8-8-01

[Ref. 4]
13,000-24-3-05.

Re DEPARTMENT.

Paper taken out of the Records from the charge of the Referencer.

Press / Miscellaneous / Routine No. 2553 dated 11-12-1895

Date taken out.	For what purpose.			Initials of clerk taking the paper or of attender.	Date returned.	Initials of attender.
	Department.	C. No.	Year.			
8 8 06	Revn.	Bud	ck	RB		

Judicial (1895.) Department.

ORDINARY MS.

G.O., No. 2554.

Dated 11th Dec. 1895.

INDEXED.

[Despatch Abstract.]

CONVICT.

Declining to interfere with the sentence passed on--Naganatha Aiyar alias Eswarayar alias Eswarapayar confined in the Central Jail, Salem, and requesting the High Court to furnish certain information in regard to the observations of the Sessions Judge in the judgment in Tanjore Sessions Case No.I of 1894.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
80	547		16-3-96				
	1166		1896				
	5404		1896		1326		17/8/95
Cir	2269/97		Transf. to I.G. & Prisons Endt. No.		1163		

2-5-97

5100

Petn Rule 7-C.
31/11-21-12-94

(1895) DEPARTMENT.

From C.F. Macleane Esq. I.C.S.
THE PRIVATE SECRETARY TO THE
RIGHT HONORABLE THE GOVERNOR.

To
THE CHIEF SECRETARY
TO GOVERNMENT,
DEPARTMENT.

3161-21-12-94

Dated 28 } October 1895.
Received 29 }
Rep 30

ENCLOSURE. -

CHIEF SECRETARY
29 OCT. 1895
GOVERNMENT OF MADRAS

Note for H.E.S.

May this be sent for a few days, please. Some interim petn is rec'd from the convict Thro' the Jail Surgeon.

Para II C H
H.E. Cancelled and petn sent to Govt. Transf. Clerk for grant of D

1-11-95

Subject.

TRANSFERS a petition from M.K.Ry. A. Krishnasami Aiyar, on behalf of Naganathaier alias Eswara Aiyar, a prisoner in the Central jail Salem, praying that he may be released from jail without having to undergo the rest of the imprisonment inflicted on him.

For I
Pl. See para 11 + any future
The Enclosures are? Must be read by me
MRP
30/x.
30/10

Please circulate
D.H.S. 28.10.95

CURRENT No. 5180

Please see G.O. No 5502 - Petition signed by the Convict which differs slightly from this

Petition from M. R. Ry. A. Krishnasami Aiyar, Manager, office of the Inspector General of Police St. Thomé, on behalf of Naganathaier alias Esvara Aiyar, a prisoner in the Central Jail Salem.

DATED _____ 189 –.

TRANSFERRED to the Chief Secretary to Government for disposal. Please circulate to H.E. the Governor.

(By Order)

Private Secretary.

GOVERNMENT HOUSE,
Guindy
28 October 1895.

To

His Excellency The Right Hon'ble Beilby, Baron Wenlock, G.C.I.E.,
Governor in Council of the Presidency of
FORT SAINT GEORGE.

The humble Petition of NAGHANATHAIER *alias* ESVARA AIYAR, *a Prisoner in the Central Jail, Salem.*

MOST HUMBLY SHOWETH :—

That Your Excellency's Petitioner is a young man, aged 22 years, belonging to a respectable family of Mirasidars in the Tanjore District.

2. That the Petitioner being convicted of abetment of forgery by the Sessions Court of Tanjore in Calendar Case No. 1 of 1894, is now undergoing a sentence of seven years' rigorous imprisonment and the rents and profits of his estate have also been adjudged to be forfeited to Government during the said period.

3. That though Your Excellency's Government is already aware of this case, the Petitioner in submitting this Petition for Your Excellency's mercy, respectfully and earnestly craves Your Excellency's gracious attention to *his* position in the case and the facts bearing upon him which are as follow.

4. That the Petitioner's father died when he, the Petitioner, was ten years of age leaving him an only son and a widow; and since then the Petitioner's property consisting of nearly 800 acres of land, worth two lacs of Rupees, was managed according to his father's wishes by Panju Aiyer, the second prisoner in the abovesaid case, who had been the agent of his family for over 40 years, under the supervision and guidance of his uncle (mother's sister's husband) Venketaramaier, the fourth prisoner in the abovesaid case.

5. That the Petitioner attained the legal age of majority (18) in 1891, but still left his estate to be managed as before by the trusted agent of the family and his uncle as he was still young and inexperienced, devoting most of his time and attention to the study of Sanskrit and, by nature, of retired habits.

6. That the agent Panju Aiyer had not only been managing the family property for over 40 years, but had also been living during all that time as a member of the Petitioner's family, and the Petitioner therefore naturally placed entire confidence in him and put himself unhesitatingly and entirely under his guidance.

7. That on the death of one Sellathammal, the widow of the Petitioner's paternal uncle, in August 1891, the Petitioner who, it will be noted, just then attained the majority age of 18, was put forward as a claimant to the estate left by her.

8. That the Petitioner was unacquainted with his own family history and much less with that of the property of Sellathammal abovementioned.

9. That the Petitioner's uncle Venketaramaier and his trusted agent Panju Aiyer were solely responsible for putting forward a claim on his behalf to the estate of Sellathammal and for all the proceedings which they took in connection therewith.

10. That in the proceedings so taken by them the said Panju Aiyer and Venketaramaier, it was held by the Sessions Court of Tanjore and the High Court that they caused a judgment of the Tanjore old Mufti Sadir Amien's Court to be forged, for which they were convicted and with them Your Excellency's most unfortunate Petitioner too.

11. That the grounds of the Petitioner's conviction are contained in paras. 220 to 232 of the Sessions Court's Judgment and paras. marked 32 to 38 of the Honourable the High Court's judgment herein enclosed.

12. That it will be observed that the Petitioner has been convicted only upon the testimony of two approvers and upon the presumption that he must have been concerned in it as the forgery was intended for his benefit.

13. That this presumption, though doubtless natural, does not, the Petitioner respectfully asserts, apply in his peculiar case as the persons who acted for him were the abovesaid uncle and the long trusted agent of the family who had practically the absolute management of the affairs of his family and whose interest in it was paramount. From a perusal of paras. 116 to 138 (para. 131 especially) and paras. 183 to 219 of the Sessions Court's judgment it will be seen how much interest must have swayed the agent Panju Aiyer and uncle Venketaramaier who are found to have planned and guided the whole forgery, obtained perjured evidence and committed other acts for no apparent motive except their interest in the Petitioner; and there is not the least evidence-not even an allegation-that the *Petitioner* either directly or indirectly induced them to commit the fraud or promised to remunerate them for it or in any way came to terms with them which would have doubtless been the case if the Petitioner, as the party to be benefited by the transaction, had moved them to it.

14. That as regards the approvers' testimony, Petitioner can only submit that the approvers have been made to implicate the Petitioner also in view to make the case complete, he being apparently the party to be benefited (as supposed) by the transaction. It is moreover with some amount of misgiving that the Sessions Judge accepts their evidence (para. 47 of the Sessions Court's Judgment) and to connect the Petitioner with the offence the Sessions Judge depends mainly upon the presumption arising from the single circumstance that the transaction was for the supposed benefit of the Petitioner. This presumption does not, the Petitioner respectfully submits, hold good in his case because of the peculiar relationship in which his family agent and his uncle who conducted the transaction stood to him. The Petitioner can only further invite Your Excellency's consideration as to what value may be attached to an approver's testimony and as to whether it is probable that while it has been found that the numerous transactions before and after the fabrication of the document C (consulting Vakils, obtaining copy of the document &c.,) have been conducted by Petitioner's uncle Venketarama Aiyer and family agent Panju Aiyer, Petitioner would have been present *at* the fabrication of the document as alleged by the two approvers.

15. With reference to the remark in para. 221 of the Sessions Court's Judgment that the Petitioner was the Village Monegar and therefore capable of managing his

own business, the Petitioner begs to state that he was nominally so the work being done wholly by a Gumastah as such an arrangement often exists in the Tanjore District and is well known to the authorities. Respectable Mirasidars for the sake of the dignity attached to the place of a Village Munsif, take up the appointment, the work of collecting money etc., being done by Gumastahs.

16. In the same para. 221 the Sessions Judge refers to the Petitioner's going to Madras and Thirukovilur on the 2nd, 3rd, and 4th August, and 13th October 1893 to look after his own business, but it will be seen that the Sessions Judge himself attaches no importance to it as the Petitioner's visit to those places was after the impounding of C (forged document). As regards Petitioner's visit to Madras on the 30th June and 18th July, Petitioner begs to submit that there was then nothing to raise any suspicion in his mind as to the proceedings of his uncle and his agent.

17. The admission of Sellam's title in June 1891 referred to in para. 222 of the Sessions Judgment was made by the Petitioner's agent, 2nd prisoner (*vide* para. 120 of the same Judgment) and not by the Petitioner, and the Sessions Judge presumes it should have been authorised by the 3rd prisoner, but in fact the agent, 2nd prisoner, acted in this as in other respects upon his own responsibility.

18. That in signing the papers referred to in para. 223 of the Sessions Court Judgment and in being present at the Revenue enquiry alluded to therein (and repeated in para. marked 35 of the High Court's Judgment) the Petitioner acted upon the representations of his uncle and agent in regard to his claim in which he placed absolute trust. There was nothing in them to raise the least suspicion in Petitioner's mind that there was any fraud contemplated. The papers were drawn up by them (the 2nd and the 4th prisoners) in consultation with Vakils of standing and not being himself able to understand the force of the contentions on his behalf and the value of the innumerable papers which his uncle Venketaramaier and agent Panju Aiyer had with them and others which were presented in Court, he did what he was asked to do as, in his mind, no suspicion of any fraud was raised.

19. That the Revision Petition referred to in para. 225 of the Sessions Court Judgment was drawn up by the Petitioner's relation Mr. Sundaram Aiyer, High Court Vakil, and that he (the Petitioner) positively understood nothing of the technical distinctions that were made in regard to his claim to Sellathammal's property and was not therefore aware of the bearings of the different phases of his claim in the manner referred to in para. 222 of the Sessions Court's Judgment.

20. That it has been presumed that as the transaction was for the benefit of the Petitioner, he must have paid large sums of money; but Your Excellency will be pleased to notice that there has been no proof to the effect that he so paid except what the approver has stated (*vide* para. 231 of the Sessions Court's Judgment and para. 36 of the High Court's Judgment) and this statement of the approver is shown by para. 41 of the Sessions Court's Judgment not to be altogether trustworthy. Petitioner further begs to submit that his uncle Venketaramaier, a wealthy man owing 400 acres of land, must have met the expenses himself or obtained the same from Petitioner's agent Panju Aiyer who had practically absolute management of the Petitioner's property and funds.

21. That the fact of the Petitioner's absconding (paras. 229 and 230 of the Sessions Court's Judgment and para. marked 37 of the High Court's Judgment) should not, Petitioner respectfully submits, be construed against him as it was a natural result of the influence of terror in a youthful mind and of the advice of his relatives.

22. That Petitioner respectfully invites Your Excellency's particular attention to paras. 227 and 228 of the Sessions Court's Judgment wherein the Sessions Judge has found that even the application for copy of the forged document (C) was *not* put in by the Petitioner but that it was forged by agent Panju Aiyer (*vide* paragraph 134 also) in conjunction with first prisoner Nagesvaraiyer. If the Petitioner was cognizant of the forgery, there is no reason at all why an application for copy of the document with Petitioner's signature should have been forged, and this circumstance affords, the Petitioner, submits a strong presumption in favour of the innocence of Your Excellency's humble Petitioner and establishes the inference that the uncle and agent resorted to presenting a forged application for copy of the document lest their plans should be upset if the matter was taken to the knowledge of the Petitioner.

23. That had the Petitioner been instrumental to the forgery and paid the first prisoner for it, the intimation of having obtained a copy of the forged document—an important item of news doubtless—would have been sent by him (the first prisoner) to the Petitioner, but it was not. Your Excellency will be pleased to observe that intimation was sent only to the fourth prisoner—uncle Venketaramaier (*vide* para. 188 of the Sessions Court's Judgment). This is another strong circumstance which Petitioner begs to urge for Your Excellency's consideration, to show that he (Petitioner) had not any previous knowledge of the fraud.

24. That it has been viewed that the forgery having been intended for the Petitioner, it must have been done at his instance, but, the Petitioner submits that really his case stands as if his own father was alive and the transaction had taken place, when, it would not be argued that because the transaction was intended for his benefit, he should have been concerned in it. In exactly the position of a parent, stood the uncle Venketaramaier and the agent Panju Aiyer and transacted all business upon their own responsibility.

25. That Your Excellency's Petitioner deeply laments the circumstance that his estate, though it was of more than the required value, was not taken under the Court of Wards, but was allowed to be managed by the second prisoner in accordance with his father's wishes and to this untoward circumstance Your Petitioner attributes the misfortune that has now befallen him. Instead of being still a Ward of the Court (Petitioner not having attained the age of 21 at the time of his conviction) he is now undergoing rigorous imprisonment for the long period of seven years. But the Petitioner has still a hope and the only one in the mercy of Your Excellency's Government.

26. That besides the above circumstances, Petitioner begs to invite Your Excellency's merciful consideration to the following *viz*:—

1. That if regard be had to the Petitioner's age, character and status in life and the part believed to have been taken by the Petitioner in the transaction, he does not deserve the *maximum* sentence of the law passed upon him.

2. That he does not deserve to be punished to the same extent as the first prisoner Nagesvaraier, the author of the forgery, and the second and fourth prisoners Panju Aiyer and Venketaramaier who are found to have planned and carried out the nefarious deed.

3. That the fact that the forfeiture of the rents and profits of the estate could not be ordered by the Courts under Section 62 of the Penal Code unless at least 7 years' imprisonment was inflicted, may have probably been aconsideration in sentencing the prisoner to seven years' imprisonment.

25. That should Your Excellency's Government be so gracious as to consider that the Petitioner's case is thus a hard one and deserves Your Excellency's mercy, it is competent to Your Excellency's Government to grant the limited relief that he herein after prays for as Your Excellency's Government has power under Section 401* of the Criminal Procedure Code to remit any portion of the sentence of imprisonment without affecting the order in regard to the forfeiture of the rents and profits of his property during the prescribed period of seven years.

26. That the Petitioner fervently prays that under the foregoing circumstances Your Excellency's Government will be graciously pleased to order that the Petitioner be released from Jail without having to undergo the rest of the imprisonment inflicted upon him considering:—

(1.) That it has not been proved that the Petitioner was a party to the fraud or that he instigated it;

(2.) That the Assessors found the Petitioner "not guilty";

(3.) That his uncle and family agent were the persons solely responsible for the whole transaction;

(4.) That the Petitioner was but a youth of between 18 and 19 years of age at the time of the offence charged against him;

(5.) That he does not deserve to be punished so severely as he has been;

(6.) That to a man of Petitioner's family and status in life one year and seven months which he has already passed in Jail—not to mention the mere disgrace of a public heinous charge followed by a conviction—is a most severe punishment;

(7.) That by his incarceration in jail his unfortunate old mother and his innocent young wife only 16 years of age have been plunged in the deepest sorrow and misery;

(8.) And lastly that justice in his case will, under the above circumstances, be done only by the exercise of Your Excellency's prerogative of mercy.

For this act of grace and mercy Your Excellency's humble Petitioner shall as in duty bound ever pray.

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* Section 401, Criminal Procedure Code. When any person has been sentenced to punishment for an offence, the Governor-General in Council or the Local Government, may at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

A. Krishnaswami Aiyar
manager, Office of the Inspector-
General of Police
St. Thome.

WC 13/1915

[OG. / 25]
300—5-10-95

Jus.ᵗ DEPARTMENT.

C. No. 5100

FOR ORDERS.

The P.S. to H.E. the Engr. has desired that this petn should be sent to H.E. the petnr himself has not been called in accordance with the rules laid down in chap XXXIX of the Jail Code. It is also liable to rejection under para III of the petn rules. C. As petn from the convict has yet been recd. orders are requested as to (1) whether the Supdt. Engl may be asked to report whether any petn from the convict has been recd in his office & if so, to expedite its transmission to Govt., or (2) whether the signatory to the present petn be desired to forward copies of original & appellate judgments in the case.

W.C. 2/11/95

W.C 13/11/95

F.C 2

Petition from convict

FOR ORDERS.

~~H. E. THE GOVERNOR.~~

THE HON'BLE MR. H. W. BLISS, C.I.E.

~~THE HON'BLE MR. J. CROSE.~~

Darbastaten Dept.

Telegram fr the I. G of Prisons

dated 6th inst please say whether any petition from Rayhanath aiyar prisoner Salem Central jail has been rec'd or about to be sent.

Mongr (From orders of C.S.)

Dft
6/11/95.

[G / 9]
2 000—12-8-95.

Current No. 5302 Jud DEPARTMENT.

Sel
From

The I. G of Prisons

No.

