M.R.O. 1—[illegible]—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 437	**Press Mis.**
191-192	
Dated 26. 3.	**19**-1866

10/11

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
26th March 1866.

No. 191. Read the following letter from the Civil Judge of Coimbatore, to the Chief Secretary to Government, Fort Saint George; dated Coimbatore, 19th December 1865, No. 17.

Adverting to the Proceedings of Government, Public Works Department, dated 18th August 1865, and to the Order of Government thereon, dated 2nd September 1865, calling upon me "to inquire and report as to Lieutenant Colonel Walker's "representation, touching the conduct of Vakeel Tiroomala Iyengar and the Moonsiff "of Bhowany," I have the honor to state that I consider the latter Officer to have been guilty of untruthfulness and of illegality and inefficiency, and the Vakeel not to have acted rightly in the matter referred to.

2. As respects the Moonsiff, the settlement of Issues in the suit was fixed for the 31st of August.

3. The Moonsiff asserts* that Mr. Lowry appeared in Court at ½ past 5 P. M., August 31st. This Colonel Walker denies†, and as the train by which he and Mr. Lowry went to "Erode" on that day did not reach‡ that station, which is eight miles from "Bhowany," until 3-15 P. M., I am of opinion that Colonel Walker has good reason for disputing the Moonsiff's statement on this point.

* See paper A.

† See paper B.

‡ See papers B. and C.

4. From both Colonel Walker's and Mr. Lowry's statement§ it is clear that the latter did not present himself before the Moonsiff before the 1st of September; this the District Moonsiff denies‖. Although Mr. Lowry is not certain whether he appeared on the 31st of August or the 1st of September, Colonel Walker's statement shows that he (Mr, Lowry) must be in error in saying that it was "on the day fixed for the hearing of the case" (*i. e.*, 31st of August), as both concur in saying that it was during *mid-day* that Mr. Lowry did so, so that this must have occurred on the 1st of September, for they only reached "Erode" in the afternoon of the 31st of August.

§ See papers B. D. and I.

‖ See paper A.

5. Even if the District Moonsiff's statement were true respecting Mr. Lowry's appearance in Court on the 31st of August, his Diary* of that date shows that he acted illegally in setting down the case ex-parte. The Diary records that although the plaintiff's pleader and the defendant were present when the suit was called up, the latter was declared ex-parte, "because he had made no answer to the plaint." In the Moonsiff's explanation† of the 28th of October, the reason assign-

* See paper E.

† See paper A.

ed for having so acted is that the defendant "put in no written statement." "But by Sections 109, 111, 120, 122, and 125 of the Civil Procedure Code, Act VIII of 1859, the putting in of such statement by a party to a suit is only compulsory when ordered by the Court, and the Moonsiff should have examined the defendant orally; and as he (defendant) had made his appearance, the declaring‡ him ex-parte was illegal.

‡ See Decrees of the High Court, vol. 2, p. 2, page 311.

6. Judging from the proceedings in the case, I do not believe that the suit in question was taken up on the 31st of August, but that the Moonsiff having failed to send word to Mr. Lowry on the 1st of September *when* to appear (which the Moonsiff, though not legally obliged to do, appears from Mr. Lowry's letter§ to have promised from courtesy that he would, and was therefore bound to do), and Mr. Lowry making no further appearance on that day, the District Moonsiff had the case subsequently, and entered as disposed of in that manner on the 31st of August. In reply to my question as to why the Issues in this suit had not been fixed on the 31st of August, the Moonsiff states‖ that press of other matters prevented him. I have referred to the Moonsiff's Diary¶ of the 31st of August, and do not consider this plea to be sustained by the quantity and quality of the work performed on that day. Mr. Lowry (an European gentleman) having attended on the day fixed for the settlement of Issues (according to the Moonsiff's account), and having come from a distance (which fact must have been known to the Moonsif), I consider that the Moonsiff should have postponed the other matters and taken up this suit at once; the fixing of Issues would not have occupied many minutes. A very cursory examination of the parties would have shewn that Colonel Walker was the responsible party and not Mr. Lowry; thus the latter would have been spared all the annoyance and expense which he has suffered owing to the Moonsiff's incapacity or negligence.

§ See paper D.

‖ See paper A.

¶ See paper F.

7. I look upon the entry in the Diary** of the 31st of August as a sham—that being the day originally fixed for the settlement of Issues; hence the supposed necessity for recording something on that date, and the defendant (Mr. Lowry) not having (for good reasons) attended Court a second time on the 1st September, and the suit having been proceeded with to judgment, the expedient of declaring the defendant ex-parte was resorted to.

** See paper E.

8. Taking for granted the Moonsiff's statement that he had no time to proceed with the suit and settle the Issues on the 31st of August, he ought to have communicated the fact to the parties and fixed another date, but this he did not do.

9. The entry in his Diary of 31st August is as follows—"that the defendant "was declared ex-parte as he had made no answer to the plaint"; and in the Moonsiff's Report* he makes what I look upon as a shuffling explanation, stating "that "the defendant was asked either to reply to the suit or put in a written statement,

* See paper A.

"and that the defendant having failed to do either, he (the Moonsiff) declared him "ex-parte" (on that day, the 31st of August). The Moonsiff was called upon to explain the meaning of the entry in his Diary of the 31st August of the defendant not having made answer, and he states† "that as the defendant did not inform "the Court either by means of a written "statement or kyfeut (representation?) he was declared ex-parte". Now Act VIII of 1859 makes mention only of "written statements" and "examination" in the case of defendant. The Moonsiff does not appear to have attempted to "examine" the defendant, and I observe that in his order‡ on Mr. Lowry's petition for review of judgment, the Moonsiff does not declare that he had *called upon* Mr. Lowry to put in a written statement. If a party *is required* by a Court to put in a written statement, some reasonable time must be allowed for the purpose; but the Moonsiff's statement is that Mr. Lowry appeared before him only at 5½ P. M., and that he closed his Court on Mr. Lowry's quitting it; and his proceedings imply that he had no time that day (31st August) to proceed with the case beyond setting it ex-parte. It does not appear that any written statement was *required* (and the Act does not make it compulsory to put in a statement *unless required*). *If required*, what time was there for putting in that statement, on the 31st of August; and how could the suit have been set ex-parte on that day? According to the Moonsiff's showing, he had only time on the 31st August to declare the defendant "ex-parte," which is ridiculous. If the suit had really been taken up on that day and set ex-parte, it should and would have been, no doubt, proceeded further with even to decision, judging from the Moonsiff's subsequent proceedings in the case. The Moonsiff acted irregularly in declaring on the 31st of August "that issues will be fixed on consideration." If this proceeding could not take place on that day, a future date should then have been fixed, and the parties informed thereof, in order to ensure their attendance, and then the date for final hearing would be settled.

