Cundasamy into a dooly and brought him under the margosa tree, I now point out, and standing at the side of the gentleman's tent, they threw up sand and stones in the direction of the tent. On this, Mr. Lovell came out with a gun, and as held it to show, that he would fire. All the bricklayers, then ran away. Afterwards, Mr. Lovell gave Cundasamy a kick. I do not know whether the kick struck on the abdomen or on the left testicle; as I was at a distance. The bricklayers ran away, leaving Cundasamy at that place, and I do not know what passed afterwards; as I went away I did not see the deceased before he died. After he died, when the Curnum and others came to Valumpatty, I also came there and examined the wounds. There were two marks of whipping on the right buttock, two on the right shoulder, the right testicle was blue and thickish. There were only these wounds. I can make out the faces and features of Mr. Lovell and Henderson. They both have grey beards, and had black coats on them.

Question.—When did this take place, do you remember?

Answer.—This took place on Saturday, and the deceased died on Tuesday.

(Signed) CHENNA GOUNDEN.

Taken by me, (Signed) J. W. B. DYKES,
Justice of the Peace.

Translation of a Tamil deposition given in evidence on solemn affirmation before J. W. B. Dykes, Esq., Joint Magistrate of Salem, and Justice of the Peace, on the 26th August 1857, at the Attoor station, by Maury Mootoo Pallichely, aged 50 years, son of Pandaj lingumputty, in the Wondiore Taluk, of Pallichy caste, of Siva sect, and living by profession as Ondury.

Question.—What do you know, about the case in which Cundasamy died from having been beaten?

Answer.—On Saturday, I was going to Cadyampatty, for bringing a *Jack-fruit*, and when in the morn I was on my way cleaning my teeth at the river, three gentlemen came to the bridge, one of them who had a board passed the bridge work with a stick, and they struck the father of the deceased with a whip, at which he cried out ada ayo, it pains me. Then the said Cundasamy came out making a salam and asked them not to beat, then the said beaded gentleman gave him 4 or 5 whippings which having struck the deceased at the testicles some where, he fell down. Afterwards as all the people assembled and came on, the said gentleman went into the tent, then the people carried Cundasamy in a *doolay* and placed him near the tent, the father of the deceased crying ayya, they have killed my son, threw sand in the air. Then two of the gentlemen came out with guns and the third with bare hands. Seeing them the people ran away. Afterwards one of the two that came out with a gun, and the third gentleman kicked the deceased Cundasamy with their shoe clothed feet: the gentleman that had flogged at the bridge was standing with a gun in his hand, the former two kicked the man with their legs and used no other instruments. Afterwards the bricklayers came and took away Cundasamy. Until all these occurred I stopped there and saw them, but afterwards I went away. I did not see the deceased after that or before his death, but I saw him after death. There were 8 wounds on his person. The scars of whipping only were apparent, but the marks of the kicking could not be seen then. I saw the things that passed at the tent from near the house which is now being pulled down.

Question.—Do you know the names and features of those gentlemen?

Answer.—I do not know the names of the gentlemen. I can make out only the features of that gentleman who had a board. I cannot make out the others.

(Signed) MAURY MOOTTOO.

Taken by me, (Signed) J. W. DYKES,
Justice of the Peace.

Translation of a Tamil deposition given on solemn affirmation on the 26th August 1857, at the Attoor station, before J. W. B. DYKES, Esq., *Justice of the Peace* at Salem, by *Pully*, aged 35, son of Soorunga Goundan, residing at New Vadagumputty in Gundalagumputty, of Vellala caste, Vaigan sect, and living by coolly work.

Question.—What do you know of the case in which Cundasamy Moodelly died?

Answer.—On Saturday when I was working at the bridge, three gentlemen came, and when Cundasamy stooped to roll up a rough stone, one of the gentlemen flogged him with a whip, which having struck Cundasamy on the testicle, he fell down; the people coming together Cundasamy's father threw sand in the air crying out you have killed my son for nothing. On this two gentlemen came out of the tent, one with a gun and the other with a whip. The people fled away, leaving Cundasamy there. The gentleman that had a whip in his hand saying, you godamd son dam, gave two or three beatings with the whip and kicked him with his shoe legs. The gentleman that had gun also kicked the man with his shoe feet. Afterwards I know not save the said Cundasamy. The two or three whippings fell on the back. I do not know the names of the above gentlemen, but I can make out their features. The gentlemen that beat at the bridge has much beard. This gentleman did not come out at the tent.

Taken by me, (Signed) J. W. DYKES, (Marked) PULLY.
Justice of the Peace.

Translation of a Tamil deposition given in evidence, on solemn affirmation before J. W. B. Dykes, Esq., *Justice of the Peace* at Salem, on the 26th August 1857, at the Attoor station, by Teroomala Moodelly, aged 72, son of Narana Moodelly, residing at New Vadastation, by Teroomala Moodelly, aged 72, son of Narana Moodelly, residing at New Vadagumputty, attached to Oothaligumputty in the Wondiore Taluk, of Vellala caste, and Siva sect, and living by profession as bricklayer.

Question.—What do you know of the case, in which Cundasamy Moodelly died from having been beaten?

Answer.—On Saturday morning, where I and others were doing bridge-work, the gentleman of this station came and beat me, and I ran away. I do not know who was beaten afterwards. I also accompanied Cundasamy, when he was being carried. I saw him when he was laid up ill. There were wound marks all over his body. I saw those marks after his death, but before his death, he covered himself in a cloth. When he was being carried away, I took off the cloth on his back, and found 4 or 5 marks of beating. I also was there, when the Caroon came and examined the wounds, but I did not put my name to the Muhazer.

Marked TEROOMALA MOODELLY.

Taken by me, (Signed) J. W. B. DYKES,
Justice of the Peace.

Translation of a Tamil deposition given in evidence, on solemn affirmation before J. W. B. Dykes, Esq., *Joint Magistrate* of Salem, and *Justice* of the Peace, on the 26th August 1857, at the Attoor station, by Permall Chetty, aged 28, son of Venkatrama Chetty, residing at Callampatty, of the Comity or Banian caste, Vaishno sect, and living by trade.

Question.—What do you know of the case, in which the deceased Cundasamy was beaten?

