M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 1362 Press ~~Mis.~~

248-250

Dated 21. 9. ~~19~~ 1865

19/20

Not to be folded or roughly handled

Ms

Proceedings of the Madras Government, Judicial Department, *21st September* 1865.

Read the following papers :—

No. 248. From the Honorable D. ARBUTHNOTT, Magistrate of Salem, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George ; dated Pennagaram, 24th July 1865, No. 20.

I have the honor to forward herewith, for the information of Government, copy of a letter dated 10th July 1865, from W. F. Hathaway, Esq., the Head Assistant Collector of Salem, now on leave, in reply to a letter from the Acting Session Judge of Salem, referred to in the Proceedings of Government, Judicial Department, No. 949, of the 7th instant.

From W. F. HATHAWAY, Esq., to the Honorable D. ARBUTHNOTT, Magistrate of Salem ; dated Madras, 10th July 1865.

I have the honor to request permission to make a short reply to letter, 72, from the Acting Session Judge of Salem, referred to in the Proceedings of Government, Judicial Department, 949, of the 7th instant.

2. The Acting Session Judge objects to two points, (1) the Section under which the accused were tried, and (2) the person convicted.

3. As to the first point, I think that there can be very little doubt that appropriation by a servant is larceny, and not breach of trust. To take a simple text-book on the point, I would refer to Mayne's Criminal Law, in which he writes, page 28 :—" *It is a well known rule* that where a master delivers goods to a servant, they are held to continue still in his own possession. For instance, if I entrust my horse to my coachman, or plate and wine to my butler, my possession of them is never altered. I merely hold them by another hand. Instead of shutting them up in a stable or room, I put a human lock and key over them, but my right is never affected. Consequently, if my servant sells my horse, drinks my wine, or pawns my plate, this is larceny." I would lay stress on the words underlined, as showing that it is a point that has long ago been settled, and is no longer open to discussion. The Acting Session Judge writes that the accused " *as servant* of the Railway Company was entrusted with a certain quantity of oil for *a particular purpose*, which oil, it was alleged, he dishonestly misappropriated, thus commiting a criminal breach of trust." But it is for this very reason, viz., because it was only given to him as a servant, for a particular purpose, that the offence is not breach of trust, but larceny ; that is to say, a servant does not have these things by virtue of any trust but from the necessity of the case, *i. e.*, from his being a servant and having to do certain work with them, and when he pilfers, he is not a dishonest trustee, but a thief. I would write more, if it were necessary ; but I believe the point has long ago been set at rest.—See 1 Hale, 506.

4. As to the 2nd point the facts of the case are as follows :—On this case coming to light, it was then discovered that the practice had been going on for some time, and that all the cleaners were forced by this head cleaner, Shaik Bauben, to use every day only half the quantity of oil allowed, and to give back to him, Shaik Bauben, the remainder. Other cleaners, who had nothing to do with the case, came forward and proved this (see the deposition of, if I do not mis-recollect, the 1st witness). All the cleaners in the whole station *could have given* their evidence on this point if it had been necessary, but I thought it fully proved by the two who were brought up by the foreman. It was on one of these occasions then, when the cleaners Karayan and Syed Raza were clandestinely taking away the oil in the evening, that they were caught; and then this practice was discovered. The Acting Session Judge allows that the accused Shaik Bauben admitted this, but sought to defend himself by saying that he was going to return it to store. But there is the evidence of the foreman to show that though this had been going on for many weeks past, yet no oil ever had been returned ; and further that it would be utterly wrong to return any oil, as it was indispensable that the *whole* of it should be used on the engine, and that this head cooly, Shaik Bauben, was further appointed solely for this very point, viz., to see that the whole of it *was* spent on the engine (to ensure its cleanness

and correct working); and further that this very head cooly had continually been trying to get more oil from the foreman, saying that the amount was not nearly enough, when all the time each cleaner was bringing him back every day more than a third of the quantity allotted him.

It was on these grounds that the head cleaner, Shaik Bauben was convicted, not on the particular case by which the practice was brought to light. He was therefore convicted not on the evidence of the two cleaners detected, but on the unanimous evidence of the other cleaners as to the daily practice, which was so signally corroborated by the detection *in flagrante delicto* in this particular case.

