

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	94	Press Mis.
<i>151-152</i> Dated	16-1-	19-1865

19/5

Not to be folded or roughly handled

(1)

Proceedings of the Madras Government, Judicial Department,
16th January 1865.

No. 151. Read the following letter from B. SHAM ROW, Madras.
(Here enter 30th November 1864.)

No. 152. ORDER THEREON, 16th January 1865, No. 94.

The Governor in Council has attentively perused the foregoing Memorial, and the papers submitted with it, and he sees no reason to remit the sentence passed upon the prisoner in the case referred to.

2. The case appears to have been fully gone into by the Acting Joint Magistrate. On appeal to the Session Court, where the prisoner's case was conducted by an English Barrister, the matter was fully considered by the Session Judge. On appeal to the High Court, the proceedings of the lower Courts were affirmed, so far as regarded the legal bearings of the case, which was all that the High Court could deal with. The only mode in which the Government could interfere is by remitting so much of the sentence as the prisoner has not yet undergone, a power which should only be exercised on very strong grounds, and for which His Excellency in Council sees no reason whatever on the present occasion. On the contrary, he has every reason to think that the view of the case, taken by the Acting Joint Magistrate and Session Judge, is substantially correct.

(True Extract).

Chief Secretary.

To B. Sham Row (with 13 Enclosures, returned).

Ed. J. H. Burns.

To, His Excellency the Governor in Council,
Fort Saint George.

The humble Petition of B. Sham Row of Bellary,

Most respectfully sheweth,

That Ragaviah, late Tahasildar of Tadapatri,
in the District of Bellary, the father of your Petitioner,
was sentenced to six months imprisonment and to
pay a fine of Rupees 500, by the Acting Joint
Magistrate of Bellary, in the month of August
last, and the prisoner is now undergoing imprison-
ment in the Jail of Bellary.

The Charge against the prisoner, upon which
he has been convicted, was that he aided and
abetted in the receipt of a gratification of Rupees
40 for showing official favor to two persons named
Karapa Reddi and Venkatachelamappa. The offence
was charged to have been committed between
the months of November 1862 and January 1863.

Petitioner humbly prays the attention of
Your Excellency to the proceedings at the trial of
the prisoner, from which it will appear:-

1 That the trial was illegally and unfair
conducted.

2 That the Acting Joint Magistrate
received ex parte statements from the principal

Witness

witness for the prosecution in the absence and without the knowledge of the prisoner long before any charge was preferred:

3. The Acting Joint Magistrate received and acted upon evidence which was illegal and which ought, therefore, not to have been taken to inculcate the prisoner:

4. The Magistrate also gave evidence against the prisoner in the case which he tried and disposed of as Judge, and thus all semblance of a fair, legal, or impartial trial was denied to the prisoner, nor was the prisoner aware of the fact that the Judge was a witness for the prosecution until the Judge delivered in open Court the Judgement in which the prisoner was condemned:

5. The case for the prosecution was kept back for more than six months after all the evidence which was ultimately produced was at the command or in the actual possession of the principal witnesses in the case, an Inspector of Police, who was also virtually the prosecutor, and no explanation was given for the delay, and the proceedings of the witnesses in reference to the case were in direct violation of the laws and the regulations issued by the Police authorities:

6. Witnesses who possessed unimpeachable knowledge of the circumstances relating to the charge against the prisoner, and whose evidence therefore was necessary for

a proper determination of the case, were not examined at the trial. Their absence was not accounted for, and it was not asserted that any effort had been made to procure their attendance.

Your Petitioner begs to add that the prisoner has been over 32 years in the public service, and was entitled to retire upon a pension when the present charge was preferred against him. Up to this he performed every duty devolving upon him with assiduity and care and conducted himself in every way to the satisfaction of those under whom he served - his character wholly unimpeachable and his reputation generally without reproach or suspicion.

Petitioner entreats the attention of your Excellency to the accompanying printed Statement of the case of the prisoner prepared by his Counsel setting forth the evidence adduced and the injustice which has been done, and Petitioner takes leave also, to forward a certified copy of the record containing the evidence and the Judgements of the Acting Joint Magistrate and the Session Judge, upon which the Statement is founded.

Petitioner trusts that, upon a perusal of this Statement, your Excellency will be satisfied that the prisoner has not been tried according to law, that he has been unjustly convicted and condemned, that there is no reliable evidence against him, and that the evidence such as it is by no means conclusive to establish his guilt, while almost every safeguard devised

for the protection of the weak and innocent and every
enlightened rule laid down for the discovery of truth
and the due administration of the Criminal Law
has been either openly violated or indirectly disregarded
in this case. And Petitioner hoping that, where
an innocent man has been condemned without
sufficient proof and through the agency of a biased
and incompetent tribunal, Your Excellency will
interpose your authority to prevent the operation
of injustice, especially when it is pointed out that the
victim is a meritorious servant who has spent
the greater portion of his life in the public service
and who now, in his old age, finds himself bereft
of all resources, of character, of station, and even
of liberty itself.

Petitioner humbly submits the whole
matter to the benevolent consideration of Your
Excellency confidently believing that right will
be done to an injured and oppressed man.
And your Petitioner as in duty bound
will ever pray.

B. Sham Row

Madras, Mangambakam
30th November 1864 — 8.

Recd
No 2576

To,
The Honorable A. J. Arbuthnot
Chief Secretary to Government
Fort St George

Honored Sir,

I beg to forward herewith a Memorial,
as per accompanying list. three printed copies of a Statement, and documents
which I humbly request you will have the
goodness to lay before His Excellency the
Governor in Council.

Madras Mangambakam
30th November 1864 — 3.

I beg to remain
Honored Sir,
Your most obedient servant
B. Sham Row.

Indial 1864 Sept.
Form
H. Nam Row
Bengumbaham

Dated 30 Nov
Dec 29 Dec 1864

1 Strenuous Row
2 H. Nam Row
3 H. Nam Row

No. 25/6
Stating that the trial, under
which his father, the late Sub-
sidiary of Tadapatri in Bellary
was found guilty, consisted of
an illegal conspiracy
conducted, and request
in consideration of the
circumstances represented
that justice may be done
to his father, who is a long-
standing officer of Govt.

