M.R.O. 1—30,000—16-10-47

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 29 Press Mis.

Dated 6 — 1 — 1866

50-51

19/20

Not to be folded or roughly handled

No. 50. Read the following letter from the Registrar of the High Court of Judicature at Madras; to the Chief Secretary to Government, Fort Saint George, dated Madras, 20th December 1865, No. 73.

I am directed by the High Court to submit a copy of the correspondence, marginally noted, for the consideration of His Excellency the Governor in Council, and for such orders as he may deem proper.

Calendar of Case No. 23 on the file of the Sudder Court of Salem for 1864.
Proceedings of the High Court, 20th February 1864.
Letter from Session Judge, Salem, 22rd February 1864, No. 1.
Proceedings of the High Court, 15th March 1864.
Letter from Session Judge of Salem, 31st March 1864, No. 2.
Proceedings of the High Court, 20th April 1864.
Letter from Session Judge, Salem, dated 27th April 1864, No. 7.
Proceedings of the High Court 11th May 1864.
Letter from Session Judge, Salem, 6th July 1864, No. 8.
Proceedings of the High Court, 19th August 1864.
Letter from Session Judge, Salem, 26th August 1864, No. 14.
Letter to Session Judge, Cottacamund, 24th November 1865.
Do. from do. do. 27th November 1865, No. 205.

2. It requires little explanation beyond the remark that, in framing their first order, the Judges had in mind the fact that this was by no means the first occasion on which the extreme carelessness of Mr. Cherry's proceedings had attracted their attention. The cause of the delay in noticing the letter of the 26th August 1864, which reached the Court during the recess, is explained in my letter addressed to Mr. Cherry on the 24th ultimo on his return from leave.

3. The Court are unanimously of opinion that the two last letters of Mr. Cherry, viz., those dated 6th of July and 26th of August 1864, are of a highly improper character, and evince the greatest disrespect to the High Court, to whose control Mr. Cherry is subordinate.

Calendar of persons tried before J. W. CHERRY, Esq., Session Judge of Salem.

1	2	3	4	5	6	7	8	9	10	11	12	13	14
No. of the Case.	Name and description of the accused.	Copy of the charge or substance of the complaint.	Name of the complainant.	Name of the witnesses for the prosecution.	Name of the witnesses for the defence.	Statement of the evidence and grounds of conviction.	Finding and sentence.	Date of offence.	Date of commencement of plaint.	Date of apprehension or appearance.	Date of commencing trial.	Date of decision.	Explanation of delay.
22 of 1864.	Narasimmon.	That the prisoner on the night of the 7th January 1864, in the village Cothipoliem of Kristnagherry Taluq, did enter into the complainant's field and stole therefrom vegetables valued at 8 Annas, and in carrying away this property caused hurt to the complainant and the 1st witness, and that the prisoner has thereby committed an offence punishable under Section 394 of the Indian Penal Code. By Sashagherry Row, Subordinate Magistrate of the 2nd Class, Kristnagherry.	Thumban.			This case, from the circumstances, might have been disposed of by the Magistrate, it partook more of the nature of a theft than a robbery.	The Prisoner admits the principal part of the charge, viz., robbery, and looking to the slight nature of the wound caused by a small penknife, while detected in stealing vegetables, the Court considers the ends of justice will be fully met by directing the prisoner to be rigorously imprisoned for three months.	7th January 1864.	8th January 1864.	8th January 1864.	2nd February 1864.	2nd February 1864.	

(Signed) J. W. CHERRY,
Session Judge.

(Signed) P. P. HUTCHINS,
Registrar, Appellate Side.

(A true Copy)

SALEM SESSIONS COURT,
10th January 1864.

Proceedings of the High Court of Judicature at Madras, dated 20th February 1864.

Read remarks of the Session Judge of Salem in Case No. 22 on the Calendar of his Court for 1864.

1. Column 2 contains no description of the persons accused, whose name only appears.

2. The admission of the principal part of the charge of *robbery* which, in column 8, the prisoner is stated to have made, is inconsistent with the view of the Session Judge, that the offence committed was only theft.

3. Column 7 does not contain what its heading indicates as necessary and the orders in force prescribe; and in column 8 there is much more than the finding and sentence. Indeed, there is a total omission of the opinion of the Assessors. The Session Judge is requested to give more attention to the drawing up of the Calendars of cases tried in his Court, and to submit a fresh Calendar of the present case with an explanation of the points above noticed.

From the Sessions Judge of Salem; to the Registrar of the High Court, Madras, dated Salem, 23rd February 1864, No. 1.

I have had the honor of receiving the Proceedings of the High Court of the 20th instant, calling for my explanation in Case No. 22 of 1864 on the Calendar of this Court.

