M.R.O. 1—39,000—16-10-23.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 909 Press ~~Mis.~~

97-99

Dated 11.6.1863 ~~19~~ .

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
11th June 1863.

Read the following papers :—

No. 97. From JAMES SWAN, Esq., Colonial Secretary Colombo ; to the Chief Secretary to Government, Fort Saint George, dated Colombo, 17th March 1863, No. 11.

With reference to the annexed copy of a letter and its enclosure from the Queen's Advocate I am directed to request that you will move the Honorable the Governor of Madras in Council to cause the necessary steps to be taken to bring the matter of the Will in question alleged to have been executed by the late Mr. Hugh Maclean to the notice of the proper authorities at Madras.

From RICHARD F. MORGAN, Esq., Queen's Advocate ; to the Honorable the Colonial Secretary, Colombo, dated 9th March 1863, No. 72.

Adverting to my letter No. 70 of the 6th instant, I have the honor to request that steps may be taken to bring the following to the notice of the authorities at Madras.

Mr. Hugh Maclean, the illegitimate son of Mr. Alexander Maclean, formerly of Madras, died at Jaffna in April 1859 leaving real and personal property. As no next of kin appeared, the District Court of Jaffna granted Letters of Administration to the Secretary of the Court who duly administered the Estate and filed his final account, by which it appears that a sum of £1,101-9-3¼, with interest, is available to the legal heirs of the deceased.

By the Roman Ditch Law, which governs this case, the father of an illegitimate child has no claims on his Estate. The mother is the legal heiress of such child, and failing the mother, or any person claiming under the mother, the Estate would pass to the Crown. No mother or any person claiming under the mother having appeared, the father applied to the Secretary of State that the Crown may make over its right to him ; and in consequence of such petition, instructions were issued to the Governor by the Secretary of State for the Colonies, acting in conjunction with the Lords of the Treasury, requiring His Excellency to instruct the Queen's Advocate to take the necessary steps for finding the Crown's title to the Estate and obtaining an adjudication thereupon.

It appeared, however, that, whilst Mr. A. Maclean was prosecuting his application in England, one Elliatamby Tamhapulle, *alias* William Ladd, produced to the District Court of Jaffna the exemplification of a Probate and Last Will granted by the Supreme Court at Madras, the former being dated the 22nd day of December 1860, the latter the 6th day of November 1856, and applied for administration with the Will annexed which was granted to him on the 14th November 1862. It having been afterwards represented to the District Court that the Will was a Forgery, the Judge, in his capacity as Justice of the Peace, took depositions, copy of which I enclose.

There is good reason to believe from these depositions, and from other evidence that is forthcoming here, that the Will is a Forgery. I have intervened in the District Court case to stop the Administrator receiving the proceeds of the Estate deposited in our Court and under its order ; but, as the Will was produced before the Supreme Court at Madras and Probate obtained thereupon, proceedings to bring the question as to the genuineness of the Will to an issue must properly be taken there. It is necessary therefore that the attention of the authorities at Madras should be called to the matter.

Depositions touching an alleged Will of Mr. Maclean.

Jaffna, 27th December 1862.

Before THOMAS LEWIS GIBSON, Esq., Justice of the Peace

David Todd of the Cotta Estate, sworn. I knew the deceased Hugh Maclean of Vettikadoo Estate. He died in April 1859 at "Vettikadoo." I had known him for four years previously. During the four years I knew him he did not go to the Coast to the least of my knowledge. I was very intimate with the deceased. I lived about three miles from him. He was never absent

from the Estate beyond a month, and on that occasion he went to Mehintelle with Mr. McCulloch On the average I used to see the deceased twice a week. I bought the deceased's Estate for Mr Forbes and the Estate books were handed over to me. I produce the monthly Report Book fror August 1852 to June 1858. I find the account in it for November 1856 ; it is in the handwritin of the deceased. I am well acquainted wi[illegible] is hand[illegible]ing. I can swear to it being his. Thi account is made up from dai[illegible] report book[illegible], which a[illegible]ually torn up after being entered in the monthly Report Book. I find the signature [illegible] [illegible]ceased in the monthly Report Book for the month of August 1852. I know it will. I can swear it is his signature. The whole of this book is in his handwriting.

THOMAS LEWIS GIBSON. (Signed) DAVID TODD.