Answer.—On Saturday morning, I came by the river way to ask Mr. Purdon some money that he should give me. Then Messieurs Lovell, Purdon and Henderson, were inspecting the bricklayers' work. They beat two or three bricklayers, I do not know for what fault; and then Mr. Purdon gave Cundasamy a beating with a whip, which striking the man in the testicles, he fell down. His father took him up to a bamboo bush, and thence after a short time to the mortgage tree, his father crying out, that they killed his son, threw sand in the air, upon which Mr. Lovell came out of the tent with a gun, while the two namely, Purdon and Henderson with whips in their hands, Mr. Lovell saying that he would shoot them. Every body ran away. Afterwards Mr. Purdon and Mr. Henderson whipped Cundasamy and kicked him with their legs, I was seeing all this, standing by. On Sunday the day after I went and saw the person at Pudoo Vadagumputty, and there were on the back and sides marks of whipping and scars produced by kicking. Though he was covered in a cloth, he opened and showed me his wounds. After this I never saw him.

(Signed) PERMALL CHETTY.

Taken by me, (Signed) J. W. B. DYKES,
Justice of the Peace.

Translation of a deposition given on solemn affirmation, before J. W. B. Dykes, Esq., *Joint Magistrate*, and *Justice* of the Peace of Salem, on the 26th August 1857, by Velayudan, son of Veeramma, residing in the village of Pudoo Vadamumputty, attached to Noombalagumputty in the Taluck of Wondiore, Cannadia caste, Siva sect, coolly by profession and aged 40 years.

Question.—What do you know respecting the death of Cundasamy by the ill treatment he received?

Answer.—On my return from hunting I passed by this bridge in order to demand a Rupee due to me by a man working at the stone work: I then saw 3 gentlemen standing there. One of those gentlemen, Mr. Purdon the Mullapooram big gentleman who was standing on a stone jumped down and struck with the whip. The whipping having fallen on Cundasamy's testicle, he fell down crying out "I am dead." I did not see when the whipping fell on Cundasamy's

testicle. Immediately the gentlemen went into their tents, Cundasamy's father and others carried away Cundasamy and placed him near the margosa tree. Cundasamy's father threw earth in the air saying that they were sent for and served after so cruelly. Whereupon the three gentlemen who were inside the tents came out; Mr. Henderson armed with a gun, another a whip and another I do not know what he brought. Upon this all the bricklayers ran away. I also went off a great distance. I saw these gentlemen each kicking Cundasamy once by turns. I saw Cundasamy after he was brought home and found the impression of whipping on his back and testicles swollen. I did not see the other parts of the body.

Marked VAYLOYDUM.

Taken by me, (Signed) J. W. B. DYKES,
Justice of the Peace.

Translation of a Tamil deposition given on solemn affirmation before J. W. B. Dykes, Esq., *Justice of the Peace of Salem*, on the 26th August 1857, at the Attoor station, by Maliun, *aged* 40, *son of* Nagappen, *residing at* Palia Vadugampatty, *attached to the Village of* Woomaloor Talook, *of* Vadiaur caste, and Sava sect.

Question.—Are you the next houseman to Cundasamy Moodelly's?

Answer.—Yes. I am the next houseman, as I was absent from the village I did not see him till he got wounds and died. I saw him after death, together with the Manager. There was a mark of whipping on his right thigh, one on the right shoulder and one on the right side and I saw them.

Marked MULLEN.

Taken by me, (Signed) J. W. B. DYKES,
Justice of the Peace.

Translation of a Tamil deposition given on solemn affirmation before J. W. B. Dykes, Esq., *Justice of the Peace at Salem*, on the 26th August 1857, at Attoor station by Venkatappen, *aged* 40, *son of* Pungian, *residing at* Palia Vadugampatty, *attached to* Woombaligampatty *in the* Woomaloor Talook, *of* Vadiaur caste, *of* Sava sect, and *living by making* mosquito curtains.

Question.—Are you the next houseman to Cundasamy Moodelly, did you see him when he was in a wounded state?

Answer.—I have been to the hills on Saturday and on my return on Monday I saw him. He had wounds on the right thigh and on the nape of the neck. I do not know by what means they were caused. He died on Tuesday. In this case I know nothing more.

Marked VENKATEPPEN.

Taken by me, (Signed) J. W. B. DYKES,
Justice of the Peace.

Translation of a Tamil deposition given on solemn affirmation before J. W. B. Dykes, Esq., *Justice of the Peace at Salem*, on the 26th August 1857, at the Attoor station, by Yellen, *aged* 20, *son of* Venkatappen, *residing at* Palia Vadugampatty *in* Oombaligampatty, *of making* baskets, &c.

Question.—Are you a neighbour to Cundasamy Moodelly. Did you see him after he was beaten?

Answer.—I am a man of the third house from Cundasamy. I did not see him after he was beaten till he died. I saw his corpse afterwards, but I did not see his wounds.

Taken by me, (Signed) J. W. B. DYKES, (Marked) YELLEN.
Justice of the Peace.

Translation of a Tamil deposition given in evidence on solemn affirmation before J. W. B. Dykes, Esq., *Joint Magistrate of Salem, and Justice of the Peace* on the 26th August 1857, at the Attoor station by Cundasamy Naiken, *aged* 29, *son of* Govindappa Naiken, residing at Cudyampatty in the Womaloor Taluk, of Telongoo caste, Vishnoo sect, and living by profession as bricklayer.

Question.—What do you know of the case in which Cundasamy died from having been beaten.

Answer.—On Saturday morning when I and others were doing work at the bridge, Mr. Lovell, Mr. Purdon and Mr. Henderson came there, and as they were inspecting the work, Mr. Lovell pointed out to Mr. Purdon the work of the putting in stone pieces in the interstices between the large stones. Mr. Purdon jumped down and flogged 2 or 3 people with the whip and then thrashed Cundasamy with the same. I did not see on what part of the body the whipping fell, but Cundasamy crying out appa and saying that the testicles were injured, fell down. Afterwards the people came together and carried him to the bamboo bush, a short time after they made a dooly and took Cundasamy by the side of the tent, when Cundasamy's father crying out that his son was killed for nothing threw some sand into the air; on this the gentlemen came out from the tent, Mr. Lovell with a gun and Mr Purdon and Henderson with whips in their hands. Afterwards Mr. Lovell showed the gun saying that he would fire, after this all the people ran away leaving Cundasamy there. Then Mr. Henderson flogged him two three with the whip and kicked him with his shoe legs. After receiving all these beatings Cundasamy limped up a little distance and fell down. Then all the people came and took him away. I have not seen him afterwards.