5. The Acting Session Judge says that he does not know why, if Shaik Bauben was dishonestly disposed, he did not retain a portion of the oil before it was issued. If a reference were made to the record, the reason would be found very simple, viz., because he had nothing to do with the issue of it. Each cleaner took his tin up to the Store-keeper and received his allowance, so that the head cleaner could only get his "perquisite" by making each cleaner disobey the rules and save some, so as to give it to him at the end of the day; the saving oil in any case being the very thing which this pai-kast, or head cooly, was appointed to prevent.

6 On the whole, it appears that the Acting Session Judge would acquit the head cooly Shaik Bauben on two reasons; 1st, that it was arranged that the oil was to be brought to him but that he was going to return it; 2ndly, that it was not to be brought to him at all. It seems that these two plans are contradictory and self-refuting, for it is plain that he could not mean to return it if it was not to be brought to him. The Acting Session Judge writes that if the oil could be traced to Shaik Bauben, the case would be different; but a few sentences before he writes that the accused Shaik Bauben admitted that he had given orders for the oil to be brought to him. It may be that he intends the defence to be that usually every day the cleaners secreted the oil for Shaik Bauben, but that on this particular occasion they secreted it for themselves; but if so, this would be a most forced and improbable hypothesis.

7. I had great doubts as to whether the two cleaners Karayan and Syed Raza should be punished as well, as being privy to this and aiding to it. But it is a very difficult thing to decide how far a subordinate is legally bound to bring to notice acts of dishonesty in his superior which he is privy to, or is forced to take a part in, especially in a matter of petty "perquisites" of this sort, and how far he ought to be punished criminally for such guilty knowledge or assistance. Considering the enormous amount of petty dishonesty of this sort, and the generally lax notions of morality on the subject, I thought it best to incline, as far as possible, to the side of leniency, especially as the uneducated cooly cleaners might have tried to half satisfy themselves with the plea put forward by the Acting Session Judge, viz., that *possibly* the head cleaner might return this oil, or a little of it. Considering all that was to be urged in their favor, if I had sentenced them, it would have been to a nominal punishment of one or two days in prison (to vindicate the letter of the law), and considering that they had already been more than that time in custody, I thought it on the whole unnecessary.

8. I request that you will kindly forward this letter to Government, as I am precluded from doing so myself direct; and it seems hard to receive such (to me) severe censure for alleged errors, which I respectfully submit I have not committed.

(True Copy).

(Signed) D. ARBUTHNOTT,
Collector.

No. 249. From the Honorable D. ARBUTHNOTT, Magistrate of Salem, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Salem, 16th August 1865, No. 28.

With reference to your Memorandum, No. 310, of the 2nd instant, I have the honor to forward translations* of the depositions† of the witnesses in the case alluded to.

* 4.
‡ 1 given in English.

2. A copy of witness Mr. Pattison's deposition, given in English, is also enclosed.

Translation of a Deposition given on oath on the 13th February 1865, before the Head Assistant Magistrate of Salem, at Tripattur, by witness Madurai, son of Muttusami, living at Jollarapet, Paraya, Siva Sect, Engine cleaner, aged 14 years.

Answer.—I am a servant on the Railway for cleaning engines at Jollarapet. The accused Maistry Shaik Bauben brings daily two ounces of cocoanut oil for cleaning engines and gives it to the cleaners, saying that whatever there may be over must be given him back, and that if it be not, he would impose a fine: while so, one day, I cannot say when, the accused brought to me two ounces of lamp oil, as there was no cocoanut oil in the store. I asked how I could clean with lamp oil, when the accused Shaik Bauben took away the bottle of lamp oil now before the Court, and gave the cleaners two ounces of dirty cocoanut oil. This is all that I know. There are 20 or 30 cleaners at Jollarapet. I am one of them. This is the oil that Shaik Bauben first gave us and took back.

× Mark of Madurai.

Taken before the Head Assistant Magistrate, and containing accurately the statement made by the witness, and acknowledged to be correct when read over to him in Tamil.

(Signed) W. F. HATHAWAY,
Head Assistant Magistrate.

Translated as accurately as possible from Tamil.

(Signed) F. BRANDT,
Acting Head Assistant Magistrate.