Benjamin Lindsay of Korilkaaoo Estate, [illegible]orn. I came to Jaffna in 1854. I knew the deceased Hugh Maclean intimately. We we[illegible]nstantly together. I can swear positively that he did not go to Madras after I took [illegible]idence in this Province. I would know his handwriting if I saw it. The signature in th[illegible]age for August 1852, I can swear and do swear is his. Witness is shown the account for November 1856, he says—"This page is in the handwriting of the deceased." These reports are ge[illegible]ally made up at the end of the month, not daily, they are made up from daily reports. I ne[illegible]eard the deceased say that he was indebted to any person at Madras. In April 1856, the [illegible]ceased went with Mr. McCulloch to Mehintelle. He was absent for three weeks, I think. He never was absent at any other time to my knowledge excepting when he went to Point Pedro or came into Jaffna. He never was absent from the Island during my acquaintance with him.

(Signed) THOMAS LEWIS GIBSON. (Signed) B. LINDSAY.

Inquiry postponed for the attendance of Ramo Panvolopulle of Karreor.

5th January 1863.

Ramo Panvolopulle, sworn. I knew the deceased Mr. Maclean of Vedicadoo. I was his servant from 1852 to 1854. I was taken ill at the end of 1854 and after 4 or 5 months I returned to him ; but he having engaged another servant he recommended me to Mr. Maddock. I was with him 7, 8 or 10 months. At the end of that time Mr. Maddock and Mr. Maclean went on a shooting excursion to the Wanny where I caught fever. I then returned home. I got well in a short time, and at that time having been informed that Mr. Maddock had another servant I went to Mr. Maclean. He told me that he did not want a servant and gave me a letter to Mr. Lindsay, and I was employed by him. This was in 1856. I cannot say what month I did so. I was with Mr. Lindsay I think one or one and a half year. I then left him and was again employed by by Mr. Maclean. This was in 1857 or in 1858. I have no character from Mr. Maclean but one from Mr. Lindsay. I cannot say its date, although I was in Mr. Lindsay's service I can say that Mr. Maclean did not go to Madras in 1856. I used to see him weekly ; he was very kind to me and my brothers from our youth. My brother Ramagam Armogam was Mr. Maclean's servant for many years. In 1856 he was his Conicopoly on the Navatham Estate. He is dead. He died in 1857 or 1858. He died before Mr. Maclean. My other brother Chinnaper is now under Mr. Davidson. He was then a very small boy. I remember Mr. Maclean going to Mehintelle with Mr. McCulloch. I cannot say when, either the year or month. Mr. McCulloch is in Scotland. I can swear that Mr. Maclean did not go to Madras after 1852. I am sure of this, viz, that he did not go to Madras after 1852. I am now in Mr. Lindsay's service.

There are several people who know that the deceased did not go to Madras after 1852. I name

Kanepathupulle Kanagasabbie ; he is now a Conicopoly of Mr. Lindsay.
Kanepathpulle Moothoo, brother of the above a Conicopoly under Mr. Maddock.

Interpreted by H. BRECH.

(Signed in Tamil.)
(Signed) THOS. LEWIS GIBSON.

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9th January 1863.

Henry George Modder, Clerk of the District Court, sworn. I produce the Testamentary Case No. 10,413 of the deceased Hugh Maclean, Esq., and by the Affidavit therein filed, it appears that the deceased died on the 6th April 1859. His Estate was administered by the deceased Secretary of this Court Mr. F. C. Grenier. I also produce Case No. 12,144 in which a Probate of an alleged Will by the deceased and a copy of the said Will, dated 6th November 1856, are filed. The Probate appears to have been granted by the Supreme Court of Madras and is dated 22nd December 1860, No. 5,247 of 1860.

(Signed) THOMAS LEWIS GIBSON. (Signed) H. G. MODDER,

14th January 1863.

Canapader Canagasabe of Mooloomalle affirmed. I knew the deceased Mr. Maclean. I was under him from the time he came up to his death. He came about 20 years ago and died about three years ago. I was a Conicopoly under him in his Estate. He went to Madras after he came here ; he was then young. He had no Estate then. After he became of age he purchased an Estate Lorompattu ; it is called Lorompatututotum and he became the Manager of others. After he became a planter he never went to Madras. I am sure of that. I think it was in 1844 or 1846, when Mr. Maclean last went to Madras. When he first came here he was under Mr. Whitehouse. He became the purchaser of one and Manager of other Estate after his return from Madras and he never went there again.