Question.—You say Mr. Purdon has struck the people at the bridge. Has he a beard?

Answer.—He has not a beard. The beating given near the tent was upon the back. They beat him severely, the whip sounding "palish" "palish."

Question.—Can you make out these gentlemen?

Answer.—Not well. (Signed) CUNDASAMY.

Taken by me, (Signed) J. W. B. DYKES,
Justice of the Peace.

Translation of a Tamil deposition given on solemn affirmation before J. W. B. Dykes, Esq., *Justice of the Peace* of Salem on the 26th August 1857, at the Attoor station, by Govindah Naiken, aged 29, son of Ramasawmy Naiken, residing at Cudyampettah, of Yadooga caste and Vishnoo sect, and living by profession as bricklayer.

Question.—What do you know of the case in which Cundasamy Moodelly died from having been beaten.

Answer.—On Saturday morning when I and others were engaged at the bridge work (*i*) gentlemen Messrs. Lovell, Henderson, and Purdon came there and inspecting the work of the bridge, came on speaking something among themselves. Then Mr. Purdon struck two or three bricklayers. He also flogged Cundasamy Moodelly with a whip as he had failed to remove a piece of stone from beneath of a large stone which he was endeavouring to turn up. The said blow having fallen on one of the testicles, he fell down. Upon this the people assembled and placed the said Cundasamy Moodelly near the bamboo bush. After some time they made a cloth dooly and put him into it and then carried him to the margosa tree I now point out. At this time the father of the said Cundasamy Moodelly threw sand into the air. Upon which Mr. Lovell with a gun and the others with whips in their hands came out from the tent. Mr. Lovell showed the gun saying that he would shoot. The people ran away. Afterwards Mr. Henderson, flogged the said Cundasamy Moodelly one blow with a whip and also kicked him with his legs. Mr. Purdon, also struck him with a whip. I was close by and saw these, but I did not see on what part of the body the blows fell. Afterwards I did not see Cundasamy Moodelly.

(Signed) GOVINDAH NAIKEN.

Taken by me, (Signed) J. W. B. DYKES,
Justice of the Peace.

Translation of a Tamil deposition given in evidence on solemn affirmation before J. W. B. Dykes, Esq., Justice of the Peace of Salem, on the 26th August 1857, at the Attoor station, by Tanjore Ramasawmy Naiken, aged 66, son of Nattasawmy Naik, residing at Cuddyampatty in the Wanniore Talook, of Talooca Naiken caste, Vishnoo sect, and living by bricklayer's profession.

Question.—What do you know of the case in which Cundasamy Moodelly died from having been beaten?

Answer.—On Saturday morning when I and others were working at the bridge, three gentlemen after inspecting the 1st line of the bridge came to the 2nd line and spoke something about the joining of the stones in that line, one of the gentlemen who had a little beard struck two or three people and flogged with a whip Cundasamy Moodelly, who was then in a stooping position to put in stone pieces between such large stones as were not firm placed. This struck him on the testicle and he fell down. I and others lifted him up and took him to the bamboo bush. As he was speechless and breathless, we formed a cloth into a dooly and carried him, and when we were coming along the road, the deceased's father cried out near the margosa tree, you have killed my son also! threw sand into the air. On this the gentlemen came out from the tent, one with a gun and the other two with whips and said that they would shoot. At this the people ran away leaving Cundasamy Moodelly there. Of the gentlemen who had whips the one that has the longer beard whipped and kicked the said Cundasamy Moodelly. The gentleman with the small beard flogged only with his whip. I do not know on what parts the kicks fell. But the whip gave one lash on the left side of the abdomen, and several others all over the body. Afterwards I did not see him either when alive or after death. The gentleman with the smaller beard belongs to this station. The gentleman with a longer beard I am told belongs to the Cellery station. I cannot make out the features of those gentlemen.

(Signed) RAMASAWMY NAIKEN.

Taken by me,

(Signed) J. W. B. DYKES,

Justice of the Peace.

Translation of a Tamil deposition given in evidence on solemn affirmation at Attoor on the 26th August 1857, by Soobbarayen, son of Rungayen, of the village of Cattyampatty, in the Wanniore Talook, Rajoo caste, Vishnoo sect, a bricklayer by profession, and aged 45 years, before J. W. B. Dykes, Esq., the Justice of the Peace of the Salem District, on the 26th August 1857.

Question.—What do you know regarding the assault and death of Cundasamy Moodelly.

Answer.—On Saturday morning while I and others were working at the bridge, 3 gentlemen came to that place to look after the work. Of whom the senior gentleman Mr. Purdon on looking at the construction of the stones, first struck 2 or 3 men and then struck Cundasamy Moodelly, who was working in a bending posture with a whip, when Cundasamy Moodelly dropped down saying that the whip struck his testicles. Immediately he was removed near a bamboo bush where he remained for some time. Afterwards he was put in a dooly and carried along the road. On approaching the tent, the father of the aforementioned Cundasamy Moodelly, threw dust and exclaimed "you have beaten and killed my son." When the three gentlemen that were in the tent came out, one with a gun, another with a whip, and the third with empty hands. On seeing the gun, we were frightened and ran away. The gentleman that had the gun in his hand and the one that had nothing in his hands came to the aforementioned Cundasamy. The gentleman of this station kicked and struck Cundasamy with a whip, stating that he was merely pretending. Mr. Lovell had a gun in his hand, and frightened the people of Cellery. I do not know what took place after this. I did not see the deceased afterwards. The gentleman of this station is Mr. Purdon. The gentleman of the Cellery station struck Cundasamy Moodelly at the tent with a whip.

f This mark was made by SOOBBARAYEN.

Taken by me,

(Signed) J. W. B. DYKES,

Justice of the Peace.