† See paper G.

‡ See paper H.

10. On the 18th of December the Moonsiff records in his Diary§ that "no "inquiry or issues appear necessary, and "that the passing of Decree will be considered." On the following day (19th December) Decree is given; so that the case, as I have already remarked, might have been disposed of at first in a few minutes, instead of being delayed from the 31st of August till the 19th of December.

§ See paper E.

11. The way in which this case has been conducted only tends to confirm the opinion that I had already entertained of this Officer's inefficiency.

12. Respecting the Vakeel, it is clear that he knew‖ that steps had been taken by Colonel Walker to compromise the case, and he must have been aware, from the nature of the claim and Colonel Walker's statements, that he (Colonel Walker) and not Mr. Lowry was the party responsible. I consider that the Vakeel ought to have brought the above circumstances to the Moonsiff's notice, when Colonel Walker would have been made a de-

‖ See paper J.

fendant in the suit, and Mr. Lowry have been saved much expense and annoyance in a matter in which he properly had no concern. Again, I consider that an honest Vakeel would have subsequently communicated with Colonel Walker regarding the settlement of the case, on finding that Colonel Walker's arrangements had not been carried out, the private adjustment of the suit having been agreed to, and pending this reference would have applied to the Court (Moonsiff) for a postponement; but neither of these steps were taken.

13. The Vakeel also showed great ignorance in having, in the first instance, laid the action against Mr. Lowry instead of Colonel Walker.

A.

Translate of an Urzee addressed to the Civil Court of Coimbatore by the District Moonsiff of Bhowany, under date the 28th October 1865, No. 137.

I have received the Order of the 23rd instant, directing me to report upon certain proceedings conducted in Original Suit, No. 187 of 1863, on the file of this Court, and to forward the Records of Miscellaneous Petition No. 252 of 1865, connected therewith.

Points which the Moonsiff was called upon, on the 23rd October 1865, are:—

1. Why, when 31st August had been fixed for settlement of Issues, no Issues were fixed on that day.
2. Why, when defendant appeared on that day, no examination was held.
3. How the District Moonsiff set the case ex-parte, notwithstanding that the defendant duly appeared.
4. Why the case was not set down at first for final hearing.
5. Why no subsequent day was fixed for the final hearing after the case was first taken up for Issues.
6. On what authority does the District Moonsiff assert that Mr. Lowry appeared before him on the 31st August 1863 at 5½ P. M.
7. What took place between the Moonsiff and the defendant, and in what language.
8. If Mr. Lowry appeared on the 1st September, and what then occurred.

2. On the 31st August 1863, the date fixed for settling Issues in the said suit, prior suits having had to be heard, and there having been no leisure in consequence of other inquiries, &c., the issues in the suit in question could not be settled on that date. The defendant, who received copy of the English summons issued to him, appeared before this Court at 5½ P. M. on the 31st of August 1863, the day fixed in the summons. He was asked that he should either reply to the suit, or put in a written statement; but as he went away without so doing, and as it was then time for the Court to rise, no examination could be held, and the suit had to be set down ex-parte.

3. As soon as the suit was filed, the plaintiff's Vakeel having requested that summons may be sent to defendant beforehand, irrespective of the order of the suit, and as I thought that issues might have to be settled upon the defence adduced by the defendant, the suit could not be set down at first for final hearing. When the suit was taken up along with others in their respective order for posting them for final hearing, the pleadings not having contained any matter requiring inquiry, the suit was set apart for consideration, with a view to decree being passed. This defendant, unlike other ordinary suitors, being a European, so that he might be distinctly known, and when he appeared in Court it having been time for the Court to rise, I recollect well that he came at 5½.

4. When the defendant appeared, I conversed with him in Hindustance, and informed him of all that had to be done in the case.

5. The defendant did not come to Court on the 1st of September 1865, the day following that fixed in the summons, nor did he appear at any subsequent time. Until the 18th of December, the date fixed for passing Decree in the suit, there was ample time. He did not, at any time during the said interval, inform the Court what he had to say.

6. As the defendant, who received the summons, had not at the time fixed, either put in a written statement, or answer the plaint and cause the statement to be reduced to writing, but remained passive, without getting the ex-parte declared against him cancelled and defending the suit until decree was passed, judgment was passed in the suit.

7. After decree was passed, the decree and certificate and other papers were sent for being executed within the Jurisdiction of the Oodumalpettah Moonsiff, where the defendant resided. On the day fixed in the notice of objection issued by the said Moonsiff's Court in June 1865, the defendant appeared before this Court and inquired in Hindustanee why the notice was sent to him. I told him that I had not issued any notice, but that the District Moonsiff of Oodumalpettah might have done so with reference to the execution of the Decree. Then the defendant showed to me the copy of the notice he had with him, and went away saying that in the notice he is required to attend before the District Moonsiff's Court of Oodumalpettah, and that while so, he came here by mistake. The defendant spoke to me on the subject in Hindustanee for an hour. I have, therefore, brought to your notice what has passed, and have, as directed, sent herewith the deposition given by plaintiff's Vakeel Tiroomala Iyengar and the Records of the Miscellaneous petition, and the separate diary sent for my perusal.

(Signed) SOOBRAMIAH,
District Moonsiff.

(True Translate.)

(Signed) G. A. HARRIS,
Civil Judge.

From Lieutenant Colonel G. W. WALKER, R. E., Superintending Engineer, 7th Division, to the Civil Judge of Coimbatore; dated Coimbatore, 8th September 1865, No. 100.