(Signed) C. CANEGASABY,
Interpreted by
St. J. TILLEYNAYAGA Moodeliar,

(Signed) THOMAS LEWIS GIBSON,
(True Copies.)
(Signed) JAMES SWAN.

Referred to the Advocate General.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

FORT SAINT GEORGE,
1*st April* 1863.

No. 98. From JOHN ROBERT BOYSON, Esq., Government Solicitor, Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Madras, dated 9th June 1863, No. 367.

Letter from Queen's Advocate at Colombo, to Colonial Secretary at Colombo, No. 72, dated 9th March 1863, and depositions therein referred to.
Letter from Colonial Secretary at Colombo, to Government of Madras, No. 11, dated 17th March 1863.
Order of Madras Government thereon, dated 1st April 1863.

1. Referring to the papers noted in the margin, I have the honor to report that, from the date on which these papers reached me, the matter to which they relate has had my most earnest and continuous attention.

2. After much inquiry (resulting some times and to varying extent in failure, and with the particulars whereof I do not consider it necessary to trouble Government in detail,) I at length succeeded (with very energetic aid from one of my Native subordinates) in discovering the person who wrote the paper, subsequently put forward and proved in common form before the late Supreme Court, by Thotah Vurthapah Chetty as the Will of Mr. Hugh Maclean, but which beyond all question was an undoubted forgery, originated and arranged by Thotah Vurthapah Chetty himself, if not in fact perpetrated as regards signatures by his own hand, some 19 or 20 months after Mr. Maclean's death. The writer of the forged Will is by name Caroongooly Theeroomalasawmy Moodelly and is by occupation a Schoolmaster. At first, after much good management on the part of my Clerk, and in the presence of two other persons, one of them being Soobroyalco Naidoo, a most respectable and trustworthy Deputy Inspector of Police, Theeroomalasawmy Moodelly gave, what I then believed and still believe to be, a true version

of the circumstances under which the paper in question was written by him, very much the same both in terms and in substance, as his *last* statement before the Magistrate. It is in evidence, however, that between the time of his making this statement to my Clerk and his subsequent appearance before the Magistrate Theeroomalasawmy Moodelly was kept out of the way by Thotah Vurthapah Chetty, and his friends; and his fears and feelings worked upon and his truthfulness tampered with, to such an extent as to induce him, when I ultimately succeeded, after the greatest difficulty, in retracing him, and getting him before the Magistrate, to deny all that he had previously stated, and to put forward in lieu of it such a version of the transaction as would be perfectly consistent (in the absence of any adverse evidence and *until* such evidence was produced) with the paper in question being the genuine Will of Mr. Maclean, and Thotah Vurthapah Chetty's being wholly innocent of crime or misrepresentation of any kind.

3. As the best means of showing Government the course which the enquiry took, I forward copies of the Depositions upon which the prisoner has been remanded, and of the forged Will; also a copy of an opinion of the Advocate General.

4. I have confined my present charge against Thotah Vurthapah Chetty to perjury in having sworn in his petition to the late Supreme Court for Probate of the forged Will, and in the usual oath of an Executor then taken by him, that the forgery in question was the last Will and Testament of Mr. Maclean; the fact being (as I hope to establish to the satisfaction of a Jury) that he himself forged the paper put forward as the deceased's Will, or, at all events, uttered it, knowing it to be a forgery, and was guilty of the most deliberate and gross perjury that it has ever fallen to my lot to prosecute. I shall certainly indict him not only for perjury, but also for uttering the paper as a Will, knowing it to be forged, and, if I can get sufficient further evidence, for forgery likewise, and possibly for subornation of perjury with respect to the witness Theeroomalasawmy Moodelly. I forward a copy of my present charge as embodied in the Magistrate's Warrant of remand.

5. All that can be done, I will do to bring the prisoner to that substantial justice and punishment, which, in my opinion so gross a crime or, I should rather say, series of crimes deserves.