Translation of a Tamil deposition given in evidence on solemn affirmation at Attoor by Ramaraj-rajen, son of Venkatavaradarajen, of Cattayampatty, Rajoo caste, Vishnoo sect, a bricklayer by profession, before J. W. B. Dykes, Esq., the Justice of the Peace of Salem, on the 26th August 1857.

Question.—What do you know regarding the assault and death of Cundasamy Moodelly?

Answer.—On Saturday morning, while I and others were doing the bridge work, Messrs. Lovell, Henderson and Purdon, came to the spot and saw the work. Mr. Lovell said, that the adjustment of the stones and the construction thereof were not properly done, and struck 2 or 3 bricklayers. After this, Mr. Purdon, the gentleman of this station struck Cundasamy with his whip. The blow of the whip having caught the testicles of Cundasamy, he dropped down when his father and others removed him to a bamboo bush, and continued to fan him. A dooly was got up, in which he was carried to the margosa tree, where the father of Cundasamy threw dust and exclaimed, that they have beaten and killed his son. Mr. Lovell came out from the tent with a gun, and the other two gentlemen, with whips. On seeing the gun all ran away. Mr. Henderson kicked and struck Cundasamy with a whip, stating that he was merely pretending. This is all. I did not see the deceased after this.

(Signed) RAMARAJ RAJOO.

Taken by me, (Signed) J. W. B. DYKES,

Justice of the Peace.

Translation of a Tamil deposition given on solemn affirmation, before J. W. B. Dykes, Esq., Justice of the Peace of Salem, on the 26th August 1857, at the Attoor station by Chenna Perooma Goundan, aged 50, son of Coyppa Goundan, residing at Vadagampatty of Paly caste, and Vishnoo sect, and living by profession as Village Moonsiff of the above village.

Question.—Were you at your village between Saturday, when Cundasamy Moodelly is, alleged to have been beaten, and Tuesday?

Answer.—Yes, I was; I learnt from hearsay, that the said man was beaten, but no one complained to me about the matter till after the death of Cundasamy. As the death took place in this village, I thought that the Moonsiff of this village would make the report of it, and so I did nothing after the deceased's death. I reported the same, with particulars, regarding the wounds found on his person. Previous to the man's dying, no complaint was made to me, either by that man or by any other, regarding his having been beaten by such and such persons.

(Marked) CHENNA PEROOMA GOUNDEN.

Taken by me, (Signed) J. W. B. DYKES,

Justice of the Peace.

(True Copies.)

(Signed) H. A. ERETT, *Magistrate.*

From J. W. B. DYKES, Esq., Joint Magistrate of Salem; to H. A. ERETT, Esq., Magistrate of Salem, dated 27th August 1857, No. 72.

Sir,

With reference to your letter of the 24th Instant, and the enclosed Extract from the Minutes of Consultation, dated 21st Idem, I have the honor to state, that in accordance to the orders of Government, I have made further enquiries in the village, where the alleged felonious assault is said to have taken place, as well as in the village where Cundasamy Moodelly subsequently died; and beg to submit, through you, for the information of the Right Honorable the Governor in Council, the additional evidence which has now been obtained.

2. The two villages are close together, and on my arrival there, as you had led me to expect,* the Head of Police produced before me ten witnesses to the felonious assault, and four others to what took place afterwards, wounds, &c.

* Letter of 24th Instant.

3. These witnesses corroborate the statement made by the prosecutor,† There are, of course, discrepancies; but, on the whole, this evidence hangs well together; and if it could be taken without reference to what has gone before, would, in my opinion, justify the committal of the case.

† July 27th 1857.

4. The evidence is much to the following effect. The deceased was working on Saturday morning, the 18th July, at the stone work of a new bridge on the line, when the three Engineers

(Messrs. Purdon, Henderson, and Lovell,) came down, and found him filling up with small stones instead of doing solid work. Seeing this, one of the Engineers hit him on the back with a whip as he was bending down to adjust the stones; and the end of the whip catching the deceased on the testicles he fell to the ground. It is stated that others also were then ill-treated, and the whole of the workmen, on seeing the deceased fall, immediately struck work, the Engineers then returned to their tent, which was close by, and the workmen putting the deceased in a litter started soon afterwards, to take him to the village past the tent. The father of the deceased, also a bricklayer on the line, had been working a few yards off, when the son was struck, and he, on the procession arriving at the tent, commenced throwing dirt in the air, and abusing the Engineers who were within for having thus injured his son. One of the Engineers then appeared at the door of the tent with a gun, which he pointed at the crowd; and the other two appearing ready to support him, the crowd dispersed and left the deceased in his litter on the road. As soon as the rest had run away, the deceased, who still remained, was accosted by the Engineers of the following Tuesday. He was kicked, and struck with a whip.

5. When the case was examined by me in the first instance, the prosecutor produced as his evidence, the four men who had carried the litter. They were working with the deceased when he was first struck, and they were carrying him when it is stated that he was assaulted for the second time; but they one and all denied having seen any assault committed; and when the prosecutor stated that he had no other witnesses to produce, I determined, after much anxious thought, that it would be no good, either, my attempting to collect further evidence, for the following reasons.

6. In the first place, the prosecutor stated, that the deceased himself, during the three days he was ill, neither did who had struck him, nor desired that a complaint should be made. He made no complaint whatever, either against the three Engineers now accused of having caused his death, or against any one else. The Moonsiff of the village was present, and if the deceased were sick to make the charge, either to the Moonsiff, or the Head of Police or myself. It is not till after the death of the man, who could have given the best evidence in the matter, that the charge is brought; and then, those who are most likely to know the whole truth, deny having seen any assault committed.

7. It is a case between a large body of Native labourers and their three European employers; the scene is the midst of the extensive jungles between the Shevaroys and Tyagoor; and the witnesses were fellow bricklayers of the deceased in the Railway employ. It indeed could scarcely be otherwise, and of the ten eye witnesses who now come forward there are only three, who have not been working under the orders of the accused, and of these two are village servants.

* Ellah Surgeon's, dated 15th July 1857.

Assistant Apothecary's dated 15th July.

8. There was further the curious fact that the Medical Certificate* made no mention of injured testicles; but this I did not pay much attention to; as the second assault, if the story were true, was quite enough to have caused the death of the deceased, and the original cause of it all might have disappeared. I simply considered that here was a most grave criminal charge brought against three Europeans by their native workmen, and that this charge when first brought forward, and supported by the best evidence attainable, had broken down; and I came to the conclusion that no additional evidence would enable me to get over this difficulty, with any sure aware of the ease with which any amount of false evidence can be obtained in this country.