2. In reply to paragraph 1 of the said Proceedings, I have the honor to state that as the order requiring the description of the persons accused was only just *then* received, it had *not become familiar with the clerks who fill up the Calendars.*

3. The Honorable the Judges, by again referring to the Calendar in the said case, will observe that I simply remarked that the case "partook more of the nature of theft than robbery," and that I did not say, as now stated, "that the offence committed was only theft."

4. Referring to paragraph 3, I have to remark that in cases of confession the High Court are aware that column 7 cannot contain a statement of the evidence, as, according to the Code of Criminal Procedure, prisoners are convicted upon their confession alone. The High Court have also ruled* that, in cases where prisoners have pleaded guilty and witnesses have not been examined, there was no question for the Assessors; hence my total omission of the opinion of the Assessors.

* 6th February 1863.

5. With reference to the same paragraph of the High Court Proceedings, I beg to add that I try and pay every attention to the drawing up of the Calendars; it is, however, a duty not in keeping with the other important functions of a Judge and ought, in my humble opinion, to be performed by a Registrar.

I have the honor, as directed in the said Proceedings, to submit a fresh Calendar in No. 22 of 1864, adverted to above.

Proceedings of the High Court of Judicature at Madras, 15th March 1864.

Read letter dated the 23rd ultimo, from the Session Judge of Salem, affording certain explanations respecting Case No. 22 of 1864, and submitting a fresh Calendar.

1. The Session Judge of Salem was, by Proceedings of the High Court, dated 20th February, directed to draw up a fresh Calendar. He has in answer addressed a letter of an *improper* character to the Court. The Judges are bound to believe that it was penned without due consideration, for paragraph 2 ascribes the production of the Calendars to the Session Judge's clerks, while paragraph 5 contains the very singular expression, "I try and pay every attention to the drawing up of the Calendars." The strange idea that orders are to become familiar with clerks, is further evidence of want of consideration.

2. The Session Judge seems still unable to understand the difference between a confession and a plea of guilty. A confession is, like other evidence, to go to the Assessors, on a plea of guilty, conviction and sentence follow without their intervention. In the Calendar submitted to the High Court in the first instance no mention whatever was made of a plea of "guilty."

3. The drawing up of Calendars is one of the duties which the Session Judge is bound to discharge, and on the efficient performance of which the High Court are bound to insist. When, then, the Session Judge's shortcomings are noticed he will not in future reply upon the Court.

From the Civil and Session Judge of Salem; to the Registrar of the High Court, Madras, dated Salem, 31st March 1864, No. 3.

I trust I may, without offence, request the Honorable the Judges of the High Court to re-consider their Proceedings of the 15th instant, without laying myself open to the imputation of any want of that respect which is due to the Court or of replying upon the Court, which I sincerely deprecate and disclaim.

2. The terms in which the High Court's Proceedings of the 15th have been couched, are such as to cause me the deepest mortification, and I venture to submit that nothing that I have said or done, or left unsaid or undone necessitated the issue of so severe a censure.

3. Nothing was further from my thoughts than the transmission of a letter of "an improper character," and I cannot think that I shall be deemed to err if I submit such observations as I trust will relieve me from this censure.

4. It was certainly not my intention, in my letter of the 23rd February, to reply *upon the Court.* Had the Court's Proceedings of the 20th February merely desired me to fill up and amend my former Calendar, I should have confined myself to that duty; it was because I was directed to give "an explanation of the points noticed" in the High Court's Proceedings, that I wrote what I intended to be simply, the explanation.

5. The High Court state that in paragraph 2 of my explanation I "ascribe the production of the Calendars to my clerks," while paragraph 5 of [illegible] expression, 'I try and pay every attention to the drawing up of Calendars.'"

6. If the two paragraphs above quoted were considered to be contradictory, I am confident that a re-consideration of my letter will relieve me of any such imputation.

7. Paragraph 2 of my explanation, it will be observed, is a specific answer to the objection taken by the Judges to a particular Calendar, viz., "Column 2 contains no description of the persons accused, whose name only appears." The explanation I gave, as called for, was that the order requiring the entry of the "description," in addition to the name of the accused, had only "just then been received, and had not become familiar with the clerks who usually fill up the Calendars."

Vide paragraph 1 of High Court, 20th February 1864.

8. Mr. Harris, one of our Senior Judges, was evidently puzzled to know what was meant by the "description" of the accused. It was not till after my reply of the 23rd ultimo to the High Court's Proceedings that I learnt that a Circular had been sent, that the Honorable the Judges meant by this term only "caste and calling."

9. The collecting and filling up of such minor details are notoriously the work of subordinates, and after satisfying myself of the truth of the statement made of the Calendar clerk, I passed on the explanation to the High Court.

10. When, however, I penned paragraph 5 of my explanation, I did so with reference to the remarks of the High Court as to the drawing up of Calendars *generally.* I then simply stated a fact, that I try and pay every attention to this branch of duty which, being obviously of a ministerial nature, I never felt myself called upon to do more than supervise.