27 Dec
28 Dec 1864

Statement of the case of B. Ragaviah, Prisoner in case No. 52 of 1864, on the file of the Acting Joint Magistrate of Bellary, prepared by Prisoner's Counsel.

The prisoner Ragaviah was Tahasildar of the Tadapatri Taluk in the Collectorate of Bellary from the month of June to the month of December 1862. At the end of December he was removed to Bellary. He was subsequently ordered to Alur Taluk, where he continued to discharge the duties of Tahasildar until the month of March, 1864. He was then directed by a Takeed issued from the office of the Collector of Bellary to go before the Sub-Collector, Mr. Reid, (no object stated) and upon proceeding to Panagonda, where Mr. Reid then was, Ragaviah found that a criminal charge had been preferred against him; but the precise nature of the charge was not communicated to him for some months after.

The examination of Witnesses in support of the charge occupied a period of four months. There were seven witnesses, in all, examined. The inquiry was commenced on the 27th of April, and Judgment delivered on the 22nd of August, 1864. The accusation was not shaped into form until August, 1864, and the prisoner was then specifically charged with having accepted a gratification of Rupees 20 from one Subbiah, a Karnam Mirasidar of the village of Yellanur, in the Tadapatri Taluk, for doing an illegal act: namely, recommending that the said Subbiah should, jointly with one Venkatachalamappa, be made Karnam of Yellanur. The accusation charged that the offence was committed between the 25th November, 1862, and the 4th January, 1863, and was preferred under Section 161 of the Indian Penal Code.

There was also framed, at the same time, a second accusation, that the prisoner, on or about the same day, at Bellary, did instigate and abet one Tirumal Row, then being a public servant, namely, a Revenue Inspector, at Tadapatri Taluk, to take a gratification other than his legal remuneration as a reward for shewing official favor to Venkatachalamappa, Karnam of Yellanur, and Narapa Reddi, village Magistrate of Yellanur, the said Ragaviah being then a Tahasildar, whose duty it was to prevent the commission of the offence abetted, and that he thereby committed an offence under Sections 116 and 161 of the Indian Penal Code.

On the 22nd of August 1864, Mr. Reid, the Acting Joint Magistrate (and who is also the Sub Collector) of Bellary, who tried the case, pronounced judgment, acquitting the prisoner upon the first charge, and convicting him upon the second. The sentence was a fine of Rupees five hundred, in addition to simple imprisonment for six months.

Attention is directed to the evidence in the case, and the manner in which the trial was conducted, from which it will be at once apparent that, not only was every legal form, devised for the security of the subject, the fair and just administration of the law, and the ascertainment of truth, disregarded or violated, but the moral perceptions will be shocked at the carelessness, incompetence and want of fair play displayed. That the effect of the evidence is fairly stated in this document, and that nothing is set down which will not be found in the written record of the proceedings, may be ascertained by a perusal of the written record itself, of which a certified copy, under the seal of the Session Court of Bellary, is sent herewith.

The oral evidence adduced in the case consisted of the statements of seven witnesses; the documentary evidence of seven letters, alleged to have been written by the prisoner, marked A to G; and two arzis or petitions. The arzis were written by the prisoner while Tahasildar of Tadapatri Taluk, and were addressed to Mr. Reid, the Sub-Collector, and they recommended that Subbiah, (the person who was alleged to have given the prisoner Rs. 20 as a gratification) and Narapa Reddi (whose name is mentioned in the second charge) should be restored to the office of Joint Karnam and Joint Reddi of the village of Yellanur, respectively.

The witnesses were:—

1. Streenivasa Row, Inspector of Police of the Taluk of Tadapatri.
2. Subbiah, the person mentioned in the first charge.
3. Lodigi Reddi, one of the Magistrates of Yellanur, and who had been associated with the Narapa Reddi mentioned in the second charge in the village Reddiship.

4. Surappa, a Karnam of Yellanur.
5. Seshagiri Row, a Munshi in the Sub Collector's office.
6. Paramaswarappa, a Munshi under the Tahasildar of Tadapatri.
7. Ram Row, described as an "English Clerk" in the Sub Collector's office.

The 5th, 6th and 7th witnesses were examined with reference to two points,—the one relating to the two arzis before referred to, which the prisoner wrote, and the second point, in relation to a Sessions Calendar, which was said to have been shewn to the prisoner, and which was supposed to furnish evidence to connect the prisoner with both the crimes charged against him.

As the prisoner wrote the two arzis recommending the restoration of Subbiah and Narapa Reddi, and the fact was admitted by him, it is needless to refer to the evidence bearing upon them here, further than to say that the evidence establishes no more than that the prisoner wrote them, and that they certainly recommended the restoration of Subbiah and Narapa Reddi to their offices.

The Sessions Calendar may seem to require a more lengthened discussion. The evidence upon the point is, that in, November 1862, when Mr. Reid was arranging the Annual Settlement, called Jamabandi, (the prisoner then being Tahasildar) Subbiah and Venkatachalamappa were village Karnams of Yellanur, and Lodigi Reddi and Narapa Reddi were Reddies. Mr. Reid displaced Subbiah from the Karnamship, and Narapa Reddi from the Reddiship, and appointed Venkatachalamappa as sole Karnam, and Lodigi Reddi as sole Reddi. Subsequently, on the recommendation of the prisoner, Narapa Reddi was replaced in the Reddiship, but Subbiah was not restored, notwithstanding the recommendation of the prisoner to that effect. In the case of Subbiah, it clearly appears, from his evidence, that, before the recommendation was made by the prisoner, Venkatachalamappa, the Karnam in office, concurred in it, and wished to have Subbiah associated with him in the office, and that both of them went to the Tahasildar (the prisoner) to request his interference with that view, on the ground that, as there was a large village and three or four hamlets, which were situated at a distance from it, two persons were required to perform the duties of Karnam effectively. This is the ground put forward by the prisoner in the arzi relating to Subbiah. The same grounds were set forth in the arzi relating to Narapa Reddi, and the Tahasildar (prisoner) recommended that two Reddies should be appointed instead of one. The prisoner, at the trial, averred that Lodigi Reddi, the person in office, asked him to recommend the appointment of Narapa Reddi, as joint Reddi, on the ground that the duties of the village and the hamlets would be better performed by two Reddies than by one. But, as Lodigi Reddi, in his examination before the Acting Joint Magistrate, denied this, and said that he never asked the prisoner to write the arzi, it cannot be said that the Magistrate was not warranted in coming to a conclusion adverse to the prisoner on this point. It is to be observed, however, that the arrangement which the prisoner states Lodigi Reddi requested should be made, and which was represented in the arzi, was not the one which Mr. Reid ordered to be carried out. What Lodigi Reddi desired, according to the prisoner's statement, was, that one Reddi should be appointed for the Village of Yellanur, and one Reddi for the hamlets, whereas Mr. Reid appointed Narapa Reddi to the Village and one of the hamlets, leaving the remaining hamlets, only, in charge of Lodigi Reddi. This may account for Lodigi Reddi's repudiation, and for the dissatisfaction which he subsequently shewed, and for his assertion that he never communicated with the prisoner on the subject of the Reddiship. It appears, from the evidence, that the arzis were dictated by the prisoner in the Cutcherry, in the presence of numbers of persons there assembled, and in the ordinary course of such business, without concealment and without disguise.