Dated 8 — 11 — 95
Received 9 — 11 — 95
Rec'd
Enclosures 11 — 11 — 95.

SUBJECT.

Stating that the Superdt., Salem writes that there is no convict named Rayhanathaiyar but that the Tanjore Convict Superintendent has asked his people to prepare a petn for him

Submd.
await petn.

Mongr

Enclosure No III

5302

04264

INDIAN TELEGRAPHS. Monthly Number.

From (Office) George / Burhanpur

Day. 8 | Hour. 18 | Minute. 42 | Official Instructions dtd

From (Person) gaids

adras

UNDER SECRETARY 9 NOV 95 PUBLIC DEPTS

our telegram 691.
superintendent salem wires
as follows no
convict here named
raghanathaiyan but tan
conduct raghanathaiyah
has asked his
people to prepare
petition to government
for him

84 Words

F.C.P.

MADRAS 8-11-95

Rec'd. from LN. Hrs. Mts. by

Sent to LN. At Hrs. Mts. by

Telegraph Master.

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COURT OF SESSION OF TANJORE.

CALENDAR CASE No. 1 OF 1894.

THE QUEEN EMPRESS *Versus* :—

1. NAGESHVARAYA.
2. PANJUVAYA *alias* PANCHANADAYA.
3. NAGANADAYA *alias* ISVARAYA *alias* ISVARAPAYA.
4. VENKATRAMAYA.

OFFENCE :—*Against 1st Prisoner,*

1. *Fabricating false evidence for the purpose of being used in a judicial proceeding, Section* 193 *I. P. C.*

2. *Forgery of a record of a Court of Justice, Section* 466 *I. P. C.*

Against 2nd, 3rd and 4th Prisoners.

3. *Abetment of Fabrication of false evidence for the purpose of being used in a judicial proceeding, Sections* 193 *and* 109 *and* 114 *I. P. C., and Abetment of Forgery of a record of a Court of Justice, Sections* 466, *and* 109 *and* 114 *I. P. C.*

OPINION OF ASSESSORS :—

Name.	Caste.	
1. A. Kuppusami Ayar	Brahmin.	*1st and 2nd Prisoners "guilty," 3rd and 4th Prisoners "not guilty."*
2. Rathakrishna Naidu	Sudra Vaduga.	

FINDING OF THE JUDGE :—*Concurred with the Assessors as regards the 1st and 2nd Prisoners and differed from them as regards the 3rd and 4th Prisoners.*

SENTENCE :—*1st and 2nd Prisoners each:—7 years' rigorous imprisonment including 3 months' solitary confinement and a fine of Rupees 5000, in default of payment whereof, additional rigorous imprisonment for 1 year and 9 months.*

3rd and 4th Prisoners each :—7 years' rigorous imprisonment and forfeiture to Government of the rents and profits of his moveable and immoveable estate during the said period of 7 years.

The 1st Prisoner was defended by counsel Mr. W. S. Gantz, the 2nd Prisoner by Vakils Messrs Muthusami Pillai and Ramachendraya, the 3rd Prisoner by counsel Mr. E. Norton and Vakils Messrs. Kalianasundrum Ayar and P. V. Naganatha Sastrial and the 4th Prisoner by counsel Mr. R. F. Grant and Vakil Mr. Sankaranarayana Sastrial.

The Case was committed by G. W. Dance Esquire, 1st Class Sub Divisional Magistrate of Kumbakonam Division.

(j) It is strange that the Judgment sets out the Will with much greater particularity than is at all necessary for the decision of the case.

(k) It is strange that the guardian should manage the property until the daughter as well as her husband should come of age. This is unintelligible from the point of view of a genuine Will; intelligible to suit the actual history of the testator's estate, which will now be narrated.

10. (a) In 1836 Anapaya had instituted a Suit (MM_4) but died during its progress. From the Judgment which was pronounced in 1837 it appears that his widow represented him. No Will had then been brought forward. In 1847 a suit was instituted, and the Judment was pronounced in 1849—five years after the date of C; but Narainsami was not Plaintiff, nor is the Will mentioned, but Sundrapaya appears as representative of the daughter Sellam who had succeeded her father (MM_5)

(b) And so it is with six other Judgments of 1847—49 (MM 1, 2, 3, 6, 7, 8). Narainsami is always ignored.

(c) In 1854 the daughter Sellam attained her majority, and her husband Narainsami took over charge of the estate from her guardian Sundramaya. The property had appeared in the Revenue Registers in the name of the guardian, and the Collector was asked to transfer the registry to the name of the husband. A formal enquiry took place extending over 2 years, in the course of which the husband put in a statement (LL 12th February 54), admitting in terms his wife's ownership, "my wife is the heiress"—and offering to take charge on her behalf. Finally, the estate was registered in his name, but as her manager.

(d) In 1855 there was some litigation in which the husband Narainsami put in a statement (MM_{10}–30th April 1855). He says the widow Parvatham succeeded her husband Anapaya, and was enjoying the property with all rights; that when she fell ill she appointed Sundrapaya as manager until Sellam should come of age; and that on the widow's death Sellam his wife succeeded, the Revenue registry passing to him with her consent. ($MM_{9\ \&\ 10}$).

(e) Again, in 1864, in a suit to which Narainsami was a party, he relied on his wife's long possession and ownership. (MM_{11-12}). This Suit ended in 1865.

11. Thus from 1854, when he first appears on the scene, until 1865, 3 years before his death, Narainsami upheld his wife's ownership. And there is no hint of a Will from 1837 onwards, although the circumstances demanded that it should have been put forward if it had really existed.

12. It is plain therefore that the recital of the Will in a Judgment of 1844 is strong internal evidence of that judgment being spurious.

13. Altogether then it is absolutely clear that C is in material and contents a forgery. And it must have been forged by a man with a smattering of legal knowledge, conversant with many circumstances of the Pillur and Rendankattalei families, and anxious to assist the Rendankattalei claim to the Pillur estate.

14. It being established that Exhibit C is a forgery, it is next to be considered whether the evidence connects any of the Prisoners with it,

15. The first class of evidence to be investigated is that of the two approvers (1st and 3rd Prosecution witnesses), and it must be shewn how the prosecution has been able to put them forward.

Steps leading to arrest of approver Pattan.

16. When in consequence of the representations of the Kiranur claimant the District Judge had seized Exhibit C on the 24th July, he proceeded to hold an enquiry in the Copyist and Record Departments of his Court; and it was ascertained that the certified copy of it which had been issued on the 10th July had been signed for by one Sambasivan. The matter was put into the hands of the Police, and a Special Inspector deputed to detect the crime. He took up his quarters in Kumbakonam because there was reason to believe Sambasivan had been living there, and because there was information connecting the forgery with 1st Prisoner who lived in that town. Enquiry proceeded until on the 7th October the Inspector (2nd defence witness) put himself into communication with one Muruga Pillai, an associate of forgers, who led the Inspector to believe that for a reward Muruga Pillai could enable him to put his hand upon the smith who had made the seal for C, In consequence of these negociations, Muruga Pillai induced the Inspector (with the Joint Magistrate Mr. Clegg) on the morning of 14th October to visit the shop of one Sadasiva Pattan. There Muruga Pillai and the Pattan were found together, the latter being in possession of some metal stamps for counterfeiting the Government Seal on ancient cadjans (palmyra leaves) and of some cadjains already stamped with these counterfeits, and being also as in the act of imitating on a copper plate the seal of a Trichinopoly Court paper. The Pattan was arrested, presumably for being in possession of counterfeiting implements, and after a search of his shop was taken to the Joint Magistrate's Court. On the way he confessed having made the seal for C, and on the Joint Magistrate tendering him a pardon made a statement implicating the four Prisoners, and Sambasivan.

Was Pattan concerned in the Forgery?

17. The view taken as to Pattan by the various learned Counsel and Vakils for the defence is that from the first he was a confederate of the Inspector—that he sold himself to that officer, or the Kiranur party behind him, for the purpose of falsely accusing the Prisoners—that the forged cadjans and counterfeiting implements were supplied to him by Muruga Pillai, through whom the Police worked the plot,—that his arrest was a pre-arranged dramatic surprise—that the Inspector then turned round upon him and used the fear of prosecution as a further motive of submission, and that the man is really incapable of cutting either the Trichinopoly imitation seal on which he was found engaged, or the seal with which C has been impressed.

18. This last contention may be put aside. Pattan has been given the necessary tools, and has during the progress of the trial turned out work fully

equal to the seal (XVIII) on which he was found engaged, or to the seal from which C must have been impressed (Prosecution 41st witness and Exhibits AAA 1—4). The only point in which he has failed is ability to cut letters in relief, which was not needed for C. It was indeed needed for the Trichinopoly seal, which he was engaged in copying on 14th October, but his work on the copy (XVIII) shows that then too he had undertaken what was beyond his grasp.

19. I do not think too that the supposition of the Inspector turning round upon him on 14th October—ignoring their supposed plot—and threatening prosecution for this new forgery, can add weight to the argument that Pattan had already sold himself to the Inspector. If the man had agreed to his part and learnt it thoroughly with the intention of carrying it out for the sake of gain, here is sufficient motive for his action without adding the additional motive of fear. I find nothing to support this in the conduct of Pattan. It is consistent with several hypotheses, but not I think with that of the Inspector having suddenly to his surprise turned against him.

20. As for the suggested supply of forged cadjans and counterfeiting implements by Muruga Pillai, it is the case for the Prosecution that the Inspector wished to test Muruga Pillai's statement that the smith could forge cadjans and metal seals, and therefore supplied him through Muruga Pillai with blank cadjans to be forged (these being first initialled by the Police Superintendent) and then with the Trichinopoly Court paper from which to imitate the seal. The weak part of the case here is that the Inspector had also through the same intermediary to supply pen, compasses, pad, ink, and a copper plate, and did not mention this in his report. If the Pattan had really believed he was asked to undertake a new forgery, he would (if his deposition be true) naturally have gone to his old friend and accomplice 1st Prisoner for these and for all the complete set of tools which he says the latter possesses. The doubt this raises is confirmed by the fact that Muruga Pillai actually shewed him a photographic or lithographic copy of the last page of C, and persuaded him to attempt to copy the Mahommedan signature of the Judge. It is true that the photograph or lithograph is so excellently made that an ordinary native cannot detect that it is a mechanical reproduction (Prosecution witness 18); but supposing Pattan's deposition to be true that in 1st Prisoner's house he had tried his hand at forging this very signature, it is beyond question that he must have suspected the game was up. I am therefore unable to accept the Police view that Pattan was decoyed into a separate series of forgeries. I shall therefore decide between the defence view that he was a confederate of the Police from the first, and what appears to me the only reasonable alternative, which may be thus stated. That Pattan had been concerned in the crime; that the detection of C as a forgery, the accumulation of evidence against one at least of his accomplices (Sambasivan) and the investigation proceeding in his town (aided perhaps by information true or false imparted to him by Muruga Pillai) induced him to anticipate his accomplices in treating for being taken as an approver; that before this negociation could be accepted, the Police required him by the same go-between to prove his competency for the work he was represented to have performed; that he consented to work on the cadjans; that this did not satisfy the Police who required him to cut a metal seal and imitate the Mahommedan signature of C; and that Muruga Pillai by arrangement with the Inspector took the Police to arrest him when he should by Muruga Pillai's devices be discovered with all these evidences of guilt around him.

21. For this theory it is immaterial whether Pattan knew or did not know that he was going to be arrested at a given time. The view that he did not know would agree with his accusations of Muruga Pillai at his arrest; and with a detail that I have always regarded as not insignificant; *viz.* that Pattan at the time of his arrest had his concubine with him, with the natural result that she too was arrested. If he had been aware of and had in fact concerted his arrest, he would I think have sent the woman away.

22. I agree then that Pattan was from 7th October attempting to negociate with the Inspector to be taken as a witness. It remains to be seen whether he had been concerned in the crime.

23. If he was not concerned, the only motive for his self-accusation can be mercenary. That is to say that this man, trusting only to the word of an Inspector that he would be pardoned, not only accused himself falsely of a highly-penal offence—with the necessary consequence of a long imprisonment (it has already lasted nearly 6 months) and the chance of breaking down in cross-examination and being prosecuted for perjury—but also put himself in a position to be arrested by a magistrate while actually in possession of the counterfeit seals for stamping Government cadjans. It would require something more than mere suggestion in argument to convince one that such an improbable course had been adopted by Pattan. It is clear that C was sealed with a hard, probably a metal seal; to cut such a seal requires a worker in metal; Pattan is a smith capable of just such coarse work as we there find; and it is infinitely the more probable view that he has spoken the truth in asserting his own connection with the forgery.

Approver Pattan's evidence.

24. On the evening of his arrest, Pattan made a statement to the Magistrate, after tender of pardon. He said that at the end of Chitrai (12th May or beginning of Vayasi (13th May) 1st Prisoner Nageshvara called him to his house, where witness saw persons described as the master of Rendankattalei (3rd Prisoner) his manager (2nd Prisoner) and his uncle (4th Prisoner); that Nageshvara (1st Prisoner) shewed him a judgment, which he describes as having a seal containing Tamil and English letters, and as being of the same workmanship as the Trichinopoly* seal; that 1st Prisoner asked him to copy the seal but the plate he offered was too thin, and it was agreed a thicker plate should be supplied on the next day: that on the next day he saw the same men there; that 1st Prisoner's gumasta Sambasivan was dictating to his master from a document; that 1st Prisoner sent for the Judgment he had shewn the previous day, and told witness who did not understand the letters, to copy the seal roughly; that witness got him to copy the impression of the seal, on the brass plate, which he then proceeded to engrave; the resulting seal was then impressed on the forged judgment; at 1st Prisoner's request, witness then tried on a separate paper to copy the Mahommedan signature, but not succeeding,

*(In fact the seal of the genuine judgment could not have contained English letters; but the mistake is not inexcusable in one who cannot read English, and the characters on some of the genuine seals are very hard to trace; the similarity of workmanship depends upon the meaning of the phrase; there is some similarity in the fact that letters are cut between circles; and much dissimilarity—the principal being that in the Trichinopoly seal the letters are in relief—a fact however which the witness failed to grasp even when he was imitating them on 14th October.)

1st Prisoner himself forged the signature ; the document was then given to the master of Rendankattalei (3rd Prisoner) who gave witness Rs. 25, and promised him annual gifts of rice ; then witness went away.

25. It will be remembered that this witness was arrested with three suspicious things in his possession; the seal in process of being copied from the Trichinopoly Court paper, some cadjans on which forged stamps had been impressed; and some counterfeit seals for cadjans. He was safe as to the first two, as they had been received though indirectly, from the Police ; the last however would be enough to secure his conviction for being in possession of instruments for forging (Section 256 I. P. C.);so in this statement he makes haste to say he obtained them from 1st Prisoner. The statement, even if it should be true, would not affect the present case, except in so far as it affords materials for cross-examination.

26. Six weeks later, on the 30th November after the charge-sheet had been put in, this witness was examined. He deposed that all the 4 Prisoners were present, and that Exhibit C. was the judgment then forged. He repeated his previous story with only one alteration, *viz.*, that 1st Prisoner drew the letters to be engraved, on a piece of paper, which was pasted on the plate, the letters then being cut.

27. The witness was next examined on the 22nd January 94 in this Court, and cross-examined all that afternoon and the seven succeeding days. His examination in-chief being at least twice as full as before the Magistrate, he told his story in more detail. In cross-examination he was not shaken as to his account of the forgery, but his answers as to the cadjan-seals and as to his connection with Muruga Pillai and the Inspector and as to the circumstances leading up to his arrest were shifty. As to the paper being affixed to the brass plate, he explained that it was not pasted but merely affixed ; but that in engraving the first letter the paper came off and was thrown away.

28. The man is no doubt a professional forger, and it is impossible to rely upon his evidence-given to get himself off-unless it is substantially corroborated. It is enough to say here that his accusation of the Prisoners is no stronger and no weaker now than it was on the 14th October within a few hours of his arrest.

Approver Sambasivan's evidence.

29. Pattan having implicated the four Prisoners and Sambasivan, warrants were issued that afternoon for 1st Prisoner and that night for the others. Prisoners 1 and 2 were soon arrested; the warrant for Sambasivan, who had gone to Tiruthuraipundi some 40 miles distant, was executed on the 25th October. He was brought to Kumbakonam on the 26th and made a statement (IV) to the Magistrate on the 31st when the case was first heard in Court.

30. He admitted that he had received from the District Court the certified copy of C. on 10th July. He said that as he was starting from Kumbakonam to Tanjore on business of his own Panjuvaya (2nd Prisoner) and Isvaraya (3rd Prisoner) asked him to see if he could get for them a copy which they had applied

for in a case of which they gave the number, saying that they would come by the noon train. He came to the Copyist Department and asked if the copy applied for by Panjuvaya and Iswaraya was ready, and obtained it on saying he was known to them. The two men came by the 3 o' clock train, and he gave the copy to Panjuvaya.