In reply to your letter, No. 196, of 6th September, I have the honor to state, as follows, the specific acts of misdoing, whereof I consider the District Moonsiff of Bhowany and the Vakeel Tiroomala Iyengar, respectively, to have been guilty.

2. In his Decree of 23rd June 1865, copy and translation whereof are herewith submitted, the Moonsiff asserts that Mr. Lowry presented himself in his Court at 5½ P. M. on the 31st August 1863, and entirely ignores Mr. Lowry having presented himself on the forenoon of the following day, when the case was in reality taken up. I very much doubt whether Mr. Lowry saw the Moonsiff at all on the 31st August, still more that he could have seen him so early as 5½ P.M., for we went down together by the afternoon train of that day, and, to the best of my belief, could not have arrived at Bhowany so early. This is a point that can be settled by reference to a Train Table of that date. If Mr. Lowry saw the Moonsiff at all, it was simply to state his presence and readiness for the trial the next day. That morning (1st September), after breakfast, Mr. Lowry left me in the Traveller's Bungalow to appear in Court, and came back shortly after to inform me that he had seen the Moonsiff, who told him he was not quite ready to take up the case, and would send for him when he was wanted. This we thought a civil and polite notion of the Moonsiff's to save a gentleman unnecessary attendance in a hot and inconvenient Court House.

Paper No. I.

3. Meanwhile (which was the object of my presence at Bhowany) I had opened negotiations with the Plaintiff, the justice of whose claim I fully admitted, to compromise the matter on payment to him direct of the sums due to him, without interest or costs. I otherwise stated my intention of only paying the amount into Court, which I knew it was an object to him to avoid, lest creditors of his in Bhowany might bring detainers against it. My original decision, written at the time, for communication to the Plaintiff and his Vakeel, by the Accountant of the Erode Range Office, is hereby submitted, in support of the statements of this paragraph. The negotiations ended in my writing orders for payment of certain sums to the plaintiff, from the Hoozoor Treasury and Range Office at Coimbatore.

Paper No. II.

4. By his Decree above referred to, the Moonsiff admits having been made cognizant by Plaintiff's Vakeel of proceedings for a compromise, but he would make it appear that the transactions took place on the 31st August; that Mr. Lowry showed himself in Court at a subsequent

hour, viz., 5½ P. M.; and that the case not being defended by him, he gave judgment ex-parte under date the 19th December 1863. I consider, therefore, that the Moonsiff has *de facto* aided and abetted the Plaintiff's Vakeel in hoodwinking Mr. Lowry and myself, by allowing us to quit Bhowany under the impression that the compromise held good, and that further legal proceedings were stopped.

5. Copy and Translation of the Vakeel's deposition of 16th June 1865 are herewith submitted in proof, on his own admission, that his client agreed to the compromise, and that he accepted certain papers from me on his behalf. But on pretence that payment, through the Bhowany Treasury, within one week was the condition which remained unfulfilled, he induced the Moonsiff to decide the case ex-parte; and such decision, obtained on 19th December 1863, he carefully kept from Mr. Lowry's and my knowledge for nearly one and half year.—Vide also paragraph 7 of my letter printed with G. O. No. 2398 of 18th August 1865, from which it would appear as if he kept his client also in ignorance, or made him sham ignorance still further to bind me in the matter. I cannot but attribute his final success to an amount of sharp practice, such as should preclude his ever again being allowed to practise in any of Her Majesty's Courts.

Paper No. III.

C.

From the Traffic Manager, Madras Railway, to the Civil Judge of Coimbatore; dated Madras, 6th November 1865, No. 2433.

I have the honor to inform you, with reference to your letter, No. 238, of the 24th October 1865, that the 12-5 P. M. Goods' train arrived at Erode at 3-15 P. M. on the 31st August 1863.

D.

From R. J. LOWRY, Esq., to the Civil Judge of Coimbatore; dated Waterfall Estate, 1st November 1865.

In reply to your letter, No. 237, dated 23rd October 1865, I have the honor to state that I attended the Bhowany Moonsiff's Court about 12 or 1 o'clock of the day fixed for the hearing of the case brought against me by Anuntharoyen. But, whether on the 31st of August or 1st September 1863, I cannot at this date say. I have the clearest recollection of going to the Moonsiff's Court on the day on which I was summoned to appear, and of being told by that official that the case had not been called, and that the plaintiff's Vakeel not being then in Court; he could not say when it would be tried, but that, if I would return to the Traveller's Bungalow, he would have me called when it came before him. The Moonsiff spoke in Hindustanee which I understand, and speak well enough to be understood.

2. This is the only occasion on which I attended that Court until May of the present year, and what is related above is the only communication I then had with the Moonsiff.

E.

Translate of the Proceedings held in Suit, No. 187 of 1863, on the file of the District Moonsiff of Bhowany.

	Plaintiff. ANNATTOORYEN.	*Defendant.* MR. R. J. LOWRY.	
1863.			
17th July... ...	Read Plaint and two plain paper documents (together with a list) presented with a Vakalatnamah by plaintiff's Vakeel Tiroomala Iyengar, for the recovery from the defendant of Rupees 252-10-8, inclusive of interest, under two documents, dated respectively, the 7th and 23rd May 1863.		
		Plaintiff's Vakalatnamah ...	1
		Plaint.....	2
		List.....	3
		Document.....	4
		Document.....	5
	At the request of the plaintiff's Vakeel, ordered that a summons be issued to the defendant, requiring him to appear to answer the Plaint on the 31st August next		
		Defendant's summons.....	6
24th July... ...	Summons to the defendant was transmitted to the District Moonsiff's Court of Oodumalpettah for being served on him, with 25 labels of half Anna value each, as also eight labels for return postage. Two labels to the value of 3 Annas were affixed on the envelope containing the said summons.		
11th August ...	Read Yadast (Memorandum) of the Oodumalpettah Moonsiff, stating that the Summons has been served on the defendant and returned.		
		Memorandum.....	7
	Surplus four labels were returned to the plaintiff's Vakeel.		
31st August ...	Plaintiff's Vakeel and the defendant present. The defendant who made his appearance not having made any answer to the Plaint, he is declared ex-parte, and it is ordered that Issues will be fixed on consideration.		
18th December..	Plaintiff's Vakeel present, and the defendant not present;—the record perused. The document filed in this suit appearing to have been given by the defendant in his official capacity, it does not seem necessary to fix Issues regarding it and make inquiry. Ordered that consideration will be made about Decree.		
19th December..	Plaintiff's Vakeel present, and the defendant not present.		
	Read the draft Judgment and Decree, directing the defendant to pay to the plaintiff the Principal and Interest, amounting to Rupees 262-12-9, together with subsequent Interest and Costs.		
		Draft Judgment.....	8
		Decree.....	9
23rd December.	Read the fair Judgment and Decree which were prepared.		
		Fair Judgment.....	10
		Decree.....	11
9th January ...	Filed Yadast (application) presented by plaintiff's Vakeel for copy of Decree.		
		Yadast.....	12
	Copy of decree granted.		