With reference to the Sessions Calendar which the second witness, Subbiah, states he shewed the prisoner before the arzi was written and before Venkatachalamappa concurred in Subbiah's appointment as Joint Karnam, the facts are these, as proved at the trial:—While the Annual Settlement was being conducted, Subbiah exhibited a Sessions Calendar in which there appeared strong remarks by Mr. Irvine, the late Session Judge of Bellary, touching the evidence which Venkatachalamappa gave, in a case tried by Mr. Irvine, in the year 1857. The remarks were to the effect, "that if the evidence were true he (Venkatachalamappa) was guilty of gross neglect in not taking measures to bring to notice the forgery that they knew from the first was being attempted, and if the evidence was false he was of course perjured. In either case he appeared to be unfit for public employ." Venkatachalamappa having been appointed Village Karnam, Subbiah produced this Calendar with the object of having his then rival removed, and shewed it,

as he alleges, to the prisoner, in the presence of three of the other witnesses, namely the 1st, 5th and 7th witnesses. The evidence of the four witnesses as to the fact whether the Calendar was seen and read by the prisoner is exceedingly contradictory, as to the circumstances precedent to and contemporaneous with the interview, but as attention will be called to the Acting Joint Magistrate's own estimate of the evidence generally, considered with reference to discrepancies and contradictions, as set forth in his own words, the matter will not be here further enlarged upon. The object of introducing the incident relating to the Calendar was, to show that the prisoner must have known that Venkatachalamappa was a person of tainted character, and that the prisoner neglected his duty in not reporting the knowledge which he had acquired to the Sub-Collector, Mr. Reid. Now it is to be noted that, at the time that this Calendar was said to have been shown to the prisoner, Venkatachalamappa had been appointed by Mr. Reid as sole Karnam, that the prisoner had nothing to do with the appointment when it was made, and does not appear to have been consulted about it, that Venkatachalamappa had performed the duties of Karnam, jointly with others, for some years before, notwithstanding the remarks of Mr. Irvine (made in 1857;) and that the prisoner could hardly have been aware of the misconduct of Venkatachalamappa, at all events before the alleged interview as to the Calendar, seeing that the Tahasildar was in office in that Taluk for only three or four months before the alleged interview, and never, in all probability, saw or heard of that person, whose place of residence was about 10 miles distant from Tadapatri, where the prisoner resided during the time he was Tahasildar. It is to be further observed that, notwithstanding the trial which has taken place, and the consequent knowledge derived as to the contents of the Calendar by Mr. Reid, at all events, and by others in power, Venkatachalamappa still continues (unless he has been removed very recently) to discharge the duties of the Karnamship of Yellanur. And yet great stress is laid upon the facts connected with the knowledge derived from the alleged interview about the Calendar as tending to prove the guilt of the prisoner upon the charge upon which he has been convicted, namely—of attempting to obtain a gratification from Venkatachalamappa, for this very service of omitting to report his misdeeds, for no other service was alleged to have been performed for him by the Tahasildar.

The prisoner denied, at the trial, that he ever saw the Calendar, or that he was made cognizant of the circumstances regarding Venkatachalamappa, as alleged by the two first witnesses, and the point was not at all clearly established. But if it were proved satisfactorily that the prisoner had been made aware of the fact, it was proved, at all events quite as fully, that Mr. Reid was also made aware of them, and by the same two first witnesses. Subbiah, the second witness, upon this point says as follows:—(the quotation is from the evidence, as written by Mr. Reid himself) "I told Mr. Reid that the Court had laid down that Venkatachalamappa had given false evidence, and 'in the din of Cutcherry I was pushed out.'" The first witness, the Police Inspector, says:—"As soon as I saw, in Tahasildar Ragaviah's house, the Sessions Calendar, I wrote in my diary that 'Mr. Reid had known this when he put Venkatachellam, and this diary was sent to Mr. Reid, and 'Venkatachellamappa was removed.'" So that, so far as this evidence is trustworthy, Mr. Reid had been informed of the facts set forth in the Calendar even before the prisoner, and if it was the duty of the prisoner to report the fact to Mr. Reid, it was equally Mr. Reid's duty to have acted upon the knowledge which he himself derived from the same source as the prisoner. The result, in the case of Mr. Reid and the prisoner, is, however, very different. Mr. Reid tries the prisoner for corruption in office, and relies upon so much of the evidence as is directed against the prisoner, as proving neglect of duty, and as further tending to establish corruption against him. The prisoner, however, firmly believes that the matter was never fully brought to the perception of Mr. Reid (who was guilty of as great a dereliction of duty as was the prisoner, if it were) any more than to that of the prisoner. The facts, as applicable to both, rest on the testimony of the self-same persons, and was not very strong, even if their *bona fides* were unimpeachable. They ought not to have been believed, when they asserted that the prisoner was made aware of the circumstances relating to Venkatachalamappa's misconduct, nor should this evidence have been accepted as a basis from which to infer criminality in the subsequent acts of the prisoner. And without this fragile and complicated superstructure the rest of the case must have entirely failed, from its inherent weakness, and the absence of any possible motive on the part of the prisoner.