Vide paragraph 3, High Court, 20th February 1864.

11. Paragraph 5 under such circumstances ought, I respectfully submit, have been considered *independently* of paragraph 2, and I trust I may no longer be held accountable for its being blended or taken in connection with the latter paragraph.

12. In paragraph 2 of the Proceedings under reply, the Honorable the Judges observe, that I "seem still unable to understand the difference between a confession and a plea of guilty, &c." I deeply regret that the Judges should have felt themselves constrained so to express themselves.

13. Doubtless it is the duty of the lower Courts to bow to, and follow the High Court's instructions, and I for one trust that I shall never be, as I believe I never have been, wanting in respect and deference to its rulings, its orders and its Proceedings, but I feel that I should be wanting in what is due to myself and the high and responsible position which I hold, as one of Her Majesty's Judges, if I did not respectfully protest against the tone the Honorable the High Court has adopted, in conveying to me its strictures on my conduct.

14. I cannot but feel that the common courtesy due to my office has been denied me; my error was, I submit, on a comparatively trivial point of detail, unconnected entirely with my proper and legal functions as a Judge.

15. It is laid down in the last paragraph of the High Court's Proceedings that "when, then, the Session Judge's shortcomings are noticed he will not in future reply upon the Court." I am free to confess that the letter which has been objected to as of an "improper character," was no voluntary contribution of mine to the records of the High Court. But my sending it was inevitable, unless I ran the risk of insubordination and contempt of authority.

16. The Honorable the Judges will remember that by their Proceedings of the 20th ultimo, I was distinctly directed to submit a fresh Calendar "with an explanation of the points noticed;" under such circumstances it seemed to me that I was in duty bound to reply to the said Proceedings.

17. The interdiction above quoted confuses me not a little as to the course to be followed for the future. I must beg to be instructed as to the circumstances under which a reply from me to the High Court will be permitted. An Englishman's right to be heard will, I am sure, never be denied by the High Court, and when fault is found with a Judge below in any matter which is capable of explanation, I cannot but feel that it is quite open to him to make a fair and honest representation.

18. In the present case I had been expressly directed to afford certain explanations, and because I did so was warned in very curt terms "not to reply upon the Court;" the question then seems to me to be what amounts to a replying upon the High Court? The importance of this question will, I trust, excuse if not justify my soliciting an authoritative and conclusive solution at the hands of the full Court.

19. I therefore most respectfully beg that this letter with the previous correspondence may be circulated to the Honorable Sir Colley Scotland, the Honorable Sir Adam Bittleston, and the Honorable the Puisne Judges, in the hope that they may be induced to re-consider and cancel their Proceedings of the 15th instant, which I cannot but think, it must have been as distasteful to them to pen, as it was painful to me to receive.

Proceedings of the High Court of Judicature at Madras, 20th April 1864.

Read letter dated the 31st ultimo, from the Civil and Session Judge of Salem, requesting the re-consideration, by a full Court, of the Proceedings of the High Court of the 15th idem, with a view to the censure there passed upon him, in regard to the preparation of the Calendar and disposal of Session Case No. 22 of 1864, being re-called.

Before disposing of this communication, the High Court request that an English translation of the record of Session Case No. 22 of 1864, which gave rise to the above-mentioned correspondence, may be submitted for their consideration.

From the Session Judge of Salem; to the Acting Registrar of the High Court, Madras, dated Salem, 27th April 1864, No. 7.

I have the honor, with reference to the High Court's Proceedings, dated 20th April 1864, to send up an English translation of the record of Session Case, No. 22 of 1864, which gave rise to the correspondence in question.

2. I beg it may be distinctly borne in mind, in considering these papers, that no question has been hitherto raised of the correctness or otherwise of the opinion I formed of that case from these records.

Proceedings of the High Court of Judicature at Madras, 11th May 1864.

Read letter dated the 27th ultimo, from the Session Judge of Salem, submitting an English translation of the record in Calender Case No. 22 of 1864.

Before finally disposing of this matter, the High Court resolve to direct the Session Judge of Salem to state—

1. Whether any charge was read to the prisoner in the Session Court, and whether, if so, the prisoner pleaded to that charge.

2. Whether the confession, upon which the Session Judge convicted the prisoner, was, or was not, the prisoner's statement made before the Sub-Magistrate of Kristnagherry.

3. If the prisoner did plead or make a confessional statement in the Court of Session, why that plea or statement was not recorded.

From the Session Judge of Salem; to the Acting Registrar of the High Court, Appellate Side, Madras, dated Salem, 6th July 1864, No. 8.