(Signed) SOOBRAMIAH,
District Moonsiff.

(True Translate).

(Signed) G. A. HARRIS,
Civil Judge.

F.

Diary of the District Moonsiff's Court of Bhowany, dated 31st August 1863.

Present—Soobaramiah, District Moonsiff.

No. 260 of 1863.
PLAINTIFF.
Subba Row.
DEFENDANT.
Moniem Pettagounden.

The Plaint presented by the plaintiff to recover from the defendant Rupees 57, inclusive of profits due on a stamped Bond, dated the 20th June 1863, (18th Auny, Rudrodgary) with the document and list are filed.

As requested by the plaintiff, ordered that a summons be issued to the defendant, requiring him to attend the Court on the 22nd September, to answer the Plaint.

The Plaint presented with a Vakalutnamah document, its copy and list by plaintiff's Vakeel Tiroomala Iyengar, to recover from the defendant Rupees 56-1-0, inclusive of profits, due on a Bond (on plain cadjan) executed for Rupees 37½, dated the 2nd March 1860, (Mausy of Siddarly) are read.

No. 261 of 1863.
PLAINTIFF.
Lutchoome Chetty.
DEFENDANT.
Veerabudra Chetty.

The Plaint presented by plaintiff's Vakeel Subbaroyer, with a Vakalutnamah for obtaining possession of, and Putta for 1⅛ 6¼ Bullah of garden land, yielding annually Rupees 100, and half a well valued at Rupees 200, being a share of family property, are filed.

No. 262 of 1863.
PLAINTIFF.
Ramagounden.
DEFENDANT.
1 Coomara Chinnia Gonnden.
2 Varagoocauttoo Palanyvailapa Gounden.

Plaintiff's Vakeel present. The defendant and his Vakeel not present. Read draft judgment and decree awarding to plaintiff Rupees 294-4-0, being the sum claimed, with costs, and disallowing interest.

No. 344 of 1862.

Read Memorandum presented by defendant's Vakeel for copy of Decree. Ordered that copy be prepared and given.

No. 346 of 1862.

Read Memorandum presented by plaintiff's Vakeel for copies of Decrees. Ordered that the copies be prepared and given.

Nos. 354, 374 and 377 of 1862.

Read Memoranda presented by plaintiff's Vakeel for copies of Razeenamahs. Ordered that the copies be prepared and given.

Nos. 43, 81 and 101 of 1863.

Read Memoranda presented by defendant's Vakeel for copies of Decrees and Judgments. Ordered that the copies be prepared and given.

Nos. 377 and 380 of 1862.

Both parties or their Vakeels not present.

No. 400 of 1862.

Read draft Judgment and Decree directing the defendant to pay to plaintiff Rupees 51-12-0, being principal sum and balance of profits, at 8 Rupees per Podi, and subsequent interest at 1 per cent. with costs.

The plaintiff and his witnesses Terumalay Krisnien 1, Thovar Subbien 2, Aravacoorichy Mootton Chetty 3, Narrainien 4, and Vencataramanien 5—and the defendant's witnesses Vencataramana Sastry 1, Anantanarrainien 2, and Erode Vencataramanien 3, present. Read depositions given by the plaintiff's witnesses on solemn affirmation, as well as the receipts granted by them for having received batta. Plaintiff dispensed with the remaining witness.

No. 440 of 1862.

Ordered that defendant's witnesses be produced on the 1st September.

Vakeels for both parties, and Narahary Iyen witness for both parties, present. The above witness was examined on solemn affirmation and deposition taken from him.

No. 459 of 1862.

Plaintiff's Vakeel, the 1st defendant and plaintiff's witness Yeggia DeeteLiton 1, defendant's witnesses Varadanulloor Ananta Iyen 2, Pudmanabien 3, Moottumbee Josyen 4, Monigar Soobbaroyen 6, present. The depositions taken from the above witnesses on solemn affirmation are read.

No. 461 of 1862.

Anantanarraina Josien 5, and Davastanam

Plaintiff's Vakeel dispensed with the remaining witnesses. 1st defendant dispensed with his 10th witness, and requested the Court to issue a warrant to his 5th witness. Ordered that warrant be issued to the 5th witness, fixing the 20th September.

Vakeels for plaintiff and 1st defendant, the 2nd defendant, plaintiff's witnesses, viz., Vakeel Palanyappa Mudelly 1, Ramasawmy Iyengar 2, Meenatchy Chetty (joint witness for plaintiff and 2nd defendant) 3, plaintiff's witness Chinnee Chetty 4; 2nd defendant's witnesses Narrainien 5, and Lutchoomeenarraina Chetty 6, are present. The depositions taken from the above witnesses, who were examined on solemn affirmation, are read. Plaintiff's Vakeel requested that Istyar may be issued to the plaintiff's 6th witness, and that remaining witnesses may be dispensed with. The 1st and 2nd defendant's Vakeel requested that he will produce the 2nd defendant's witnesses on the 1st September, and that warrant may be issued to the 1st defendant's witnesses.

No. 463 of 1862.