The oral evidence, relating to the charge of abetment, of which the prisoner was convicted, is to the following effect:—Subbiah, the second witness, states that during the Annual Settlement, he handed a sum of Rupees 20 to Tirumal Row, a Revenue Inspector (the person whom the prisoner is charged with abetting) for safe keeping, that he afterwards applied to Tirumal Row for the money, when Tirumal Row informed him that he had given it to the prisoner for writing an arzi, and that he might get it from the prisoner if he wished. The prisoner had been, at this time,

removed to Bellary, distant from Yellanur about 80 miles. Subbiah, having business at Bellary, went there and saw the prisoner, and asked him for the money, when the prisoner denied that he had received any, but told him that he would write a letter to Tirumal Row, which he could take with him to Tadapatri. This letter, which is the strongest evidence against the prisoner that was adduced at the trial, will be set forth hereafter. Subbiah delivered the letter to Tirumal Row in the presence of the 4th witness, Surrappa, who read it at Tirumal Row's request. Tirumal Row, according to the witness, promised to give the money to Subbiah, but failed to do so; he however, got Tirumal Row to give him possession of the letter. Subsequently, Subbiah, accompanied by the 3rd and 4th witnesses, proceeded to Tadapatri and handed the letter to the 1st witness, Sreenivasa Row, the Inspector of Police.

Subbiah states distinctly that he had never authorized Tirumal Row to give the money to the prisoner, and that it was given to Tirumal Row for safe keeping, and for no other purpose. The 3rd and 4th witnesses were examined for the purpose of corroborating Subbiah as to the fact of the interview with Tirumal Row (at which, however, the 3rd witness was not present) and what was said thereat, and as to interview with the Police Inspector, and what passed thereat also, all of which (as to what was said) was most improperly, as well as illegally, received in evidence.

The first witness then states the action which he took upon receipt of the letter, with the object of bringing the prisoner to justice. He alleges that he wrote to the prisoner a friendly letter, setting forth the circumstances concerning the letter to Tirumal Row, told him that it would be productive of great trouble, and advised and urged the prisoner to obtain possession of it at any cost. This letter, according to the witness, elicited a reply from the prisoner, dated at Bellary, and bearing the Bellary Post Mark, in which the prisoner besought the witness to aid him in his difficulty, and to get up the letter, and the writer said he would pay any sum of money which might be needed for the purpose. The witness wrote a second letter to which the prisoner sent a reply to the same effect as that of the first. In this way the prisoner wrote, in all, six letters to the Inspector, and in two of them there were enclosed two currency notes for Rupees 100 each, to be paid to the 2nd and 3rd witnesses for giving up the letter which had been written to Tirumal Row. The correspondence, between the witness and the prisoner, is stated by the witness to have commenced about the month of May, and ended in September 1863. The Witness did not keep copies of the letters which he wrote to the prisoner, nor does he give any reason for having neglected to do so; and the contents of his letters are only to be ascertained from his own uncorroborated account. He also admitted that he neglected to make entries in his diary of any of the circumstances of this matter, as he is especially and peremptorily enjoined to do, both by the law of the land and the Police Regulations issued for the guidance and information of Police officers. He accounts for this omission by averring that he had the permission of his superior Officers, namely, Mr. Dobbs, and Major Hicks, but especially Mr. Dobbs, whom he consulted in the course of the inquiry, to omit the usual entries in the diary, on the ground that, as the entries would be in Telugu, they might be seen by subordinates before they could reach the Superintendent. It is to be observed, however, that, according to his own account, he did not see Mr. Dobbs or obtain this permission until some time after the interview with the second, third, and fourth witnesses, and that he did not see the Superintendent, Major Hicks, until the month of August, when the correspondence had nearly concluded. Neither Mr. Dobbs nor Major Hicks was called to give evidence on this point, and it therefore rests entirely upon the sole, unsupported, assertion of this one Witness; and, considering how emphatic, frequent, and minute, are the injunctions laid upon Police Officers, both by the Code of Criminal Procedure, and the Police Regulations, in respect of this diary, it is, to say the least, unlikely in the last degree that the statement of the witness is correct. At all events the fact should have been proved beyond doubt or cavil.

The Sections of the Code of Criminal Procedure are as follows:—

Section 139. "Every complaint or information preferred to an officer in charge of a Police Station shall be reduced into writing, and the substance thereof shall be entered in a diary to be kept by such officer in such form as shall be prescribed by the local government."

Section 154. "A Police officer making inquiry under this chapter shall, day by day, enter his proceedings in a diary, setting forth the time at which the complaint or other information reached him, the time at which he began and closed his inquiry, the place or places visited by him, and a statement of the circumstances elicited by his inquiry, and shall forward, day by day, a copy of such diary to the District Superintendent of Police, who shall, without delay, bring to the notice of the Magistrate of the District, any part of such diary which he shall consider it to be important that such Magistrate shall know."

The directions of the Inspector General of Police (No. 74 of 8th December, 1860) are in these words:—"The Inspector's Diary must be a thoroughly business-like paper, and a minute accurate, and faithful record of all the acts done, and orders given by him. It should specify concisely but in detail all duty performed, inspections made, and every occurrence and information coming to their notice. It should record every step taken in tracing cases and following up clues, and all circumstances elicited in his inquiry. Matters apparently most trivial, when they occur frequently, become of greatest moment to the Police. The Diary is meant to be a record of these facts. If neglect or wilful suppression be tolerated for a moment all value of this paper as a check, or in its character as a record of occurrences, is gone."

It will be seen that the witness's superior officers had no power whatever to give him permission to omit the notes in his Diary, that, if they did so, they acted most reprehensibly and illegally, and that it is most improbable that they did so at all. The alleged reason for the omission would apply equally to every important criminal inquiry, and if it were a valid or feasible one, it can hardly be supposed that the Legislature, and, above all, the Police Authorities, would be so emphatic in their directions concerning the Diary. So that it is fully established that the witness omitted to keep copies of the letters which he wrote with the avowed purpose of detecting a criminal, and failed to make entries of his proceedings in his Diary, and that he has not accounted for the omission in either case. It is further established by the record of the proceedings that all the evidence produced at the trial, oral and documentary, was in this witness's possession in September, 1863, and yet no charge was made against the prisoner until March or April, 1864, nor was any step taken to that end, and no explanation is given for the delay. The witness further states that at the end of the month of July, 1863, he saw Mr. Reid (who tried the case subsequently as Judge) and shewed him some of the letters said to have been written by the prisoner, and told him all the circumstances affecting the prisoner. This was in a private conversation, which took place at a time when the prisoner was sixty or seventy miles away.