31. In this same statement Sambasivan alleged that in the cart which took him to the Railway station after arrest he had been beaten on the wrist with a handcuff and on the back with the hand; and that in the train the Inspector with threats of blows had shewn him some paper in his handwriting, telling him his only chance of escape lay in turning approver as the gold-smith (Pattan) had done ; that he had consented, and on reaching Kumbakonam next day (26th October) had given a statement to the Inspector as dictated by him. He admitted however that he had seen the joint Magistrate both in Court and in the Sub-Jail on the 26th, and had not complained of ill-treatment.

32. A fortnight later, on 14th November a pardon was tendered to Sambasivan, who then gave a deposition to the following effect :

Until June of 1893 he had been living in 1st Prisoner Nagesvara's house in his employment. During the last year of his service, Isvaraya (3rd Prisoner) his manager (2nd Prisoner) and his uncle (4th Prisoner) were frequenting the house, consulting Nagesvara about the Pillur case, (then in the Negapatam Sub Court)and asking him to fabricate a document to establish the claim of 3rd Prisoner. At request of 2nd Prisoner Panjuvaya 1st Prisoner forged a Will and gave it to him. (Witness seemed to know but little about this Will, not knowing whether a copy or draft was given, and describing its contents simply as a settlement of the property by Anapaya.) The 2nd and 4th Prisoners (the agent and the uncle) reporting that vakils advised against this will being filed in Court, 1st Prisoner Nageshvara conceived the idea of fabricating a Judgment to embody and recite the will. To this end they applied for copies of some Mayavaram Court Judgments, and subsequently through the connivance of Assistant Record-keeper Kuppusami Ayar obtained the originals. They then fabricated a Judgment of that Court, but Kuppusami Ayar refused to substitute it, as the Mayavaram records were in his own custody, agreeing however to get them a Judgment of another Court from the custody of some one else. When the hearing of the Negapatam Suit was drawing near, (it was disposed of on 1st November 92) Prisoners 2, 3, 4, came and asked 1st Prisoner how matters stood, and he told them of Kuppusami Ayar's resolution, It was contemplated to file the forged Judgment in the Magisterial Possession case, but that was decided (14th March 93) without anything being done. After that 1st Prisoner Nageshvara told 2nd Prisoner Panjuvaya, who was coming often, that he had obtained an original judgment from the Court, and that he would substitute a forged one for it. 1st Prisoner brought the Pattan who required a thicker plate and was required to come the next day. 1st Prisoner wrote part of a fair copy of the forged Judgment from a draft, apparently in the presence of Prisoners 2, 3, 4. (The Tamil here is not clear). The next day in the presence of Prisoners 2, 3, 4 the writing was continued, witness dictating from the draft, and Pattan working at a seal. The Pattan was made to imitate the signature on a separate piece of paper, but failed ; 1st Prisoner then forged the signature. This was on 7th or 8th May. Next day 1st Prisoner went to Tanjore and on his return informed 2nd Prisoner Panjuvaya that the forged Judgment had been substituted in the records. Witness went

on to say that on 10th July when he received the certified copy of C, 1st Prisoner was present and it was only through his speaking to the Copyist Superintendent that the copy was given to witness. Outside the Court he gave the copy to 1st Prisoner who told him to keep it; at the Railway Station he gave it to 2nd Prisoner Panjuvaya. Witness then used this phrase, which has been much relied upon by the defence; "We all went to the Grahapravésam", or housewarming in Kumbakonam on 1st Prisoner bringing home his bride. On 14th July witness saw 1st Prisoner outside the Tanjore Court writing an application for five more copies of C.

33. Witness was next examined in this Court. His examination-in-chief took up the 9th January, and his cross-examination the 8 succeeding days.

34. The cross-examination largely proceeded on a statement (IX) of this witness recorded by the Inspector on 26th October, the day after his arrest, and a few hours before he was placed before the Joint Magistrate. This the Prosecution could not put in (Section 161 Criminal Procedure Code) but the defence relies upon it for contradictions and omissions.

35. The chief omission is of the Will first said to have been forged, and of the Mayavaram Judgment said to have been forged and to have been rejected by Assistant Record-keeper Kuppusami Ayar. The witness and the Inspector are inclined to think that some mention was made of the Will, though not recorded. They speak so doubtfully however that I consider that no mention was made of it then; and the witness' later accounts of it before the Magistrate and in this Court are so hazy and contradictory that I cannot believe he knew much about it, of his own knowledge.

36. As to the Mayavaram Judgment, I cannot think that witness mentioned it to the Inspector, as both assert; for it is a matter as to which witness had something material to do, namely writing applications for the copies of the original. (If indeed he did not write the draft of the forgery himself, See pp. 2 and 9 of printed notes.) If this had then been stated in all its bearings, it would have been recorded. It is true that on the day of this witness' arrest, the Inspector shewed him vakalats for these applications, but I think it probable he did so only because on the face of them they connect witness with 2nd and 3rd Prisoners.

37. How can these omissions be explained? The explanation put forward by the Prosecution is that the Inspector had been deputed to detect the forgery of C; that when Sambasivan on his arrest for that forgery shewed a disposition to turn approver, the Inspector took down all he said as to the perpetration of that offence, and then hurried him before a Magistrate, without then enquiring as to all the antecedent circumstances introductory of and leading up to, the offence. I see nothing unreasonable in this explanation.

38. I now turn to the contradictions between this statement IX of 26th October, the statement before the Magistrate of 31st October, the deposition of 14th November and the deposition in this Court of 9-20 January.

39. The statement of 31st October may be taken first. This had the effect of disclaiming all knowledge on behalf of himself, and his master 1st Prisoner

and leaving all the responsibility for obtaining the copy of C on the shoulders of Prisoners 2 and 3. It accounted for his statement to the Inspector by the excuse of ill-treatment; but this may be put out of the case on the ground that that statement has not been used against the accused. Besides, it is shewn (Prosecution 43rd witness) that he got only a blow on the knuckles with a handcuff from a Police Constable; and this, most highly reprehensible though it is, could not have affected witness 19 days after when he made his confession to the Magistrate. In the meantime too he had made his exculpatory statement, which shows he was no longer in fear of the Police.

40. The witness told the Magistrate on the 14th November that C had been forged 7th or 8th May; and he adheres to this in this Court. In statement IX to the Inspector on 26th October he was not asked to fix the date, but gave a general account from which the time can be calculated thus;

(*a*) Within 2 or 3 days after the disposal of the Possession case (14th March) Prisoners 2 and 3 came;

(*b.*) 2 or 3 days later they came with money;

(*c.*) 5 or 6 days later, 2nd Prisoner came;

(*d*) Next day 2nd Prisoner came, and he and 1st Prisoner wrote the draft;

(*e.*) Some days later, 1st Prisoner wrote the fair copy.

If this calculation is correct, the "some days" must be no less than 47 days to bring one to the 7th May. It must be observed however that between (*a.*) and (*b.*) come these words; "They were considering that appeal should be preferred against the decision in the Possession case. On those occasions I was in Nageswaraya's house" and witness' subsequent words may well refer to one of those occasions. This would upset the calculation on which the defence rely for the contradiction.

41. In IX he said Rs. 500 was paid to 1st Prisoner; here he says a bag which contained about 1000 Rs. He has contradicted himself on several occasions as to the time when payment was made.

42. In IX witness only referred to one day on which the forgery was in progress, when he himself dictated; here he speaks of two days and says Suri another gumasta of 1st Prisoner dictated on the first day.

43. In IX he said that the day after the forgery Prisoners 1 and 2 went to Tanjore by the morning train. Before the Magistrate he said that 1st Prisoner went to Tanjore and returning the same day told 2nd Prisoner that the forgery had been put into the Record-room.

44. Besides these contradictions I have mentioned those as to the Will; and he has been shifty also as to the Mayavaram forgery, pretending he cannot recollect by whom it was written (notes p. 2). If it be granted he has had anything to do with the forgery of C, it must be admitted that his evidence as to the complicity of others is in need of substantial confirmation.

45. I think it cannot reasonably be doubted that Sambasivan was concerned in the forgery, for besides his admission of guilt, he is proved to have re-

ceived the only copy of it that was ever issued from the Court (see evidence of 17th and 21st Prosecution witnesses and compare his receipt in Register D with the signatures to his depositions.)

Comparison of Pattan's and Sambasivan's evidence.

46. Though the two approvers cannot supply each to the other such corroboration as is required by a wise rule of practice, it must be seen wherein they contradict one another.

(*a.*) They give the place of the forgery, Sambasivan at first as the back-yard Veranda, later as the back *rezi* ; Pattan at first as the Veranda of the second compartment, later as the *Kudam*. They explain that these are different names of the same place, and it has not been shewn by any counter-evidence that this explanation is unreasonable.

(*b.*) Sambasivan says Pattan came as soon as the writing had begun (Notes Page 12) ; Pattan seems by implication to say he came only after 6 or 7 pages had been written. (Notes Page 32).

(*c*) Sambasivan did not see 1st Prisoner touch the metal seal ; Pattan says 1st Prisoner smoothed its unevennesses and washed it once or twice.

(*d.*) Sambasivan does not mention the use of a magnifying glass ; nor several other details to which Pattan speaks.

(*e.*) Sambasivan (Page 24) says 1st Prisoner kept C ; Pattan (Page 3) that 1st Prisoner gave it to 3rd Prisoner.

47. I have now gone through the evidence of the two approvers. I believe that each of them was concerned in the forgery, but that neither the Pattan, the professional forger, nor Sambasivan, who is by his own account a forger's parasite, can be taken to have given an entirely full and candid account of all antecedent and subsequent circumstances within their knowledge without concealing a single point or affecting more knowledge than they possess at first hand. On the other hand the variations and contradictions are not vital, and there is a considerable residuum of consistency and agreement as to which they have not been shaken. However, the evidence of such witnesses is to be acted upon only after they have been confirmed by trustworthy and independent evidence as to each person whom they accuse. This confirmation will now be discussed in relation to each of the prisoners.

1st Prisoner Nageshvaraya—His connection with Sambasivan.

48. (*a.*) The connection of Sambasivan with 1st Prisoner is shewn as early as 1890 by the latter attesting an assignment to the former (L.)

(*b.*) In September 92 Sambasivan takes action to deposit money for 1st Prisoner (H_2.)

(*c.*) In July 93 an eating-house keeper in the ordinary course of business makes an entry in his books against Sambasivan, gumasta of Kumbakonam Nageshvaraya. (VV_1 and 23rd Prosecution witness.)

(*d.*) Four Vakalats and two petitions (A_{1st} B_{1-4}) for copies of the Mayaveram Judgments, drawn up as the Vakil (24th Prosecution witness) says at the request of 1st Prisoner, are in Sambasivan's writing (compare with H_2, I and his signatures); and the Vakil says Sambasivan was present with 1st Prisoner both when these were given, and also in April 93 when other applications were given.

(*e.*) An Ex-Village Munsiff of a suburb of Kumbakonam proves that these Vakalats were attested by Sambasivan, and that Sambasivan was 1st Prisoner's gumasta. (25th Prosecution witness).

49. There seems therefore no ground for reasonable doubt that Sambasivan did act as gumasta for 1st Prisoner. It has been proved by the last mentioned witness, and not disproved, that Suri was another gumasta.

Connection of 1st Prisoner with the Pillur disputes.

50. (*a*) Before the Magistrate 1st Prisoner said 3rd Prisoner consulted him about the claim to Pillur, adding " on many other occasions they may have asked and I may have said." (BBB_1).

(*b.*) In February 92, 1st Prisoner attested the Vakalat for 3rd Prisoner's Injunction suit in Negapatam (EE) and bought Rs. 155 worth of stamps for the Plaint. (see back of EE).

(*c.*) In August 92, one gumasta Sambasivan wrote, and both gumastas attested two Vakalats purporting to be by 3rd Prisoner to 2nd Prisoner (K_{1-2}), and an application by 2nd Prisoner for copies (K_3) appears to be in 1st Prisoner's handwriting

(*d.*) In October 92 the applications for copies of the Mayavaram Judgments in the name of 3rd Prisoner are connected with 1st Prisoner by the evidence of the Vakil and the Ex. Village Munsiff (24th and 25th witnesses.)

(*e.*) In January 93 there is a Vakalat as by 3rd Prisoner in the name of Sambasivan, who in consequence made an application to the Sub-Collector. Both these and a document leading up to them have stamps (four in all) which were bought in the name of 1st Prisoner.

51. These circumstances, taken with the oral evidence of Prosecution witnesses 11, 26, 27, 28 and 17th Defence witness, prove beyond all doubt that 1st Prisoner was connected as a private law-agent with the Pillur litigation and disputes, and that Sambasivan assisted him in some respects. (See also paras 139-220.)

Connection of 1st Prisoner with the copy-applications for C.

52. A copy of C was first applied for on 15th April (C. C.) and again on 29th April (D. D.) It is enough to say here that 2nd Prisoner has admitted he wrote the former ; and that it is in the name of 3rd Prisoner. The evidence as to 1st

Prisoner's conduct connecting him with this application or with the copy of C will now be noticed in order of date.

53. In the second week of May 93 during the District Court's recess a clerk from one of the Subordinate Courts was engaged in destroying old records (16th Prosecution witness Chinnasami Pillai,) He says that 1st Prisoner came 3 or 4 times and used to go apart for half an hour at a time with Assistant Record keeper Kuppusami Ayar. On 9th or 10th May he asked 1st Prisoner why he had come, who told him he had applied for a copy of a certain document and wanted Kuppusami Ayar to send the original to the Copyist Department. If this were true, it was open to the defence to prove it from the Copy Application Registers.

54. Another clerk, who had also been deputed from an outside Court, (since deceased), deposed before the Magistrate that 1st Prisoner came and held such private conversations with Kuppusami Ayar every day for 3 or 4 days (PP.)

55. Copyist Dorasami Pillai (21st witness) deposes that at the end of May 1st Prisoner told him he had applied for a copy of Judgment $\frac{138}{1844}$ (the number of C) and asked him to get a certain record-clerk to send it for copying, as he wanted it urgently for an encroachment prosecution in Kumbakonam. A week later, 1st Prisoner again reminded him, and a third time a week later, when he accused Kuppusami Ayar of having abstracted it for revenge owing to a quarrel about a copy of a Mayaveram Judgment for which he had applied, and threatened to inform the Judge anonymously of his having obtained three original Judgments from Kuppusami Ayar's custody.

56. Witness gave information as to these facts as early as 4th August—11 days after C had been impounded (T.T.2). The Defence have not attempted to prove that any Judgment numbered $\frac{138}{1844}$ could be of use in the Encroachment Case, the records of which have been filed in Court.

57. The Head-Record-Keeper (Krishna Rau 20th witness,) besides proving that the Mayaveram Judgments were in Kuppusami Ayar's custody, the Mufti Sadr Amin's in his own, deposes that on 1st or 2nd June 1st Prisoner told him he had applied for a copy of an old Judgment of the Mufti Sadr Amin, and complained that he had not obtained it. About 10th or 15th June 1st Prisoner came to witness' house, and again complained of the delay, mentioning that the Judgment was of the year 1844. Witness mentioned this last conversation to the Sub Judge on 11th August.

58. None of the learned counsel for the defence has attempted to impeach the veracity of this witness. The learned counsel for 1st Prisoner indeed said "It is difficult to say anything against him as he has given his evidence in a straightforward manner." It is only suggested that he might have misunderstood the 1st Prisoner as saying that he himself had made the application for Mufti Sadr Amin's Judgment $\frac{138}{1844}$

59. This evidence seems to me to establish that in May and June 1st Prisoner was avowing his having applied for a copy of the Mufti Sadr Amin's Judgment and was taking considerable pains to obtain it soon.

1st Prisoner's possession of the copy of C.

60. The next date is the 10th July. Abraham, the Superintendent of the Copyist Department (17th witness) deposes that he delivered the certified copy of C to Sambasivan on 1st Prisoner Nageshvaraya guaranteeing that he was the agent of the applicant (who nominally was 3rd Prisoner Isvaraya.) This witness was questioned by the Sub Judge on 27th July, only three days after C was impounded, and he told the same story then. But he then said, at first that he could not identify Nageshvaraya; later, that he did not know him well, but might identify him if he saw him. Here he admits he knew 1st Prisoner well. He also explained that when 1st Prisoner Nageshvaraya first came and asked for the copy, he altered the name of the applicant in the Register—(Isvaraya) into Nageshvaraya by prefixing the letters Nag—thinking the entry a clerical error. This excuse is supported by the fact that the addition was made, not in a way to escape, but in a way to attract, attention, being in red ink. The explanation is also supported by Dorasami Pillai (21st witness.) But the more probable view on the facts for the prosecution seems to be that Abraham must have had a more or less guilty knowledge, and pretended to believe in the clerical error to account for his giving the copy to 1st Prisoner or his gumasta.

61. Dorasami Pillai (21st witness) also speaks to the copy having been given to Sambasivan on 1st Prisoner's guaranteeing him to be the agent of the applicant. He made this statement on the 27th July (T. T. 1).

62. On the 11th July—the day after the copy of C had been given to Sambasivan, 1st Prisoner, telegraphed to 4th Prisoner, from Kumbakonam "Copy received; come immediately" (E & B. B. B1.)