Translation of a Deposition given on oath on the 13th February 1865, before the Head Assistant Magistrate of Salem, at Tripattur, by the third witness Jummi, son of Varagappan, Paraya, Vaishnava Sect, Water pump user, aged 35 years.

Answer.—About 13 days ago, one day in the evening, at ¼ past 5 o'clock, I was attending to the calls of nature on the high ground further off the engine shed at Jollarapet. Aroggiyam called me and told me that the cleaner was taking something. I and Aroggiyam went and asked the accused Karayan, who was coming in front of us, what he had got in his waist cloth and told him to untie it. He did so, and in his waist cloth was a bottle of oil now produced here. We took him with the oil and delivered him to Mr. Pattison, stating all that had happened. He told us to take him to the Police. This is all that I know. I know nothing more. When we caught Karayan, we asked him nothing, nor did he say any thing. The gentleman only inquired.

× Mark of JUMMI.

Taken before the Head Assistant Magistrate, and containing accurately the statement made by the witness, and acknowledged to be correct when read over to him in Tamil.

(Signed) W. F. HATHAWAY,
Head Assistant Magistrate.

Translated as accurately as possible from Tamil.

(Signed) F. BRANDT,
Acting Head Assistant Magistrate.

Translation of a Deposition given on oath on the 13th February 1865, before the Head Assistant Magistrate of Salem, at Trippatur, by the fourth witness Aroggiyam, son of Muttukurichi, living at Jollarapet, Paraya, Siva Sect, cleaner of the brass part of the engine, aged 36 years.

Answer.—About 13 days ago, one day in the evening at ¼ past 5 o'clock, after finishing our work, Jummi and I were attending to the calls of nature on a high ground, when the accused

Karayan went down the high ground to take the bottle of oil in his waist cloth. I found out and asked him what was in his waist cloth. He said "nothing." I called out Jummi and told him; when he made the accused Karayan to untie his waist cloth, where this bottle of oil was found. We delivered the accused with the bottle of oil to Mr. Pattison, and related to him all that had happened. This is all that I know. I am a cleaner of the brass part of the engine.

× Mark of AROGGIYAM.

Taken before the Head Assistant Magistrate, and containing accurately the statement made by the witness, and acknowledged to be correct when read over to him in Tamil.

(Signed) W. F. HATHAWAY,
Head Assistant Magistrate.

Translated as accurately as possible from Tamil.

(Signed) F. BRANDT,
Acting Head Assistant Magistrate.

Translation of a Deposition given on oath on the 13th February 1865, before the Head Assistant Magistrate of Salem, at Tripattur, by the 2nd witness, Nagamalai, son of Sala, living at Tripattur, Paraya, Vaishnuvu sect, Engine cleaner, aged 15 years.

Answer.—I am an Engine cleaner at Vellore. The accused Shaik Bauben always gives myself and others two ounces of cocoanut oil for each bandy per day from the Store at Jollarapet. We used to clean the engine with it, and return to the accused whatever there might be over: he says, if we do not, he will discharge or fine those that do not give him that which is over. Therefore, of the two ounces given us daily, we return one ounce or half an ounce. About 10 or 12 days ago, Shaik Bauben brought a bottle with about ¼th of lamp oil to clean the brass part. I objected, asking how I could clean with the lamp oil, as it would be unsuited for such purpose. He took it away and brought a little cocoanut oil. We cleaned with that. The accused Syed Raza poured the lamp oil into the bottle now produced. He hid the brass dúm on the top. In the evening, at 5 o'clock, he took it and gave it to the accused Karayan. When he (Syed Raza) gave it to Karayan, he told him to take it to the accused Maistry Shaik Bauben. This is all that I know. It was at the Jollarapet station that he gave it.

× Mark of NAGAMALAI.

Taken before the Head Assistant Magistrate, and containing accurately the statement made by the witness, and acknowledged to be correct when read over to him in Tamil.

(Signed) W. F. HATHAWAY,
Head Assistant Magistrate.

Translated as accurately as possible from Tamil.

(Signed) F. BRANDT,
Ag. Head Assistant Magistrate.