When, therefore, Mr. Reid subsequently assumed the office of Judge it was, perhaps, too much to expect that he could conduct the inquiry and consider all the circumstances of the case from a clear, dispassionate, and unbiassed point of view, and the interests of the prisoner have suffered, and the administration of justice has been compromised, accordingly.

The 1st witness undertook to say that the letters produced were in the handwriting of the prisoner. He admitted, however, that he never saw the prisoner write; but he produced one letter, which purported to come from the prisoner while he was Tahasildar of Tadapatri, addressed to the witness. He admitted that he had not seen the prisoner write that letter. He also alleged that he had in his possession other letters from the prisoner and written by him, but, upon being required to produce them, the witness was obliged to admit that he could not, and that he had them not. This is the only evidence as to hand-writing which was given in the case, except that of the 6th witness for the prosecution, who, upon being shewn the letters, could not say that they were in the prisoner's hand-writing.

Of the first four witnesses, three of them, the 2nd, 3rd and 4th, were clearly animated by feelings of strong enmity against the prisoner—the 2nd, because he was displaced as Karnam which he attributed (though erroneously) to the prisoner, the 3rd because he was deprived of the office of sole Reddi, by having another associated with him in the office, and the 4th who is or was a Karnam also, and considered the prisoner's acts inimical to his interests. The enmity of the second and third witnesses is admitted by the Judge, and it was hardly sought to conceal the fact of its existence. The three witnesses were also deeply interested in the result; for, if the prisoner was convicted, they had reason to hope that they would get the appointments which they had sought for, and of which they believed the prisoner had deprived them.

The enmity of the 1st witness was not so directly established. The prisoner, in his defence, ascribed it to his refusal to lend the Police Inspector money which he asked him for while Tahasildar. It is true that no proof was adduced in support of this allegation, as, in the nature of the thing, it could not well be. But the conduct of the witness betokened much hostility. His avowed attempt (taking his statement to be true, for a moment) to entrap the prisoner into an admission of guilt by putting on the guise of sincere friendship, his omission to keep copies of the letters which he says he wrote to the prisoner, and also to make entries of his proceedings in the Diary, added to the fact that he kept the evidence in his possession for six months without taking any action upon it, and that upon all the important facts deposed to by him, his statements are entirely unsupported by any other witness or any writing or circumstance which possesses any

value in itself—all this, if it does not establish enmity, shews that his evidence ought to be received with great suspicion, and subjected to searching scrutiny, and careful analysis.

In addition, it is to be noted that the four first witnesses (and the other three deposed only to a collateral fact not affecting the prisoner's guilt, as has been already pointed out) contradicted each other most materially and with reference to almost every single circumstance of moment to which their answers were directed. The Acting Joint Magistrate notices only some of the discrepancies which appear in the record, but that even these were of a most serious and damaging character may be gathered from the following Extract from his Judgment:—"These discrepancies are such, as the Acting Joint Magistrate considers might altogether destroy the credit of the witnesses, if the events narrated had occurred a few days before, but after the lapse of a year and four months, but few people could describe such occurrences correctly: and they have accordingly left no impression on the mind of the Acting Joint Magistrate."

The very distance of time, which was brought about by the machinations of the first witness and for which he is responsible, and which was so unfair and prejudicial to the prisoner in the first instance, is here used by the Acting Joint Magistrate as a reason for believing that very first witness, who could not be believed if he and the others had given the same evidence soon after the event. It was not, therefore, without result that the charge was held back by the first witness long after all the evidence was forthcoming and available; and the position of the prisoner is a singularly hard one in the use which is made of this very circumstance for his condemnation and utter ruin, whereas it ought, in reason and justice, to have produced exactly the opposite effect.

The documentary evidence in the case, to which reference has already been made, consists of the letter to Tirumal Row delivered by Subbiah, and the letters to the Police Inspector (1st witness) alleged to have been written by the prisoner, in all seven in number, and of which letters the material portions only, that is, the portions upon which the Acting Joint Magistrate grounded his Judgment, are given—Letter marked A, from the prisoner to Tirumal Row in Telugu, is as follows in English:—"They say you received Rupees 20 from the man who brings this note. You said, 'did you not, that other Rupees 20 were to be given to you by Venkatachalamappa. You may take that and give it to this man, or else you may give it out of that which Narapa Reddi is to give. This man must not suffer loss. I fancy that Venkatachalamappa will give you what he owes you. I desire you to write by post about the settlement of this matter. To-morrow I leave this and reach Alur. I am very sorry to leave all, and desire to see your Taluk another time. * * * I wish you to tear up, after seeing. What more, respects. This is a good man. (You must tell) the succeeding Tahasildar about this man, and about the arzi I wrote, and I in Bellary in person represented his case and that he is a very poor man. It is necessary to get an arzi written, and the business will fall convenient. If (he) gets nothing any where, I will gradually look forward."

2. Second letter, marked B, purporting to be written by the prisoner to first witness, the Police Inspector,—original in Canarese:—"About Subbiah whom you write, as he was very sad in Bellary, I wrote in that way. Now if he will bring that paper I will give more than the sum mentioned in the note to the poor man. If you will act like a brother to me and pay money and get the paper, I will send you as many Rupees as you pay. Whatever oburgation you cast on me for my fault is trifling. You have the burthen of protecting me this time. I believe I have no other protector but you. I never till this day was cheated before. I did not believe he would act in this way. What is past cannot be helped. Nevertheless I have trusted you. It is not proper to give you trouble in your sorrow: but this is a sorrow similar to yours. In this mind I have written and my writing is a small matter. I watch the post till your reply comes."