63. On 13th July 1st Prisoner was travelling by train, and in a conversation with a Sub Engineer (7th witness) and others said 'what, gentlemen! Do you know in what condition the affair of the Pillur estate now stands?' He then proceeded to read out a Court paper, which he said was a copy he had obtained from the District Court records. It was a copy of an old document and concerned the Pillur estate, referring to a Will of Anapaya, deceased long before, leaving the property to his son if a male child should be born; but if a daughter, to her husband on marriage.

64. This Sub Engineer Mr. Nilakanta Sastri is a gentleman above suspicion. His veracity has not even been impeached by the learned counsel for 1st Prisoner, who has suggested an explanation which will be noticed presently.

65. The next day (14th July) 1st Prisoner was again travelling by train. In the same carriage was Sivaramakrishnan (9th Prosecution witness) a gumasta of a Vakil who had formerly appeared on one or two occasions for the Kiranur claimant, but who was at this time engaged by neither party, though later before the committing Magistrate he represented 2nd Prisoner. 1st Prisoner gave this man, to read, a certified copy of a judgment the contents of which he recites in terms similar to C; and asked him what objection could be urged against it. Witness answered "They will say it is a forgery". When remonstrated with by a companion for showing it to a man of the opposite party, 1st Prisoner replied 'What if it is shewn to them? It is to them it should be shewn".

66. The motives underlying such a disclosure might be these; to learn what could be urged against the copy; to prevent it afterwards being said that the judgment had been suddenly sprung upon the Kiranur party in Court: to induce a compromise of yielding up half the property, as spoken of by 11th Prosecution witness; to invite overtures from the Kiranur claimant to buy 1st Prisoner over and suppress the forgery. The last three motives might have developed into action if the Kiranur claimant had waited but a few days longer before applying to the District Court to impound C, for as will be seen later there is no doubt that C was to be destroyed as soon as five more copies of it should have been furnished.

67. Immediately he got out of the train this witness says he told his master of what had been shown him. That gentleman had been summoned to this Court as a defence witness for another purpose, but the defence did not put him in the box to contradict his gumasta on this point. Witness also told the Kumbakonam Sub Judge so early as 27th July.

68. Later on that same day (14th July) 1st Prisoner was again in the train going to Tanjore, and Mr. S. A. Ananta Narayana Ayar, Vakil of the High Court was in the same carriage (8th Prosecution witness). 1st Prisoner who knew that this vakil to some extent, and his brother to a greater extent had worked on the side of Kiranur, asked him "If a person files a copy of a Judgment in Court, can the opposite party object to it as *peshagu* (false) ?" Witness said they could, for sufficient reasons, and questioned 1st Prisoner why he had asked him. 1st Prisoner said "A Judgment has now been found in connection with the Fillur case. By it it appears that Srinivasaya (of Kiranur) has no right to that property."

No attempt has been made to impeach the veracity of this witness.

69. These witnesses render it certain that a copy of C. was in 1st Prisoner's hands, at least from 13th July. Taken in connection with the evidence before noted as to 1st Prisoner having applied for the copy and busied himself in hurrying up the clerks to obtain it, and with the evidence of Abraham the Copyist Superintendent (17th witness) and Dorasami Pillai (21st witness) it may be taken that there are considerable grounds for believing that he was present and assisted when Sambasivan obtained it, and that Sambasivan obtained it for him.

1st Prisoner's Explanation and conduct.

70. When questioned by the committing Magistrate, 1st Prisoner said he did not remember having asked for a copy of Judgment Mufti Sadr Amin $\frac{135}{1844}$, and that he remembered nothing then about it. In this Court he has contented himself by saying that his learned counsel would explain. The explanation suggested is that 1st Prisoner never had in his possession the certified copy—if he had a copy at all, it might have been a private copy given him by one of his clients—and that his knowledge of such a Judgment was derived innocently in the same way.

71. Now not only does Sivaramakrishnan (9th witness) say that 1st Prisoner had a certified copy with him, but the Sub-Engineer is distinct as to the document being a Court paper with a Court seal, and to 1st Prisoner saying he had obtained the copy in the District Court. Had they been mistaken, it would have

been easy for 1st Prisoner to produce the suggested private copy, and account for its getting into his hands.

72. As for the suggestion that 1st Prisoner may have obtained it innocently, say for the purpose of this argument from 2nd Prisoner, that is at variance with the evidence that it was he who took means to obtain it. If it be further suggested that some one, say again 2nd Prisoner, had told him of such a Judgment, and he innocently had applied for a copy of it, that is at variance with the following evidence;

(*a*) The false reason he gave to Dorasami Pillai (21st witness) for wishing to get it;

(*b*) The false explanation he gave of the telegram of 11th July, as will be shewn presently;

(*c*) The question addressed to Vakil Ananta Narayanayar on 14th July as to the possibility of alleging forgery in respect of a certified copy of a Judgment if the original should not be forthcoming, seems to show a design to get rid of the so-called original C. This view is supported by evidence not hitherto noticed *viz* that of

(*d*) Vedantachari, Clerk of the Sub-Court Kumbakonum. On the 8th June this witness was travelling in the train with 1st Prisoner who asked him this curious question, "If a Judgment purporting to be of 1840 were said to be a forgery, would that contention be accepted? In the absence of the original, can a copy be taken to be of the same validity?" In that connection was mentioned the name of Anapaya, and the devolution of his property in different ways according as a male or female child should be born.

Witness mentioned this conversation to one of the Kiranur Vakils on the 20th August, and, next day, by order of his Sub-Judge to the Police Inspector. I see no reason to doubt his veracity.

73. I may now return to the telegram of 11th July sent by 1st Prisoner to 4th Prisoner "Copy received; come immediately." It was filed on 30th November, and 1st Prisoner was asked about it the next day. He explained that 4th Prisoner had been interested in a Judgment lately pronounced by the Tranquebar Sub-Magistrate, and that one of his agents, by name Rajapayan, had come and asked him whether 4th Prisoner had come to Kumbakonam, asserting that it was important 1st Prisoner should see a copy of the judgment as the appeal time was about to expire, and requesting him to send for 4th Prisoner. Now neither has Rajapayan been called, nor has any evidence been offered by 1st Prisoner to show that this account could be true. On the other hand, the Prosecution has shewn that there was only one case on the Tranquebar file in which 4th Prisoner was interested; that the appeal time would not have expired until 14 days after the date of the telegram; that 1st Prisoner had nothing to do with that case; and that only one copy of that judgment was obtained, and that was actually filed in Court four days before the telegram was sent. (Witnesses 13, 14, 15 and Exhibits OO_{1-4}).

74. The learned Counsel for 1st Prisoner then falls back on the possibility of his client having received, not a certified copy, of the Tranquebar judgment, but a private copy made by 4th Prisoner's vakil. But that vakil (Prosecution 14th

witness) and another person (21st defence witness) prove that this private copy did not leave the vakil's hands till 10 A. M. at Mayavaram, while the telegram was despatched from Kumbakonam at 8—55 A. M.

75. It is established therefore that 1st Prisoner has given a false reason for despatching the telegram on the 11th, and the whole course of his conduct renders it certain that Sambasivan's account is correct—that it was sent to announce the receipt of the copy of C.

76. It has been seen that 1st Prisoner avowed his connection with the application on 15th or 29th April for a copy of C; that he busied himself greatly in having the original (so-called) sent from the Record-room to the Copyist Department; that he used his influence in getting the copy given to Sambasivan on 10th July; that on 11th he telegraphed the important fact of its receipt; that he was in possession of it on 13th and 14th; and that he sought to get the opinion of persons more or less skilled in legal matters as to the effect of a copy in case the original should disappear. We find also he came to Tanjore on 14th by the train which arrives there 2—15 P M. (8th witness and time-table Exhibit GGG.) with his mind full of the supposed judgment (8th and 9th witnesses). It must also be borne in mind that one certified copy would not be of much use in a litigation which had spread into many Courts, provided the so-called original should disappear —a contingency that was in 1st Prisoner's mind (8th and 12th witnesses)—for a copy of a transcribed copy is not secondary evidence unless compared with the original. (Evidence Act Section 63 Illustration c). From these considerations it would appear not improbable that he should apply for more copies.

77. On the afternoon of that day an application was put in for 5 more copies (XXXIX). Mr. Singaravelu Mudaliar (6th witness) Superintendent of the Government Department of the Madras Bank, who was called as an expert on signatures, was asked by the defence to compare the writing with that of exhibits which will be shewn presently to have been written by 1st Prisoner, and gave it as his opinion that the same hand wrote both. Mr. Leonard however (5th witness) who was called as an expert on handwriting, differed from him, and adhered to the opinion given by him before the Magistrate that this exhibit was by a different hand. His reason for thinking so was that he could not find in it any of the 24 peculiarities marked a to z he had noticed in the others.

78. Here Mr Leonard seems to be mistaken; this is a matter capable of being checked, and the following table shows where most of these very peculiarities occur in XXXIX (compare AA.)

(*a*) Running the pen upwards before beginning an initial downward stroke. See the d in line 1, the m p and d in line 3.

(*b*) Curve at end of downward stroke, the n in line 5 of endorsement.

(*c*) Vowel sign of ti at the extreme end of horizontal. Line 1 and in endorsement line 1.

(*d*) So with the contraction for melpadi (aforesaid); lines 11 and 16.

(*e*) Ps round with defective second pependicular; lines 11 and 16.

(*f*) tha from right to left and back again; endorsement, line 1.

(*h*) Small curl in the middle of v; last line and in endorsement line 5.

(*k*) Top curl of long E smaller than the lower; first and last lines.

(*l*) Bold clear curl under letter; last line of endorsement.

(*m*) A perfect ring inside the curl; last line.

(*n*) Very long horizontal in sa; line 2.

(*p*) Sharp angle instead of rounding, in capital U; last line.

(*q*) Long horizontal in da; endorsement, line 1.

(*r*) Middle attachment of vowel I to ta; line 11.

(*x*) In long pà, last perpendicular of consonant and first of vowel, merge; line 11.

79. This exhibit XXXIX may be compared with first Prisoner's hand writing in F_7. The following words show similarity;

Ottirukiradu—for otti irukiradu in last line p 3 of latter, above first line in former; and the characters are much alike;

XXXIX.	*Kudu* last line	F_7.	p. 3. line 15.
,,	*Naladu* (contracted) line 8.	,,	p. 1, line 12.
,,	*Narayana* line 4.	,,	p. 1. line 13. virodam. (curious rá in each.)

80. It thus appears that Mr. Leonard's opinion that XXXIX was not written by 1st Prisoner, cannot safely be relied upon to contradict Sambasivan on that point, supported as the latter is by Mr. Singaravelu Mudaliar's opinion and by these considerations, as well as by the probabilities arising from conduct. It may be added that four days later on 19th July, 75 stamps (NN)were bought for the copies, and five of these were bought in the name of Narainsami Ayar of Kumbakonam; a man of this name, brother to 1st Prisoner, was a witness for 1st Prisoner and was cross-examined about these stamps. He said he could not remember whether he had gone to the place where they had been sold, or whether he knew the stampvendor who sold them, nor whether he bought them. When pressed to say whether he did or did not buy them, he would not go further than the cautious answer "To the best of my recollection I swear I do not remember I bought them." There is considerable similarity between the writing in the endorsement of these stamps (NN) and the writing of 1st Prisoner. The words *Court* may be compared, in lines 1 and 2 of NN and line 2 of the endorsement on F_7; *Vadi* in line 4 of NN and in line 9 Page 1 of F_7; *Váras* in line 4 of NN and in line 4 page 1 of F_3; and *Kudutta* in line 5 of NN and in line15 Page 3 of F_7. Of the peculiarities Mr. Leonard noticed, there are in the 19 words of this endorsement the following;

(*a*) In the m. in line 4 and p. in line 5.

(*b.*) In the capital I line 4.

(*c.*) In ti line 1.

(*e.*) In the p line 5 (*f*) in *thi* line 4.

(*h.*) in the Second V, line 4 (*k*) lines 1 and 2.

(*l.*) lines 2 and 5 (*n*) line 2 (*q*) line 1 (*r*) line 5.

81. The only other detail of evidence against 1st Prisoner that need here

be noticed is that from January to July (inclusive) he had Season-tickets between Tanjore and 3rd Prisoner's Railway Station, the next station beyond Kumbakonam.

Comparison of C. with 1st Prisoner's handwriting.

82 It is now necessary to compare the hand-writing of 1st Prisoner with that of C, the forged Judgment. The materials we have are the F_{1-8} Series. Not only did Sambasivan depose that all these were in 1st Prisoner's hand-writing, without being cross-examined on the point; but before the Magistrate 1st Prisoner admitted that $F_{1,2}$ seemed to be in his writing, and Mr. Leonard has given it as his opinion that the whole of the F. series are by one hand, and was not cross-examined on this. When to this it is added that 1st Prisoner did not deny the fact when an opportunity was given in this Court and that no evidence was called by his learned Counsel to disprove it and that even his brother was not examined about it, it may be taken as certain that we have here a sure basis for comparison. (F. 4, 5, 8 are also proved by 32nd Prosecution witness.)

83. Mr. Leonard (5th Prosecution witness) though he has not scientifically trained himself in the science of comparative hand-writing, has undoubtedly devoted much attention to the study of Tamil writing. He considers that C. & the F. series were written by the same hand, partly from general comparison, partly because in both of them he finds all of some score of peculiarities or deviations from the normal formation of letters which he sets forth and illustrates.

84. I shall select some prominent examples of these, though Mr. Leonard's point is the occurrence in both writings of all the peculiarities. The references are to his illustrations (A A.)

(q) Very long horizontal in *da*.

F_1. page 1. lines 3,18, 19, 22.
F_2. page 3, 4th line from bottom.
C. page 1. lines 8 and 28.
page 2. line 14.
page 4. line 16.
page 5. line 27.
page 6. line 17.

(v) The Roman letter A.

F_2. page 1. lines 24, 29, 31.
2. lines 1, 5.
C, page 1. line 18.
6. line 3.

In F_{1-8} the letter is written in its printed form; in C, with pronounced curls at the end of each upright; but there is a peculiarity common to both, that the transverse is formed by two curves, as though representing a bird in flight.

(w) The Roman letter B.

In F_2. page 3. lines 7 & 9. This letter is peculiarly made, being formed, as it appears to me, by these processes, though opinions differ on the point; a

line is first drawn at the top, and a perpendicular dropped from it, as though to form a short-topped T; then the figure 3 is written, with a distinct slope to the left; it is begun just under the left top of the T, and completed at the bottom and well to the left of the vertical stroke, and then a flourish is brought back to the right, which has the effect of converting the letter T into the Roman numeral I. There are no fewer than 8 Bs in Exhibit C viz.

page 1. line 24.
3. ,, 29.
4. ,, 24, 30, 33, 40.
5. ,, 36.
6. ,, 5.

The last one is wanting in the top to the T, and its 3 does not slope to the left; but all the others seem to have been described in the same curious way as those in F_2.

(x) The second perpendicular of p made to do duty for the first perpendicular of the vowel á added; the compound letter thus wanting one perpendicular.

F_7 page 3 lines 20 and 22 show three examples of these, in the words *bàki, póga & báki;* the effect to an English eye is as though a man should write ir instead of ur.

In C the same peculiarity occurs twice in page 5 line 5 in the word *bàdiast.*—P. 4 line 15 supplies another instance in the same word *bàki.*

85. This witness had not a very pleasant cross-examination, as he is one of those persons almost absolutely unable to express even correct ideas with accuracy, for which they attempt to substitute emphasis. For instance, as to his example (l) he said the curl "is *never* taken ..... above the letter;" and as to (q) "the horizontal line is *always* drawn long." From such positions he was easily dislodged; but his evidence was honest and not without value as pointing out several lines of comparison.

86. Mr. Singaravelu Mudaliar (6th witness) pointed out grammatical peculiarities between C. and F., but all of them except one occur in genuine Judgments. The exception is *vai-muzi*, a mistake for *mozi*, which occurs in C. page 6. line 1, in F_6 page 3. line 2, and in F_8 line 13.

87. I now proceed to compare C with the F Series in respect of words which occur in both; but it must be premised that C is obviously in a disguised hand-writing, as is seen from the stiffness of the style, the fact that nearly each letter is written separately, and from the different formation of the letters in the same words. As an instance of this last, may be pointed out the word *prati-vati* (Defendant) which occurs no fewer than 36 times. The writer seems to have set himself to write the word with the tail of the t ending below the line and the vowal i beginning from the top of the t—as in p. 1 line 12 p. 2 line 12 p. 5 lines 3, 6, 7, 9. There are numerous instances however in which he has drawn the tail to the left, or has run it up again through the letter, in some of which he has joined the vowel sign to this tail e g. p. 1 lines 4, 13, 36, 39. He begins too with a soft r, drops into a hard r and then resumes the soft.

