M.R.O. 1—23,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 1210 Press Mis.

260-261

Dated 30 — 8 — 19 80.

14/15

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
30th August 1865.

Read the following Petition from IYADORAY MUDALI, Prisoner in Case No. 25 of 1865, on the Calendar of the Session Court of Tranquebar.

(Here enter 19th August 1865).

ORDER THEREON, 30th August 1865, No. 1210.

The Governor in Council is not prepared to comply with the petitioner's application for a remission of the sentence passed upon him by the Session Court at Tranquebar, and which, it is observed, has been affirmed by the High Court on appeal.

(True Extract).

Chief Secretary.

To V. Rajagopaul Charlu, Vakeel of the High Court of Judicature at Madras, with two enclosures returned.

Exd. J. H. Burns.

1871 P/15
2 Encl.
1/8

TO

HIS EXCELLENCY SIR WILLIAM DENISON, K. C. B.

GOVERNOR IN COUNCIL OF
FORT SAINT GEORGE.

The humble Petition of IYATOORAY MOODELLY, *Prisoner in Case No. 25 of 1865, on the Calendar of the Sessions Court of Tranquebar, presented on his behalf by* V. RAJAGOPALA CHARLU, B. L. *Vakeel of the High Court of Judicature at Madras.*

RESPECTFULLY SHEWETH,

That Your Petitioner, a highly respectable Mirasidar in the District of Tanjore, having been by a sudden reverse of fortune exposed to an entirely unfounded and malicious prosecution, was subjected by the fatal sentence of the Sessions Court of Tranquebar under date the 24th July 1865, to the most undeserved and ignominious punishment of transportation for seven years. And to his great misfortune this sentence was confirmed by the High Court of Judicature under date the 10th August 1865. Aggrieved as your Petitioner is by such determination, he begs leave to submit herewith Copies thereof and to appeal to your Excellency in Council, in the assured hope of obtaining that justice at your hands which was denied to him by the Sessions and High Courts.

2. That Your Petitioner and Theagaraja Moodelly, are brothers divided from each other and from their deceased Cousin Chokkappa Moodelly. This Chokkappa Moodelly having been issueless and in death bed, duly and lawfully adopted Ramalinga Moodelly, the son of Your Petitioner; and executed a Will in his favour constituting Your Petitioner guardian and executor to him and his minor widow under date the 13th September 1863. On his death on the 16th September following, Your Petitioner peacefully and by virtue of the Will entered the family, performed the funerals of the deceased, and continued in the management of the Estate. While matters continued in this state his divided brother Theagaraja Moodelly, 19th witness for prosecution in this case, naturally anxious to procure to himself the heirless property, contrived to gain over the widow of the deceased and her father, and thereby to gain possession of the accounts of the family and a portion of the Estate. Your Petitioner was therefore driven to the necessity of instituting a Civil Action against his brother Theagaraja Moodelly together with the widow of the deceased and several tenants, in Original Suit No. 3 of 1864, on the file of the Civil Court of Tanjore. The said Theagaraja Moodelly as 1st defendant in the said suit denounced the Will in question as forgery, and set up a forged agreement said to have been executed in his favor by the widow of the deceased, as per the instructions of her late husband. The Civil Court under the impression that the Will in question was really a forgery directed a criminal trial of the case. Such is the brief summary of the case.

3. That your Excellency in Council will perceive two antagonistic interests involved in the case; the elder brother claiming the estate under an alleged agreement, and the younger, *i e* your Petitioner, claiming under the Will which is the subject of this unfortunate proceeding. Your Excellency will also find that your Petitioner is an innocent victim to the real guilt of his unnatural brother. If, as it was suggested, the Will was a subsequent forgery and the agreement a genuine assignment, it does not stand to reason how your petitioner who had no interest whatever in the family was allowed to enter it and perform the obsequies of the deceased; and why his brother the 1st defendant who is said to have been constituted the sole successor to the estate should stand by a patient spectator of the

acts of a wrong-doer. It is worthy of remark here, that his brother who had the audacity to set up the agreement had not moral courage enough to exhibit it even in the Civil Case, wherein his interest to no inconsiderable degree was at stake. Before proceeding to other facts of the case it may not be out of place to remark that the fact of your Petitioner having performed the obsequies of the deceased has been unequivocally proved not only by the witnesses for the defence, but also by the 13th witness for the prosecution, and your Petitioner's brother who appeared as the 19th witness for prosecution did not even venture to gainsay it. The deceased left landed property alone to the extent of 450 valis; and this is no small inducement for the 19th witness to manufacture a case on his own behalf to the prejudice and ruin of his brother who as he himself admits was not only divided but was for a long time on terms of the bitterest enmity. It may perhaps be argued that this circumstance may equally apply to your Petitioner. But the fair and straight-forward way in which your Petitioner brought the Will forward to light and openly acted in accordance to it; and the sly and guilty manner in which his brother kept the agreement back and suffered his hostile brother to take such a position in the family as he alone should have been entitled to, had the Will been forged and the agreement genuine, coupled with his previous and subsequent conduct throughout this proceeding will take away any such presumption against your Petitioner. He submits that this single circumstance is enough to exculpate him altogether but there are ample grounds bearing out his innocence.

4. That the Assessors who must of necessity, have known the facts and history of such a prominent family in the district, and the character and position in life of the witnesses brought to bear upon the case, have one and all unanimously acquitted your Petitioner. It is true that the Judge has a right to over-rule the verdict of Assessors generally but in special cases like the one in question involving, as it does, unusual intricacies, the opinion of one who has not the same opportunities and advantages as against that of three unobjectionable and experienced assessors of noted respectability, will, your Petitioner submits, naturally be received with a degree of caution. Your Excellency will find the greater necessity for the exercise of that caution when going through the record of the case; and yet to your Petitioner's great misfortune the Judges of the High Court have not thought it fit to do so.