In reference to the High Court's Proceedings of the 11th May, which could not be attended to until after the recent re-opening of the Court, I have the honor to state—

2. That the charge was duly read to the prisoner in Calander No. 22 of 1864, and that, as usual, the prisoner did not plead at all to that charge, but made a statement. The High Court must be aware that it is seldom that a prisoner in this country *pleads* in the very words, "I am guilty," or "I am not guilty." This like many other of our forms is perfectly unintelligible to him; when addressed, he generally begins "talking" and the Judge and Assessors are obliged to gather, as best they may, whether from what he says he actually committed the offence or not.

3 The confession said to have been made by the prisoner was not his statement made before the Subordinate Magistrate of Kristnagherry, but was the statement made by him to the Court.

4. A due record of the substance of that statement was entered by me, as will be seen in my notes, in which I wrote that "the prisoner admits the principal part of the charge, viz., robbery, &c." It was unnecessary to give it in detail, as he said nearly word for word before the Court what he had stated to the Sub-Magistrate, and which formed already a part of the record.

5. I may take this opportunity of observing that in regard to the High Court, in their Proceedings of the 15th March 1864, pointing out to me my ignorance of the *difference* between a "confession" and a "plea of guilty," that while in communication on the subject with the other Queen's Judges during the adjournment on the Hills, I found they were all as ignorant as I was, and looked upon a prisoner "pleading guilty" and "confessing" as one and the same thing.

6. I would suggest, therefore, this new ruling of the High Court should be sent to them, with mention of the legal authorities who authoritatively define this distinction, as it is evidently unknown to others as well as to myself.

Proceedings of the High Court of Judicature at Madras, 19th August 1864.

Read again the following communications from the Session Judge of Salem, Calendar in Case No. 22 of 1864, recorded in Proceedings, dated 20th February 1864.

Letter dated 23rd February, recorded in Proceedings, dated 15th March.

Letter dated 31st March, recorded in Proceedings, dated 20th April.

Letter dated 27th April, recorded in Proceedings, dated 11th May.

Read also letter, dated 6th July, from the same Session Judge, affording further explanation in regard to Calendar Case No. 22 of 1864.

The first of these papers is the Calendar of a case before the Session Court of Salem, in which the prisoner appears to have been convicted of robbery, although there was no formal entry of the finding. The document is in many other respects irregular, and column 7 contains the remark that the case was one of which the Magistracy should have disposed. As the indictment was for robbery, this observation seemed so inconsistent with the finding that the High Court would have neglected a plain duty if they had omitted to call for explanation.

2. In his reply the Session Judge stated that the prisoner had pleaded guilty. From the remarks in the finding it appears that he confessed the robbery but not the hurt, which forms an essential element of the offence described in the Section of the Code under which he was indicted. It seems clear, therefore, that the alleged confession did not amount to what is popularly termed a plea of guilty.

3. Looking at the character of these proceedings, the Judges are of opinion that the record should have been called for, and that the censure conveyed to the Session Judge in their Proceedings of the 23rd February, as to the confusion in his mind between such a confession as the prisoner was alleged to have made, and a plea of guilty, was premature.

4. That course should have been taken because robbery with hurt, the offence provided for by the Section under which the prisoner was indicted, was punishable much more severely than mere robbery, and because if, as was probable, the wounding alone changed the nature of the offence from theft to robbery, there could be no plea of guilty at all. Strictly speaking, a *plea of guilty is not a "plea" at all*, but, as a popular phrase, it implies a plenary confession in open Court of the truth of the whole matter of the indictment, and not of a principal, or of any other fractional part of it.

5. The Session Judge's third letter has now laid the record of the whole case before the High Court, and they regret to observe that the errors committed are even more serious than they supposed. There is no record whatever of the statement made before the Court of Session, and the Judge in his explanation states, that it was almost word for word that made before the Subordinate Magistrate. Now in his statement before the Subordinate Magistrate, the prisoner confessed that he had committed theft, but wholly denied the wounding which would, if committed in attempting to escape, have made that theft robbery.

6. It is quite clear, therefore, that the proceedings of the Session Judge do shew that he has treated a partial confession as a plea of guilty, and that, although the Court ought not perhaps in strictness to have drawn that inference from the papers originally before them, the censure, although then premature, is obviously not undeserved. It seems that the prisoner began to "talk," and the Session Judge lays it down, that from this talk he was to gather whether the prisoner committed the offence or not. The Session Judge probably means, whether the prisoner intended to admit that he committed the offence, for it is quite clear that if anything was left to inference, there must have been a trial. But even this would be a most incorrect and dangerous doctrine, unless the exact words used by the prisoner were carefully *recorded*.

7. The proceedings in this case show the extreme danger of allowing the Session Judges to draw their own inferences from a long and confused statement of an ignorant prisoner. The High Court resolve, therefore, to direct the strictest observance of the provisions of Section 362 of the Code of Criminal Procedure. If this prisoner had been told that he was indicted for robbery, and that he was a robber and not a thief, because in carrying off the beans he had hurt the prosecutor with his knife, there seems to be no doubt that he would have denied the substantial allegation, and a trial would have taken place. Nothing short of an unqualified plea of guilty to a charge fully explained to the prisoner in all its bearings, or of a plenary confession made in unmistakeable language after such explanation, will justify a conviction without proceeding to a regular trial.