88. A comparison of these instances with the same word *prati-vati* in F_1 (line 7) F_2 (p. 1 line 9) F_4 (p. 1 line 2) F_5 (p. 1 line 2) F_6 (p. 1 line 7) F_7 (p. 1 line 6) and F_8 (p. 1 line 2) certainly reveals a marked similarity.

89. So with the word *tirppu* in C (p. 1 line 2 and p. 6 line 15) and in F_2 (p. 6 line 2); the word *Silavu* in C (p. 6 line 24) and in F_6 (p. 2 line 12); and the word *Ageiyal* in C (p. 2 line 29 and p. 6 line 10) and in F_3 (p. 3 line 19) and F_8 (p. 1 lines 16 and 17).

90. These examples represent but a small part of the examination which has been given in this Court to the writing of C, which has become thoroughly familiar to all engaged in the case. The assessors retired with the Exhibit and the F series for the purpose of a longer scrutiny into it than they could give in Court and both of them gave it as their opinion that C was forged by 1st Prisoner. All that I need say at this stage is that the document affords many reasons for this view.

91. It must now be seen what evidence 1st Prisoner has called to rebut that for the Prosecution. It is directed to break down approver Sambasivan's testimony in two points; viz (i) that from the end of March to 10th July 1st Prisoner was not living in Kumbakonam, but in Aduthorai 7 miles from Tanjore.

(ii) That on the 10th July the housewarming ceremony took place, not after the arrival of the train at 9—36 p.m. (G. G. G,) as the approver says, but shortly after sunset, and that 1st Prisoner went to it from Tiruvadi not by train but by cart; this would render it impossible for him to have been at Tanjore when the copy of C was given to Sambasivan.

1st Prisoners' three months' alibi.

92. The 1st Prisoner's elder brother (15th defence witness) says that from the end of March 1st Prisoner lived in Aduthurai, tenants occupying his house.

93. Only one witness is called from Aduthurai to speak to this (14th defence witness). He says he saw 1st Prisoner 10 or 15 times there, but only spoke to him once, though they are related; he has been mixed up in some disputes between 1st Prisoner and his ryots, and then gave evidence for him; he cannot say in which of three months 1st Prisoner came, and he cannot say he was all the time in the village. Such testimony cannot be thought to help the defence.

94. Sundrapaya (3rd defence witness) is one of the persons said to have rented 1st Prisoner's house. He supports this story, but says 1st Prisoner used to come once in 15 days and look round. Cross-examination shattered his testimony. It brought out not only that witness was under obligations to 1st Prisoner's brother and that 1st Prisoner and his brother had assisted witness' sister in some litigation, but the more important facts that the witness-list put in by 1st Prisoner described this witness—not as living in that house as he asserts, but in a *chavadi* outside Kumbakonam, and that when the house was searched in October this witness was not there. He makes up some foolish story of his whole family having gone out that day to some ceremony, but even here he cannot be consistent, saying in one place that he returned the evening of the search and in another the day after. This is obviously a false witness.

95. Rangayangar (4th defence witness) is put forward as a doctor who treated the last witness. He is the family physician of 1st Prisoner and his brothers—was jointly interested with 1st Prisoner for 3 years in litigation—and cannot remember whether he was ever in jail, or whether a receipt he filed in Court was ever held to be a forgery.

96. Muttusami Aiyar (8th defence witness) deposes that he was the other occupant of the house. He is connected with 1st Prisoner, has had money dealings with him, and has cited him as a witness in two suits, and 1st Prisoner's brother was his vakil.

97. Now none of the witnesses for the prosecution was cross-examined as to this alibi, and as one supposed tenant was originally described as residing elsewhere and the other was not one of the 37 witnesses 1st Prisoner cited for this case, but appeared without a summons, I cannot but suppose that this line of defence was not thought of until the Prosecution in this Court had closed. Had it been a fact that 1st Prisoner was not living in Kumbakonam but in Aduthurai, it would have been easy to prove it by the testimony of independent neighbours. Besides, not only does one of these witnesses admit 1st Prisoner came to the house once a fortnight, but the 13th Defence witness saw him there once and in the town 3 or 4 other times—the 8th and 11th Defence witnesses saw him there in June—and the records of the Encroachment case (CCC 1 & 2) show he was there in that month. There is no doubt therefore that 1st Prisoner was constantly in Kumbakonam, and this interested and very poor evidence is absolutely insufficient to prove that he had given up his house.

1st Prisoner's 10th July alibi.

98. These supposed tenants have again been put forward to prove the second alibi—but their evidence need not again be weighed.

99. The point here for determination is whether on 10th July, after his marriage in Tiruvadi, 1st Prisoner came by jatka to Tanjore, remained here all day, and went on to Kumbakonum by the 8-30 p. m. train from Tanjore and celebrated his house-warming; or whether he went by cart direct from Tiruvadi to Kumbakonam arriving at sunset, and celebrating the ceremony at once.

100. 1st Prisoner's brother Narainsami Ayar (15th Defence witness.) says that he himself left the party at Tiruvadi, and came by jatka to Tanjore to proceed by train to make all arrangements beforehand; the rest arrived at Kumbakonam in carts and the ceremony took place soon after sunset.

101. 1st Prisoner's father-in-law (9th defence witness)—his maternal uncle (11th defence witness) and a first cousin (13th defence witness.) support this account.

102. So do three cartmen (5th, 6th, 7th defence witnesses.) The second of them is 1st Prisoner's tenant-at-will, but the other two are independent.

103. The first two of these contradict each other, one saying that the four carts were the same that had brought 1st Prisoner to Tiruvadi for the wedding 4 days before, the other saying that only two were the same.

104. The two latter of these cartmen contradict one another on a point where their memory could hardly fail them. The representation is that when the marriage party arrived at Kumbakonam they got down at some distance from the house and proceeded thither in a procession headed by the bride and groom seated in a carriage. The 5th defence witness supports this; the 6th first said he saw no carriage; then that he saw a carriage; then that some horse went ahead but he did not see the carriage. This man though he professes to be a cultivator cannot remember whether he drove the cart in the ploughing, the sowing, the reaping or the fallow season; and said that he took up his land 4 or 5 months after this drive, and that he took it up 18 months ago. This witness cannot possibly be believed when he says this drive was in July last.

105. Nor is the 5th witness more credible. He began by saying 1st Prisoner urged him to reach Kumbakonam by night as the grahapravesam (house-warming) was to be celebrated. When he was asked whether he—a low-caste illiterate man—knew the names of any more Brahman ceremonies, he denied that he had used the word at all, or that he had heard it that day. He also began his evidence by saying that he had been hired on 20 or 24th Ani, but afterwards had to admit that he did not know the date even of the day he was under examination.

106. The evidence of these cartmen may at once be put out of consideration.

107. Sami Sastri (10th defence witness) says he is the priest who celebrated the house-warming ceremony. He admits that he has lived for 1½ years in the house of 1st Prisoner's brother, and that he is not the hereditary Purohit who should perform the ceremony and who had in fact fixed the auspicious hour.

108. Now it is in evidence that the son of this hereditary Purohit was with the marriage party that morning at Tiruvadi, and if it be correct, as is contended, that the auspicious hour was Dhanur, from 4-20 to 7-20, there is no evidence to prove it fit to be compared with his or his father's; yet neither was called. The last witness admits that the hour Kumba from 9-25 to 11-15 is generally superior to Dhanur for the house-warming ceremony, but explains that it depends on the horoscopes of the bridal couple. Here again the best evidence would have been that of the hereditary Purohits. It is not denied the elder of these two was asked to officiate, but it is said that he did not come and therefore this Sami Sastri was called in. I regard this excuse with a great deal of suspicion. Even as it is, the defence have found it hard to fit in the time of the ceremony with their evidence; the cartmen 5th and 6th witnesses who were examined on the 7th March say they reached Kumbakonam at lamp-lighting time, which would be 20 minutes after sunset—or on 10th July, 10 minutes to 7 p. m; and the 3rd witness and the Priest (10th witness,) say the ceremony took place an Indian hour (24 minutes) after sunset. As Dhanur ended at 7-20, this only left 25 minutes for the ceremony. On the 9th March however, the day after the

Priest was examined, the uncle (11th defence witness) said it was twilight during the procession, and it had to proceed fast as they were pressed for time, and the usual ceremonies of swinging and singing had to be restricted to 3 or 4 minutes, and the exchange of garlands and gifts of fruit actually had to be omitted. No hint of this had been given before, and it certainly seems invented to meet a difficulty that had just been ~~examined~~ perceived.

109. Tiruvadi is a large place, well supplied with pony jatkas, and it certainly would seem the natural course for persons of any means to take those conveyances to Tanjore (7 miles) and thence take the train to Kumbakonam. This was the course actually adopted by 1st Prisoner's brother (15th witness) and it may be stated here that Copyist Dorasami Pillai (21st Prosecution witness) deposes he saw 1st Prisoner with others alight that morning from a jatka in Tanjore, and was told by him he had come from Tiruvadi, and meant that afternoon to obtain the copy he had been seeking.

110. Not only is it improbable the wedding party would have gone in bullock-carts to Kumbakonam, 21 miles by a sandy road, a journey that could take them to their destination only barely in time for the ceremony; but if they had wanted carts, they were plenty in Tiruvadi and it is highly improbable 1st Prisoner would have ordered 4 carts from Aduthurai, 7 miles distant.

111. In fact, to prove that the ceremony took place before the evening train from Tanjore arrived, nothing could have been easier than to call some respectable independent witnesses from among the guests or neighbours. Instead of this, we have three cartmen who are certainly false witnesses, three relations, and a Priest who in all probability did not perform the ceremony.

112. I have no hesitation in saying that the two alibis set up by 1st Prisoner have collapsed, and that this attempt to shake Sambasivan's evidence by direct testimony has completely failed.

Recapitulation of case against 1st Prisoner.

113. It must now be seen by recapitulation how far the other Prosecution witnesses have confirmed the evidence of the approvers against 1st Prisoner.

(*a*) In the first place there is Mr. Leonard's opinion, which I see much reason to adopt and which the Assessors have adopted, that C was written by 1st Prisoner.

(*b*) In the second, there is the unimpeachable evidence of

Krishna Rau (20th witness) that twice in June 1st Prisoner asked him to hasten the delivery of a copy of a Mufti Sadr Amin's Judgment of 1844.

of the Sub-Engineer Mr. Nilakanta Sastri (7th witness) that on 13th July 1st Prisoner possessed a Court document which corresponds with C.

and of Mr. Ananta Narain Ayar (8th witness) that on 14th July 1st Prisoner sought his opinion as to the value of a copy of a judgment

concerning the Pillur case, wanting to know whether a copy could be objected to as spurious.

(*c*) This unimpeachable testimony gives strength to the evidence of two witnesses, whose veracity has not been successfully impeached; *viz.*

Vedantachari (12th witness) whose opinion was sought on 8th June by 1st Prisoner as to the effect of a copy of a judgment of 1840 (so was the case supposititiously put) concerning the devolution of the property of Anapaya, the old proprietor of Pillur, in a way consistent with the devolution recited in C,

and Sivaramakrishnan(9th witness) to whom on 14th July 1st Prisoner shewed a copy of a judgment which corresponds with C.

(*d*) The five witnesses mentioned in (*b*) and (*c*) seem to me to have completely established the facts they speak to, and render the following evidence natural, probable and credible, *viz.*

that of Abraham the Copyist Superintendent (17th witness) and that of Copyist Dorasami Pillai (21st witness) that on 10th July the copy of C was handed to Sambasivan through the recommendation of 1st Prisoner,

as also that of the same witness Dorasami Pillai that at the end of May and twice in June 1st Prisoner was begging him to hasten the delivery of a copy of a judgment corresponding in its number and in its year with C.

(*e*) It has also been shewn that the room in which the genuine original Mufti Sadr Amin $\frac{138}{1844}$ was kept could be entered from Assistant Record-keeper Kuppusami Ayar's room by merely sliding a bolt (19th witness), and that in the second week in May 1st Prisoner came several times and had private conversations with Kuppusami Ayar (16th witness and PP). It is also in evidence that 1st Prisoner admitted having been bargaining with Kuppusami Ayar for the abstraction of documents from the record room (21st witness), that he hinted of some hold he had over Kuppusami Ayar, and that he boasted on the 10th July of having overcome all difficulties as to $\frac{138}{1844}$ reaching the Copying Department, "by means of the medicine I told you of."

(*f*) Besides allowing to be put forward two alibis false to his knowledge, 1st Prisoner has falsely denied that Sambasivan was his gumasta, falsely repudiated any connection with the copy of C, and has given a false account of the telegram he sent 4th Prisoner.

114. Taking all these facts together, there is a wonderful amount of confirmation as to Sambasivan's statement that 1st Prisoner forged C, caused it to be substituted for the genuine judgment in the record-room, and was the means of a copy of it being obtained.

115. On the whole record I have not a moment's hesitation in agreeing with the Assessors in finding 1st Prisoner guilty under both heads of charge; for there can be no doubt the copy was required for use in further judicial proceedings.

PRISONER 2 PANJUVAYA.

His conduct up to 15th April.

116. This man has been in the service of the Rendankattalei family (3rd Prisoner) since 1854 (R); has been 3rd Prisoner's agent since at least January 1891 (KK_2); and has been attending to 3rd Prisoner's business in the Civil, Criminal and Revenue Courts, including his claim to the Pillur estate.

117. It has been already shewn that up to his death in 1868, Narainsami Ayar—the uncle through whom 3rd Prisoner claims—had always loyally acknowledged his wife Sellam's ownership of the estate. It is necessary to take up the course of events from that year. It must be repeated that Sellam as a Hindu daughter did not succeed to her father Anapaya's estate absolutely so as to become a fresh stock of descent; but had only a limited estate, the property reverting on her death to the last male owner's heir, who is the Kiranur claimant. The only way in which the Kiranur claim could be defeated would be by establishing a valid gift or Will of Anapaya, in favour of his daughter's husband Narainsami Ayar, uncle of the Rendankattalei claimant, 3rd Prisoner.

118. Now in 1875 Sellam had occasion to institute a suit in the Negapatam Sub Court. In that suit her husband's brother, 3rd Prisoner's father, was a witness, but so far from putting forward any claim and alleging a gift or a Will, he admitted the property had come to Sellam as her father's heiress. (MM_3).

119. It has now been shewn from the conduct of Anapaya's widow, of the guardian Sundramaya, of Sellam, of her husband and of his brother (3rd Prisoner's father), that from 1836 to 1875 there was no question of a gift or of a Will adverse to Sellam's inheritance of the estate. I come now to the position taken up by 3rd Prisoner and his mother, particularly with reference to 2nd Prisoner's active knowledge.

120. In 1890 Sellam as her father's heiress, and asserting all her title, claimed the Revenue registry of some land which had somehow got into the name of 3rd Prisoner's mother. 2nd Prisoner as the agent of 3rd Prisoner put in a statement which not only does not traverse Sellam's allegations of title and possession, but describes 3rd Prisoner as her heir, being the son of her husband's undivided brother. The context shows it was conceived that on Sellam's death the property would devolve from her to her deceased husband's nearest relative. ($\frac{KK_{1\&2}}{\text{3rd December 1890. 16th January 1891.}}$)

121. The consent of 3rd Prisoner's mother also being requisite, 2nd Prisoner put it in, in April 1891. Again Sellam's title is not impugned.

122. Four months later—30th August 91, Sellam died. Up to that time there had not been a whisper in derogation of her title, and 2nd Prisoner had put in two petitions to the authorities, one of which specifically, and the other by its silence, admitted her ownership.

123. On her death, a claim being advanced by Anapaya's nearest male heir, the Kiranur claimant, the position is suddenly changed. Within 9 days a vakil, instructed by 2nd Prisoner, put in a petition stating that the Pillur estate had

been gifted to Narainsami Ayar "at the time of his marriage, in pursuance of the directions of the said Anapaya," and that it had never belonged to Sellam, Anapaya's daughter and Narainsami Ayar's wife (XL and 27th witness). On the next day, 9th September 91, 2nd Prisoner gave a statement in which this passage occurs; "The estate was made a gift to Narainsami Ayar at his marriage. He *i.e.*, (Anapaya) made a gift of Sellam with the estate." (ZZ_1). It may be observed in passing that the petition in further representing that Sellam inherited the estate as her husband's widow is in contradiction of the view put forward 8 months before (KK_2) that her husband and his brother were undivided; for if they were undivided, Sellam would only have been entitled to maintenance from her husband's estate and the estate would have passed at once to the brother or his son 3rd Prisoner. But the important thing to note here is the growth of 3rd Prisoner's claim within the knowledge of 2nd Prisoner. In January 91, the property belonged to Sellam; 8 days after her death in August, it had never belonged to her, having been gifted along with her to her husband on her marriage, in pursuance of the directions of her father before his death. Two old men of that neighbourhood, who seem to have been undiscovered for half a century, were put forward ($ZZ_{2\&3}$) to state that they had been present at the death-bed directions, and also at the marriage when the guardian openly declared he gave away the estate in accordance therewith to the son-in-law. It may be noted that one of these old men made out that the marriage occurred 5 or 6 years after Anapaya's death, while C makes out that it occurred 8 years after. In the whole of this transaction there is no mention of a Will; we have got no further than a gift carried out by the guardian in accordance with Anapaya's oral instructions.