5. That the main hinge of the sentence of the Sessions Court is, that the Stamp upon which the Will is drawn up, was purchased long after the death of Chokkappa Moodelly the Testator, and that therefore the Will was a forgery. Your Petitioner premises by stating that the Stamp was actually sold by the vendor on the 9th July, the Will executed on the 13th, the Testator died on the 16th September 1863. But the Sessions Judge relies upon the evidence of the 3rd, 4th, 5th and 6th witnesses for prosecution. The scope of their evidence is to shew that the Stamp was purchased by your Petitioner from the 4th witness on or about the 15th November 1863, *i. e.* about two months subsequent to the alleged execution of the Will. Their evidence, if believed, will shew that the Stamp was sold by the 6th witness the Stamp Vendor to the 3rd witness who sold it again to the 4th witness on account of your Petitioner, and that the 4th witness delivered it to your Petitioner on the date aforesaid in the presence of the 5th and two other persons, viz: Atchayalinga Moodelly and Vydianadyen. If these witnesses be believed conviction comes home to your Petitioner; but he submits that they are not entitled to the least respect. In the first place two of the persons said to have been present at the time of the delivery of the Stamp to your Petitioner viz: Atchayalinga Moodelly and Vydianadyen who in consequence of their position being unmanageable articles to your Petitioner's brother, he did not choose to cite them on behalf of the prosecution. But they were cited for the defence as the 13th and 14th witnesses. These being the relations and friends of both the parties were the most likely persons to be neutral and give an unbrased version of the transaction. These were present at the execuion of the Will and attested it; according to them the Stamp was not delivered to Your Petitioner as alleged on behalf of the Prosecution; but that it was taken by the Testator out of his own box, at the time of the execution of the Will. If the matter stood here, some doubts might

still be entertained. The 17th witness for prosecution itself who is a respectable Vakeel of the Civil Court of Tanjore states upon his oath that on or about the 4th of November 1863, the very identical Will in its complete state came into his hands for the purpose of an application under Act 19 of 1841. It must be borne in mind that the prosecutor put him into the witness box, regarding him as a witness of truth and of undoubted integrity, from the prominent position that he occupied; and that his character and statement were not impeached even afterwards. The evidence of this witness, ample as it is, is supported by the 2nd, 3rd and 4th witnesses for the defence, one of whom was the Goomasta of the Vakeel, and another a respectable friend of his, and the third, the person that followed the Testator's Agent who carried the Will to the Vakeel. The evidence of these witnesses was not even attempted to be shaken in the cross-examination. The testimony then of the 17th witness for the prosecution, and the 2nd, 3rd and 4th witnesses for the defence satisfactorily establishing that the Will was handed over to the Vakeel on or about the 4th of November 1863, completely falsifies the statement, of the witnesses 3 to 5 for prosecution, that the stamp was delivered plain into the hands of your Petitioner on or about the 15th of November aforesaid. It may not be out of place to remark here that the stamp was purchased by the testator himself and kept in his box till it was taken out on the date of the execution of the Will. The peculiar prejudices of Natives, viz. that one ought not to execute a will except in the extreme danger of life will sufficiently account for the stamp having been kept in the box a long time before the Will was executed. The 10th witness for the defence, the head steward of the Testator's family stated, on oath, that the purchase of the stamp was entered in the accounts of the testator himself. The conduct of the 19th witness for prosecution, *i. e.* the unnatural brother of your Petitioner, will throw further light on this matter. In the examination in chief, he admitted to have been in possession of all the accounts of the Testator, but when he was asked in the course of the cross-examination to produce the account for August 1863, aware, as he was, of the entry, therein, of the purchase of the stamp, he asserted that he was in possession of all the accounts save and except the accounts of that one month. The 10th witness not suiting his purposes was dismissed from the service. It was hence put out of his power to confirm his statement by the production of the account. The value of these witnesses for prosecution will sink the more when we consider the evidence of the 11th, 12th, 13th, 14th and 15th witnesses for the defence who are all respectable persons present at the time of the execution of the Will and who swear unanimously to the fact that the stamp was taken out by the testator from his box at the time of the execution of the Will. There is still, however, ample pregnant evidence in the conduct of the 19th witness to shew that the 3rd, 4th and 5th witnesses were his mere tools. As to the character and position in life of these bazar witnesses, the 3rd witness on the face of his own deposition carries the highest degree of impossibility. According to his own statement, he did not know your Petitioner up to the date of the sale of the stamp. He was himself a resident of a place about 35 miles from that of your Petitioner. He manages to remember all the minute of facts said to have taken place full two years ago, and which are not likely to be noticed and committed to memory. He may have sold the stamp to the deceased or some of his agents or even to the 4th witness on account of the testator. If a person was necessitated to sell a stamp, and did sell it, there is no necessity for him to enquire about the purpose, and the person for whom it was intended. And it is highly improbable that he could remember all the minute circumstances connected with it. The only question in his evidence is one of time. He admits to have purchased numerous stamps on numarous occasions for purposes of his own trade; he is unable to state the date of any other purchase, but singularly enough remembers the date of the sale of this particular stamp alone to a stranger whose face he never saw, and for a purpose that he need never care for. The reasons assigned by him for identifying the stamp are no less rediculous while no body ever denied that the stamp was originally purchased by him. This unnecessary exertion in one respect, serves only to throw light upon the nature of his evidence in other respects. A comparison of his depositions before the magistrate and Sessions Court, as to the number of stamps he delivered to his son-in-law, will shew the actual frailty of his mind. He is according to his own statement an extensive banker, and