Ordered, accordingly, that Istyar be issued to the plaintiff's 6th witness, fixing the 29th September for attendance, and that orders will be passed regarding the 1st defendant's witnesses on production of batta for warrant.

Read written statement presented by Muttusamy Mudelliar, Vakeel, for supplemental defendant.

No. 6 of 1863.

Ordered that orders be passed on a reference to the record.

Muttusamy Mudelliar, Vakeel, presented a written statement with Vakalutnamah on behalf of the 2nd defendant's heirs. On a reference, it appears that the said defendant already filed a written statement. Ordered therefore that the Vakalutnamah be filed, and that the written statement be returned to the said Vakeel.

No. 10 of 1863.

Read return made by Peon Shaik Hoossain of having served summonses on the defendants.

No. 27 of 1863.

Read Vakalutnamah presented by Vencatasiengar, Vakeel for the defendants.

Read return made by the Head Goomastah, stating that plaintiff's 1st, and defendant's 1st and 2nd witnesses are absent from their villages, and that summonses were served on the remaining witnesses.

No. 35 of 1863.

Read withdrawal presented by plaintiff's Vakeel, stating that the defendants had paid the sum claimed to the plaintiff with costs.

No. 40 of 1863.

Ordered that the suit be dismissed.

Read petition presented by plaintiff's Vakeel Vencatasiengar, praying to allow him to cite the 1st Defendant as a witness on behalf of the plaintiff.

No. 41 of 1863.

Miscellaneous Petition, No. 545.

Ordered that a summons be issued to the 1st defendant, fixing the 15th September for attendance.

Read return made by the Head Goomastah, stating that summons was served on the 1st defendant.

No. 51 of 1863.

Read list of witnesses and copy of razeenamah (which was filed in this Court on the 19th December 1862), with a list put in by the 1st defendant's Vakeel.

No. 57 of 1863.

Ordered that orders will be passed on the return of the Plaintiff's Vakeel, who is absent on leave.

Read the list of witnesses put in by the plaintiff's Vakeel.

Ordered that summons be issued to the above witnesses requiring them to be in attendance on the 19th September.

No. 73 of 1863.

Plaintiff's Vakeel present.

No. 82 of 1863.

Defendants not being present, they are declared ex-parte. Ordered that points will be recorded on the 1st September of the current year.

Read list of witnesses put in by the plaintiff's Vakeel.

No. 87 of 1863. Ordered that summons be issued to the witnesses for both parties fixing the 27th September for attendance.

Read Razeenamah presented by plaintiff's Vakeel and the defendant, stating that of the

No. 90 of 1863. sum claimed, the Defendant is to pay to the plaintiff Rupees 21-8-0 within three months from this date, and that the Plaintiff has relinquished the remaining sum and the costs.

No. 96 of 1863, Read the list of wi nesses presented by the defendant.

Ordered that orders will be passed on the plaintiff's list of witnesses being filed.

Defendants not being present they are declared ex-parte, and the list of witnesses put in by

No. 113 of 1863. plaintiff is read. Plaintiff having represented that he would produce his 5th witness with the other witnesses, ordered that summons be issued to the other witnesses requiring them to be in attendance on the 21st September.

Read return made by the Head Goomastah, stating that summons was served on the 2nd

No. 144 of 1863. defendant.

Read return made by the Head Goomastah, stating that summons was served on the 1st, 2nd,

No. 146 of 1863. and 4th defendants, and that copy of the summons was affixed to the house of the 3rd defendant who was absent from his village.

Read return made by Peon Nunja Naiken, stating that the summons was served on the

No. 153 of 1863. defendant.

As requested by the 1st petitioner, copy of the petition was granted to him. The list of

No. 178 of 1863. witnesses put in by the 1st, 2nd, 3rd, and 4th motioners are filed. Ordered that summons be issued to the witnesses for the 2nd motioner, directing them to be in attendance on the 13th September. The other motioners stated that they will produce their witnesses on the same date. Ordered accordingly.

Plaintiff's Vakeel and defendant present. The said defendant, who appeared, not having

No. 187 of 1863. made any answer to the plaint, he is declared ex-parte, and ordered that the Issues will be fixed on consideration.

No. 240 of 1863. As requested by the 1st defendant, copy of the Plaint was furnished to him.

Read return made by the Head Goomastah, stating that summons was served on the defen

No. 251, of 1863. dant, and producing a list of his (defendant's) property to the value of Rupees 12 attached.

Read returns made by the Head Goomastah to the summons and precept, stating that the

No. 257 of 1863. summonses were served on the defendants, and that the whole of the hedge was removed as directed in the precept.

Read application presented by 1st defendant's Vakeel, requesting to furnish him with a cer-

No. 413 of 1862. tificate to enable him to obtain a copy of the

P. 548 of 1863. written statement put in by the supplemental defendant in suit No. 892 of 1859, the same being essential to be filed in this suit. Ordered that a certificate be issued to him. Vakeel Muttusamy Mudelly, present. Ordered that he may attend to his duties.

M. P. No. 546 of 1863. Read petition presented by plaintiff's Vakeel,

O. S. No. 746 of 1861. requesting that orders may be issued for the sale of the attached property.

M. P. No. 749 of 1863 Ordered that the Petition rejected be restored to the file, and that orders will be passed on reference to the record.

Read motion presented by plaintiff's Vakeel, stating that the land decreed was made over,

M. P. No. 547 of 1862. O. S. No. 391 of 1860. that the costs mentioned in the Decree should be levied from the 5th defendant alone, and that the 1st defendant's place of residence is not known.

Ordered that a notice be issued to the 5th defendant.

M. P. No. 549 of 1863. O. S. No. 119 of 1860. Read application presented by plaintiff Soobramonia Chetty, praying that Rupees 10-8-9, being the balance of the amount of the decree which he obtained against the defendant Tiroomagounden, may be collected.

Ordered that notice be issued to the defendant.

M. P. No. 550 of 1863. O. S. No. 1110 of 1861. Read motion presented by plaintiff Lutchooma Chetty, praying for the collection of Rupees 18-1-0, being the amount of judgment debt and costs due by defendants Mungany and Ruogadason.

Ordered that notice be issued to the defendants.