I, Thomas Pattison, son of Robert Pattison, Locomotive Foreman, living at Jollarapet, being sworn, depose as follows:—

The oil is given out daily—two ounces to each engine—by the Store-keeper. The Maistry Shaik Bauben ought to see that each engine is properly cleaned, and that the whole amount is used, because it is impossible to clean it properly without. He has complained to me previously that the two ounces were not enough.

2. The oil is never given out in a large quantity to the Maistry. About 4 or 5 men clean an engine; one of the number comes in the morning, and receives the oil generally in an oil-feeder or something of the sort. On the night that I sent for the Maistry and asked, he gave me no explanation, but declared that he knew nothing about it.

(Signed) THOMAS PATTISON.

3

Given before me and acknowledged to be correct when read over to the witness in English.

TRIPATTUR, *15th February* 1865. (Signed) W. F. HATHAWAY,
Head Assistant Magistrate.

(True Copy).

(Signed) F. BRANDT,
Ag. Head Assistant Magistrate.

No. 260. ORDER THEREON, 21st September 1865, No. 1362.

The Governor in Council sees no reason to question the correctness of the remarks made by the Acting Session Judge in his letter recorded in the Proceedings of Government, under date the 9th June last, as to the insufficiency of the evidence for the conviction of the prisoner, Shaik Bauben, therein referred to.

(True Extract).

Acting Secretary to Government.

To the Magistrate of Salem.

Exd. J. H. Burns.

4

No. 20

Salem Magistrate's office
on circuit Pennagaram
24th July 1865.

From
The Honorable D. Arbuthnott
Magistrate of Salem

To
A. J. Arbuthnott Esquire
Chief Secretary to Government
Fort Saint George

Sir

I have the honor to forward herewith for the information of Government, copy of a letter dated 10th July 1865 from W. F. Hathaway Esquire the Head Assistant Collector of Salem, now on leave, in reply to a letter from the Acting Session Judge of Salem referred to in the Proceedings of Government Judicial Department No 949 of the 7th Instant.

Written at Madras

I have the honor to be
Sir
Your most obedient Servant
D. Arbuthnott
Magistrate

[illegible]

Pro: 9th June 1865 No. 1173
" 7th July " Nos. 25–26.

Jud. Department 1865
From No. 93
The Magistrate of Salem
To The Chief Secretary to Government Fort Saint George Madras
Dated 24th July 1865
Recd 29 " "
Received
No. 20
Enclosure 1

Ton. 1362

J. No. 1620
Forwarding copy of letter from W. F. Hathaway Esq. in reply to the Acting Sessions Judge's letter referred to in the Govt. Proceedings dated 7th July/65 No. 949.

~~Fort. 1758.~~

248

C 22 Aug
R 24 "

Madras July 10th/65

From.
W. F. Hathaway Esquire. C. S.

To.
The Honorable D. Arbuthnott
Magistrate of Salem.

Sir

I have the honour to request permission to make a short reply to letter 72 from the Acting Session Judge of Salem referred to in the Proceedings of Government, Judicial Department 949 of the 7th Instant

2 The Acting Session Judge objects to two points, (1) the section under which the accused were tried and (2) the person convicted.

3 As to the first point I think that there can be very little doubt

that

that appropriation by a Servant is Larceny, and not breach of trust. To take a simple text-book on the point I would refer to Mayne's Criminal Law + in which he writes page 28" It is a well known rule, that where a master delivers goods to a Servant, they are held to continue still in his own poſseſsion. For instance, if I entrust my horse to my coachman, or plate and wine to my butler, my poſseſsion of them is never altered. I merely hold them by another hand. Instead of shutting them up in a stable or room I put a human lock and key over them, but my right is never affected. Consequently if my servant sells my horse, drinks my wine or pawns my plate, this is larceny". I would lay

neither the word nor the offence under discussion finds a place in the Code — [illegible]

+ is an obsolete work having been published prior to the I. P. Code coming into operation

6

streſs on the words under-lined, as showing that it is a point that has long ago been settled, and is no longer open to discussion. The Ag. Seſsion Judge writes that the accused" as Servant of the Railway Company was entrusted with a certain quantity of oil for a particular purpose, which oil, it was alleged, he dishonestly misappropriated, thus committing a criminal breach of trust" But it is for this very reason viz. because it was only given to him as a servant for a particular purpose that the offence is not breach of trust, but larceny. That is to say a servant does not have these things by virtue of any trust but from the neceſsity of the case i.e. from his being a servant

The law Mr. Hathaway as H. A. magistrate had to administer does not recognise such an offence —

and having to do certain work with them, and when he pilfers, he is not a dishonest trustee but a thief. I would write more if it were necessary, but I believe the point has long ago been set at rest - See 1 Hale 506.