8. Only one other point remains for notice. The Session Judge has stated that in his first letter he did not intend disrespect. The High Court would feel more confidence in this assurance, and in the propriety of withdrawing the rebuke to which the tone of that letter gave rise, if in the last letter of the series he had not been deliberately guilty of very great impropriety in

addressing the High Court in the tone and language of the 5th and 6th paragraphs of that letter. In directing the Session Judge not "to reply upon the Court," they certainly had no intention, as he must be well aware, of interdicting him from offering any explanation, properly so called, which it might be in his power to afford.

From the Session Judge of Salem; to the Deputy Registrar of the High Court, Appellate Side, Madras, dated Salem, 26th August 1864, No. 14.

I regret to observe by the Proceedings of the High Court, under date 19th August, which I have the honor of acknowledging, that the principal matter of my letter of the 31st March appears to have been almost lost sight of.

2. I am now favored with the instructions of the Judges upon points I never submitted to them, and as they refer to a case that had already been passed by the High Court, I trust to be excused in looking upon these proceedings as much "posthumous" as the former proceedings are admitted to have been premature.

3. My application to the full Court was a respectful appeal against the treatment of the "Judge." The reply refers chiefly to the disposal of the "prisoner," who made no appeal at all.

4. I certainly was not aware of "the very great impropriety in addressing the High Court in the tone and language of the 5 h and 6th paragraphs" of my letter of the 6th July. I am sorry I cannot myself see what is objectionable either in that suggestion or in the terms of it. The suggestion was *bona fide*, and if I was in error in making it, I duly apologise. Further, I have not been able to discover that my explanation of the 23rd February was a letter of an "improper character."

5. I shall, however, be very happy to make the "amendo," if I am told in what particulars in those communications I have given offence, as general statements are impossible to meet.

From the Registrar of the High Court of Judicature at Madras; to the Civil and Session Judge of Ootacomund, dated Madras, 24th November 1865.

I am directed by the Chief Justice and Judges to forward to you the enclosed copy of a letter addressed by you to the High Court in August 1864. The letter reached the Court during the recess and, having been mislaid by the Deputy Registrar, was not brought to the notice of the Chief Justice and Judges until after your departure from the country on leave. They therefore abstained from passing any orders on it, being desirous that you should first have anopportunity of withdrawing it if so disposed. This opportunity is now given you, and the High Court await your reply.

From the Civil and Session Judge of Ootacamund; to the Registrar of the High Court of Judicature, Madras, dated Ootacamund, 27th November 1865, No. 205.

I have had the honor of receiving this day your letter of the 24th November 1865, stating that my letter to the High Court in August 1864 having been mislaid, was not brought to the notice of the Chief Justice and Judges until after my departure from the country on leave (the following October), and that the High Court give me the present opportunity of withdrawing it, if so disposed.

2. I am fully sensible of the kindness thus shewn, and have never intended any disrespect to the Judges, but an important principle, viz, the proper treatment of a Judicial Officer of Government by the High Court, is involved in this dispute, arising as it has solely in a simple clerical error in his office, and in no way connected with any decision or legal proceedings.

3. I regret I can see no grounds for withdrawing my letter, unless I am directed to do so by Government, to whom I beg the whole correspondence may be referred.

(True Copies).

(Signed) P. P. HUTCHINS,
Registrar, Appellate Side.

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No. 51. ORDER THEREON, 6th January 1866, No. 29.

The Governor in Council concurs in the opinion of the Honorable the Judges of the High Court that the letters addressed to the Court by Mr. Cherry, late Civil and Sessions Judge of Salem, under date the 6th July and 26th August 1864, are not such as a Judicial Officer in Mr. Cherry's position should have addressed to the Court, and he must direct that Mr. Cherry will withdraw them.

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

Exd. J. Tulloch.

...er where Prisoners have

Proceedings; I have the honor to state that as the order requiring the description of the persons accused, was only just then received, it had not become familiar with the clerks who fill up the Calendars.

× but the Judge must have known it & had ten that it was complied with JP 4/11/63

3. The Honorable the Judges by again referring to the Calendar in the said case will observe that I simply remarked that the case "partook more of the nature of Theft than Robbery" and that I did not say, as now stated "that the offence committed was only Theft."

4. Referring to para 3, I have to remark that in cases of confession, the High Court are aware that Column 7 cannot contain a statement of the evidence, as according to the Code of Criminal Procedure; Prisoners are convicted upon their confession alone. The High Court have also ruled that in cases where Prisoners have

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pleaded guilty and witnesses have not been examined, there was no question for the Assessors hence my total omission of the opinion of the Assessors

5. With reference to the same para of the High Court proceedings Beg. to add that I try and pay every attention to the drawing up of the Calendars it is however a duty not in keeping with the other important functions of a Judge and ought in my humble opinion to be performed by a Registrar.