Read petition presented, with a copy of Raziamah, by Tiroomala Iyengar, Vakeel for

M. P. No. 551 of 1863. O. S. No. 429 of 1859. plaintiff Balarama Chetty, praying for the collection of Rupees 46-5-0, being the amount of Razinamah from Sivarama Chetty the defendant.

Ordered that orders will be passed on consideration.

Read petition presented by Vakeel Vencataramanier for 2nd defendant Mutton Chetty,

M. P. No. 552 of 1863. O. S. No. 286 of 1862. praying for the collection from the plaintiffs Meenatchy Ammal and Vencatakristnien of Rupees 8-14-5, being the amount of costs decreed. Ordered that warrant be issued to the plaintiffs.

Read petition presented by plaintiff, praying that the petition No. 327 of 1861, which was

M. P. No. 553 of 1863. O. S. No. 702 of 1858. dismissed, may be re-placed on the file, and orders passed for the attachment of the defendants property.

Ordered that orders will be passed on a reference to the record.

M. P. No. 554 of 1863. O. S. No. 1359 of 1861. Read petition accompanied by a copy of Razinamah presented by Tiroomala Iyengar, Vakeel for plaintiff Appajeegounden, praying for the collection from the defendant Nagasara Nunjon of Rupees 18-7-2, being the amount of Razinamah.

Ordered that a warrant be issued to the defendant.

Read petition presented, with a copy of Razinamah, by Vakeel Tiroomala Iyengar, for

M. P. No. 555 of 1863. O. S. No. 1393 of 1861. plaintiff Appajeegounden, praying for the collection from the defendant Sawminaden of Rupees 18-7-2, being the amount of the said Razinamah.

Ordered that warrant be issued to the defendant.

Read petition presented, with a copy of Razinamah, by Tiroomala Iyengar, Vakeel for

M. P. No. 556 of 1863. O. S. No. 1366 of 1861. plaintiff Appajeegounden, praying for the collection from the defendants Chinnan and Nunjon of Rupees 18-7-2, being the amount of the said Razinamah.

Ordered that a warrant be issued to the defendants.

Both parties and the petitioners not present. On a reference to the record it is proved from the evidence of the witnesses that the attached house belonged to Rungadasagounden, petitioner in Miscellaneous Petition No. 302 of 1863 by virtue of a decree; that the defendant subsequently paid the money and obtained possession of the said house; that he (the said defendant) then mortgaged it to Mutton Chetty, (petitioner's 1st witness) on the 31st May 1860 under the document A, for Rupees 170; and that Mutton Chetty subsequently sub-mortgaged it to this petitioner on the 4th July 1860, for Rupees 50. If Rungadasagounden, petitioner in Miscellaneous Petition No. 302, had any claims there was no reason why he did not start any objections notwithstanding the said two mortgages. Moreover, as it appears from the defendant and witnesses, that the defendant paid the decree amount and satisfied its demands, there seems no doubt that the house of five ankanoms under attachment is his own. Moreover, the said 1st witness Mutton Chetty (the 1st mortgagee) states that the attached house may be sold in auction, and out of the sale proceeds the sub-mortgage amount be paid first, and the surplus, if any, be then paid in satisfaction of the decree, and that he would realize the sum in some other way. It is therefore ordered that the house of five ankanoms, under attachment, be sold by auction and the sale proceeds produced. The interest mentioned in the sub-mortgage being too heavy, it does not appear reasonable to make the defendant pay that interest. Hence, under Section 246, Act VIII of 1859, it is ordered that the principal sum alone should be paid, and that the interest should be realized from Mutton Chetty, the sub-mortgager. As it appears from these proceedings and from the proceedings in Miscellaneons Petition 305, that the house of five ankanoms, under attachment, had belonged to the petitioner, and that subsequently the defendant paid the money and obtained it, it is ordered to be sold. As the other house, one buffaloe, and grains appear not to belong to the defendant but to the petitioner, their release is ordered. As it appears from the petitioner's witnesses and from the defendant's deposition that the grain under attachment belongs to petitioner, it is ordered to be released. These decisions are read in Court.

M. P. No. 18? of 1863.
O. S. No. 847 of 1861.

Read return to a precept made by Ameen Chinna Rungon, stating that in selling by public auction 1¼ bullah of poonjah land, valued at Rupees 5, enjoyed by the defendant as his portion in land No. 236, consisting of 2½ bullahs called Muttantur Poonjay, which is situate in the village of Teroovachy Taluq, Bhowany, and the Puttah for which runs in the names of one Chinnamarackon and defendant's husband Angamoottoo, one Calichetty, son of Lutchoome Chetty of Semboolichampolliem, being the highest bidder (for Rupees 20), the sale was confirmed to him, and out of the sale proceeds, deducting four Annas hire of beating tom-tom, the balance, Rupees 19-12-0, is produced in Court together with the sale account and attachee for having transferred possession of the land. Read also the receipt passed by the plaintiff for having received the said sum.

M. P. No. 320 of 1863.
O. S. No. 40 of 1861.

Plaintiff represented that he would levy balance afterwards.

Ordered that the number be dismissed.

Petition Nos. 325, 326, 363, 379, and 390 of 1863.

Plaintiffs not being present when called, ordered that the petitions be struck off the file.

Petition No. 400 of 1863.

Plaintiff's Vakeel produced batta for warrant. Ordered that warrant be issued.

Petition Nos. 442, 445, and 529 of 1863.

Ordered that the petitions be dismissed, the petitioners having made no efforts for enforcement.

Petition No. 453 of 1863.

Read the list of witnesses put in by the defendant's heir. He stated that he will produce the witnesses on the 10th September. Ordered accordingly.

Petition No. 458 of 1863.

Third defendant stated that he will produce batta for issuing precept for attachment on the 1st September. Ordered accordingly.

M. P. No. 465 of 1863.

Petitioner's Vakeel stated that the defendants are under concealment, and that he will pay batta if the peon should watch for one month. Ordered accordingly.

M. P. Nos. 484, 498 of 1863.

Ordered that precept be issued for production of plaintiff for granting receipts.