4 As to the 2nd point the facts of the case are as follows. On this case coming to light it was then discovered that the practice had been going on for some time, and that all the cleaners were forced by the head cleaner Shek Bābaw to use every day only half the quantity of oil allowed, and to give back to him Shek Bābau the remainder. Other cleaners who had nothing to do with the case came forward and proved this (See the deposition of (if I do not misrecollect the 1st witness) All the cleaners in the

whole

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how can you know this? as they were not examined?

whole station could have given their evidence on this point if it had been necessary, but I thought it fully proved by the two who were brought up by the foremen. It was on one of these occasions then, when the cleaners Karayan and Saad-raza were clandestinely taking away the oil in the evening that they were caught + and then this practice was discovered. The Acting Session Judge allows that the accused Shek Baban admitted this but sought to defend himself by saying that he was going to return it to store. But there is the x evidence of the foreman to show that though this had been going on for many weeks past yet no oil ever had been returned; and further that it would be utterly wrong to return any oil, as it was indispensable that the whole of it

+ and with the head cleaner, made Prisoners! then multiplying an evidence agst. the cleaners any thing they might have stated or did state.

x There is no such evidce.

should be used on the engine, and that this head cooly Shek Baban was further appointed solely for this very point, viz, to see that the whole of it was spent on the engine (to ensure its cleanness and correct working); and further that this very head cooly had continually been trying to get more oil from the foreman, saying that the amount was not nearly enough when all the time each cleaner was bringing him back every day more than a third of the quantity allotted him.

the cleaner objected that it was lamp oil, instead of cocoa nut oil

It was on these grounds that the head cleaner Shek Baban was convicted, not on the particular case by which the practice was brought to light. He was therefore convicted not on the evidence of the two cleaners detected, but on the unanimous

there was no charge on these general grounds — the specific act of theft on a specific date was charged & nothing else

8

as to a practice wh. ought [illegible] wrongly deduced from the basis of any charge -

evidence of the other cleaners as to the daily practice which was so signally corroborated by the detection in flagrante delicto in this particular case. +

of two men who being charged with theft were allowed to give evidence agt. their fellow Prisoner! 5

The Acting Session Judge says that he does not know why, if Shek Baban was dishonestly disposed, he did not retain a portion of the oil before it was issued. If a reference were made to the record the reason would be found very simple viz: because he had nothing to do with the issue of it. + Each cleaner took his tin up to the store keeper and received his allowance, so that the head cleaner could only get his "perquisite" by making each cleaner disobey the rules, and save some, so as to give it to him at the end of the day.

+ this is not so. the testimony of the I.W.s shows that the [illegible] took & distributed daily a certain quantity of oil ~~[illegible]~~ This may be so; but the depos. of wit. [illegible] are [illegible] that the oil for cleaning was given out to the head cleaner - w. upon 3 Prisoner's [illegible] seems to [illegible] knowledge of things with the depos. [illegible] support -

5

the saving oil in any case being the very thing which this pai-kast or head cooly was appointed to prevent.

6 On the whole it appears that the Acting Session Judge would acquit the head cooly Shek Babau on two reasons, 1st that it was arranged that the oil was to be brought to him but that he was going to return it 2ndly that it was not to be brought to him at all. It seems that these two pleas are contradictory and self refuting, for it is plain that he could not mean to return it if it was not to be brought to him. The Ag. Session Judge writes that if the oil could be traced to Shek Babau the case would be different, but a few sentences before he writes that the accused Shek Babau admitted that he

had

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had given orders for the oil to be brought to him. It may be that he intends the defence to be that usually every day the cleaners secreted the oil for Shek Babau, but that on this particular occasion they secreted it for themselves: but if so, this would be a most forced and improbable hypothesis

not in these words or with: explanation of the reason for the order.