I have the honor as directed in the said proceedings to submit a fresh Calendar in No. 22 of 1864 as inverted to above.

I have &c.
(Signed) J. W. Cleary
Sessions Judge.

Proceedings of the High Court of Judicature at Madras, 15th March 1864.

Read letter dated the 23d Ultimo, from the Sessions Judge of

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Salem affording certain explanations respecting Case No. 22 of 1864 and submitting a fresh Calendar.

1. The Sessions Judge of Salem was, by proceedings of the High Court dated 20th February, directed to draw up a fresh Calendar. He has in answer addressed a letter of an impertinent character to the Court. The Judges are bound to believe that it was penned without due consideration for para 2 wherein the production of the Calendars to the Sessions Judges Clerks, while para 5 contains the very singular expression, "I try and pay every attention to the drawing up of the Calendars." The strange idea that Clerks should become familiar with the various orders regulating the forms of detail & the attention to be paid to the drawing up of Calendars & Memorandums & Documents

The Sessions Judge seems still unable to understand the difference

between a Confession and a Plea of guilty. A confession is, like other evidence, to go to the Assessors, and a Plea of guilty, conviction and sentence follow without their intervention. On the Calendar submitted to the High Court in the first instance no mention whatever was made of a Plea of guilty.

3. The drawing up of Calendars is one of the duties which the Sessions Judge is bound to discharge, and on the performance of which the High Court are bound to insist. When, then, the Sessions Judge's shortcomings are noticed he will not in future reply upon the Court.

No 3. Salem Civil & Sessions Court.
31st March 1874.

From,
J. W. Cherry, Esqre
Civil & Sessions Judge of Salem

To
C. F. Chamier Esqre
Registrar of the High Court, Madras.

Sir,
I may, without offence

Sd am I to the Confession & full one.

not if there was a Plea

on the Calendar

no doubt,

request the Honorable the Judges of the High Court to reconsider their Proceedings of the 15th instant without laying myself open to the imputation of any want of that respect which is due to the Court or of Replying upon the Court, which I sincerely deprecate and disclaim.

2. The terms in which the High Court's Proceedings of the 15th have been couched, are such as to cause me the deepest mortification, and I venture to submit that nothing that I have said or done, or left undone or undone necessitated the issue of so severe a Censure.

3. Nothing was further from my thought than the transmission of a letter of "an improper character," and I cannot think that I shall be deemed to err, if I submit such observations as I trust will relieve me from this Censure.

4. It was certainly not my intention

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in my letter of the 23d February to reply upon the Court. Had the Court's proceedings of the 20th February merely desired me to fill up and amend my former Calendar, I should have confined myself to that duty - it was because I was directed to give "an explanation of the points noticed in the High Court's proceedings, that I wrote what I intended to be simply the explanation.

This seems to be the reason why I wrote

5. The High Court state that in para 2 of my explanation that I ascribed "the production of the Calendars by my "Clerks" while para 5 of the same "contains "the very singular expression "stay and "pay every attention to the drawing up "of Calendars"

6. If the two Paras above quoted are considered to be contradictory I am confident that a reconsideration of my letter will relieve me of any such imputation.

7. Para 2 of my explanation is

vide para 1 of High Court's 20th July 1864

will be observed it is a specific answer to the objection taken by the Judges to a particular Calendar viz: "Column 2 contains no description of the persons accused whose name only appears" The explanation I gave, as called for, was that the order requiring the entry of the "description" in addition to the name of the accused had only just been received and had not become familiar with the clerks who usually fill up the Calendars"

8. Mr Harris one of our Senior Judges was evidently puzzled to know what was meant by the description of the accused - It was not till after my reply of the 23d Ultimo to the High Court's Proceedings that I learnt that a Circular had been sent that the Honorable the Judges meant by this term only Caste and Calling"

Mr C. has no - thing to do with Mr Harris

Mr very opportunely -

9. The collecting and filling up such minor details are notoriously

the work of subordinates and after duly certaining
& satisfying myself of the truth of the — duty of the Judge
Statement made, of the Calendar Clerk, this work
I practice on the explanation to the Privy is for you
Court. done
Yr WM.

10. — When however I perused para 5
of my explanation I did so with reference
to the remarks of the Privy Court as
to the drawing up of Calendars generally
& then simply stated a fact, that I wide para 5
H.C. 20th Feby/66
try and pay every attention to this
branch of duty which, being obviously
of a ministerial nature, I never felt
myself called upon to do more than
superintend.