9. Whether it is considered that I was justified or not in coming to this conclusion at that stage of the proceedings, the reasoning which I have given applies now, it appears to me, with and all information that cannot be made available in a Court of Justice; and I confine myself wholly to considering what would be the probable result, if the case were committed to the Supreme Court; and whether there are such reasonable grounds for expecting a conviction as would justify my passing this course.

10. The result of the first enquiry has been given already, and it must be taken into account in considering the effect of any evidence obtained subsequently. There is the father's admission that the deceased, during the three days he was ill, neither said who had struck him, nor that he wished a complaint to be made against any one. There is the neglect of the father to bring to the knowledge of the authorities the serious assault which he states had been committed on his son; and, finally, there is the fact that the four men, who it is said carried the deceased, and were most likely after the death of the deceased to know all about the alleged assaults, one and all, denied having seen any assault committed. The charge is not pressed now by the father; he is not forthcoming, but might probably be found, if required; and the additional evidence has been collected by the Native Head of Police. As I have mentioned before, this evidence is itself very strong, but as regards the assault consists, with three exceptions, of men employed on the line, and of the three exceptions, two are village servants. If all these men should adhere to their statements, it would be urged that the former were the native workmen who had been arrayed against their employers; and that the latter were acting under the orders of the Head of Police; and taken in connexion with what has gone before, and the case with which false witness can be obtained in this country, the whole of this additional evidence would be discredited, and the case, I myself believe, would inevitably break down.

11. I have not therefore issued warrants for the re-apprehension of the accused, although this additional evidence has been obtained. But in case you should be of a different opinion, I have directed that security should be taken from the witnesses for their appearance when required; and I would respectfully suggest, that the additional evidence which has now been taken should in that case be submitted for the opinion of the Honorable Company's Solicitor, who is already in possession of the evidence taken in the presence of the accused.

12. There is not, I believe, any reason to fear that the accused would not be forthcoming, should the Honorable Company's Solicitor be of opinion that the case should be proceeded with, as they are entrusted with important offices under the Madras Railway Company.

(Signed) J. W. B. DYKES,
Joint Magistrate and Justice of the Peace.

From H. A. BRETT, Esq., Magistrate of Salem; to J. W. B. DYKES, Esq., Joint Magistrate of Salem, dated 29th August 1857, No. 214.

Sir,

I have the honor to acknowledge the receipt of your letter dated the 27th Instant,* No. 78, transmitting additional evidence in the case of the deceased Conjeevey Moodelly, and the Report you were directed to make in Extract Minutes of Consultation of the 21st Instant, No. 1059.

* Received at 11 P. M. 29th Instant.

2. It appears from this letter that ten additional witnesses have been brought forward, and examined for the prosecution. You observe that these witnesses corroborate the statement made by the prosecutor, and that their evidence, if it could be taken without reference to what has gone before, would justify the committal of the case.

3. Your precise meaning as to the last point is explained in para. 10 of your letter, you entertain, as appears from your first decision, no doubt that the deceased met his death by violence; but you dont find that the evidence given by the several witnesses, including the prosecutor, affords reasonable ground for believing that the persons who are charged with having caused the death of the deceased were the actual perpetrators of that crime.

4. It is not that the evidence of the 10 witnesses contains internal contradictions or is insufficient in degree, but looking at certain collateral circumstances you think their statements do not deserve credit.

5. Those circumstances are as follows:

1st. That up to the time of the deceased's death no complaint was made either by himself or on his behalf, as to the assault.

2nd. That the person most likely to know all about the alleged assaults denied at the time of the first investigation "having seen any assault committed."

3rd. That the father of the deceased no longer presses the charge.

4th. That seven out of the ten additional witnesses, are people employed on the line of Railway, and as to the other three, 2 are village servants.

6. I cannot see in any of these points any ground for discrediting the evidence to which exception is now taken.

7. As to the first point, the prosecutor explained that he did not complain because he was a stranger to this country. To this he might have added, that the sick state in which his son was lying, was sufficient to engage all his attention till the time of his son's death. In my opinion the fact here referred to does not afford the slightest presumption that the evidence, so it regards the accused parties, is untrue.

8. As to the 2nd point, it is an error to state that the four witnesses first examined were the persons "most likely" to know all about the alleged assaults. They were not, in the natural order of things, the "most likely" of all other persons to know. They were not more likely to know than any of the other persons who were present on the occasion. The prosecutor stated that a large crowd accompanied those who carried the wounded man.

9. Moreover, you have misinterpreted the statements made by those 4 persons.

10. It would seem from your letter, as if all four had admitted that they aided in carrying the wounded man, and that thus they were in a position to state from personal knowledge whether an assault was committed or not. The value of your presumption in this instance rests on the fact last stated. But how does the case really stand?

11. Three out of the four denied that they were present at all at the scene of the last assault. Moottiapillay, the remaining witness, deposed that he was one of those who carried the wounded man; that he ran away (though not before he was severely beaten himself) when the defendants issued from the tent; that he afterwards returned to aid in removing Candappay Moodaliy (the deceased,) who then had marks on his person, and who said he had been beaten.

12. In my letter to Government, I observed that 3 out of the 4 witnesses who had been examined at the first investigation had probably been tampered with.

13. This opinion is supported by the fact that the investigation was postponed in your office for 24 hours unnecessarily, at the instance of the accused, to obtain Vakeel, and that the names of the witnesses were taken by Mr. Fischer, the defendant's Vakeel, at the time you consented to defer the enquiry.

Parties and witnesses were present before you on the 25th. The examination of the witnesses was deferred till the 26th.

14. As to the 3rd point, it is true that the father of the deceased has not prayed for a further investigation. I ascribe this in part of the fact that he has received a pecuniary compensation. His silence therefore admits of an easy explanation.

15. As to the 4th and last point, I suppose it would require very little consideration on your part to satisfy you, that the objection therein raised is of no real weight. No more than your general proposition, that false witnesses may be easily obtained in this country; which is a good reason for carefully sifting evidence, but not for rejecting the statements of ten or eleven men, who all agree in giving consistent evidence on the question at issue. These persons would have given the same evidence at the first had the investigation, as public justice required, been followed up.