7 I had great doubts as to whether the two cleaners Karayan and Said R should be punished as well, as being privy to this and aiding to it. But it is a very difficult thing to decide how far a subordinate is legally bound to bring to notice acts of dishonesty in his superior which he is privy to, or is forced to take a part in, especially in a matter of petty "perquisites" of this sort, and how far

he ought to be punished criminally for such guilty knowledge or assistance. Considering the enormous amount of petty dishonesty of this sort, and the generally lax notions of morality on the subject, I thought it best to incline as far as possible to the side of leniency, especially as the uneducated cooly-cleaners might have tried to half satisfy themselves with the plea put forward by the Acting Session Judge viz: that *possibly* the head cleaner might return this oil, or a little of it. Considering all that was to be urged in their favour, if I had sentenced them it would have been to a nominal punishment of one or two days in prison (to vindicate the letter of the law) and considering that they had

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Translation of a deposition given on oath on the 13th February 1865 before the Head Asst Magte of Salem at Tripattur, by witness Madurai, son of Muttusami, living at Jollarapat, Paraya, Siva Sect, Engine cleaner, aged 14 years.

Answer. "I am a servant on the Railway for cleaning Engines at Jollarapat. The accused *Maistry Sheik Baban* brings daily 2 ounces of cocoanut oil for cleaning Engines and gives it to the cleaners saying that whatever there may be over must be given him back and that if it be not, he would impose a fine. While so, one day, I cannot say when, the accused brought to me 2 ounces of lamp oil, as there was no cocoanut oil in the store. I asked how I could clean with lamp oil, when the accused Sheik baban took away the bottle of lamp oil now before the Court and gave the cleaners 2 ounces of dirty cocoanut oil. This is all that I know. There are 20 or 30 cleaners at Jolarpet. I am one of them. This is the oil that Sheik baban first gave us and took back.

\ Mark Madurai

Taken before the Head Asst Magte and containing accurately the statement made by the witness and acknowledged to be correct when read over to him in Tamil.

(Signed) W. F. Hathaway
Hd. Apt. Magte

Translated as accurately as possible from Tamil

F. Brandt
Ag. Head Apt. Magte

In a letter from the Magistrate of Salem dated 16th August 1865 No. 28.

Enclosure 1

Translation of deps:
:ositions given by witness
Madusai -

Ind. [illegible]
No. 1758

Translation of a deposition given on oath on the 13th February 1865 before the Head Apt. Magte of Salem, at Tripattur, by the 3rd Witness Jummi, son of Varagappan, Paraya, Vaishnava Sect, water pump user, aged 35 years.

Answer About 13 days ago one day in the evening at 1/4 past 5 o'clock I was attending to the calls of nature on the high ground further off the engine shed at Jolarapet. Aroggiyam called me and told me that the cleaner was taking some thing. I and Aroggiyam went and asked the accused Kariyan, who was coming in front of us, what he had got in his waist cloth and told him to untie it. He did so and in his waist cloth was a bottle of oil now produced here. We took him with the oil and delivere him to Mr. Pattison, stating all that had happened. He told us to take him to the Police. This is all that I know. I know nothing more. When we caught Kariyan, we asked him nothing, nor did he say any thing. The gentleman only enquired.

Jummi's mark

Taken before the Head Apt. Magte, and Contain

ccurately the statement made by the witness
nd acknowledged to be correct when read
over to him in Tamil.

(Signed) W. F. Hathaway
Head Apt Magte

Translated as accurately as possible from Tamil

F. Brandt
Ag Head Apt Magte

In a letter from the Magistrate of Salem dated 16th August 1865 No. 28.

Enclosure 3

Translation of deposition given by witness Jummi.

Recd. [illegible]
Rec 1758

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lation of a deposition given on oath on the 13th Februa
fore the Head Apt Magte of Salem, at Tripatur, by the
ess Aroggiyam, son of Muttukurichi, living at
lat, Paraya, Siva Sect, cleaner of the brass part
engine, aged 36 years.

ver. About 13 days ago one day in the evenin at 1/4 past 5 o'clock, after finishing our work, Jummi and I were attending to the calls of nature on a high ground, when the accused Kariyan went down the high ground to take the bottle of oil in his waist cloth. I found out and asked him what was in his waist cloth. He said "nothing". I called out Jummi and told him, when he made the accused Kariyan to untie his waist cloth, where this bottle of oil was found. We delivered the accused with the bottle of oil to Mr. Pattison and related to him all that had happened. This is all that I know. I am a cleaner of the brass part of the engine.