11. Para 5. under such circumstances
might I respectfully submit, have
been considered independently of Para
2, and I trust I may no longer be held
accountable for its being blended or
written in connection with the latter Para-

12 In Para 2 of the Proceedings
under reply, the Honorable the Judge

I seemed to me that I was in duty
bound to reply to the said Proceedings

13. The interdiction above quoted
confused me not a little as to the course
to be followed for the future. I much
beg to be instructed as to the circumstances
under which a reply from me to the
Privy Court will be permitted. An
Englishman's right to be heard will
I am sure never be denied by the Privy
Court, and when Justice demands it
a Judge Below in any matter which
is capable of explanation, I cannot
but feel that it is quite open to him
to make a fair and honest representation

18. In the present case I had been
expressly directed to afford certain
explanations and because I did so I was
warned in very plain terms not to reply upon
the Court. The question then seems
me to be what amounts to a replying
upon the Privy Court? The importance
of this question will I trust excuse

if not justify my objection to an authoritative and conclusive solution at the hands of the full Court.

19. I therefore most respectfully beg that this letter with the previous correspondence may be circulated to the Honorable Sir Colley Scotland, the Honorable Sir Adam Bittleston and the Honorable the Puisne Judges, in the hope that they may be induced to reconsider and cancel their Proceedings of the 15th instant, which I cannot but think, it must have been as distasteful to them to pass, as it was painful to me to receive.

I have &c.

(Signed) J. W. Cherry.
Civil & Sessions Judge.

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an English translation of the record in Calendar Case No. 22 of 1864. 11/8

Before finally disposing of this matter the High Court resolved to direct the Sessions Judge of Salem to state:-

1. Whether any charge was read to the prisoner in the Sessions Court, and whether, if so, the prisoner pleaded to that charge.

2. Whether the confession upon which the Sessions Judge convicted the prisoner, was, or was not, the prisoner's statement made before the Sub Magistrate of Kistnagherry.

3. If the prisoner did plead or make a confessional statement in the Court of Session, why that plea or statement was not recorded.

Salem Sessions Court
6th July 1864.

From,
J. W. Cherry Esquire
Sessions Judge of Salem.

To
P. P. Pulaluru Esquire
Asst. Registrar of the High Court
Appellate Side, Madras.

Sir,

In reference to the High Court's

Vide. The Court appears to me ought have preceded the opinion expressed by the Court upon the case

Proceedings of the 11th May, which could not be attended to until after the recent reopening of the Court, I have the honor to state.

2. That the charge was duly read to the Prisoner in Calendar No. 22 of 1864 and that, as usual, the Prisoner did not plead at all to that charge, but made a statement. The High Court must be aware that it is seldom that a Prisoner in this country pleads in the very words "I am guilty" or "I am not guilty." This like many other of our forms is perfectly unintelligible to him; when addressed; he generally begins "talking" and the Judge and Assessors are obliged to gather as best they may, whether from what he says, he actually committed the offence or not.

3. The confession said to have been made by the Prisoner was not his statement made before the Subordinate Magistrate of Hatigharry, but

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but was the statement made by him to the Court.

4. A due record of the substance of that statement was entered by me, as will be seen in my notes, in which I note that "the Prisoner admits the principal part of the charge viz robbery &c." It was unnecessary to give it in detail, as he said nearly word for word before the Court, what he had stated to the Sub-Magistrate, and which formed already a part of the record.

5. I may take this opportunity of observing that in regard to the High Court in their proceedings of the 15th March 1864 pointing out to me my ignorance of the difference between a "confession" and a "plea of guilty,"

that outside in communication on the subject with the other Queen's Judges during the adjournment on the Hills, I found they were all as ignorant as I was and looked upon a prisoner "pleading guilty" and "confessing" as one and the same thing.

6. I would suggest therefore this new ruling of the High Court should be sent to them, with mention of the legal authorities who authoritatively defined this distinction; as it is undoubtedly unknown to others as well as to myself.

I have &c.

[signed] J. W. Sherry

Sessions Judge.

I don't see much to object to in this letter. The Court in their letter of 24th ult. do not enjoin on him to withdraw their own.

So to say as if the confession before the Court

It is no part of my duty to support the High Court when they are wrong and to regard other duties but simply to explain and defend his own proceedings.

What does this mean? A partial confession does not amount to a plea of guilty - a full confession does.

4. That course should have been taken because robbery with hurt, the offence provided for by the Section under which the prisoner was indicted, was punishable much more severely than mere robbery, and because if as was probable, the wounding alone changed the nature of the offence from theft to robbery, there could be no plea of guilty at all. Strictly speaking a plea of guilty is not a "plea" at all, but as a popular phrase, it implies a plenary confession in open Court of the truth of the whole matter of the indictment, and not of a principal, or of any other fractional part of it.

5. The Session Judge's third letter has now laid the record of the whole case before the High Court, and they regret to observe that the errors committed are even more serious than they supposed. There is no record whatever of the statement made before the Court of Session; and the Judge in his explanation states that it was almost word for word that made before the Subordinate Magistrate. Now in his statement before the Subordinate Magistrate, the prisoner

confessed that he had committed theft, but wholly denied the wounding which would, if committed in attempting to escape, have made that theft robbery.