124. On the 4th November 91, a petition was put in by Vakils who had been in consultation with 2nd Prisoner (28th witness), alleging an oral Will to the same effect as the oral instructions (XX.).

125. In February 92, 3rd Prisoner filed a plaint in an Injunction Suit, and his title being challenged by the Kiranur claimant had to be disclosed.

126. In March 92 a Vakil (26th witness) instructed by 2nd Prisoner made a statement in the Court that Anapaya in his life-time had given away the estate to the son-in-law, but he could not say whether by gift or otherwise.

127. On 2nd April the same Vakil was instructed to say Anapaya left a Will, bequeathing all his estate to Sellam, then in the womb, and to the person who should marry her. He could not state the contents of the Will nor did Plaintif know in whose possession it was. This is the first time a written Will is mentioned—five weeks after 1st Prisoner's appearance on the scene—and it will be observed the alleged Will left the property to Sellam as well as her husband. (The further statement of the Vakil that Narainsami Ayar acquired all Anapaya's property, may or may not be consistent with joint ownership.)

128. Defendant replied that the Will was then in course of concoction.

129. The case was adjourned to 11th October, but before that, on 12th August, a second list of witnesses was put in, (by a Vakil 26th witness instructad by 2nd Prisoner) containing the name of one Perumal, cited to produce a box "which, it now comes to our knowledge, was deposited with him by Sellam." (WW_2).

130. On 11th October, only two witnesses appeared, of whom Perumal was not one. 2nd Prisoner was examined as Plaintif's agent and deposed that he had so early as in 1854 heard—he could not say from whom—of a Will in the terms of that recited in C. "I have been giving instructions to Plaintif's Vakil. * * I cannot say who attested the Will. Nor can I say who, among the witnesses cited for the Plaintiff, prove the Will. It was I that told the Plaintiff's Vakil the names of witnesses to be examined in the case. I think all the elderly witnesses would speak to the Will."

131. It has been shewn that no such Will could have existed; that until Sellam's death in August 91, 2nd Prisoner fully admitted her title, which was inconsistent with such a Will; that in September 91 he could think of nothing but oral directions; that in November 91 he cannot go further than an oral Will; in April 92 he alleges a Will in favour of Sellam and her husband; in August he summons a witness to produce a mysterious box deposited by Sellam; in October, he not only alleges a Will disinheriting Sellam, but says he has known of such a Will since 1854. He also had cited witnesses to speak to it, but does not know which of them can do so. This course of conduct—which is not disputed—plainly stamps 2nd Prisoner as the active agent in a fraud to obtain the Pillur estate for 3rd Prisoner by means of a false Will in the terms of that recited in C. It also shows that on 11th October the fraud was not quite ripe.

132. A summons was issued for Perumal to appear on 1st November with the box (LLL). The summons however was not served, and on that date the case was dismissed for default. Still the fraud was not ripe.

133. The next day (2nd November) on 2nd Prisoner's instructions a petition was put in to restore the case to the file; but this was dismissed on 30th November (LXIV).

134. The next document with which 2nd Prisoner is found to be connected, is the application (C.C.) of 15th April for the copy of Mufti Sadr Amin Judgment $\frac{135}{1844}$, admittedly in his handwriting (BBB_2). It is urged by him that he applied for this in all innocence, at the instigation of 1st Prisoner who told him it was a judgment favorable to his master's interests. It is impossible to accept this plea, as the forgery recites just such a Will as 2nd Prisoner had been labouring to invent.

135. Further, 2nd Prisoner has not explained how his application contained the name of the Mufti Sadr Amin who passed the judgment $\frac{138}{1844}$—Moulvi Mir Batta Dhin Sahib. No. $\frac{137}{1844}$ was passed by Moulvi Mahomed Adavu Sa Sahib, and the knowledge of the name of the Sadr Amin who passed 138 can hardly have been derived otherwise than from the genuine judgment or from a copy the existence of which has not been alleged.

His conduct after 10th July.

136. Besides, if it were possible to take the view that 2nd Prisoner acted in good faith, his subsequent conduct would contradict this. For so far from frankly admitting that the copy for which he wrote application CC was obtained, he told

the Magistrate it had not been obtained (BBB₂). Yet the Vakil (27th witness) who had acted for him before the Tahsildar, proves that 2nd Prisoner brought him on 17th or 18th July the copy which evidence previously noticed has shewn to have been with 1st Prisoner on 14th July. The only explanation his Vakil in this Court can offer is that he may have innocently accompanied the 4th Prisoner there; but this does not account for his having denied that the copy was received, and is for the reasons given above very highly improbable.

137. The man Perumal cited in the Injunction case has been examined and has deposed that 2nd Prisoner offered him a bribe to produce a box as having been deposited with him by Sellam. There is nothing improbable in his evidence (which as will be pointed out below explains a point otherwise unintelligible) but it is uncorroborated (42nd witness).

138. That 1st Prisoner was connected with 2nd Prisoner in the Injunction and other suits is shewn from 2nd Prisoner's statement before the magistrate (BBB₂), and the evidence of the Vakil in the Injunction suit (26th Prosecution witness), while another Vakil (33rd witness) proves that G, which was written by Sambasivan in the name of 3rd Prisoner, was handed to him by 2nd Prisoner. He was the attesting witness in the Vakalats for the copies of the Mayavaram Judgments (A. series) written by Sambasivan, and the Vakil (24th witness) says that 2nd Prisoner was then present with 1st Prisoner and Sambasivan. There are also two powers of attorney (K₁₅₂) accepted by 2nd Prisoner as from 3rd Prisoner, written by Sambasivan and attested by 1st Prisoner's other gumasta Suri (see 25th witness). 1st Prisoner also attended the injunction suit and with 2nd Prisoner gave instructions to the Vakil (26th witness). Thus there is no doubt that 1st Prisoner was engaged in the Pillur litigation and disputes with 2nd Prisoner, and Rs. 155 worth of stamps were bought by 1st Prisoner (see paras 50-51-219.)

His Alibi of 10th July.

139. It has been mentioned that Sambasivan says he saw 2nd Prisoner at Kumbakonam on the morning of 10th July—that 2nd Prisoner asked him to obtain the copy for him—and that after he had obtained it by 1st Prisoner's assistance he gave it to 2nd Prisoner that afternoon in Tanjore at the Railway Station. These are the only statements which 2nd Prisoner has elected to attack by counter evidence, and he has done so by calling not any of the 12 witnesses he cited before the Magistrate but a witness allowed him by this Court.

140. As the 3rd Prisoner was also allowed to call two witnesses to the same point, the evidence of these three witnesses will be considered together.

141. High Court Vakil Sundramaya (17th Defence witness called by 3rd Prisoner) deposes that on 30th June 3rd Prisoner came to him in his village and asked him to put in a revision petition in the High Court against the decision in the Possession Case. With this view 2nd Prisoner came to him on 3rd July, and accompanied him first to Tirukoilur, South Arcot, where they stayed with witness' brother Krishnaya the District Munsiff of that place, and then to Madras which they reached on 5th. There 2nd Prisoner stayed in witness' house, along with one Ramasami Sastri, Vakil's gumasta and his occasional assistant. On Saturday the

8th the District Munsiff came, and the brothers drafted the revision petition. That night when the draft was translated to 2nd Prisoner, he required a further objection to be stated to the effect that an application for witnesses had been neglected by the Magistrate, and agreed to put in an affidavit of that fact. On Sunday 9th these four persons were in Madras, but the District Munsiff left by the evening train. On Monday 10th Ramsami Sastri drew up the affidavit and fair copied the petition, about 10 a.m, (LXXXIII). Witnesses took to Court the petition only, going there with 2nd Prisoner, having told Ramsami Sastri to get the affidavit sworn on that day. When they reached the High Court witness sent 2nd Prisoner back home for a duplicate key required to unlock his chambers, with which 2nd Prisoner returned about 12 or 12-30. About that hour, witness gave the petition to a barrister Mr. Rozario, that it might be filed. At 3-30 or 4 p.m. 2nd Prisoner said the affidavit could not be sworn that day, as he had gone late to Ramsami Sastri who was busy and told him the next day would do. On Tuesday 11th witness did not go to office, but 2nd Prisoner told him he had sworn the affidavit. On Thursday 13th 2nd Prisoner left Madras.

142. The Prosecution admit that on Tuesday 4th July 2nd Prisoner went as far as Tirukoilur with this witness, that he swore the affidavit on Tuesday 11th, (having arrived that morning) and that he left Madras on the 13th, the basis for these facts being witness' diary and the affidavit (LXXXVII and LXXXIV). Most of the other assertions they dispute, and they absolutely deny that 2nd Prisoner was in Madras on Monday 10th.

143. Before considering the credibility of this witness, it may be seen how far his evidence agrees with that of Ramasami Sastri who occasionally acts as his gumasta. This man asserts that he fair copied the Revision Petition on Monday 10th in the presence of 2nd Prisoner, but he says that the District Munsiff also was present—which is impossible as the latter was then back in South Arcot. Again while Sundramaya says 2nd Prisoner went to Court with him at 11 A. M. and returned with the key at 12—30 P. M., Ramsami Sastri says 2nd Prisoner excused himself for coming to him at 3 P. M. instead of 2 P. M. on the plea that he had overslept himself.

144. This witness has not only worked under Sundramaya, and stayed at different periods in his house, but also has married the cousin of a dependent of 4th Prisoner (20th Defence witness). I cannot think that his evidence lends any strength to Sundramaya's. If the latter be shewn to be false, the former will fall with it.

145. The probability of Sundramaya's story will now be considered; first in itself, secondly in relation to the conduct of himself and of 2nd Prisoner. It has to compete with the account of Sambasivan, which attributes to 2nd Prisoner conduct perfectly consistent with the antecedent circumstances. For it was natural for the man who had engaged in the fraud of the Will and who had written the application for the copy of the forged judgment reciting that Will, to be at hand when the copy should be given out from the Court. (See also para 175). Nor has Sambasivan ever receded from that position. Even on 31st October, when he made before the Magistrate what has been called his retractation, he still asserted that 2nd Prisoner had asked him to get the copy, and that he had given it to 2nd Prisoner.

146. On the other hand, Sundramaya is a man of education and some standing. He has taken the degrees of B.A. and B.L. and is a Vakil of the High Court.

The probability of Sundramaya's story in itself.

147. (*a*) If the affidavit had been prepared on the 10th with 2nd Prisoner in Madras, one would expect that he would have sworn it that day and put it in with the petition The excuses for his not doing so are very weak. Affidavits are received at 11,2 and 5 o'clock. For the 11 o'clock opportunity there is an excuse that the office was found locked and 2nd Prisoner had to be sent back for the key ; for the 2 o'clock, that 2nd Prisoner had everslept himself ; for the 5 o'clock that Ramsami Sastri was too busy. That is to say, 2nd Prisoner waited about the High Court from I2 or 12-30 till evening of the 10th, and found time to have the Revision petition put in by Mr. Rozario, but was foiled in all his attempts to put in the affidavit until the next day.

(*b*) Again, if the affidavit and petition were both ready on 10th, the former as well as the latter would have been given to Mr. Rozario or his clerk, and not been retained by Ramsami Sastri.

(*c*) Not only does the Petition make no mention of the affidavit, but there is internal evidence that the latter was not drafted until after the former had been put in, and that it was drafted by somebody not at the moment able to put his hand on certain details. For on the first page the word *Possession* twice as characterizing the case and the words *3rd October 93* as giving the date of applying for witnesses show evident signs of having been added afterwards. This contradicts Sundramaya and the gumasta Ramsami Sastri in going to show that the affidavit was not thought of when the petition was put in, and was not drafted in 2nd Prisoner's presence.

(*d*) The diary which mentions a score of unimportant events—who came to the house—with whom he took a walk etc—is absolutely silent as to 2nd Prisoner having accompanied witness to Madras and having stayed with him from the 5th to the 13th. The entries of 8th, 9th, 10th, 11th in which especially one would expect to find 2nd Prisoner mentioned, are these (LXXXVII);

Saturday 8th July T. S. K. (Krishnaya) came by the morning train. Went to Mr. Norton's office with T. S. K. &c and stayed till 4 o'clock. Returned home on foot. Drew up grounds in Pillur Revision Petition.

Sunday 9th July ... ... T. S. K. left for Tirukovilur by evening train.

Monday 10th July. Subbaya and Gurusami came by morning train. Went to office. Saw Rozario, Bashiam etc., Had the Rendankattalei Criminal Revision Petition filed. Returned Chowdi Reddi's paper amended. Gurusami had cold and fever. Went to sleep in Subbaya's house.

Tuesday 11th July. ... ... Did not go to Court ...

It will be seen that the diary gives no support to the statement that 2nd Prisoner was in Madras on or even before 10th.

Probability of Sundramaya's story from his or 2nd Prisoner's conduct.

148. (*a*) If it were true that 2nd Prisoner put in the Revision Petition on 10th July, the best evidence to prove it would be that of Mr. Rozario or his clerk, by whom it was presented. They have not been called.

(*b*) If an affidavit had been prepared on 8th and 2nd Prisoner was ready to put it in on 10th, Sundramaya in whose house he is said to have been staying must have learnt on the evening of 11th both fron him and from Ramasami Sastri (also said to be staying in the house) that it had been put in. And he deposes that he did learn this that evening from 2nd Prisoner. Yet the diary shows that he never heard of this till 1st January 94. (LXXXVII. b,) "Ramsami came. Learnt from him that affidavit had been filed. Asked him to get a copy. Ramsami left by evening train."

(*c*) The conclusive argument is now to come, but before it can be presented, the relation of Sundramaya to 3rd Prisoner and his legal advisers must first be shewn.

149. Witness' cousin is mother-in-law to 3rd Prisoner and he states that he has no interest in 3rd Prisoner but that of relationship. He says he has not taken much trouble about the case,—has never been 3rd Prisoner's Vakil—and has never received nor been promised any remuneration. He had to admit however that the entry of 9th December 'resolved not to go without a fee' might refer to this case. His diary will show whether he is equally accurate in other respects. The opportunity will be taken to make other extracts which throw a light on the case.

150.

20th July 92	(LXXXVII*a*.)	1st Prisoner Nageshvaraya consulted him in Madras on behalf of some tenants of the Pillur estate who had been convicted.
20th May 93		Witness' brothers went to Kuttur (to arrange a marriage with a son of 3rd Prisoner's father-in-law).
30th June—		3rd Prisoner came to witness' village and consulted him about filing an appeal.
3rd July.		2nd Prisoner came.
4.	,,	They went to Tirukoilur and consulted Krishnaya.
5.	,,	Witness went to Madras (for the Revision Petition).
8.	,,	His brother followed him. They drafted the petition.
10.	,,	Witness had it filed.
13.	,,	Saw 2nd Prisoner.
18.	,,	3rd Prisoner came.
19.	,,	3rd Prisoner left.
(24.	,,	C was impounded, and a petition put in against 3rd Prisoner.)
28.	,,	Received letter from Krishnaya.
29.	,,	He came. The brothers discussed Rendankattalei affairs. Telegraphed to 3rd Prisoner.
30.	,,	Krishnaya and 2nd Prisoner consulted two Vakils. Krishnaya left again (for South Arcot).
1st August.		Witness drafted a Rendankattalei appeal. 2nd Prisoner left.
2.	,,	3rd Prisoner came. Witness wrote to Krishnaya and 3rd Prisoner started for Tirukoilur.

3rd August. On receiving a telegram from Krishnaya, witness left for Tanjore, picking up 3rd Prisoner at Villapuram (the junction for Tirukoilur).

4. ,, Accompanied 3rd Prisoner to Vakil the Hon'ble Mr. K. Kalianasundram Ayar. 3rd Prisoner left by train.

5. ,, From his village witness asked Lachmanaya (uncle of 3rd Prisoner's wife) and another man to go to Rendankattalei.

6. ,, Saw 2nd Prisoner at Tiruvadamarudur.

10. ,, Went to Rendankattalei. Arranged to leave for Madras on 12th.

13. ,, Reached Madras.

14. ,, Gave money for Criminal Revision Petition.

18. ,, Saw Rozario about case.

19. ,, Krishnaya came.

20. ,, Krishnaya returned.

25. ,, Took up the Rendankattalei papers and finished the petition to Government.

28. ,, Engaged barrister in Possession case, which is admitted. Wrote to 3rd Prisoner and Krishnaya.

29. ,, Finished Government petition.

30. ,, Engaged in having it printed.

31. ,, Prepared application in Rendankattalei case.

1st September. Got Rozario's signature to petition.

4. ,, Arranged to despatch Government petition.

23. ,, 2nd Prisoner's brother came.

11th October. Went to Tirukoilur.

13. ,, 3rd Prisoner came there.

14. ,, (date of Pattan's arrest, warrants for the Prisoners being issued that afternoon and night.) 3rd Prisoner left by morning train. Made arrangements to start for Kumbakonam the next day (to meet 3rd Prisoner.)