Read return to warrant made by the Head Goomastah producing the defendant and the depositions given by both parties, stating that the defendant paid Rupees 10, and eight day's time is given for the payment of the balance.

M. P. No. 523 of 1863.

Ordered that precept for keeping the defendant in custody be issued.

Read return to warrant made by Peon Subba Naiken, producing Rupees 23-6-5, being the amount of decree and costs levied from the defendant, and the receipt of the plaintiff for having received the said sum, and for full satisfaction having been made of the decree.

M. P. No. 431 of 1863.
O. S. No. 1814 of 1861.

Read receipt granted by the plaintiff, stating that the defendant has paid him Rupees 28-12-0, being the amount of the decree and costs, that he has relinquished the interest, and that decree was satisfied.

M. P., No. 440 of 1863.
O. S. No. 1373 of 1511.

Read return to warrant made by Peon Caruppa Pillai, producing Rupees 333-11-5 being judgment debt, batta, and interest realized from the defendant and the receipt passed by the plaintiff, acknowledging the receipt of the said sum, and stating that the decree was satisfied.

M. P. No. 389 of 1863
O. S. No. 164 of 1862.

Read return to warrant made by the Head Goomastah, producing the defendant and the deposition given by the defendant, requesting 8 days' time for payment of judgment debt.

M. P. No. 524 of 1863.

Ordered that precept be issued for the defendant being kept in custody till that time.

Read return to a sale precept made by the Ameen Soobia, stating that it was not executed in consequence of the defendant having paid Rupees 125-10-8, being the decree amount and costs, and that the sum in question is produced.

Petition No. 242 of 1863.

O. S. No. 70 of 1861.

Ordered that the sum be sent with a Memorandum, the plaintiff not being present.

Read return to warrant made by Peon Guruvon, producing attachee that the defendant was absent from his village.

M. P. No. 455 of 1863.

Ordered that Istiyars, notifying the sale on the 30th September, be sent to the Civil Court and Collector's office for publication.

M. P. No. 485 of 1863.

Read return made by Peon Kristnama Naick, stating that summons was served on the defendant.

M. P. No. 525 of 1863.

Read return made by Nunja Naicken, stating that the summons was not served on the defendant, he having been absent from his village, and that a copy thereof was affixed to the defendant's house.

M. P. No. 503 of 1863.

Read return made by Kristnama Naick, stating that the sale Istiyar was published and affixed to the defendant's house, and producing an attachee to that effect.

Petition No. 424 of 1863.

Read return to a warrant made by Peon Vencatasamy, producing Rupees 19-5-2, being the amount of Razinamah levied from the defendant, and the receipt given by the plaintiff, stating that he received the said sum, and that the demand of the Razinamah was satisfied.

Petition No. 526 of 1863. No. 4.

Read return made to a warrant by Peon Kothundarama Jetty, producing an attachee given by the plaintiff, stating that the defendant was absent from his village.

Petition No. 517 of 1863. Ordered that the petition be dismissed.

On a reference to the records of the two suits, it appears that they were fully disposed of, and they are therefore ordered to be entered under the head " fully disposed of."

Petition No. 163 of 1863.
O. S. No. 1478 of 1861.
O. S. No. 62 of 1861.
Petition No. 58 of 1863.

Ordered that the Urzee, stating the reasons for having collected stamp penalty on the document filed in the said suit, be sent to the Civil Court. Ordered also that the Goomastahs should, in future, enter in the 3rd column of the Register of stamp penalty the stamp paper and the particulars of its sale.

Bhowany Village Moonsiff, No. 91 of 1862.

31*st August* 1863.

(Signed) SOOBRAMIAH,
District Moonsiff.

(True Translation.)
(Signed) G. A. HARRIS,
Civil Judge.

G.

Translation of an Urzee.

No. 164, addressed to the Civil Court of Coimbatore by the District Moonsiff of Bhowany, dated the 6th December 1865.

I beg to acknowledge the receipt this day of the order, dated the 4th instant, directing me to explain what is meant by the entry in the proceedings recorded in Original Suit No. 187 of 1863, on the file of this Court on the 31st August 1863, to the effect that " the defendant, who appeared, not having answered the plaint was declared *exparte*."

The defendant who appeared having failed to inform his circumstances, either by means of a written statement or by Kyfeat (representation), it is stated there that he was declared *exparte*. That no answer was given to the plaint, means the above.

The seperate diary which accompanied the said order, is herewith returned.

(Signed) SOOBRAMIAH,
Moonsiff.

(True Translation).
(Signed) G. A. HARRIS,
Civil Judge.

H.

Moonsiff's order rejecting the application.

In the District Moonsiff's Court of Bhowany, Zillah Coimbatore.
Miscellaneous Petition No. 252 of 1865.
ORIGINAL SUIT No. 187 OF 1863.

Plaintiff. Iyathoray Iyen.

Defendant. Mr. R. J. Lowry.

The suit is for recovery of Rupees 252-10-8, being amount deposited on account of security and interest.

Read Petition No. 252, presented for the cancelment of the Decree passed in this suit.

Decision of the Court.

The defendant perused the summons issued to him to answer to this suit, and appeared before this Court at 5½ P. M., on the 31st August 1863, the day fixed in the summons. Written statement not having been presented, the suit was declard *exparte* on the same date; afterwards, the defendant not having made any representations, judgment was passed in favor of plaintiff on the 19th December 1863. The defendant was not told to go and remain in the bungalow, nor that he would be sent for, nor was there any necessity for the Court to say so. On the plaintiff's Vakeel Tiroomala Iyengar being examined regarding the allegation made in the petition, it appears that on the day following that on which the defendant was declared *exparte*, he and plaintiff went to Colonel Walker at the bungalow; that the said gentleman told plaintiff that he will obtain orders within a week, so that the amount sued for may be had from the Bhowany Taluq, and asked him to withdraw the suit; that the plaintif said that the withdrawal would be given if the amount were paid; and that as this was not done, the withdrawal was not put in. Moreover, the defendant who attended at the proper time ought to have represented to the Court whatever he had to say, but he did not. It appears that the provisions of Section 119, of Act VIII of 1859, apply only to consideration about setting aside a judgment when it appears that the summons was not duly served upon the defendant, or that he was prevented from defending the suit through any other inconvenience; but it does not provide any thing for the case of a defendant who has been duly served with a summons, and who appeared before the Court in due time, but did not defend the suit, therefore the motion is rejected, there appearing no reason to the Court to enter into it.