\ Mark Aroggiyam

Taken before the Head Apt Magte and containing accurately the statement made by the witness and acknowledged to be correct when read over to him in Tamil.

(Signed) W. F. Hathaway
Head Apt Magte

Translated as accurately as possible from Tamil

F Brandt
Ag Head Apt. Magte.

In a letter from the Magistrate of Salem dated 16th August 1865 No. 28.

Enclosure 4

Translation of deposition given by witness Na:gayam.

Rd. 1857
No 1758

13

Translation of a deposition given on oath on the 13th February 1865 before the Head Apt Magte of Salem, at Tripattur, by the 2nd Witness Nagamalai, son of Sala, living at Tripattur, Paraya, Vaishnuva sect, Engine cleaner, aged 15 years.

Answer I am an engine cleaner at Vellore. The accused Sheik baban always gives myself and others 2 ounces of cocoanut oil for each bandy per day from the store at Jolarapet. We used to clean the engine with it and return to the accused whatever there might be over: he says, if we do not, he will discharge or fine those that do not give him that which is over. Therefore of the 2 ounces given us daily, we return one ounce or half an ounce. About 10 or 12 days ago Sheik baban brought a bottle with about 1/4th of lamp oil to clean the brass part. I objected asking how I could clean with the lamp oil, as it would be unsuited for such purpose. He took it away and brought a little cocoanut oil. We cleaned with that. The accused Sayad Raza poured the lamp oil into the bottle now produced. He hid the brass drum on the top. In the evening at 5 o'clock, he took it and gave it to the accused Kariyan. When he (Sayad Raza) gave it to Kariyan, he told him to take it to the accused maistry Sheik baban. This is all that I know. It was at the Jolarapet station that he gave it. [illegible]

(Mark Nagamalai [illegible]

Taken before the Head Apt Magte and containing accurately the statement made by the Witness and acknowledged to be correct when read over to him in Tamil

(Signed) W F Hattaway
Head Apt Magte

Translated as accurately as possible from Tamil

F Brandt
Ag Head Apt Magte

In a letter from the Magistrate of Salem dated 16th August 1865 No. 28.

Enclosure 2

Translation of deposition given by witness Nagamalai.

Recd [illegible]
No 1758

I Thomas Pattison son of Robert Pattison, Locomotive Foreman, living at Jolarapet, being sworn depose as follows.

The oil is given out daily, 2 ounces to each engine by the store keeper. The maistry Sheik Baban ought to see that each engine is properly cleaned, and that the whole amount is used, because it is impossible to clean it properly without. He has complained to me previously that the 2 ounces was not enough.

The oil is never given out in a large quantity to the maistry. About 4 or 5 men clean an engine; one of the number comes in the morning and receives the oil generally in an oil feeder or something of the sort. On the night that I sent for the maistry and asked he gave me no explanation but declared that he knew nothing about it.

(Signed) Thomas Pattison

Given before me and acknowledged to be correct when read over to the witness in English.

(Signed) W F Hattaway
H. A. M.

(True copy)

Tripatur
15th February 1865

F Brandt
Ag Head Apt Magte

It would be a simple step, if determined on, to back out of the opinion unfavorable to Mr. Hathaway which has been expressed; for such as it is, that opinion rests on what has been submitted by the Sessions Judge.

The Sess: Judge's opinion, however, rests on the entire record: on, in fact, the very same material that Mr. H— had before him when he punished Naik Banden.

But, the Government itself has the same entire record before it, and therefore can form their own opinion of the propriety and justice of the sentence passed, for they are in the same position exactly as Mr. H & the Judge have respectively been.

It seems, however, necessary that in doing this, the Govt. should keep within the 4 corners of the record. This record consists of five depositions, and it is on a consideration of these, not of Mr. H's

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In a letter from the
Magistrate of Salem
dated 16th August 1865
No. 28.