yet never kept a single account in his life. It is needless to dwell upon the incredible story of this witness since a glance of his deposition will supersede the necessity of it. With regard to the 4th witness, his father has a monthly income of Rupees 6-6-6. He says he has a thousand rupees of his own independent property, and yet undertakes the amateur service of going a distance of 30 miles to purchase the stamp. At first he receives a hire of 5 Rupees for the trip and then returns it honorably, because the Almighty placed him in a happy position. He admits that your Petitioner had a number of servants; and yet he could not get anybody else but this respectable messenger. He styles himself a friend of your Petitioner. His position certainly entitles him to close friendship with such an extensive land-holder as your Petitioner; the nature of the service he has undertaken is another proof of his friendship. And the evidence he chose to give against your Petitioner is the strongest proof of it. He had the affability to appear as witness in different Courts on very many former occasions. He thought, for reasons best known to himself that it was necessary to intimate the purchase of the stamp to the 19th witness, the avowed enemy of your Petitioner. His respectability was certainly so great that he could not be tempted by such a wealthy land-holder as the 19th witness. As to the 5th witness, he is a Punchangam Brahman having the precarious income of 4 or 5 rupees a month. He likewise was liberal enough to appear often in Courts to give evidence on behalf of parties whom he scarcely knew. He comes to the spot by chance as if simply to hear evidence to the purchase of the stamp. He admits that he could not remember any thing that transpired 4 months ago; and yet strongly enough remembers what he, by chance, saw upwards of two years ago. The 4th witness according to this, returned 5 rupees to your Petitioner. He admits that they were not counted; and yet by the force of his astrology, could tell the actual number of rupees delivered to him. As regards the 6th witness, your Petitioner need not question his character; for it does not at all touch the case. And in fact there is no doubt that he did sell the stamp. The evidence then of the 3rd, 4th and 5th witnesses containing so much improbability in itself, coupled with the character of the witnesses on the one hand, and the evidence of the respectable witnesses on the other, vizt., the 17th witness for prosecution and the 2nd, 3rd and 4th witnesses for the defence, will your Petitioner feels assured, be treated with the contempt which it deserves.

6. That the next circumstance relied on by the Sessions Court is the negative evidence of a number of witnesses whose tendency is to shew that the Will was not executed nor the adoption made from the continued insensibility of the testator on the one hand, and from the difference between the usual signature of the testator and his signature in the Will. The witnesses that speak on this point are those from 7th to 16th and 19th. The 7th witness declares that the testator was laid up with a Carbuncle in his neck for about 12 days. During the last 7 or 8 days out of it he was in a state of continued insensibility. He is a resident of a different village and admits himself to have been an enemy of the deceased. With all this he was charitable enough to visit the patient morning and evening. And when asked to account for it, forgetting his former statement, he stated he was a friend of the deceased. He acknowledges to be an enemy of your Petitioner. No motive therefore need be suggested for giving this false evidence. Your Petitioner cannot conceive the force of the statement that this alternate friend and enemy would have been invited from a foreign village had the Will been really executed. He presumes the continued insensibility of the testator from the simple fact of his not having been spokon to. Experience shews that a patient labouring under a Carbuncle rarely, if ever, loses sensibility, and should any insensibility, result it would be only temporary. After all he admits that the Will may have been executed in his absence and that there was sufficient interval for it; for he admits he visited the patient only in the mornings and evenings while the Will is proved to have been executed in the mid day. When he is driven further, he says that he does not know if the testator was senseless on the 30th of Avany *i. e.* the very day in which the Will was executed. He ventures to deny the signature in the Will to be that of the testator, simply from the fact that he was in the habit of signing his name in full *i. e.* Chokkappa Moodelly, in all public documents. A short experience of the Native customs and habits will shew that invariably they would sign public documents in full; whereas in private documents they would affix simply their names without the title. That such was the case with the testator also, has been amply substantiated by the 20th witness for prosecution and also by several witnesses for the defence. After all, this fact goes more in favor of the genuineness than otherwise of the Will, for if it were really forged, the author of it would have taken good care to forge a signature in the more usual form rather than risk his case by following the occasional practice. The deponent further denies the signature in the Will by comparing it with the documents B. to E. Here your Petitioner would remark that Sir Christopher Rawlinson in construing a section of the new Evidence Act, ruled that comparison of hand-writing ought not to be had recourse to in criminal cases, the word "cause" in the statement limitting it to a Civil Suit. On this point, your Petitioner would beg to refer your Excellency in Council to note Z under section 562 of Nortons Law of Evidence. Even if it should be considered that comparison of hand-writing may be had recourse to, yet the difference is so very trifling at all, that it may be very easily accounted for by the altered state of the health of the deceased. In conclusion the deponent unable, as he acknowledges himself to be, to remember and mention any of the dates of the numerous births and deaths in his own family, is able enough not only to remember the dates, but also the period of the illness of the testator and the several unimportant matters that transpired in connection with it. As your petitioner dwelt at some length on the evidence of this witness he begs leave to dismiss the rest with a few summary remarks about each of them.

The 8th witness has a monthly income of about 4 Rupees. He simply speaks to the insensibility of the testator from his not having spoken to him. He likewise visited the patient only in the mornings and evenings and admits that the Will may have been executed in his absence. The 9th witness is a resident of a foreign village. His income is 10 Rupees per month. He visited the patient in the mornings and evenings, and admits that the Will may have been executed in his absence. The 10th witness is a barber, and appears to have attended on the patient purely with a view to perform surgical operations. Although as a matter of necessity he might have been allowed to enter the house for that specific purpose, it is most unlikely that he would have been allowed access on such a religious and solemn occasion as that of the adoption and Will. His evidence after all, like that of the other witnesses is nothing more than that the Will might have been executed during his absence. The 11th, 12th and 13th witnesses deny the signature in the Will to be that of the testator for the very reason assigned by the 7th witness. They need not therefore be separately commented on. The 14th and 15th witnesses are residents of a different Taluq. Both of them were the 24th and 23rd defendants respectively in the Civil Suit. This circumstance alone sufficiently accounts for their motive in giving false evidence against your Petitioner. They deny the signature of the deceased in the Will for the very same reason as the 7th witness. The evidence of the 16th witness being so short and vague that it requires no comment at all. Your Petitioner contents himself with stating that he was likewise a resident of a foreign village. With regard to the evidence of the 19th witness your Petitioner considers it unnecessary to comment upon it since he is in fact the prime mover of all this unfounded proceedings. He admits to have been an inveterate enemy of the deceased and did not think it worth his while to visit the patient during the first 5 or 6 days of his illness. Even afterwards far from acting like a brother or first cousin, he was content with paying a formal visit of a few minutes either in the morning or evening, like the other witnesses who were palpably hired to give false evidence in this case. He would further allow your Petitioner to exercise the rights of the ownership in the family of the deceased till he succeeded in concocting an agreement, when it was certainly his interest to denounce the Will as a forgery. There is, however, a peculiarity observable in the conduct of this witness. So long as they were launched in the Civil Action he openly branded the Will as an impudent forgery, but when he saw the fate of his brother on one