16. I am afraid that the ends of Justice may yet be defeated through continued delay in the investigation. I therefore urge it upon you, as your obvious duty, that you should proceed at once with the enquiry, by causing the accused parties to re-appear before you; by completing the informations of the additional witnesses; by taking the evidence of the Medical Officers who examined the body; and, finally, by committing the persons against whom the charge is proved to stand their trial before the Supreme Court.

17. As to the evidence of the Medical Officers, the proper course was to have examined those persons at the first investigation, whether the crime of having killed the deceased was brought home to the accused or not. If the deceased died from violence, of which fact, no doubt has at any time been entertained since the body was examined, it was incumbent on the authorities to obtain full and formal evidence on that point, showing the precise nature of the injuries by which death was caused, as the preliminary step to a further search after the real parties who killed the deceased.

18. I think it sufficiently obvious, that the papers already submitted to the Government have been laid before the Honorable Company's Solicitor to the end that his opinion might serve as a guide to the local authorities, if they continued in doubt. You have full authority, acting as a Justice of the Peace, to commit the case without waiting for the Law Officer's opinion on what forms now so small a portion of the evidence.

19. As to para. 2 of the Minutes of Consultation, I do not understand therefrom that the Government have restricted your duty to the imperfect proceedings already held. They contemplated the re-apprehension of the accused, if the further investigation should justify that measure.

20. I return you all the papers. I beg to observe that the informations last taken are not as full as they ought to be in respect to all material facts. I would advise that the informations should be carefully looked over, and all omissions supplied at the time of the re-examination.

(Signed) H. A. BRETT,
Magistrate.

From J. W. B. DYKES, Esq., Joint Magistrate of Salem; to H. A. BRETT, Esq., Magistrate of Salem, dated 31st August 1857, No. 75.

Sir,

I have the honor to acknowledge the receipt of your letter of the 29th Instant, on the evening of the same day, and of the records referred to therein this morning.

2. I am sorry that I have failed to make myself intelligible in explaining the grounds on which I doubt the propriety of proceeding further with the case.* In the 4th para. of the letter under acknowledgment, you refer to what I expressed in para. 9 of my letter of the 27th, I confine myself wholly to considering what would be the probable result, if the case were committed to the Supreme Court, and whether there are such reasonable grounds for expecting a conviction, as would justify my pursuing this course. The question, permit me to repeat, is not what I think of this additional evidence, but what a Jury would.

* Proceedings Sudderuddy Moodaliy.

3. The second point, on which I have apparently failed to express myself with sufficient clearness, is the subject of your remarks in paras. 9 and 10. When I spoke of the prosecutor's producing as his evidence "the 4 men who it is said carried the* deceased and were most likely after the death of the deceased to know all about the alleged assault." I referred chiefly to the prosecutor's own statement; and, if that statement is true, I must still submit that these were the men most likely to know. But I ought to have been more precise, for the 4th witness although produced by the prosecutor as the "only one who knew" was not stated to have been actually carrying the deceased.

* Para. 10 of my letter of the 27th.

4. Neither had I any intention, as you suppose, of attaching any weight to the fact of the father not pressing the charge now. I mentioned his absence to explain why he did not appear at this second enquiry, and why the additional evidence had been wholly got up by the Police, and the three facts to which I did refer, with regard to the father were,

First, his admission that his son never said, before he died, who had struck him, or desired that any charge should be made.

Secondly, that the father himself failed to make the charge, when the law, for obvious reasons, requires that it should be made, viz., at once—

And, thirdly, that the evidence which he produced when he did make the charge, and which from his statement it would appear was the best that could be got, broke down. You make no allusion to the first most important fact; and, with regard to the other remarks which you have made on this case, I regret to say that I cannot, either, see in them sufficient reason for changing my opinion, that the first witnesses having signally failed, any further direct testimony would be discredited, when coupled with the other circumstances to which I have specially referred in my letter of the 27th. I have therefore again to request that legal evidence may be taken before I proceed further as regards the accused.

5. The Medical Officers were not examined, as their certificates seemed to furnish all the information they could give; but I will now lose no time in having them put on oath, and taking additional evidence to any points which you may be good enough to specify, or, in your opinion, requiring to be brought out more fully.

6. In para. 16, you express your apprehension that the ends of justice may yet be defeated through continued delay; but I trust that there is no fear of this, as the witnesses having already given their evidence on oath to all the material points would now be simply required to identify the accused, in which from the position of the accused there could not well be any room for mistake.

7. And, finally, as to the probability that the evidence had been tampered with; which supposition is supported, you consider, in the first place by the fact that the investigation was postponed in my office for 24 hours unnecessarily. If it could be proved that the evidence first produced had been tampered with, that would of course bring in the 2nd batch of witnesses; but with all due deference I must submit that this case was not postponed unnecessarily in my office. The defendants had secured Mr. Fischer as their Vakeel, and when they appeared if I remember right about 10-30 A. M., on the 28th, nearly two hours were consumed in completing the prosecutor's statement, and translating what passed to the accused. At noon, Mr. Fischer requested me to adjourn the investigation, as he was engaged as Vakeel in an important criminal case then pending before the Session Court; and the Acting Sessions Judge had refused to defer resuming proceedings in that case beyond that hour. Under the peculiar circumstances of the case, I did not consider myself justified in refusing this request. The defendants were three Europeans ignorant of the language, and Mr. Fischer the only European who could act as their legal adviser on so important an occasion. I therefore consented to his request, and the case was adjourned till 9 A. M. the next day. Should this explanation be deemed satisfactory, and I trust that I may hope so, I would respectfully submit whether it would not have been better had you first ascertained from me the grounds on which I have proceeded, before expressing that the case had been "postponed in my office for 24 hours unnecessarily."

8. You are also of opinion that the evidence was probably tampered with, as the names of the witnesses were taken by Mr. Fischer at the time I consented to defer the enquiry. Whether Mr. Fischer did do so or not, I cannot now remember for certain. But as I examined the case for you with your Cutcherry servants, and you have, I presume, derived your information from them, it is very probably correct; for the witnesses were present when the case was adjourned, and it would have been impossible, if desired, to keep their names a secret. But it is no good considering this point, except with a view to its being made use of at the trial, and if laid before a Jury this fact would, I fear, be of little avail however clearly proved.