6. The prisoner has been remanded to the 2nd of July to enable me to obtain further evidence from Ceylon, and is now in confinement in the Penitentiary, the Magistrate having (most properly in my judgment) refused to admit him to bail, although urgently pressed to do so by the prisoner's Advocate. I have, therefore, now to request that the Government of Ceylon may be moved to arrange for sending up to Madras by the second Steamer in this month, the best available evidence of the fact that on the 6th of November 1856 (the date of the forged Will) and for long previously and subsequently, Mr. Maclean was residing on his property in Ceylon, and was not and could not possibly have been in Madras. Two witnesses, at least, should be sent, and those two witnesses, who can give the best and most conclusive evidence to establish this fact, should be selected. The Government of Ceylon must, of course, make all needful arrangements for defraying the travelling and other expenses of the witnesses and making them such compensation for time as may be thought right, and it seems to me that all expenses connected with the prosecution can fairly and most legitimately be deducted from the assets of the deceased's Estate, before the Crown relinquishes its rights in favor of the deceased's father, Mr. Alexander Maclean. Mr. H. Maclean's books of account for the whole of the year 1856 should be forwarded to Madras, and one, at least, of the witnesses sent to Madras (and both if possible), should be able to identify the books, to prove Mr. Maclean's handwriting, from whence the books are produced, and that such was the proper custody or place of deposit.

In the name of God, Amen. I Hugh Maclean at present residing on the Mount Road being in perfect health and of sound and disposing mind and considering the uncertainty of life do make this my last Will and Testament in writing.

Firstly.—I request my Executor hereinafternamed will pay my funeral expenses the expenses of proving this my last Will and Testament and all my just debts from and out of the assets of my Estate consisting of household furnitures money and other securities and of cocoanut

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plantation, at Jaffna called Vettacadoo, which latter was given to me by my father Alexander Maclean, Esquire, of the Civil Service.

Secondly.—From the residue of my Estate, as well as from any reversionary property I may inherit either from my said father or from his family I will and bequeath the undermentioned Legacies which I request my Executor hereinafternamed will properly carry out to the extent of his power, viz:—

1st.—To my friend J. Ramanjooloo Native Convert residing in St. Thomé the sum of Rupees three hundred for the purpose of his purchasing a Gold Watch in rememberance of me.

2nd.—To my friend Henry Boswell for his regard and kindness to me during the time I lived in his house which was for a period of one year Rupees two hundred.

3rd.—To Ramakistna Chetty, the son of my dearest friend Thotah Vurthapah Chetty, the sum of Rupees five thousand in trust for his benefit and payable to him after he shall have attained the age of discretion.

4th.—To my old Ayah Chowreeammah now residing in I believe at Poodoopettah the sum of Rupees hundred.

5th.—To my Maty Boy Anthony the sum of Rupees fifty.

6th.—The residue of the residue after payment of the above Legacies to be invested and the interest thereon appropriated for the maintenance of my affectionate mother Seevacamoo Ammal now living in Paly Cavany.

7th.—After the death of my mother should she die leaving no representative a portion of the principal invested for her is to be appropriated for the building of a School-room at Royapettah for the schooling of poor children of all classes and the interest derivable on the remaining portion of the funds to be applicable for the maintenance and support of such School.

3rdly.—I hereby nominate and appoint my esteemed friend and well wisher Thotah Vurthapah Chetty the Executor of this my last Will and Testament hereby revoking all other Wills and Testaments by me at any time heretofore made. In witness whereof I have hereunto set my hand and seal this sixth day of November one thousand eight hundred and fifty-six.

Signed sealed and delivered by the abovenamed Hugh Maclean as and for his last Will and Testament in the presence of us who in his presence and in the presence of each other have subscribed our names as witnesses.

(Signed) H. MACLEAN. L. S.

(Signed) EDWARD D'SYLVA.
(„) C. THEEROOMALASAWMY MOODLEY.

(Signed) J. R. BOYSON,
Government Solicitor.

COPY—OPINION.

I received this reference on the 8th April; but after careful consideration and conferring with the Government Solicitor, we quite agreed that the information forwarded by the Ceylon Government, though presenting a case of strong suspicion against Thotah Vurthapah Chetty, was not at all conclusive that Mr. Maclean might not *possibly* (though it certainly was highly improbable) have run up to Madras about the alleged date of the Will, and have returned to Ceylon after only a very few day's stay here. We agreed that there were no grounds upon which any proceedings could be then commenced against Thotah Vurthapah Chetty, but the Government Solicitor having received some private information which seemed highly important if the parties mentioned could be got at, it was resolved to follow up the scent cautiously but diligently.