side, and his own position as a witness upon oath on the other, his audacity seems, to have given way so that he would not flatly deny the genuineness of the sighature but would or simply declare that it did not appear like that of the deceased ; and the reason that he asserts, is the very same as was assigned by the 7th witness. Since the conduct of this witness was animadverted upon in various places, it is needless to dwell here longer upon it. The evidence of all these witnesses for prosecution would only amount to saying that the Will was not executed during their presence but might have been executed in their absence. It may however be a question as to whether it is probable that ten such men should be absolutely ignorant of the transaction if it really did take place. It requires no great reflection to answer this if it is borne in mind that the majority of them were the lowest dregs of the people or residents of distant villages and that one or two who were comparatively in a higher position in Society were actuated by thrift and enmity to hide the fact even if they were aware of it. The reason assigned by all these witnesses is negatived by the evidence of the 20th witness for prosecution. For he declares that in all private documents the deceased signed his name without the title. Again the 21st witness for prosecution speaks to the previous intention of the testator to make the adoption and execute the Will. The truth of the evidence of these witnesses should be tested by the testimony of the defence witnesses 8 to 17. Of these the 8th and 9th are the nearest relations of the testator and men of considerable importance in the district. They visited the testator a short time before his death and were told by himself in person of the actual adoption and execution of the Will. As to the 10th witness his evidence was partly noticed already. He was, the head house-hold manager of the deceased and speaks from personal knowledge to the performance of the adoption and the execution of the Will. According to him the Stamp was never with your Petitioner, but was purchased by the Testator, entered in his account, kept in his box, and taken out at the time of the execution of the Will. He also adds that the testator was in the habit of signing his name in full in public records and without his title in private documents. The 11th and 12th witnesses speak to the preparation for the adoption and the execution of the Will. They state likewise that the stamp was taken out of the box by the deceased. The 13th, 14th and 15th witnesses attested the Will and were men of consequence, possessed of several valis of land. Of them the 13th and the 15th were relations, and the 14th, an agent of the testator. They all concur in stating circumstantially that the adoption was performed and the Will executed. The 16th witness was spectator and proves the genuineness of the Will. The 17th witness swears to the identity of his father's attestation in the Will. His father was an agent of the testator and the transcriber of the Will. Your Petitioner feels, assured that your Excellency in Council will be easily convinced of the disproportion between the evidence for prosecution and that for defence, the testimony for the defence preponderating over that of the prosecution. Even granting for the sake of argument that the balance of evidence on both sides, is equal, the prisoner is undoubtedly entitled to the benefit of the doubt.

7. The last circumstance relied on by the Session Court, is the exhibit H. It is said to be an Arzee addressed by your Petitioner to the Deputy Collector of Tanjore under date the 20th September 1863. The object of its production is to shew the improbability of the execution of the Will, since it was not therein referred to. In the first place, your Petitioner totally denied the Arzee to have been addressed by him and there is not an iota of evidence to bring it home to him. The only witness examined in regard to that, is the 2nd witness for prosecuiion. He did not see the Arzee being written by your Petitioner nor was he acquainted with his signature and cannot swear whether your Petitioner was the author of it. It was an Arzee received by tappal and the 19th witness himself is unable to identify the signature in it. The 15th witness has the audacity to identify the signature. But when it is remembered that he was the 23rd defendant in the Civil Suit, it need not be commented on. Even assuming for the sake of argument that it was addressed by your Petitioner, still it proves nothing against him. For addressed as it is said to have been on the 4th day after the decease of the testator,

it could not embrace all the facts of the case, and your Petitioner himself expressly reserves all the particulars till after the absequies should be over. His object was simply to suspend any order that might be passed at the instance of any third party. So that if H. proves any thing at all, it shows clearly enough that your Petitioner had rightfully entered the family of the deceased and was in rightful possession of the estate by virtue of a bequest.

8. That the conduct of the 19th witness in pleading yet with holding the agreement, and keeping back the accounts for August 1863; the evidence of the 17th witness for prosecution supported by that of his Goomastas shewing that the Will existed long before it is alleged to have been forged, the position occupied by your Petitioner in the family of his testator, and the relative characters and positions in life of the witnesses on both sides will, your Petitioner trusts, produce a conviction in your Excellency's mind of the total innocence of your unfortunate Petitioner.

Your Petitioner therefore prays that your Excellency in Council will be graciously pleased to reverse the sentence, suspend the sentence pending the disposal of the case and grant such further or other relief as in the premises to your Excellency in Council, may seem meet ; and your Petitioner further submits that if any further doubt be entertained in this case, a reference to his Vakeel on the spot will remove the same.

AND YOUR PETITIONER SHALL EVER PRAY.

19th August, 1863.

P Rayagopala Chariar
Vakeel

TO

HIS EXCELLENCY SIR WILLIAM DENISON, K. C. B.
GOVERNOR IN COUNCIL OF
FORT SAINT GEORGE.

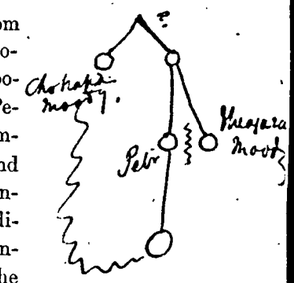
The humble Petition of IYATOORAY MOODELLY, *Prisoner in Case No.* 25 *of* 1865, *on the Calendar of the Sessions Court of Tranquebar, presented on his behalf by* V. RAJAGOPALA CHARLU, B. L. *Vakeel of the High Court of Judicature at Madras.*

RESPECTFULLY SHEWETH,

That Your Petitioner, a highly respectable Mirasidar in the District of Tanjore, having been by a sudden reverse of fortune exposed to an entirely unfounded and malicious prosecution, was subjected by the fatal sentence of the Sessions Court of Tranquebar under date the 24th July 1865, to the most undeserved and ignominious punishment of transportation for seven years. And to his great misfortune this sentence was confirmed by the High Court of Judicature under date the 10th August 1865. Aggrieved as your Petitioner is by such determination, he begs leave to submit herewith Copies thereof and to appeal to your Excellency in Council, in the assured hope of obtaining that justice at your hands which was denied to him by the Sessions and High Courts.

on appeal? or on a mere perusal of the Calendar without going into the Compln record?