3. Letter marked C, addressed to the 1st witness, original in Telugu:—

"I have understood what you wrote, after taking great trouble in my concerns in your grief. I did not do that man any harm. Forseeing from afar before that murder would ensue from the enmity existing between them, I to some extent recommended the second man; but did not do so that they might quarrel and lose their lives. He ought to think of the benefit I conferred on him. You wrote that they would not agree to take Rupees 50 more than I wrote in my letter. This is very large and more than double. He ought to take it gladly. I am a Brahmin, their Guru. If he is pleased to take the sum mentioned in my note I should not even as long as I lived forget that benefit, or if he take double I will agree to that. I am a man with children. I

"beg you will protect me. * * * I have, according to your instructions, sent two half notes. After you have acknowledged their receipt I will send the other halves." * * *

4. Letter, marked D, addressed to 1st witness, original in Canarese:—

"The letter you very kindly sent has reached me. I have understood. I waited and thought the answer would not come; now according to your instructions I have sent the remaining halves. You must do according to your wish. I have been looking out for your getting the paper from them and sending it. I am not able to write much on this matter."

5. Letter, marked E, addressed to 1st witness, original in Canarese:—

"I do not know of the arrival of the letter which I wrote lately. Agreeably to your order I sent two notes. The answer did not come: therefore I am waiting for it every minute."

6. Letter, marked F, addressed to 1st witness, original in Canarese:—

"The letter and notes may have arrived, no answer has yet been sent. I fancy you must be on leave. Whether you have since sent for that man and received my paper I don't know. It is your business to please to get it and send it."

7. Letter, marked G, addressed to the 1st witness, original in Canarese.

"Lately I don't know what has become of the matter about which I wrote secretly. I thought that the reason for non arrival of the paper was that you were not in the place. I have now heard you are there. So you must be pleased to protect me. You are my feeder, my encourager, my father. The justice of this Slocum has come on you. I cannot say much. The credit of protecting one who trusts you is yours. I look for your answer every minute."

The notes referred to were two currency notes for Rupees one hundred each. One of them was proved to have been issued to the prisoner from the Alur Treasury in April, 1863, more than three months before it was alleged to have been transmitted by the prisoner. The other note was not shewn to have been in the prisoner's possession at any time. With reference to the note which was issued to the prisoner, he stated in his defence that he purchased it not for himself but for a man, named Sanjiva Reddi, and the prisoner requested that the man should be cited to give evidence of the fact. No attention was paid to this request, however, and Sanjiva Reddi was not examined at the trial. All the letters, except the first, bear the post mark of Bellary and appear to have been posted there.

The only evidence adduced to prove that the letters, except the first, were in the prisoner's hand-writing, was that given by the Police Inspector, the nature and value of which have been already pointed out. As to the first letter (A) there is the farther evidence of Subbiah, that he brought the letter from the prisoner to Tirumal Row. But Subbiah's evidence, upon this point, is wholly unsupported by any other witness, and it depends entirely upon his veracity. Where his evidence is supported at all, upon any point, it is supported by witnesses interested and hostile to the prisoner, who contradict Subbiah and one another in such a way that only the lapse of time is put forward to cure the defect. And as to Subbiah's own evidence, the following is an extract from the Judgment of the Session Judge of Bellary, who heard the case on Appeal:—"The said Subbiah prudently represents himself to have left (the 20 Rupees) for safe custody with Tirumal Row"—referring to 20 Rupees which formed the subject matter of the first charge against the prisoner. Considering that Subbiah's evidence goes to shew that he *did* give the Rupees 20 for safe custody to Tirumal Row, and for no other purpose, it is evident that the Session Judge did not believe this part of his testimony, but believes instead that he committed wilful and deliberate perjury. That is what is meant by the word "prudently," as used by the Judge. If the witness committed perjury upon one point—if he deposed to that which he knew was false—it is hard that the prisoner should have been condemned upon the unsupported testimony of such a person, or that such testimony should be taken as true in order to deduce from it the conclusion of the prisoner's guilt. Without Subbiah's evidence there is none of any legal, to say nothing about moral, significance against the prisoner as to the letter, and his evidence, discredited as it has been, and unfortified as it is by any other of a reliable or independent character, is wholly insufficient to inculpate the prisoner.

There is, it is true, another ground upon which the handwriting of the prisoner was attempted to be identified and established in connection with the letters said to have been written by him. This was by comparing the handwriting of the letters in question with that of the papers which

it was the duty of the prisoner to write in the performance of his duties, and which papers were brought from the proper custody. This comparison was made by the Acting Joint Magistrate (Mr. Reid) who tried the case, and in the result he expressed himself satisfied that the letters produced by the Police Inspector were written by the prisoner. The Section in the Indian Evidence Act which authorizes a comparison of documents (Act II of 1855, Sec. XLVIII) is in these words:—"On an inquiry whether a signature, writing, or seal is genuine, any undisputed signature, writing, or seal of the party, whose signature, writing, or seal is under dispute, may be compared with the disputed one, though such signature, writing or seal be on an instrument which is not evidence in the cause."

Without stopping to consider whether this Section warrants a Judge in acting upon the result of a comparison of writings made by himself to decide the guilt or innocence of a person charged with a criminal offence, in the absence of any other credible evidence as to the handwriting, it is certain that the comparison of handwritings, though made under the most favorable circumstances, and by persons possessing skill and experience in the art, is a most deceptive and fallacious test to apply in any cause to decide the turning point. It is a still more unsatisfactory and insufficient test to apply in the course of a criminal trial. There is no warrant for it in English Law and none in the Law of this country, save what may be furnished by the above quoted Section of the Indian Evidence Act. But, when it is borne in mind that the comparison is made by a person not professing any peculiar knowledge or experience in this matter, that the writings between which the comparison is instituted are in a foreign language (namely Telugu and Canarese, Mr. Reid being an Englishman) with which no foreigner can possess a full, exact, and thorough acquaintance, and of which, furthermore, the knowledge of Mr. Reid is, and must, in the nature of the case, considering his residence in India, and the nature and localities of his employments, be comparatively superficial, the attempt to discover truth (the avowed object of the comparison) in a criminal injury by such means is simply idle and illusory. Any conclusion come to by a man under such circumstances ought to carry no moral weight, and a conviction for crime grounded upon such a conclusion is simply a scandal and a reproach. If Mr. Reid had given the evidence in the witness-box, which he gave in the Judgment-seat, it would be of infinitesimal value in determining the question of guilt or innocence. He would, no doubt, be bold enough to declare that he could arrive at a sound conclusion by the same means with respect to Tamil writings, as well as, probably, writings in some of the other Indian languages; but no body would pay attention to so preposterous a pretension, if such evidence were given by a witness. When, however, the evidence is given by Mr. Reid, the witness, to Mr. Reid, the Judge, its weight and importance become enhanced to an overwhelming degree, and the effect is—that the unfortunate prisoner is undone.