(Signed) J. W. B. DYKES,
Joint Magistrate and Justice of the Peace.

From H. A. BRETT, Esq., Magistrate of Salem; to J. W. B. DYKES, Esq., Joint Magistrate of Salem, dated 2nd September 1857, No. 318.

SIR,

In my report to Government in the case against the Railway Engineers, I think it necessary to remark on the fact that a witness named Iyalu Naik, who was sent in by the Head of Police with the other witnesses, at the time of your first investigation of the case, was not examined.

2. The name of this witness is entered in the list of witnesses which accompanied the Tahsildar's Urzee of the 24th July. In that Urzee, the Tahsildar refers to a list of witnesses given by Soukkammanayr Moodaly, the father of the deceased. He states that of the witnesses named

in that list four were present, and then sent in to you, one of these was Iyalu Naik. He further states that 2 other witnesses entered in the list given by the Prosecutor, viz., Soobben, the sister of Soobben's brother, name not known, had gone to Mullapooram; Moonoppah Moodaly, and

The information and deposition of Henry Rolley Donaldson Marrett, Assistant Surgeon, before me James William Ballantine Dykes, one of Her Majesty's Justice of the Peace in and for the District of Salem, in the Presidency of Madras, the second day of September 1857, who on oath saith :—

That on the 24th *July* I examined about 20 miles from Salem a *body of a man* said to be Cundasamy, who is supposed to be 28 years of age. The certificate which I now look at is what I drew up after making the *post mortem*.

Externally, the body was so decomposed that it was impossible to trace *any injury*, but looking internally, or into the chest, the walls of the right and left pectoral regions were in a state of *lividity*, the heart and its appendages, also the lungs, were in a state of *vascularity*, about the head no external injuries could be discovered, and the brain was too decomposed to admit of *any* examination, all the other organs appeared to be healthy.

Q.—Full of veins?
Q.—Congestion?

From all that presented itself at the *post mortem*, it appeared as if the vascularity and lividity were the results of injury; but it seems that in hot climates, if the interval between death and examination was 20 or 30 hours, these parts would become or look vascular or congested and taking this into consideration, as well as the decomposed state of the body externally, where no traces of injury could be detected, it is really a very difficult point to say decidedly from which of these two causes the internal appearances resulted. The above views are those of Dr. John Davy at Ceylon, mentioned in page 635, Dr. Peck's *Medical Jurisprudence*.

2. In the certificate to which you refer, you gave it as your opinion that the inflammation observed was in all probability the result of severe injury. What is the occasion of the doubt which you have now expressed?

Answer.—Because at the time, I was not aware of the above mentioned fact; and now that I find such appearances are really seen, where the *post mortem* has not taken place till 20 or 30 hours after death,* but I hesitate in giving so decided an opinion.

* So it is say.

Question.—The other organs of the body you state were healthy, can you remember with precision what was the exact state of the testicle?

Answer.—No, I cannot precisely, but, as well as I can remember, the external coverings of the testicle and penis was such a mass of maggots, and the testicles themselves appeared to be so softened from decomposition, that it was difficult to make any examination of it. I chiefly directed my attention to the organs contained in the chest and abdomen.

(Signed) H. R. D. MARRETT.

Taken by me.

(Signed) J. W. B. DYKES,
Justice of the Peace.

The information and deposition of James Hoyle, Assistant Apothecary, before me James William Ballantine Dykes, one of Her Majesty's Justice of the Peace in and for the District of Salem, in the Presidency of Madras, the second day of September 1857, who on oath saith :—

That the certificate which is now placed in my hand is what I drew up after making the *post mortem* referred to therein on the 25th *July* 1857. I found, 64 hours after death, the body

of a man said to be named Cundasamy, at the village called Vadeogumputty, in a state of decomposition, and much swollen; the face, nose, and tongue destroyed by maggots, and the external skin, epidermis, coming away. On examining the body I found no marks of injury on the posterior side, anteriorly I found a large space of lividity occupying the whole extent of pectoral region. No other marks either on the abdomen or extremities.

On opening the chest, I found the inner surface of the external and walls of the right and left pectoral region, as well as the intercostal corresponding to the lividity, as described above. The heart, its appendages, together with both lungs and pleura, were in high state of vascularity. The heart, its appendages, together with both lungs and pleura, were in high state of vascularity. No trace of fluid serous escaped on opening the pericardium, and about 6 ounces from the pleura cavity.

Abdomen viscera healthy, and no injury, head no external injury, brain highly decomposed, and did not permit examination.

Q.—The lividity to which you refer, as having been observable externally, as well as the inflamed state of some of the internal organs, in your opinion, were they the result of external injuries, and, if so, what nature would you suppose those injuries to have been?

A.—The lividity and inflammation had been occasioned by severe injury, but of the nature of the injury I am unable to speak in the state in which the body was.

Q.—Did you observe the state of the testicles particularly?

A.—Yes, I *did*, and after examining them both, externally and internally, could find no trace of injury.

(Signed) JAMES HOYLE,
Assistant Apothecary.

Taken by me,

(Signed) J. W. B. DYKES,
Justice of the Peace.
(True Copies.)

(Signed) H. A. BRETT,
Magistrate.

Translation of a kyphaet sent by the Head of Police of Womaloor, in reply to a Tickood issued by the Magistrate under date the 11th August 1857, Extra No. 1, calling for certain information in the case in which it was alleged that the death of one Cundasamy, a bricklayer in the service of the Railway Company at Palis Vadeumputty, was caused by the ill-treatment received from the Railway Engineers, Messieurs Lovell and others.

Question No. 1.

Are there any other eye witnesses besides those already examined by the Joint Magistrate in the case, in which it was stated that the death of one Cundasamy, a bricklayer in the service of the Railway Company at Palis Vadeumputty was the result of the ill-treatment he received from the Railway Engineers, Messrs. Lovell and others, and if so, send a list of the names of such witnesses?

Answer.

The Head of Police proceeded to the village of Vadeumputty, &c., and from the enquiries made by him it appears that the undermentioned individuals were present during the commission of the offence.