2. That Your Petitioner and Theagaraja Moodelly, are brothers divided from each other and from their deceased Cousin Chokkappa Moodelly. This Chokkappa Moodelly having been issueless and in death bed, duly and lawfully adopted Ramalinga Moodelly, the son of Your Petitioner; and executed a Will in his favour constituting Your Petitioner guardian and executor to him and his minor widow under date the 13th September 1863. On his death on the 16th September following, Your Petitioner peacefully and by virtue of the Will entered the family, performed the funerals of the deceased, and continued in the management of the Estate. While matters continued in this state his divided brother Theagaraja Moodelly, 19th witness for prosecution in this case, naturally anxious to procure to himself the heirless property, contrived to gain over the widow of the deceased and her father, and thereby to gain possession of the accounts of the family and a portion of the Estate. Your Petitioner was therefore driven to the necessity of instituting a Civil Action against his brother Theagaraja Moodelly together with the widow of the deceased and several tenants, in Original Suit No. 3 of 1864, on the file of the Civil Court of Tanjore. The said Theagaraja Moodelly as 1st defendant in the said suit denounced the Will in question as forgery, and set up a forged agreement said to have been executed in his favor by the widow of the deceased, as per the instructions of her late husband. The Civil Court under the impression that the Will in question was really a forgery directed a criminal trial of the case. Such is the brief summary of the case.



What Court was this? Was it the Court that tried the Crim: charge?

3. That your Excellency in Council will perceive two antagonistic interests involved in the case; the elder brother claiming the estate under an alleged agreement, and the younger, *i e* your Petitioner, claiming under the Will which is the subject of this unfortunate proceeding. Your Excellency will also find that your Petitioner is an innocent victim to the real guilt of his unnatural brother. If, as it was suggested, the Will was a subsequent forgery and the agreement a genuine assignment, it does not stand to reason how your petitioner who had no interest whatever in the family was allowed to enter it and perform the obsequies of the deceased; and why his brother the 1st defendant who is said to have been constituted the sole successor to the estate should stand by a patient spectator of the

acts of a wrong-doer. It is worthy of remark here, that his brother who had the audacity to set up the agreement had not moral courage enough to exhibit it even in the Civil Case, wherein his interest to no inconsiderable degree was at stake. Before proceeding to other facts of the case it may not be out of place to remark that the fact of your Petitioner having performed the obsequies of the deceased has been unequivocally proved not only by the witnesses for the defence, but also by the 13th witness for the prosecution, and your Petitioners brother who appeared as the 19th witness for prosecution did not even venture to gainsay it. The deceased left landed property alone to the extent of 450 valis; and this is no small inducement for the 19th witness to manufacture a case on his own behalf to the prejudice and ruin of his brother who as he himself admits was not only divided but was for a long time on terms of the bitterest enmity. It may perhaps be argued that this circumstance may equally apply to your Petitioner. But the fair and straight-forward way in which your Petitioner brought the Will forward to light and openly acted in accordance to it; and the sly and guilty manner in which his brother kept the agreement back and suffered his hostile brother to take such a position in the family as he alone should have been entitled to, had the Will been forged and the agreement genuine, coupled with his previous and subsequent conduct throughout this proceeding will take away any such presumption against your Petitioner. He submits that this single circumstance is enough to exculpate him altogether but there are ample grounds bearing out his innocence.

4. That the Assessors who must of necessity, have known the facts and history of such a prominent family in the district, and the character and position in life of the witnesses brought to bear upon the case, have one and all unanimously acquitted your Petitioner. It is true that the Judge has a right to over-rule the verdict of Assessors generally but in special cases like the one in question involving, as it does, unusual intricacies, the opinion of one who has not the same opportunities and advantages as against that of three unobjectionable and experienced assessors of noted respectability, will, your Petitioner submits, naturally be received with a degree of caution. Your Excellency will find the greater necessity for the exercise of that caution when going through the record of the case; and yet to your Petitioner's great misfortune the Judges of the High Court have not thought it fit to do so.

5. That the main hinge of the sentence of the Sessions Court is, that the Stamp upon which the Will is drawn up, was purchased long after the death of Chokkappa Moodelly the Testator, and that therefore the Will was a forgery. Your Petitioner premises by stating that the Stamp was actually sold by the vendor on the 9th July, the Will executed on the 13th, the Testator died on the 16th September 1863. But the Sessions Judge relies upon the evidence of the 3rd, 4th, 5th and 6th witnesses for prosecution. The scope of their evidence is to shew that the Stamp was purchased by your Petitioner from the 4th witness on or about the 15th November 1863, *i. e.* about two months subsequent to the alleged execution of the Will. Their evidence, if believed, will shew that the Stamp was sold by the 6th witness the Stamp Vendor to the 3rd witness who sold it again to the 4th witness on account of your Petitioner, and that the 4th witness delivered it to your Petitioner on the date aforesaid in the presence of the 5th and two other persons, viz: Atchayalinga Moodelly and Vydianadyen. If these witnesses be believed conviction comes home to your Petitioner; but he submits that they are not entitled to the least respect. In the first place two of the persons said to have been present at the time of the delivery of the Stamp to your Petitioner viz: Atchayalinga Moodelly and Vydianadyen who in consequence of their position being unmanageable articles to your Petitioner's brother, he did not choose to cite them on behalf of the prosecution. But they were cited for the defence as the 13th and 14th witnesses. These being the relations and friends of both the parties were the most likely persons to be neutral and give an unbrased version of the transaction. These were present at the execuion of the Will and attested it; according to them the Stamp was not delivered to Your Petitioner as alleged on behalf of the Prosecution; but that it was taken by the Testator out of his own box, at the time of the execution of the Will. If the matter stood here, some doubts might