Enclosure 5

"Copy of a deposition
given by Mr. Pattison

Jud. [illegible]
No 1758

explanatory & justificatory letter, that I have formed the opinion written on the 23rd instant –

Mr. H's statements in that letter are not supported by the 5 depositions – he has travelled beyond the facts they furnish, and it is little to the point whether S. Bawden (Mr. H) was or was not justly punished, that he ^named raise an argument about the refinements of larceny and breach of trust. – Mr. H –, it will be observed, wrote his letter at Madras where he had not the record to refer to.

My attention has again been drawn to these depositions which contain the only testimony in support of the charge of "theft" on a given date against S. Bawden – and I certainly am quite unable to see in them an approximation even to the quantity of evidence necessary for a legal or justifiable conviction of such an offence —

WDh

31 Augt.

Judicial Department

17

Nos. 1626 and 1758

From the Magistrate of Salem

Dated 24th July & 16th August 185

For Orders

I have perused & carefully considered the translations of the depositions which have now been laid before Government and see no reason whatever to alter the opinion I formed on first reading the Calendar of the trial.

The arguments in Mr. Hathaway's present letter of explanation, are wide of the point. Against the head [illegible] Shaik Bawden (3 Prisoner) and two others, was laid a specific charge of theft, said to have been committed on a specific date.

The single issue for determination was whether that charge was supported by evidence sufficient for conviction; the Session Judge, again taking careful, conscientious Officer, has had the entire record under consideration, and has thus had before him exactly the same material as that on wh. Mr. Hathaway formed his judgment ~~[illegible]~~; — but the Session Judge, though in mild, cautious language, has stated that his view of the case is quite different from Mr Hathaway's — that is, in plain terms, the Session Judge would have punished where Mr Hathaway has acquitted, and would have acquitted where Mr Hathaway has punished.

I fully agree with the Session Judge and would intimate to the Salem Magte that there is nothing in Mr. H's explanatory comn. to induce the Govt to modify the opinion of the judgment passed on Shaik Dauden wh. was expressed in their pro: of date the 7 ultimo.

23 August

17

I have read Mr Hathaway's letter and I must say that ~~that~~ in my opinion Shaik Bauden only got what he fully deserved, in Equity; I cannot of course speak to the Law — but I may observe ~~that~~ Mr Sullivan is wrong in stating ~~that~~ ~~[illegible]~~ he (Shaik Bauden) issued the oil in full quantities for it appears that the oil was given to the people who had to use it by the Storekeeper and the admission by the said Shaik ~~[illegible]~~ that he did give the order to the others to bring some back ~~though he~~ gave a false reason for having done so — cannot prove this & I cannot of course go into the question as to the difference between criminal breach of ~~trust~~ & Larceny, but may observe ~~that~~ the Penal code seems to have made the Law more difficult to ~~understand~~ & administer — my opinion is ~~that~~ the man who was punished got what he fully deserved & ~~that~~ the other two men who were caught ought to have been punished also —

What we have to consider is whether the evidence as taken by Mr Hathaway and now laid before us was sufficient to establish against the convicted Shaick Bamban the specific act of larceny or criminal breach of trust for which he has been punished –

I cannot see that the depositions sent on contain any evidence whatever against S.Bn. altho there is plenty in them as against Kazan & perhaps Syed Raza – I concur therefore in the view of the Sessions Judge that these two last should have been convicted and the first acquitted –

That they are all rascals together & Shaick Bamban the biggest rogue of the three is likely enough – but that was not the particular issue which Mr Hathaway had to try – J.P.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letters

From the Magistrate of Salem (Here enter 24 July 1855 No. 20/

Do (do 16th August 1855 No. 28/

Order thereon 21st September 1855 No. 1362.

The Governor in Council sees no reason to question the correctness of the remarks made by the Acting Sessions Judge in his letter recorded in the proceedings of Government under date the 9 June last, as to the insufficiency of the Evidence for the conviction of the prisoner Sheikh Bamban therein referred to.–

The Magistrate of Salem – desp'd 27/9

Pro: of Sepr.

Judl. 1865. *Department.*

No. 1362

Comml

PROCEEDINGS *of* GOVERNMENT.

Dated 21 Septr./65

248 a 250.
[illegible]