This commentary would be just and fair, assuming that Mr. Reid had approached the consideration of the case with a mind cool, and dispassionate, unbiassed by predilection and unwarped by prejudice: which was certainly not the case here. The very reverse was the fact as Mr. Reid has certified under his own hand and seal in his own written Judgment.

Mr. Reid was mixed up with the transactions under investigation in the capacity of Sub-Collector, and it might have been expected that he would have discharged from his mind any knowledge which he supposed himself to have possessed in that capacity, and decided upon the evidence and the evidence only. It was manifestly his duty to adopt such a course; but he did not adopt it. On the contrary, he permitted the Police Inspector to have at least one private interview with him while the case was being got up, read some of the letters which were afterwards used against the prisoner, initialed them, and permitted the Inspector, the concocter of the case, to make an *ex parte* statement of the circumstances tending to shew the prisoner's guilt—and several months afterwards he ascends the Judgment-seat and condemns the prisoner. But worse, if that be possible, remains behind—a proceeding which might not be credited if it were not established by the, for this purpose, irrefragable evidence of Mr. Reid's own admission. Mr. Reid acted in the double and antagonistic position of Judge and Witness in the same cause, and, worse still, the prisoner had no intimation that Mr. Reid would give evidence until the fact was proclaimed, together with the evidence itself, when Mr. Reid pronounced the evidence, the judgment, the sentence, and the condemnation in, as one may say, the same breath.

The evidence which Mr. Reid gave, under these culpable circumstances, is extracted from his own Judgment and is as follows:

"The Acting Joint Magistrate would here remark that he was in Bellary on his way from

"Tadapatri to Alur taluk, which taluk he settled in the end of 1862, and again after finishing the Jamabandi of Alur, he returned to Bellary, the settlement of which taluk he had to conduct. On one of these occasions he remembers the prisoner visiting him at Mr. Hathaway's house, and recommending that a second Karnam should be appointed to Yellanur. He also remembers being met when going out for a morning ride by a young and old man as to whose identity with the second witness and his father he is not prepared to swear, but the impression left on his mind is that it was the 2nd witness. This circumstance the second witness deposes to, and states, in continuation of the above, that he heard from Appa Venkat Row, * * *."

"The Acting Joint Magistrate remembers perfectly the 1st witness shewing him the letters, and he wrote the numbers of the notes in a Lett's Diary, with the date on which they were shewn to him, and also put the date 31-7-63 on the notes, A. D. with his initials."

Now the facts to which the Judge testifies are not of much importance *per se*, as tending to prove the prisoner's guilt—for they may be quite true, and yet the prisoner be wholly innocent. But it appeared not so to Mr. Reid. He naturally ascribes a salient importance to them, coming as they do from himself, and unhappily *he was the Judge*. So flagrant a disregard of law, of equitable dealing, of all responsibility, of every sentiment of decency and of morals, by a person in authority, and to whom the liberties and property of thousands are committed, has, it is hoped, not of late been exhibited even in India.

Nothing is put forth in this Statement but what appears upon the face of the record of the trial. When so much is avowed, what must have really happened!

It will also appear, from a perusal of the record, that Mr. Reid was quite unequal to the task of conducting the trial according to that law which he professes to administer, and that this is true not with reference to subtleties, nice distinctions, or refinements, but with reference to clear, broad, well-recognized principles—principles derived from the understanding and conscience of every man of common capacity. One of these principles, which is also the fundamental rule in the law of evidence as administered in criminal trials in every civilized country of modern times, and notably in India, is that "hearsay" shall not be received as evidence against a prisoner. For instance, that the 1st witness should not be permitted to state what the 2nd witness told him, as to a conversation which the 2nd witness said he had with Tirumal Row; such statement having been made, and such conversation held, in the absence of the prisoner. What the Police Inspector deposed to as having been told to him by Subbiah ought not, according to the law of this country, be received as evidence against the prisoner. So also what a witness "heard" from a third person, in the absence of the accused, is not evidence. If the prisoner were present when any statement was made by Subbiah to the Police Officer the statement might be received. And it is manifestly unjust, as well as illegal, to hold the prisoner responsible for what other persons chose to say to each other behind his back, without his knowledge, and without any opportunity of contradicting, explaining, or qualifying the statement having been afforded to the prisoner. Any other rule would endanger every man's reputation, liberty, property, and personal security. It is nevertheless a fact that Mr. Reid received evidence of conversations and statements of this character from the seven witnesses examined, and more particularly from the first four. The greater part of the record is taken up by what purports to be evidence of this character. Mr. Reid not only received, but acted upon this "evidence." He recite part of it in his "summary of facts proved or admitted," and from it deduces several "presumptions," to use his own word, one of which was the clear and undoubted guilt of the prisoner. If Mr. Reid did all this through ignorance it is bad enough. It is terrible that men (*some* of whom at all events must be innocent of the charges made against them) should be liable to imprisonment, forfeiture of property, loss of station and, character and every thing which makes life worth having, owing to the incompetence of men in authoritative and responsible stations who profess to administer laws of which they know not even the alphabet. Seeing how incapable Mr. Reid is to do that which it is his duty to do, how ignorant he is of that which it is his duty to know, it seems extraordinary that he should undertake to do that which is in its nature difficult and uncertain, from which men would ordinarily shrink, or as to which they would speak, at all events, with diffidence and hesitation—namely, to determine the genuineness of a writing in a foreign language by comparing it with another foreign writing—and his proved incapacity in the one case tends strongly to detract from the value of his opinion in the other. If Mr. Reid's proceedings did not arise from incapacity, then no words would be sufficiently strong to stigmatise his conduct. It is probable

that his errors resulted from insufficient knowledge to administer law in criminal cases. Mr. Reid has been for the most part engaged in the Revenue Department, and it is therefore likely that he does not possess the requisite knowledge to enable him to discharge Judicial functions. In any case the prisoner has been the victim and has been ruined to such extent that he can never be restored to his former health, his peace of mind, and his reputable station.