still be entertained. The 17th witness for prosecution itself who is a respectable Vakeel of the Civil Court of Tanjore states upon his oath that on or about the 4th of November 1863, the very identical Will in its complete state came into his hands for the purpose of an application under Act 19 of 1841. It must be borne in mind that the prosecutor put him into the witness box, regarding him as a witness of truth and of undoubted integrity, from the prominent position that he occupied; and that his character and statement were not impeached even afterwards. The evidence of this witness, ample as it is, is supported by the 2nd, 3rd and 4th witnesses for the defence, one of whom was the Goomasta of the Vakeel, and another a respectable friend of his, and the third, the person that followed the Testator's Agent who carried the Will to the Vakeel. The evidence of these witnesses was not even attempted to be shaken in the cross-examination. The testimony then of the 17th witness for the prosecution, and the 2nd, 3rd and 4th witnesses for the defence satisfactorily establishing that the Will was handed over to the Vakeel on or about the 4th of November 1863, completely falsifies the statement, of the witnesses 3 to 5 for prosecution, that the stamp was delivered plain into the hands of your Petitioner on or about the 15th of November aforesaid. It may not be out of place to remark here that the stamp was purchased by the testator himself and kept in his box till it was taken out on the date of the execution of the Will. The peculiar prejudices of Natives, viz. that one ought not to execute a will except in the extreme danger of life will sufficiently account for the stamp having been kept in the box a long time before the Will was executed. The 10th witness for the defence, the head steward of the Testator's family stated, on oath, that the purchase of the stamp was entered in the accounts of the testator himself. The conduct of the 19th witness for prosecution, *i. e.* the unnatural brother of your Petitioner, will throw further light on this matter. In the examination in chief, he admitted to have been in possession of all the accounts of the Testator, but when he was asked in the course of the cross-examination to produce the account for August 1863, aware, as he was, of the entry, therein, of the purchase of the stamp, he asserted that he was in possession of all the accounts save and except the accounts of that one month. The 10th witness not suiting his purposes was dismissed from the service. It was hence put out of his power to confirm his statement by the production of the account. The value of these witnesses for prosecution will sink the more when we consider the evidence of the 11th, 12th, 13th, 14th and 15th witnesses for the defence who are all respectable persons present at the time of the execution of the Will and who swear unanimously to the fact that the stamp was taken out by the testator from his box at the time of the execution of the Will. There is still, however, ample pregnant evidence in the conduct of the 19th witness to shew that the 3rd, 4th and 5th witnesses were his mere tools. As to the character and position in life of these bazar witnesses, the 3rd witness on the face of his own deposition carries the highest degree of impossibility. According to his own statement, he did not know your Petitioner up to the date of the sale of the stamp. He was himself a resident of a place about 35 miles from that of your Petitioner. He manages to remember all the minute of facts said to have taken place full two years ago, and which are not likely to be noticed and committed to memory. He may have sold the stamp to the deceased or some of his agents or even to the 4th witness on account of the testator. If a person was necessitated to sell a stamp, and did sell it, there is no necessity for him to enquire about the purpose, and the person for whom it was intended. And it is highly improbable that he could remember all the minute circumstances connected with it. The only question in his evidence is one of time. He admits to have purchased numerous stamps on numarous occasions for purposes of his own trade; he is unable to state the date of any other purchase, but singularly enough remembers the date of the sale of this particular stamp alone to a stranger whose face he never saw, and for a purpose that he need never care for. The reasons assigned by him for identifying the stamp are no less rediculous while no body ever denied that the stamp was originally purchased by him. This unnecessary exertion in one respect, serves only to throw light upon the nature of his evidence in other respects. A comparison of his depositions before the magistrate and Sessions Court, as to the number of stamps he delivered to his son-in-law, will shew the actual banker, and frailty of his mind. He is according to his own statement an extensi

yet never kept a single account in his life. It is needless to dwell upon the incredible story of this witness since a glance of his deposition will supersede the necessity of it. With regard to the 4th witness, his father has a monthly income of Rupees 6-6-6. He says he has a thousand rupees of his own independent property, and yet undertakes the amateur service of going a distance of 30 miles to purchase the stamp. At first he receives a hire of 5 Rupees for the trip and then returns it honorably, because the Almighty placed him in a happy position. He admits that your Petitioner had a number of servants ; and yet he could not get anybody else but this respectable messenger. He styles himself a friend of your Petitioner. His position certainly entitles him to close friendship with such an extensive land-holder as your Petitioner; the nature of the service he has undertaken is another proof of his friendship. And the evidence he chose to give against your Petitioner is the strongest proof of it. He had the affability to appear as witness in different Courts on very many former occasions. He thought, for reasons best known to himself that it was necessary to intimate the purchase of the stamp to the 19th witness, the avowed enemy of your Petitioner. His respectability was certainly so great that he could not be tempted by such a wealthy land-holder as the 19th witness. As to the 5th witness, he is a Punchangam Brahman having the precarious income of 4 or 5 rupees a month. He likewise was liberal enough to appear often in Courts to give evidence on behalf of parties whom he scarcely knew. He comes to the spot by chance as if simply to hear evidence to the purchase of the stamp. He admits that he could not remember any thing that transpired 4 months ago; and yet strongly enough remembers what he, by chance, saw upwards of two years ago. The 4th witness according to this, returned 5 rupees to your Petitioner. He admits that they were not counted ; and yet by the force of his astrology, could tell the actual number of rupees delivered to him. As regards the 6th witness, your Petitioner need not question his character; for it does not at all touch the case. And in fact there is no doubt that he did sell the stamp. The evidence then of the 3rd, 4th and 5th witnesses containing so much improbability in itself, coupled with the character of the witnesses on the one hand, and the evidence of the respectable witnesses on the other, vizt., the 17th witness for prosecution and the 2nd, 3rd and 4th witnesses for the defence, will your Petitioner feels assured, be treated with the contempt which it deserves.