2. At last the actual writer of the Will was found (if his story be true, as it appears to be) and disclosed T. Vurthapah's guilt fully and clearly, and we resolved, if this man could be got

before the Magistrate, and induced to repeat there what he had already stated, to charge Vurthapah at once with perjury.

3. Vurthapah and his friends, however, had a keen look out kept upon this man, and managed to smuggle him out of the way; but the Government Solicitor managed to trace him again and ultimately compelled his appearance under a Subpœna before Mr. T. G. Clarke. He at first denied in *toto* that he had ever made any such statement implicating Vurthapah, as I have referred to, and declared Vurthapah to be entirely innocent and the Will genuine; but on being confronted with two witnesses, one of them a Police Officer, his courage failed him. He took off his turband, prostrated himself on the ground, admitted he had been telling falsehood to the Magistrate; but said he would now tell the real truth. He then detailed how Vurthapah had got him to write the Will in 1860, I think, but certainly after Maclean's death, giving him a copy to write it from.

The Magistrate thereupon issued his Warrant for Vurthapah's apprehension, who after a long search was found in a room carefully padlocked on the outside.

5. The Magistrate has remanded him and has twice refused his Solicitor's applications to admit him to bail.

So the case stands at present.

(Signed) T. SYDNEY SMYTH,
Advocate General.

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor.

COPY—CHARGE.

With having on the 20th day of December 1860 committed perjury by swearing before Mr. Benjamin Brooks, then being one of the Commissioners, duly authorized for administering oaths in the late Supreme Court at Madras, that a certain paper writing marked A, and referred to in a certain petition of him the said Thotah Vurthapah Chetty to the said Supreme Court praying for Probate of the said paper writing marked A, that the said paper writing marked A was the last Will and Testament of one Hugh Maclean in the said petition also mentioned. Whereas in truth and in fact the said Thotah Vurthapah Chetty then well knew that the said paper writing marked A was not the Will or Testament of the said Hugh Maclean, and with having also on the said 20th day of December 1860 committed perjury by swearing before the said Benjamin Brooks, then being such Commissioner as aforesaid, in a certain oath then taken by him the said Thotah Vurthapah Chetty as a pretended Executor of the said paper writing marked A, that the said paper writing marked A was the true last Will and Testament of the said Hugh Maclean, whereas in truth and in fact the said Thotah Vurthapah Chetty then well knew that the said paper writing marked A was not the Will or Testament of the said Hugh Maclean.

(Signed) J. R. BOYSON,
Government Solicitor.

No. 99. To the Colonial Secretary, Colombo, dated Fort Saint George, 11th June 1863, No. 909.

In acknowledging the receipt of your letter of the 17th March last, No. 11, I am directed by His Excellency the Governor in Council to transmit to you the annexed copy of a letter, under date the 9th instant, from the Government Solicitor, reporting the steps taken by him with reference to the Will alleged to have been executed by the late Mr. Hugh Maclean, and to request that with the permission of the Government of Ceylon you will be good enough to arrange for sending to Madras by the second Steamer in this month, the best available evidence of the fact that on the 6th November 1856, the date of the forged Will, and for long previously and subsequently, Mr. Maclean was residing on his property in Ceylon, and was not and could not possibly have

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been in Madras. "Two witnesses," the Government Solicitor observes, "should be sent, and those two witnesses who can give the best possible evidence should be selected, all needful arrangements being made for defraying their travelling and other expenses. Mr. H. Maclean's books of account for the year 1856 should be forwarded to Madras, and one at least of the witnesses sent to Madras, and both, if possible, should be able to identify the books to prove Mr. Maclean's handwriting, to state from whence the books were produced, and that such was the proper custody or place of deposit, &c.

(Signed) J. D. SIM,
Secretary to Government.

Exd. T. McMoory.

Jud. D-13

Judicial Department.

09.

To The Colonial Secretary
Colombo

Sir,

In acknowledging the receipt of your letter of the 17th March last U.11 I am directed by His Excellency the Governor in Council to transmit to you the annexed copy of a letter dated the 9th Instant from the Government Solicitor, reporting the steps taken by him with reference to the will alleged to have been executed by the late Mr. Hugh Nevill and to request that with the permission of the Govt. of Ceylon you will be good enough to arrange for

Pending

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Fort St George
11th June 1863

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that such was the proper
custody or place of deposit
&c."

Prov. Surv.

Judicial 1863 Department

No 909

To

The Colonial Secretary

Colombo

Dated 11 June 1863

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