The prisoner has been 32 years in the Public Service, has risen to almost the highest attainable position, and has always performed his duties to the satisfaction of those in authority over him. His character has never before been impeached. He is now old, and sick, and infirm. He was entitled to retire upon a pension when the present accusation was brought against him. Is it credible that he would imperil his liberty, his property, his character, and the prospects of his family, for a bribe of 40 Rupees? According to the case for the prosecution three persons at least must be made aware of his delinquency and participators in his guilt—namely, Tirumal Row, Venkatachelumappa, and Narapa Reddi. This corruption he is supposed to have attempted in a Taluk in which he was comparatively unknown, in which he did duty for only six months, and to have attempted it, not while he was in the Taluk, but after he had left—after he had ceased to have any authority or control in its affairs, the only motive which could possibly influence the three persons named to corrupt him, or lend themselves to the corruption. And, finally, he is supposed to be so credulous, and so heedless of the future, as to commit himself in the expectation that persons to whom he *had* rendered a service, and whom he could never serve or injure more, would corruptly pay him money which he had demanded through a third person, over which third person likewise he ceased to have any authority or power. And all for 40 Rupees! Whatever, however, may be thought upon the question of probabilities, and the weight or value of the evidence, the trial was so unfairly and so inefficiently conducted, that, practically, the prisoner had no trial at all. He was accused before a partial tribunal, and condemned by a functionary who assumed the incompatible characters of Judge and Witness.

The case of the prisoner was brought before Mr. Davidson, the Session Judge of Bellary, and most of the facts herein stated were put before him, but he confirmed the sentence of Mr. Reid, and adopted, in so far that he did not censure, the proceedings and conduct of Mr. Reid. He pronounced no opinion one way, or the other, as to the questions of law submitted to him, except as to one. As to that one he misapprehended what was urged on behalf of the prisoner, as will appear by comparing the appeal petition, setting forth the grounds of the appeal, and the portion of his judgment in which he declares that letters marked A to G were admissible in evidence. He does not notice the illegal evidence received, the conduct of the Lower Judge in himself giving evidence, and in consulting with the Police Inspector during the progress of the inquiry, or the other acts of commission and omission which rendered the trial, in the first instance, no better than a mockery and a shame. Mr. Davidson, however, does censure the course pursued by the Police Inspector (whom Mr. Reid lauds without stint) and the delay in instituting the prosecution. This is all he says as to the proceedings. The facts of the case Mr. Davidson does not seem to have mastered. He takes it as proved that when the prisoner wrote the letter to Tirumal Row, the latter was "his then subordinate," whereas the evidence all tends to shew, and it is positively stated by Mr. Reid, that Tirumal Row was not the prisoner's subordinate at the time referred to. Mr. Davidson also states that it struck him as a notable circumstance that Tirumal Row was not examined as a witness in the case before the Acting Joint Magistrate, and that his attention had not been called to the circumstance on the part of the prisoner. On reference, however, to paragraph 5 of the appeal petition, presented to the Session Court, it appears that the withholding of Tirumal Row, as well as Narapa Reddi and Venkatachelumappa, as witnesses before the Joint Magistrate, on the part of the prosecution, was put forth for the consideration of Mr. Davidson. But he had entirely forgotten, if ever he was aware of, this circumstance.

Mr. Davidson having failed to consider the law, or fully to comprehend the facts brought before him upon appeal, the High Court was moved in reference to the legal aspect of it, it being impossible for that Court, in the present state of the law, to consider the facts of the case at all. The Chief Justice stated that the Court had no power to interfere. No matter what irregularities were committed, what improper evidence received and acted upon, (and in effect he said) no matter what was done, so long as there was *any* legal evidence upon which the Court below *might* have come to the conclusion that the prisoner was guilty, the High Court had no power by law to interfere. His Lordship added that if the matter had come before the Court as a Court of Appeal there would be much force in what was put forward on behalf of the prisoner.

Nothing further remains to the prisoner but to lay a statement of the facts and circumstances before his Excellency the Governor in Council, in the hope that his Excellency will be pleased to consider the matter, or cause it to be referred to the law officers of the Government for their opinion as to the sufficiency of the evidence taken against the prisoner, the legality and fairness of the proceedings before the Acting Joint Magistrate, and the manner in which the prosecution was conducted, and that his Excellency may see fit to exercise the clemency of the Government in favor of one who has suffered much, and has been grievously, if not irretrievably, injured.

P. Sullivan
Counsel for Prisoner.

Judicial

No. 2516.

From B. Shaw Row - Birmingham

Dated 30th November 1864.

For Orders.

I have read the papers & attention
The case seems to have been carefully
gone into by the Act & Joint Meis Court
& was appealed to the Sessions Court
where the previous case was conducted
by an English Barrister - and
the matter was fully consider-
ed by a Sessions Judge. The High
Court on Special appeal affirmed
the proceedings of the lower Court
so far as the legal bearing of the
affair went. They could not deal
with the merits of the case, neither

for 12/64 Dept
No 2516

can be put - All that they could do
would be to remit so much of the
penal labour as the prisoner has
not yet undergone - But this is a
point which the Govt should exercise
only on very strong grounds & for which
I see no reason whatever on the pre-
-sent occasion - On the contrary
the judgment of the Mag. & Session
Judges seems to me substantially
correct, and I perceive no
cause why the sentence should not
be fully carried out

12 - 12 - 64

J.P.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following
letter from B. Shaver Esq. Madras
dated 30th November 1864

Order thereon 16th January 1864 No. 94

The Governor in Council
has attentively perused the foregoing
Memorial and the papers submitted
with it and he sees no reason to
permit the sentence passed upon
the prisoner in the case referred to.

2 The case appears to have
been fully gone into by the Acting
Joint Magistrate. On appeal to
the Session Court, where the pri-
-soner's case was conducted by an

English

Section

Sefton judge is substantially correct.

h R

20 B. Sham Row, with 13 exlosures
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Report against
Medical Director

151.152

74

Just. 1865. Department.

No. 94

PROCEEDINGS OF GOVERNMENT.

Dated 16 January 1865

list of 31 Jan 65

2nd

1865 Jan 16