6. That the next circumstance relied on by the Sessions Court is the negative evidence of a number of witnesses whose tendency is to shew that the Will was not executed nor the adoption made from the continued insensibility of the testator on the one hand, and from the difference between the usual signature of the testator and his signature in the Will. The witnesses that speak on this point are those from 7th to 16th and 19th. The 7th witness declares that the testator was laid up with a Carbuncle in his neck for about 12 days. During the last 7 or 8 days out of it he was in a state of continued insensibility. He is a resident of a different village and admits himself to have been an enemy of the deceased. With all this he was charitable enough to visit the patient morning and evening. And when asked to account for it, forgetting his former statement, he stated he was a friend of the deceased. He acknowledges to be an enemy of your Petitioner. No motive therefore need be suggested for giving this false evidence. Your Petitioner cannot conceive the force of the statement that this alternate friend and enemy would have been invited from a foreign village had the Will been really executed. He presumes the continued insensibility of the testator from the simple fact of his not having been spokon to. Experience shows that a patient labouring under a Carbuncle rarely, if ever, loses sensibility, and should any insensibility, result it would be only temporary. After all he admits that there was sufficient interval for it; for he admits he visited the patient only in the mornings and evenings when the Will may have been executed in his absence and that When he is driven further, he says that he does not know if the testator was senseless on the 30th of Avany *i. e.* the very day in which the Will was executed. He ventures to deny the signature in the Will to be that of the testator, simply from the fact that he was in the habit of signing his name in full *i. e.* Chokkappa Moodelly, in all public documents. A short experience of the Native customs and habits will shew that invariably they would sign public documents in full; whereas in private documents they would affix simply their names without the title. That such was the case with the testator also, has been amply substantiated by the 20th witness for prosecution and also by several witnesses for the defence. After all, this fact goes more in favor of the genuineness than otherwise of the Will, for if it were really forged, the author of it would have taken good care to forge a signature in the more usual form rather than risk his case by following the occasional practice. The deponent further denies the signature in the Will by comparing it with the documents B. to E. Here your Petitioner would remark that Sir Christopher Rawlinson in construing a section of the new Evidence Act, ruled that comparison of hand-writing ought not to be had recourse to in criminal cases, the word "cause" in the statement limitting it to a Civil Suit. On this point, your Petitioner would beg to refer your Excellency in Council to note Z under section 562 of Nortons Law of Evidence. Even if it should be considered that comparison of handwriting may be had recourse to, yet the difference is so very trifling at all, that it may be very easily accounted for by the altered state of the health of the deceased. In conclusion the deponent unable, as he acknowledges himself to be, to remember and mention any of the dates of the numerous births and deaths in his own family, is able enough not only to remember the dates, but also the period of the illness of the testator and the several unimportant matters that transpired in connection with it. As your petitioner dwelt at some length on the evidence of this witness he begs leave to dismiss the rest with a few summary remarks about each of them.

The 8th witness has a monthly income of about 4 Rupees. He simply speaks to the insensibility of the testator from his not having spoken to him. He likewise visited the patient only in the mornings and evenings and admits that the Will may have been executed in his absence. The 9th witness is a resident of a foreign village. His income is 10 Rupees per month. He visited the patient in the mornings and evenings, and admits that the Will may have been executed in his absence. The 10th witness is a barber, and appears to have attended on the patient purely with a view to perform surgical operations. Although as a matter of necessity he might have been allowed to enter the house for that specific purpose, it is most unlikely that he would have been allowed access on such a religious and solemn occasion as that of the adoption and Will. His evidence after all, like that of the other witnesses is nothing more than that the Will might have been executed during his absence. The 11th, 12th and 13th witnesses deny the signature in the Will to be that of the testator for the very reason assigned by the 7th witness. They need not therefore be separately commented on. The 14th and 15th witnesses are residents of a different Taluq. Both of them were the 24th and 23rd defendants respectively in the Civil Suit. This circumstance alone sufficiently accounts for their motive in giving false evidence against your Petitioner. They deny the signature of the deceased in the Will for the very same reason as the 7th witness. The evidence of the 16th witness being so short and vague that it requires no comment at all. Your Petitioner contents himself with stating that he was likewise a resident of a foreign village. With regard to the evidence of the 19th witness your Petitioner considers it unnecessary to comment upon it since he is in fact the prime mover of all this unfounded proceedings. He admits to have been an inveterate enemy of the deceased and did not think it worth his while to visit the patient during the first 5 or 6 days of his illness. Even afterwards far from acting like a brother or first cousin, he was content with paying a formal visit of a few minutes either in the morning or evening, like the other witnesses who were palpably hired to give false evidence in this case. He would further allow your Petitioner to exercise the rights of the ownership in the family of the deceased till he succeeded in concocting an agreement, when it was certainly his interest to denounce the Will as a forgery. There is, however, a peculiarity observable in the conduct of this witness. So long as they were launched in the Civil Action he openly branded the Will as an impudent forgery, but when he saw the fate of his brother on one

side, and his own position as a witness upon oath on the other, his audacity seems, to have given way so that he would not flatly deny the genuineness of the signature but would or simply declare that it did not appear like that of the deceased; and the reason that he asserts, is the very same as was assigned by the 7th witness. Since the conduct of this witness was animadverted upon in various places, it is needless to dwell here longer upon it. The evidence of all these witnesses for prosecution would only amount to saying that the Will was not executed during their presence but might have been executed in their absence. It may however be a question as to whether it is probable that ten such men should be absolutely ignorant of the transaction if it really did take place. It requires no great reflection to answer this if it is borne in mind that the majority of them were the lowest dregs of the people or residents of distant villages and that one or two who were comparatively in a higher position in Society were actuated by thrift and enmity to hide the fact even if they were aware of it. The reason assigned by all these witnesses is negatived by the evidence of the 20th witness for prosecution. For he declares that in all private documents the deceased signed his name without the title. Again the 21st witness for prosecution speaks to the previous intention of the testator to make the adoption and execute the Will. The truth of the evidence of these witnesses should be tested by the testimony of the defence witnesses 8 to 17. Of these the 8th and 9th are the nearest relations of the testator and men of considerable importance in the district. They visited the testator a short time before his death and were told by himself in person of the actual adoption and execution of the Will. As to the 10th witness his evidence was partly noticed already. He was the head house-hold manager of the deceased and speaks from personal knowledge to the performance of the adoption and the execution of the Will. According to him the Stamp was never with your Petitioner, but was purchased by the Testator, entered in his account, kept in his box, and taken out at the time of the execution of the Will. He also adds that the testator was in the habit of signing his name in full in public records and without his title in private documents. The 11th and 12th witnesses speak to the preparation for the adoption and the execution of the Will. They state likewise that the stamp was taken out of the box by the deceased. The 13th, 14th and 15th witnesses attested the Will and were men of consequence, possessed of several valis of land. Of them the 13th and the 15th were relations, and the 14th, an agent of the testator. They all concur in stating circumstantially that the adoption was performed and the Will executed. The 16th witness was spectator and proves the genuineness of the Will. The 17th witness swears to the identity of his father's attestation in the Will. His father was an agent of the testator and the transcriber of the Will. Your Petitioner feels, assured that your Excellency in Council will be easily convinced of the disproportion between the evidence for prosecution and that for defence, the testimony for the defence preponderating over that of the prosecution. Even granting for the sake of argument that the balance of evidence on both sides, is equal, the prisoner is undoubtedly entitled to the benefit of the doubt.