23*rd June* 1865.

(Signed) SOOBRAMIAH,
Moonsiff.

(True Translation).
(Signed) G. A. HARRIS,
Civil Judge.

I.

Mr. Lowry's Petition for review.

Translation of a Miscellaneous Petition presented to Bhowany Moonsiff's Court, under Section 119 of Act VIII of 1859, by Kristnien, Vakeel for Mr. R. J. Lowry, Defendant in Miscellaneous Petition No. 181 of 1865 on the file of Oodmulpettah Moonsiff's Court, connected with Original Suit No. 187 of 1863, Bhowany Moonsiff's Court file.

In the abovesaid suit brought by plaintiff Annathorien, the defendant appeared before this Court on the day fixed in the summons issued to him. The Court told him to remain in the bungalow and that he will be sent for afterwards.

2. The defendant was about to contest the suit, on the ground that the amount for which the plaintiff sued consisted of the sum deposited by him (plaintiff, in the Engineer's Office (Rupees 200) on account of security and the amount of his pay (Rupees 62-12-9), and that as these sums were due to plaintiff from Government he ought not to have sued him (defendant). In the mean time, on the date fixed for hearing, the Superintending Engineer, Colonel Walker, sent for Tiroomala Iyengar, plaintiff's Vakeel, and gave him orders for Rupees 200 on the Deputy Collector, and for Rupees 62-12-9 on Lieutenant Trail. The Vakeel received the orders and went away, assuring that he had full powers from the plaintiff in the suit that he has relinquished the costs of the suit, and that he would present a withdrawal. The defendant remained in Bhowany the whole of the day fixed, but the Court did not send for him, and he (defendant) is ignorant what took place in the Court afterwards.

3. Now from the notice issued to defendant in the said Miscellaneous Petition, it appears that plaintiff's Vakeel, the aforesaid Tiroomala Iyengar, has concealed the aforesaid facts and fraudulently conducted the suit, and managed to obtain a decree against the defendant. It was solely for the above reasons that the defendant was unable to defend the suit. I therefore request the Court will cancel the decree passed in the suit, admit defendant's defence, enquire into the case, and pass a decision. I present herewith the copy of the Diary order of the 9th instant, obtained from the District Moonsiff's Court of Oodmulpettah.

(Signed) KRISTNIEN,
Vakeel.

(True Translation).
(Signed) G. A. HARRIS,
Civil Judge.

J.

Vakeel's deposition. | Translation of a Deposition given by Tiroomala Iyengar, Vakeel for plaintiff, in Original Suit No. 157 of 1863, Miscellaneous Petition No. 252 of 1865, on the file of the District Moonsiff of Bhowany, Zillah Coimbatore, on the 16th day of June 1865.

I have heard the motion given by the defendant's Vakeel in the aforesaid suit read out, but nothing took place as therein stated. But on the day following that on which the said defendant was declared *exparte*, plaintiff came and asked me if the full value of the primary stamp could be got back, as Engineer Colonel Walker said that he would settle about the amount sued for, and told him to obtain a certificate from the Court for refund of the full stamp duty. I told him that as the suit had been proceeded with *exparte*, the full stamp duty could not be obtained. Thereupon plaintiff called me to come over to the said gentleman, and I accompanied the plaintiff accordingly with copy of the plaint and other papers connected with the said suit. The said gentleman told plaintiff that he would obtain orders, so that he may obtain the plaint amount within a week at the Bhowany Taluq, and that he should relinquish the amount of costs. The plaintiff told the gentleman that he had instructed the Vakeel to present a withdrawal in the case on his getting the amount within a week. Thereupon I and plaintiff came away. The said gentleman did not give me any orders, nor did I admit to him that I would present a withdrawal. On the 2nd May 1865, I received from the defendant in this suit by post a Vakalatnamah to present a motion on his behalf, and an English Memorandum, dated 11th April last, drawn out by the aforesaid Colonel Walker, and its Tamil translation. As I was the plaintiff's Vakeel I informed him by post of the reason of my not having accepted the Vakalatnamah, and on the 5th of this month of June, when the said defendant appeared before this Court, I returned to him the Vakalatnamah and the English Memorandum, and kept with me the letter addressed to me, and the translate of the Memorandum.

In the said translation it is mentioned that, according to the settlement made on the 1st of September 1863, the amount was not then paid, and that the said gentleman is now prepared to settle in the same manner.

When plaintiff and myself went to the said Mr. Walker, I did not see the defendant there. I heard the deposition read. It is correct.

(Signed) TIROOMALA IYENGAR,
Vakeel.
(Signed) SOOBRAMIAH,
Moonsiff.

(True Translation).

(Signed) G. A. HARRIS,
Civil Judge.

No. 192. To the Honorable the Chief Justice of the High Court of Judicature, Madras, dated Fort Saint George, 26th March 1866, No. 437.

I am directed by the Governor in Council to transmit, for the consideration of the Honorable the Judges of the High Court, and for such notice as they may deem proper, the annexed copies of a correspondence relating to the conduct of the District Moonsiff of Bhowany, and of one of the Vakeels of that Court, in connection with a suit instituted in it.

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

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Judicial Department

No. 437.

To The Honorable Sir C. H. Scotland Kt
Chief Justice of the High Court
of Judicature
Madras.

Hon'ble Sir,

I am directed by the Governor in Council to transmit for the consideration of the Hon'ble the Judges of the High Court, and for such notice as they may deem proper, the annexed copies of a correspondence relating to the conduct of the District Moonsiff of Bhowany and of one of the Vakeels of that Court in connection with a suit instituted in it.

Fort St. George
26 March 1866

Judicial 1866 Exhibit

No. 137.

To
The Honorable
The Chief Justice of the
High Court of Judicature
of Madras.

Dated 26 March 1866.

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