15. ,, Reached Kumbakonam in evening. (Here witness must have heard of the issue of warrants and the arrest of 1st Prisoner.)

16. ,, Lachmanaya came (uncle of 3rd Prisoner's wife). Krishnaya came at night (arriving 3-30 A. M.)

17. ,, Krishnaya left by morning train (6-15 A.M.) Lachmanaya went to Rendankattalei and returned.

24. ,, Vakil the Hon'ble Mr. K. Kalianasundrum Ayar came (to talk about the charge.)

29. ,, Went to see Vakil the Hon'ble Mr. K. Kalianasundram Ayar (who watched the case for 3rd Prisoner from 31st October.)

4th November. Left for village with Lachmanaya.

7. ,, Left for Kumbakonam with Lachmanaya.

13. ,, Telegraphed money to Madras for counsel.

14. ,, (Sambasivan made a deposition containing the statements now under discussion.)

16. ,, Lachmanaya left for Madras to fetch Mr. Norton (the learned counsel for 3rd Prisoner.)

18. ,, 3rd Prisoner produced in Court by Mr. Norton.

Bail Motion rejected. Went in the evening and saw Mr. Norton.

23. ,, Got copy of goldsmith's deposition (Pattan's).

26. ,, Two men sent to Madras to engage counsel.

28. ,, Telegram from Madras that no counsel coming.

29. ,, First day of hearing. Two vakils appeared rather late for 3rd Prisoner. Much worried.

30. ,, 2nd day of hearing. Resolved to go to Court. Sent Lachmanaya instead. Studied the evidence soon after evening.

1st December 3rd day. Went to a vakil engaged in the case.

2. ,, Lachmanaya went to Madras to fetch Mr. Norton.

9. ,, (In village) Lachmanaya came from Madras. Had long talk with him about the case. Resolved not to go without a fee.

11. ,, A man came from Rendankattalei. Promised to go to Kumbakonam on 13th. Lachmanaya left for Kumbakonam.

13. ,, Went to Kumbakonam.

14. ,, Telegram from Lachmanaya that Norton was coming.

15. ,, Norton arrived from Madras. Hearing. Went in the evening and saw Mr. Norton.

16. ,, Case proceeded with.

17. ,, After meals went to Mr. Norton's and stayed there till 5 o'clock. Went over case with him and two vakils. Started for Madras.

17 to 22. ,, Engaged in Madras with Revision Petition.

21. ,, (Case committed to Sessions).

22. ,, Reached Kumbakonam.

25. ,, (In village) Lachmanaya left for Rendankattalei.

27. ,, Left for Tanjore with Lachmanaya.

28. ,, Went over the two approvers' depositions with (either his cousin or 3rd Prisoner).

1st January 94. Found that vakil the Hon'ble Mr. K. Kalianasundram Ayar etc. had made arrangements for a loan. Ramasami (Sastri) came. Learnt from him that affidavit had been filed. Asked him to get a copy. He left by noon train.

5. ,, Reached Madras. Mr. Norton wanted new terms. Telegraphed to Lachmanaya and received reply.

6. ,, Tried to engage another barrister.

7. ,, Engaged Mr. Brown, barrister. Wired to Lachmanaya.

8. ,, Reached Tanjore with Mr. Brown. "Went myself and made arrangements for him to leave." Wire sent to Mr. Norton.

9. ,, Mr. Norton arrived. Trial began.

11. ,, 3rd day of trial. Sent diary to Mr. Norton.

14. ,, Lachmanaya went to Madras.

17. ,, Met Lachmanaya.

19. ,, The vakil for 2nd Prisoner applied to summon Ramsami Sastri to prove that 2nd Prisoner was in Madras on 10th July.

,, ,, Mr. Norton made an oral application, no note of which was made at the time by the Court, to summon Sundramaya and Krishnaya.

23. ,, Mr. Norton put in written application to summon Sundramaya and Krishnaya to prove that 2nd Prisoner was in Madras on 10th July and a few days before and after.

151. It will be seen from this abstract that witness was very wide of the truth when he said he was never 3rd Prisoner's vakil, had not taken much trouble in connection with this case, and had taken action merely as a relation. In his evidence he admits that before 30th June 93 he had seen 3rd Prisoner only on one occasion. But his activity at any critical period in the development of this case is extraordinary; and it may be treated with his brother's. On the 28th July, only four days after C was impounded, Sundramaya received a letter from Krishnaya, which was followed on 29th by the latter's arrival. They discussed Rendakattalei affairs and telegraphed for 3rd Prisoner. On the 30th Krishnaya and 2nd Prisoner consulted two vakils—but that evening Krishnaya had to leave for his Court, from which he was generally able to absent himself only on Saturday and Sunday. On 1st August 2nd Prisoner left. On 2nd August 3rd Prisoner came in obedience to the telegram. Sundramaya wrote to Krishnaya, and 3rd Prisoner started for Tirukoilur where Krishnaya lives. On 3rd August Krishnaya telegraphs to Sundramaya, who at once starts for Tanjore, picking up 3rd Prisoner at the junction for Tirukoilur. 4th August Sundramaya accompanies 3rd Prisoner to consult a vakil who still represents the latter in the case.

152. This is sufficient activity consequent on the impounding of C. Passing over further steps taken by the brothers in August (when Krishnaya made his third Saturday—Sunday trip to Madras about 3rd Prisoner's matters) the next point of interest centres about the 14th October. It will be remembered that for a week before that date the Police Inspector had been in indirect communication with Pattan. On 13th October 3rd Prisoner came to Tirukoilur where Sundramaya was staying with Krishnaya, having been summoned by telegraph by the brothers (Sundramaya's deposition). On 14th October 3rd Prisoner left by the morning train for Kumbakonam, arranging to see Sundramaya there on the 15th (see his evidence). On the 15th the latter followed, but did not see 3rd Prisoner for whom a warrant had been issued the previous night. On 16th, 3rd Prisoner's wife's uncle Lachmanaya came, who along with Sundramaya seems to have been the principal agent for the conduct of 3rd Prisoner's defence. On 17th, Krishnaya, summoned by Lachmanaya, arrives about 4 A.M. and has to leave before 6 A.M., spending over 15 hours in the train for a consultation of a couple of hours (see his evidence and G.G.G.).

153. The next point of interest is the appearance in Court of the Honorable Mr. Kalianasundram Ayar to watch the case for 3rd Prisoner whose warrant had not yet been executed. This was on 31st October, and six days before this we find this vakil visiting Sundramaya about this case. (See evidence)

154. The next point of interest is the surrender of 3rd Prisoner in Court on 18th November, produced by Mr. Norton. Five days before that, we find Sundramaya telegraphing money to Madras for Counsel.

155. Later, we find Sundramaya getting a copy of Pattan's deposition-studying the evidence- having a long talk with Lachmanaya about the case—resolving not to go without a fee—going over the case with Mr. Norton and two vakils —going over the two approvers' depositions—sending Ramasami Sastri to Madras for a copy of the affidavit—negociating terms with Mr. Norton—engaging another barrister—paying him large sums of money (diary and oral evidence)—dispensing with his services—and being continually about with Lachmanaya.

156. From all this it appears that Sundramaya has from 30th June last been in the closest confidential communication with 3rd Prisoner and with 3rd Prisoner's legal advisers, whom he admits having instructed.

157. It is now necessary to see whether Sundramaya's relations with Mr. Norton were such as to obviate any shyness or backwardness on his part in communicating information to that learned Counsel.

158. From October 91 to February 93 Sundramaya had been attending to Mr. Norton's business, appearing for him when he should be absent, preparing "grounds" and instructing him in Court—for which Mr. Norton paid him 100 or 150 Rs. a month. From July 93 onward, Sundramaya occupied a room in the learned Counsel's office, and was allowed to use his library. When Mr. Norton came down to Kumbakonam, Sundramaya went to see him on three occasions.

159. It is thus clear that Sundramaya was on terms of comparative intimacy with Mr. Norton, and could have felt no hesitation in giving him all the information in his power.

160. Sundramaya says in his deposition "I read Sambasivan's deposition the day after a copy of it had been obtained. I might have read it 4 or 5 days after he gave it. * * *. If it was taken on 14th, I would have read it about 19th or 20th" (November). It was in fact taken on the 14th, and stated, as has been mentioned above, that 2nd Prisoner received the copy of C in Tanjore on 10th July.

161. Now under the circumstances recited above, what was the natural course of conduct to be expected of Sundramaya on reading that statement? He would at once have gone to 3rd Prisoner's legal representatives and told them that, so far from 2nd Prisoner being in Tanjore, he was then in Sundramaya's house in Madras and had that day put in the Criminal Revision Petition on the re-opening of the High Court—he would have mentioned his brother Krishnaya as able to bear him out to the extent hereafter to be noticed—have given the name of Ramasami Sastri and others as being cognizant of these facts as living in the house at the time—and would have insisted that all these persons with .Mr. Rozario and his clerk should be cited as witnesses.

162. What in fact occurred? The case was allowed to be committed to Sessions on 21st December, 2nd Prisoner having cited 12 witnesses and 3rd Prisoner having cited 8, among which Sundramaya, Krishnaya and Ramasami Sastri were not included; nor was any effort made to have any of these witnesses summoned until at least the 18th January, 9 days after the trial had begun in this Court.

163. Sundramaya at first represented that he had told Mr. Norton on 17th December that 2nd Prisoner had been in Madras on 10th July; but he soon abandoned this position. "I do not remember whether I told Mr. Norton 2nd Prisoner was in Madras for some days up to 11th. So far as I can certainly remember, the first time I told any body about 2nd Prisoner having been in Madras from 4th to 11th. was on night of 22nd December" (after the case had been committed), "when I told 2nd Prisoner's son in Kumbakonam." * * Mr. Brown the Barrister was the first professional legal man I told; that was 7th or 8th January. * * * I am sure I told him after he arrived here on morning of 8th.

On that day the Sessions were to begin." "In Kumbakonam * * I saw Mr. Norton 2 or 3 times. * * * I do not remember making any reference to 2nd Prisoner to Mr. Norton. * *

Q. When did you first tell any body that 2nd Prisoner had been in Madras on 10th July ?

A. I remember I first mentioned it to 2nd Prisoner's son on 22nd December."

164. Thus from the witness' own lips we have it that he told no one of his important information until the case had been committed for trial, and told no legal representative of the Prisoners until the day appointed for the trial in this Court. Even this does not probably accurately represent the facts, for it was not till 11th January that he sent his diary to Mr. Norton, whose industry in this case cannot be blamed. Even then it seems doubtful how far he put forward his present story, for no application to cite him or his brother was made until at least the 18th. The application then made was oral, and I will not raise the question of its exact purport, as on 23rd a written application was made, stating in specific terms that the brothers could speak to 2nd Prisoner's presence in Madras on 10th July.

165. In courtesy to the learned Counsel who put in the latter application, I must notice a statement therein contained to the effect that the fact and relevancy of the brothers' evidence were mentioned to Mr. Norton on or about 18th December, but he declined to enter them as witnesses until he was satisfied *in greater detail* of the evidence which each of them could give. (The phrase italicized will be observed.)

166. To find the true explanation of this it is necessary to refer to a sentence in Sambasivan's evidence before the Magistrate which has not yet been dwelt upon. Speaking of the party in the train on the evening of the 10th July, he said "We all went to the Grahapravésam" or house-warming. The defence hold that this necessarily included 2nd Prisoner, and the contention is perfectly legitimate. The Prosecution contend —as Sambasivan states in this Court— that in fact 2nd Prisoner did not get down at Kumbakonam but went on to Madras; that considering that the whole of the wedding party had gone to the housewarming, and were being followed by the bridegroom and his clerk, the latter might legitimately though loosely use the expression 'We all went', without meaning to include 2nd Prisoner who had joined them for a different purpose. From the point of view of the Prosecution too it might be urged that this was a slip of memory four months after the event on a minor point —since 2nd Prisoner went on to Madras on business which did not concern Sambasivan.

167. Whatever may be the correct view of the statement, the defence have seized upon it with avidity, (Petition to H. C. 29th January) as inconsistent with the undoubted fact that 2nd Prisoner put in an affidavit in Madras on 11th July.

168. This would account for Sundramaya after his study of Sambasivan's deposition telling Mr. Norton in December about the affidavit (see deposition,) and for his professed inability to say in what connection he mentioned it, and for his having spoken to Mr. Norton of the Criminal Revision Petition which introduced the affidavit. This would account also for Sundramaya only hearing on 1st January 94

for certain that the affidavit had been filed, and then sending for a copy of it. In short, it appears to me that Mr. Norton in December was told of the affidavit of 11th July as a means of contradicting Sambasivan as to his housewarming statement, and heard of the Revision Petition in that connection. It appears absolutely established however from the procedure in the case, and from the reluctant admissions of Sundramaya, that his information as to 2nd Prisoner's 10th July alibi was only communicated by him after the opening of the Sessions.

169. Such extraordinary concealment can only be credited if it can be satisfactorily explained. What explanation does Sundramaya give ? This man, the most confidential counsellor of 3rd Prisoner, in close relations with his legal advisers, a student of the evidence of the approver and knowing that he can establish an alibi for 2nd Prisoner that would seriously damage the approver's veracity, locks the secret in his breast and can only give his reason in these words "It did not strike me." This explanation too only concerned his reticence up to 17th December. For his reticence after that date, no explanation has even been suggested.

170. This analysis of the probability of Sundramaya's story and of his conduct, renders it unnecessary to refer further to his deposition. It may be said however to show considerable want of candour in many points. Only one need be instanced. On the 17th October when Krishnaya took the trouble to spend 15 hours in the train to have a short consultation with his brother and with Lachmanaya, Sundramaya would have it believed that he was so sleepy that he only spoke a word to his brother and went to sleep again.

171. On a careful consideration of the whole of Sundramaya's evidence I come to the reluctant conclusion that it is entirely false as to the events of 10th July.

172. What can be the motives for his perjury ? The answer is perhaps to be found in the fact that in 1892 his net family income was only about 400 Rs. (LXXXVIIA. 28th March). He says it is now over 800, but that may be doubted. His health is wretched, as his diary shows, and he has had in consequence to give up practice. This means poverty to a man accustomed to Madras life, and to a circle of friends earning good professional incomes. I can only suppose that he is a man of little moral principle, corrupted by bad associates, and unable to resist the temptation of a large illicit reward.

173. With his evidence falls that of his friend and occasional clerk, Ramasami Sastri. Some of the criticisms made above will apply to his evidence; and he would have been put forward before 18th January had his account been true. As to his motives, if a man in Sundramaya's position has been corrupted, it is not difficult to understand the corruption of Ramasami Sastri.

District Munsiff Krishnaya's evidence.

174. The third witness to this alibi is Mr. Krishnaya, District Munsiff of Tirukoilur, South Arcot. He says his brother Sundramaya and 2nd Prisoner came to visit him on 2nd July, and on 3rd July went on to Madras. He arrived in

Madras on Saturday 8th, and found 2nd Prisoner in Sundramaya's house and also one Subbaya. That night a draft of the Revision Petition was drawn up, and it was agreed 2nd Prisoner should put in an affidavit. On Sunday 9th the draft was revised, and witness left the house at 4 or 4—30, saying goodbye to 2nd Prisoner, and caught the 5—15 P. M. train.

175. It will be seen that this account is not necessarily inconsistent with 2nd Prisoner being in Tanjore on 10th, for if witness left the house at 4 P. M, 2nd Prisoner might have left it half an hour afterwards, and caught the same train. Nor can witness say 2nd Prisoner did not leave the house after he did. A motive indeed for 2nd Prisoner not wishing the witness to know he was going to Tanjore, might be found in the fact that 2nd Prisoner was going to receive the copy of C for which he had written application CC. True that application purported to be signed by 3rd Prisoner, but that signature was below an express statement that 2nd Prisoner was 3rd Prisoner's agent. This would be sufficient authority for the copy being handed to 2nd Prisoner, and as the Copyist Department might very possibly refuse to hand it to any other so called agent, it would be necessary for 2nd Prisoner to be on the spot. He would not tell Krishnaya of this, for he not only never told him of the Sadr Amin's judgment, but had just instructed him in the Revision Petition to assert that Pillur was the absolute property of Sellam. This argument proceeds upon the assumption that 2nd Prisoner was aware of the date when the copy would be ready. This is not an improbable assumption, first, because any body can learn such a fact by enquiring in the Copyist Department, secondly because the conspirators must have had at least one accomplice in the District Court. This journey to Kumbakonam and Tanjore and back would necessitate 2nd Prisoner being absent when the Revision Petition should be put in, but that was to be done by a barrister; he could be back in Madras on 11th to make the affidavit.

176. In cross-examination the witness had to admit his memory might be wrong as to the man Subbaya being in the house. In fact, the latter did not arrive till after witness left.