7. The last circumstance relied on by the Session Court, is the exhibit H. It is said to be an Arzee addressed by your Petitioner to the Deputy Collector of Tanjore under date the 20th September 1863. The object of its production is to shew the improbability of the execution of the Will, since it was not therein referred to. In the first place, your Petitioner totally denied the Arzee to have been addressed by him and there is not an iota of evidence to bring it home to him. The only witness examined in regard to that, is the 2nd witness for prosecuiion. He did not see the Arzee being written by your Petitioner nor was he acquainted with his signature and cannot swear whether your Petitioner was the author of it. It was an Arzee received by tappal and the 19th witness himself is unable to identify the signature in it. The 15th witness has the audacity to identify the signature. But when it is remembered that he was the 23rd defendant in the Civil Suit, it need not be commented on. Even assuming for the sake of argument that it was addressed by your Petitioner, still it proves nothing against him. For addressed as it is said to have been on the 4th day after the decease of the testator,

it could not embrace all the facts of the case, and your Petitioner himself expressly reserves all the particulars till after the absequies should be over. His object was simply to suspend any order that might be passed at the instance of any third party. So that if H. proves any thing at all, it shows clearly enough that your Petitioner had rightfully entered the family of the deceased and was in rightful possession of the estate by virtue of a bequest.

8. That the conduct of the 19th witness in pleading yet with holding the agreement, and keeping back the accounts for August 1863; the evidence of the 17th witness for prosecution supported by that of his Goomastas shewing that the Will existed long before it is alleged to have been forged, the position occupied by your Petitioner in the family of his testator, and the relative characters and positions in life of the witnesses on both sides will, your Petitioner trusts, produce a conviction in your Excellency's mind of the total innocence of your unfortunate Petitioner.

Your Petitioner therefore prays that your Excellency in Council will be graciously pleased to reverse the sentence, suspend the sentence pending the disposal of the case and grant such further or other relief as in the premises to your Excellency in Council, may seem meet; and your Petitioner further submits that if any further doubt be entertained in this case, a reference to his Vakeel on the spot will remove the same.

AND YOUR PETITIONER SHALL EVER PRAY.

August,
1865.
August,

If correctly represented in this address, this Petn's case is certainly one that demanded great caution and much consideration in passing judgment on it.

This judgment, I observe, has been given by the Sessions Judge, Mr. R. G. Clarke, in opposition to the views of the Jurors who were taken by this Court expressly for the purpose, the conviction of this Petitioner (Prisoner) and his transportation for seven years.

The High Court appears to have had this case before them & to have affirmed this sentence of the Sessions Judge; but it is not apparent whether the High Court acted on a perusal of the Calendar only, and a hearing of what may have been urged by the Petitioners Counsel, who undertook to present the present

addresses, or whether they called for the complete record of proceedings and so disposed of the appeal.

Had it been clear that the latter course was taken in the Supreme Court, this Petition might, I think, at once have been rejected. Whatever the course adopted may have been, it is clear that the propriety and justice of the Lepsius Judges' conviction and sentence wholly depend on an examination of the evidence recorded in the Lepsius Circuit and Magistrates Courts; — or, in fact, the point whether the case for the Prosecution or that for the defence is the more credible, the Government, who are now appealed to, being bound to assume that the arguments & reasoning used in this Petition were duly set out and urged both before the Lepsius Judge and in the Supreme Court also.

Personally, taking the case as it is now represented to the Govt., I shd see no

by that Court the criminal prosecution founded on
the allegations in the Petition, was ordered —

reason to advise the exercise of the Royal Prerogative of Mercy, but I should think that any harm will happen, and a hopeful position may be done — if you can see Mr Petition & the Lepsius Judge of Transvaal with a request that he will report what is therein stated and report whether on duly considering the Petrs representations he sees any ground for supposing that there has been any error of judgment. He shd also

19 Aug.

Petition-

No. 1871 of 1865. d/19th Sept 1865.
Read ——————

From V. Rajagopala Charlu, Vakeel of the High Court of Judicature at Madras, in favour of Syedaraya Mudali, prisoner in case No. 25 of 1865, on the Calendar of the Sessions Court of Tranquebar.

Protests against the decision of the Sessions Court of Tranquebar in case No. 25 of 1865 and its sentence of Transportation for 7 years on the charge of fraudulent use of a forged Bill as genuine; and

For orders
with reference to minute
by Hon'ble H. D. Phillips.

10

Petitioner humbly prays that as the Prisoner resides at Madras and has been apprehended by the Supreme Court the case ought to be tried and determined by the Supreme Court of Judicature at Madras and not by the Sessions Court of Tranquebar. Petitioner therefore prays that the Supreme Court will be pleased to call for the proceedings of the Sessions Court of Tranquebar in the case of Queen Empress against Syedaraya Mudali Prisoner and that the Supreme Court will be pleased to try the case.

[signature]

and that the High Court on appeal have confirmed the decision.

Enclosing the Copies of decisions, submits certain proofs of his innocence and prays that the sentence may be reversed and suspended pending the disposal of the Case.

C. 25th Augt 65

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following Petition

from Ayadoray Mudali - Prisoner in Case No 26 of 1865 in the Calendar of the Sessions Court of Tranquebar - } Dated 19th August 1865 -

Order thereon 30 August 1865 No 1210.

The Governor in Council is not prepared to comply with the Petitioner's application for a remission of the sentence passed upon him by the Sessions Court at Tranquebar and which, it is observed, has been affirmed by the High Court on appeal -

V. Rajagopaul Chariar
Vakeel of High Court, Madras -
with 2 Enclos - dated 15/9

Pro: of Augt.

Judicial 186,5. Department.

No. 1210

PROCEEDINGS OF GOVERNMENT.

Dated 30 August 1865

26. 261.