3 persons residing in the village of Pauloo Vadeumputty.
1 Mauny Moottoo, son of Pauley Moottoo Coundan.
1 Palany, son of Soorunga Coundan—not examined.
1 Velayoodan, son of Vooranmul.
1 Bricklayer Tandavarayalu Moodaly of Madras.
1 Bricklayer Ramasamy of Salem.
2 Soukkars and Ramasamy, sons of Palanda Govinda Naiken of Boommaly in the Taluck of Tengicottah.
} not examined.

Question No. 5.

It appears that Cundasamy died 2 or 3 days after the ill-treatment, what enquiries were made by the Village Moonsiff during that interval of time, and why did not he report as soon as Cundasamy came to the village of Vadamunpatty, after he received the ill-treatment?

Answer.

Chennapa Coundan, the Village Moonsiff of Vadamunpatty, states that the place where Cundasamy was ill-used, is within the jurisdiction of the Village Moonsiff of Voombaligumpatty, that therefore he did not report the matter; that, though the deceased returned to Vadamunpatty, within his jurisdiction after he (deceased) received the ill-treatment, he did not report that circumstance because the prosecutor did not then complain to him; that, after the death of Cundasamy, the prosecutor having complained to him, he reported the matter to the Cutcherry.

Rama Goundan, the Village Moonsiff of Voombaligumpatty, states that the place where the crime is committed is 3 miles distance to the place where he resides; that neither the Tahsildar, nor the totty of the place where the crime was committed, gave him information of the commission of the offence; that, after the death of Cundasamy, he was informed of the circumstance by the Sub Police Officer who came to investigate the matter; that he, afterwards, reported the same to the Taluk. Lubbay Cawder, the Tanah peon, states that he was absent at the time when the deceased was ill-treated; that, although he returned to his Tanah the same day, nobody informed him of what took place in his absence.

Veeraten, a cooly totty, states that he was attending on the Tanah peon by desire of the registered totty Sara Cannen; that, according to the orders of the Tanah peon, he went to the village of Dammunpatty, to call the totty of the village; that, on his return from that village, he was informed by certain coolies, that a kolekhyer was beaten, and all the other coolies ran away; that he informed this circumstance to the Tanah peon, who said that he had nothing to do with the matter.

Neither of the above Moonsiffs was present during the commission of the offence, but there is no doubt that they might be aware of the transaction. Their omission to report might have arisen partly through negligence, and partly through fear, because the parties concerned were Europeans. After the man had died, they reported the matter under impression that something serious might happen to them, if they did not report the case.

The Tahsildar and totty might have been present at the time when the offence was committed. The Tanah peon being stupid, he did not report the case, either to the Village Moonsiff or to the Police office. The statements of the peon and totty are unworthy of belief. The village Moonsiff, Rama Coundan might have been informed of the commission of the offence that very day by the totty.

Had all the witnesses who were present at the time of the commission of the offence, as well as the village Moonsiffs, been examined at the 1st examination, the case would have been easily proved, and the negligence of the village servants brought to light.

A rough plan of the several localities is herein enclosed.

(Signed) GOVINDA ROW,
Head of Police.

(True Copy.)

(Signed) H. A. BRETT.
Magistrate.

No. 67. ORDER THEREON, No. 1158; dated 8th September 1837.

Government direct that enclosures 1, 2 and 4 of this letter be forwarded to the Honorable Company's Solicitor, with a request that he will report without any loss of time whether there is sufficient evidence to warrant the commitment of Messrs. Henderson, Lovell and Purton for trial on the charge of homicide preferred against them.

(Signed) E. MALTBY,
Acting Chief Secretary.

To be heard

The first papers in this case have been laid before the Company's Law Officer to ascertain if there was sufficient evidence for committing the Accused for trial.

His reply has not yet been received, & I presume that Govt will wish these additional papers, to be laid before him also. —

The points at issue between the Acting Sub Collr & the Judge can be best noticed when the evidence in the case & the mode of conducting have undergone judicial scrutiny, but in some important respects the proceedings seem fair to accused.

Whether the Judge is responsible to cause an examination of witnesses on the spot, during the absence of the Collector & the Sub Collr & Magistrate, or whether the Collr should have done so, is a question which I have not considered.

1st. In so important a case the Jurist thought should have proceeded to the Village & held a Local enquiry

2nd. He erred in not examining the first Witnesses on the day they arrived. Their evidence in chief might & have been at once taken down. The Jurist could have had it explained to him, & the Counsel of the accused could have cross examined them the following day.

3rd. It was a very serious misfortune if the Jurist to close his enquiry without examining all the Witnesses sent by the Head of Police. As it was shown that the deceased had met his death by violence, it was incumbent on the Jurist to ascertain from all possible sources of information by whom the violence was inflicted, whether by the prisoners at the bar or others. That the Jurist should

Counsel the evidence against the prisoners was present & closed the case after examining a portion only of the witnesses leaving the cause of the decease undefined & unsettled. -

4th. For the higher views of his duty as Coroner Officer appear mistaken - the Jurist had he had ascertained the prisoners for trial because he had what a Jury would consider - that there is a primâ facie case of perpetration, & a primâ facie case is made out against the accused, the Jurist is bound to commit them for trial, & leave their guilt or innocence for Judicial decision. -

J. Ker

No 1868

Extract from the Minutes of Council

Board Letter from Knights of Labor

dated 3 September 1886

- Govt directed that the Enclosures
1, 2 & 4 of this Letter be forwarded
to the Hon^ble Commissioners of Railroads
with a request that he will
report whether any Case of the
character there is sufficient
evidence to warrant the
commencement of proceedings
Locke & Parker for trial
on the charge of Homicide
preferred against them

Etc

Copy to Hon^ble Commissioners
of Railroads

Sept 8th

St Croix 8th September
Judicial 1857 Department

No 1168

Enclosing Minutes of Proceedings
in Rex
v
Rivers

dated 8th Sept 1857

Forwarding evidence taken
down by the Assist. Clk Solicitor
for report as to whether there
is sufficient evidence in the
to warrant the recommitment
of Daniel Rivers to take his
Trial on the charge
of Arson

Recd 18th Novr 57

No 23 of 1858

No 47