6. It is quite clear therefore that the proceedings of the Session Judge do shew that he has treated a partial confession as a plea of guilty, and that although the Court ought not perhaps in strictness to have drawn that inference from the papers originally before them, the censure, although then premature, is obviously not undeserved. It seems that the prisoner began to "talk", and the Session Judge lays it down, that from this talk he was to gather whether the prisoner committed the offence or not. The Session Judge probably means, whether the prisoner intended to admit that he committed the offence, for it is quite clear that if any thing was left to inference, there must have been a trial. But even this would be a most incorrect and dangerous doctrine, unless the exact words used by the prisoner were carefully recorded.

7. The proceding in this case shew the

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19th August which I have the honor of acknowledging, that the principal matter of my letter of the 31st March appears to have been almost lost sight of.

2. I am now favored with the instructions of the Judges upon points I never submitted to them and as they refer to a case that had already been passed by the High Court, I trust to be excused in looking upon these proceedings as much "posthumous" as the former proceedings are admitted to have been premature.

3. My application to the full Court was a respectful appeal against the treatment of the "Judge." The reply refers chiefly to the disposal of the "Prisoner," who made no appeal at all.

4. I certainly was not aware of the very great impropriety in addressing the High Court in the

"tone and language of the 5th and 6th
"paras" of my letter of the 6th July. I am
sorry I cannot myself see what is
objectionable either in that suggestion
or in the terms of it. The suggestion
was "bona fide" and if I was in error
in making it I duly apologise. —
Further I have not been able to discover
that my explanation of the 23rd February
was a letter of an "improper character"

5. I shall however be very
happy to make the "amende" if I am
told in what particulars in those com-
munications I have given offence, as
general statements are impossible to
meet.

I have &c.

(Signed) J. W. Cherry.

Sessn Judge.

From

P. P. Hutchins, Esquire.

Registrar of the

High Court of Judicature

at Madras.

To J. W. Cherry, Esquire.

Civil and Session Judge

of Cotacamund.

Sir,

I am directed by the
Chief Justice and Judges to for-
ward to you the enclosed copy
of a letter addressed by you to
the High Court in August 1864.
The letter reached the Court
during the recess and, having
been mislaid by the Deputy
Registrar, was not brought to
the notice of the Chief Justice
and Judges until after your
departure from the country on
leave. They therefore abstained

from passing any orders on it, being desirous that you should first have an opportunity of withdrawing it if so disposed. This opportunity is now given you and the High Court await your reply:-

but not that of 6 July

I have &c.
Signed P. P. Hutchinns.
Registrar.
Appellate Side.

High Court of Judicature, Madras, 24th November, 1865.

No. 205.

Octacamund
Civil & Session Court
27th November 1865.

From
J. W. Cherry, Esquire
Civil and Session Judge of
Octacamund

To
P. P. Hutchinns, Esquire
Registrar of the High Court
of Judicature
Madras

Sir,

I have had the honor of

Judicial
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No. 2736.

From
The Registrar of the High Court of Judicature
at Madras - dy 20: December 1865.

For Orders.

I can read this communication any
comfortably - but I confess that I do not
regard Mr Cherry's letter as so objec-
tionable as they are viewed by the
High Court -

Mr Cherry's motive is known to
me & what I should have been,
and he has gone beyond what was
necessary for his own vindication &
the explanation of his proceedings - As
the Judges of the High Court unani-
mously consider this two letters

impression I would drink tea
with them now. JP.
24/12/65.

Unless the matter of this petition
admits an opinion from me, I suspect
it cannot be passed over, as I am one of
the Judges whom one at least of the
objectionable cases name addressed.
E. de Cherney.
24.12.65.

Please note to enquire [illegible] if this
letter is addressed as it should have been
he should be directed to withdraw them -
do not like much in the matter proposed

Judl. Dept. Consg. 16th Jan. 1866 No. 30

Judicial Department. 15

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following Letter from the Registrar of the High Court of Judicature Madras / Rec'd 20 Dec. 1865 No. 731

Order thereon 6 January 1866 No. 29.

The Governor in Council concurs in the opinion of the Honorable the Judges of the High Court that the letters addressed to the Court by Mr Cherry late Civil and Session Judge of Salem under date the 6 July and 26 August 1864, are not such as a Judicial Officer in Mr Cherry's position should have addressed to the Court, and he must direct that Mr Cherry will withdraw them.—

Hon'ble the Judges of the High Court
J. D. Cherry Esq. Civ. & Sess. Judge
Salem

Copy

Bom.ª January 2

Judicial 1866. Department.

No. 29.

PROCEEDINGS OF GOVERNMENT.

F.R. 68.

Dated 6 January 1866.

50-57.