177. This witness also is gravely deficient in candour. He explains his summoning 3rd Prisoner to Tirukoilur on 13th October by saying his brother wanted 3rd Prisoner to get another vakil for the Revision Petition—this was certainly not a sufficient reason for the step. He supports his brother in saying that the latter never spoke to him at the conference at 4 o'clock in the morning of 16th October though in the same room with him and Lachmanaya. He would have it believed he had not then heard of a warrant having been issued for 3rd Prisoner. At first the witness said he had never spoken to anybody about his evidence but afterwards admitted a vakil for the defence had questioned him six weeks before. At first he was unable to remember that 3rd Prisoner had come to Tirukoilur on 3rd August, or that he had then telegraphed to his brother; being unable to explain the entries in the diary. He later remembered that he and his brother had telegraphed from Madras for 3rd Prisoner, and admitted that 3rd Prisoner might have followed him to Tirukoilur; but he still could not or would not recollect having seen him there. He also says that he took so much trouble for 3rd Prisoner only on account of their relationship, and because 3rd Prisoner said he would conduct everything through witness' brother. None of these answers seems satisfactory.

178. It may be repeated here that if 2nd Prisoner was in Madras on 10th July, there is no reasonable explanation why the affidavit was not put in with the petition or why the affidavit should have blanks which were afterwards filled up.

179. It has been argued by the learned counsel for 3rd Prisoner that if Krishnaya's evidence were disbelieved he would be dismissed from his appointment. If the fact were necessarily so, I should consider that such a sanction would have immense weight with the witness. But the evidence is so carefully guarded that the possibility of inconvenience arising from incorrectness would not in fact present itself strongly to the witness' mind. There is nothing that can be caught hold of except that 2nd Prisoner was in Madras on Saturday and Sunday, which is not improbably true. The witness will not swear 2nd Prisoner did not leave on Sunday night, and even as to the probability he suggests, he leaves a door open, For he represents his having said to 2nd Prisoner that the petition and affidavit should be put in on the 10th, "or if it was inconvenient to swear the affidavit that day, 2nd Prisoner should remain there the next day and put it in." This contemplation of a possibility that 2nd Prisoner might be prevented from putting in the affidavit on 10th is significant.

180. This witness, be it remembered a District Munsiff, was first consulted about the Pillur litigation by 1st Prisoner. In the first week of June they travelled together 2 or 3 times, and witness gave 1st Prisoner permission to bring him the Possession case records for his advice. In the same month witness went to Rendankattalei, and from this time the brothers seem to have constituted themselves confidential advisers of 3rd Prisoner. Krishnaya was consulted at his station on 4th July, and on 8th July went to Madras and helped to draft the Revision Petition. A few days after the impounding of C, he went again to Madras, and the brothers telegraphed for 3rd Prisoner. The next day (30th) he and 2nd Prisoner consulted vakils. On 2nd August, 3rd Prisoner who had come to Madras and missed witness, started for Tirukoilur; this is the occasion which witness cannot recollect. On 3rd August witness telegraphs to his brother who starts suddenly for Tanjore, picking up 3rd Prisoner at Villapuram. On 19th August witness was again in Madras just before his brother wrote a petition to Government. On 13th October the brothers are in Tirukoilur and have telegraphed for 3rd Prisoner who came. On the night of 16th, witness travelled to Kumbakonam for a two hours' conference with his brother and Lachmanaya; this was on his hearing of some warrants being issued. On 25th and 26th December witness was staying in Madras in the house of Mr. Norton's clerk with Ramasami Sastri.

181. Considering the probabilities of the matter, the want of frankness in Krishnaya's statements, his connection with 1st Prisoner, with Sundramaya and with Ramasami Sastri, and the all-important fact that he was put forward only after the case was well advanced in this Court, I come to the conclusion that his evidence cannot be taken as rendering it even probable that 2nd Prisoner was in Madras on 10th July.

182. Having expressed these views as to the evidence of Ramasami Sastri, Sundramaya and Krishnaya, it is proper for me to say here that the Assessors, who have bestowed much pains on the case, hold that this alibi of 2nd Prisoner on 10th July is proved and that Sambasivan's statement is incorrect. They are of opinion however that this does not affect 2nd Prisoner's guilt. If I shared their view, I

should share this opinion, for it appears to me that the prosecution evidence recited above, documentary and oral, completely establishes 2nd Prisoner's complicity in the forgery. The testimony of the approvers has been amply confirmed.

4TH PRISONER VENKATRAMAYA.

Defence explanation for his being falsely implicated

183, I turn now to confirmation of the two approvers' evidence against 4th Prisoner, taking his case before that of 3rd Prisoner as the facts and testimony to be cited have been already mentioned and may be still fresh in the memory.

184. The learned counsel for this accused, Mr. Robert Grant, has contended that the Pattan was induced to implicate his client on 14th October by one Chinnasami Naik, Station House Officer of Peralam.

185. He pointed out that Muruga Pillai, the intermediary of the Police Inspector and Pattan, had been introduced to the former by Chinnasami Naik; that this Station House Officer in March 93 was accused of extortion and wrongful confinement by a dependent of 4th Prisoner's son; that 4th Prisoner's son and son-in-law gave evidence against him; that the Kiranur claimant's nephew and another Vakil defended him professionally; and that the Station House Officer was under suspension from the hearing of the charge until December (21st witness for defence).

186. From these facts it is argued that this Station House Officer must have felt resentment against 4th Prisoner, and may through Muruga Pillay have induced Pattan falsely to implicate him. Some of the learned Counsel for the defence have also animadverted severely on the Inspector's employing this Station House Officer while under suspension.

187. It appears to me that there are other facts which detract seriously from the force of this contention. The charge of extortion and wrongful confinement was not an occurrence entirely outside the disputes leading up to this case, but arose out of these very Pillur disturbances. This dependent of 4th Prisoner (21st defence witness) and a number of 4th Prisoner's tenants mixed themselves up in some proceedings concerning the occupation of some Pillur lands, and were prosecuted by the local Station House Officer, this Chinnasami Naik, for being members of an unlawful assembly, with the result that the former person was convicted by the Nannilam Sub-Magistrate. As a counter-step, he charged the Station House Officer with extortion and illegal confinement. Under the circumstances it was not unnatural that the Kiranur party who had called him in to protect their rights, should aid him by Vakils in defending himself. He was indeed fined Rs. 100, (not by the same Magistrate but by the Kodavasal Sub-Magistrate) but the Judgment was reversed on appeal. As for his suspension, that took place presumably under the rules of the Department, either on the charge being made or on his conviction. But when he was acquitted on appeal in December, the suspension was taken off (2nd defence witness). There is nothing therefore which appears from the records whence an unfavorable opinion of Chinnasami Naik can be drawn, and there is nothing to substantiate the insinuation that he brought

influence to bear on Pattan to falsely accuse 4th Prisoner. Nor under the circumstances can the Inspector be blamed for employing Chinnasami Naik to collect information. He was a man well versed in the criminal habits of Kumbakonam, and the Inspector would have shewn an excess of scrupulousness if he had not availed himself of the Station House Officer's knowledge just because, while one Sub-Magistrate had upheld his conduct, another had condemned it. The acquittal by the appellate Court shows that Chinnasami Naik's conduct had not been disreputable.

1st Prisoner's telegram of 11th July.

188. It will be remembered that the copy of C, applied for in April, reached 1st and 2nd Prisoner's hands on 10th July; and that 1st Prisoner had to go that evening to Kumbakonam for the house-warming ceremoney. The train would arrive only after half past nine, and the ceremony would keep him busy that night. At 8-55 the next morning a telegram E was sent to 4th Prisoner at Mayaveram in these words; "copy received; come immediately."

189. Now without prejudging the decision as to 4th Prisoner's guilt or innocence, it appears to me that the evidence of the two approvers, coupled with the facts to be soon noticed that 4th Prisoner was on 14th July—4 days after the delivery of the copy of C—found in possession of it with 1st Prisoner, and on 17th in possession of it with 2nd Prisoner, affords at the least *prima facie* reasonable grounds to believe that 4th Prisoner had conspired together with Prisoners 1 and 2 to commit an offence. Under Sec. 10 of the Evidence Act, the sending of this telegram which is so connected with the fact in issue, viz 4th Prisoner's complicity, as to make it likely, is relevant (Whitley Stokes' note to Sec. 10 and authorities there cited.)

190. In this view it is immaterial whether the telegram reached 4th Prisoner. However that question may be shortly discussed, The Mayaveram telegraph signaller (31st Prosecution witness) proves that the telegram reached that station, was issued at 11-15 A. M. to Peon Gurusami Naidu, and was returned by him at 12-10 P. M., and that the receipt-form does not bear the Stamp-marks which always evidence non-delivery.

191. The peon (35th Prosecution witness) deposes that he remembers delivering this telegram into 4th Prisoner's hand, his memory serving him as 4th Prisoner is 'a big lord'.

192. On the other hand, the telegraph receipt-form is unsigned, and the care-taker of 4th Prisoner's house comes forward to depose that he refused to receive the telegram as 4th Prisoner was at that period of time staying at his village (20th defence witness.) I confess I distrust this witness, from his demeanour, from his being under obligations to 4th Prisoner, and from his being a relation of Ramasami Sastri. Besides, his evidence does not account for the subsequent treatment of the telegram which should under such circumstances have been impressed with stamps which do not appear on it. Further, 4th Prisoner's village is only 6 miles from Mayavaram, and it appears improbable that the care-taker would have refused to receive and forward it.

193. The man also who was prosecuted by Station House officer Chinnasami Naik and who prosecuted him in return (21st defence witness)—not a very trustworthy person, says 4th Prisoner was in his village on 11th.

194. On the whole, I think the best explanation is that adopted by the Assessors, who are of opinion that the telegram was received at the house, and subsequently came to 4th Prisoner's notice. But in my view of the law and the facts in this case, the matter is unimportant.

195. What is important is that the 4th Prisoner has not attempted to show that the telegram referred to any other copy than that of C.

4th Prisoner in possession of the copy of C.

196. On 13th July, 1st Prisoner is found travelling with the copy from Kumbakonam past Narasingapet, which is separated from Mayavaram by only one station (7th Prosecution witness and G. G. G).

197. On 14th July, according to Sivaramakrishnan's evidence (9th Prosecution witness) 4th Prisoner was in the train going to Kumbakonam from the direction of Mayavaram with 1st Prisoner when the latter shewed witness what was undoubtedly the copy of C. 4th Prisoner used an expression showing that he was cognizant of the contents of the copy ; "Why do you show it to a man of the opposite party ?"

198. On the 27th July the District Judge while prosecuting enquiries at Kumbakonam, sent for this witness and made notes of what he said. The learned Government Pleader sought to corroborate the evidence of this witness by these notes, and sought to put them in without proof.

199. I take it that the records of acts of official bodies spoken of in Section 74 Evidence Act and the official record spoken of in Section 35 must be understood to be records intelligible in themselves. These notes however are made almost in a sort of short-hand, with contractions that a stranger to this case could not understand, and with words omitted that make the sense difficult to grasp. I ruled therefore that the document required proof, and called the Sub-Judge of Kumbakonam who had been present when the document was written. That gentleman however having first stated that the notes produced were those made by the District Judge, veered round for whatever reason, till finally he asserted he could not say so. In the result, it was held the document had not been proved and it was excluded.

200. That same morning the Sub-Judge had taken a statement from this witness Sivaramkrishnan. He was asked to say all he knew about 1st Prisoner having shewn him a Judgment in the train (for witness had already mentioned this to others.). He wrote an answer in only 51 words, but this does not mention the name of 4th Prisener.

201. The learned Counsel for the latter, Mr. Grant, lays great stress upon this fact, as tending to show that Sivaramakrishnan's mention of 4th Prisoner was an afterthought.

202. I cannot agree that it was an afterthought for three reasons; first, witness had been asked only about 1st Prisoner; secondly, he was asked to write, and did write, his answer quickly and briefly; thirdly, though he has deposed that the first person to whom he mentioned the matter immediately on leaving the train was his master, Mr. Mahadeva Sastri, Vakil for 2nd Prisoner before the Magistrate, and actually summoned by 4th Prisoner as a defence witness in this Court, that gentleman was not put into the box to contradict his clerk either as to the general story or more particularly as to 4th Prisoner's presence.

203. Nor can I see any reason to disbelieve this witness, in view of the evidence next to be noticed.

204. Mr. V. Krishnaya (27th Prosecution witness) says that on a day which other evidence fixes as 17th July, 4th Prisoner came with 2nd Prisoner and both of them shewed him a certain copy, which can be no other than the copy of C.

205. The veracity of this witness is not disputed, but it is contended that 4th Prisoner having an appointment in the neighbourhood may have come to the spot without any connection with 2nd Prisoner's business. But this does not agree with the account of the witness, who distinctly says 4th Prisoner told him to read the Judgment.

Explanation of 4th Prisoner's Counsel.

206. It has been shewn that the morning after he had received the copy of C, on 10th July, 1st Prisoner telegraphed this fact to 4th Prisoner and summoned him to Kumbakonam ; that on the 13th 1st Prisoner was travelling towards Mayavaram with the copy ; that on the 14th 4th Prisoner was with 1st Prisoner in the train when 1st Prisoner again had the copy, 4th Prisoner being aware of its contents ; and that on the 17th he and 2nd Prisoner were showing it to a vakil.

207. It is argued by the learned counsel for 4th Prisoner that all these facts are consistent with innocence. 1st and 2nd Prisoners may have conceived and executed this fraud, keeping him in the dark ; and just as they thought it to their advantage to give all publicity to the existence of the judgment, telling casual fellow passengers and showing it to vakils and clerks, so it must have been necessary for them to show it promptly to 3rd Prisoner's uncle, (mother's sister's husband) who in his anxiety to keep in a safe path shewed it to vakil Krishnaya.

208. Something of the gloss is rubbed off this argument by the contradictions with which 4th Prisoner has assailed the evidence from which it springs. An honest gentleman in the circumstances suggested would have admitted the telegram, admitted Sivaramakrishnan's evidence, and admitted that he helped to show the copy to Mr. Krishnaya. 4th Prisoner denies all these facts.

Checked with 4th Prisoner's subsequent conduct.

209. A still more important guage of 4th Prisoner's attitude is to be found in his behaviour when a warrant was issued on 14th October. He absconded

ded, and only surrenderd himself nearly two months later after proclamation had been made for him and attachment issued against his property.

210. Some slight effort has heen made to deny this fact by calling a witness to prove that 4th Prisoner left his residence before the warrant had been issued. (22nd defence witness). But this witness needs only a moment's consideration. He is so uncandid that he pretends not to have heard of a warrant having been issued for this 'big lord', though the fact must have been the talk ef every bazaar; and though his memory is so good that he can recollect that 4th Prisoner left between 9th and 12th October, he cannot recollect whether he saw 4th Prisoner, who often came to that village, in any of three given months. The bare word and the bare memory of this witness are not enough to show that 4th Prisoner left his village, say, on 12th October instead of 15th.

211. Besides, 4th Prisoner in his statement here admits he concealed himself to avoid execution of the warrant. He says he heard of it in Madura, and then went to Tinnevelly and Malabar. It is true he says he did this to avoid being shewn to witnesses lest a false case should be got up against him, and to avoid indignity and ill-treatment. But this excuse cannot be admitted, and the natural presumption must be drawn from his conduct, both contradicting his plea of *bona-fides*, and serving as confirmation of the statements of the two approvers. (See Gobardhan's case. I .L. R. IX. Allahabad 528 where Sir John Edge C. J., and Mr. Justice Straight held absconding to be confirmation of an approver's evidence.)

Checked with 4th Prisoner's previous conduct.

212. The conduct of 4th Prisoner after 10th July having been considered, it is now necessary to turn to his connection with the Revenue dispute of 91 when a gift or oral Will was first mentioned, and with the Injunction Suit of 1892 in which in varying forms a written Will was first put forward.

213. Up to Sellam's death, 4th Prisoner as brother-in-law of 3rd Prisoner's mother, must have known that Sellam's title had never been impugned. The Hon'ble Mr. K. Kalyanasundram Iyer 28th Prosecution witness proves that 4th Prisoner instructed him for the petition of 4th November 91. (XL) though he thinks the paragraph reciting an oral Will was entered from knowledge he himself had gleaned and not from instructions. There can be no doubt however that 4th Prisoner knew then of the new position taken up by the family. That position as he must have heard was supported by the evidence of the two old men put forward under circumstances on the face of them most suspicious.

214. Mr. Svayambu Ayar (26th Prosecution witness) proves that 4th Prisoner was present when Prisoners 1, 2 and 3 came to him about the Injunction Suit of 1892. "4th Prisoner came thus more than once; thrice as I remember. He came on the first occasion when the vakalat was given; on the other two occasions the case had been posted for trial." Thus there can be no doubt that 4th Prisoner was cognizant of the main proceedings in that extraordinary suit, where in

March Plaintiff's representative could not say whether the transfer of the estate was by gift or otherwise (Q), in April he was able to speak of a written Will in favour of Sellam and her husband, in August a witness was summoned to produce a box of Sellam's, and in October an unknown number of the cited witnesses are ready to prove such a Will as is spoken of in C, disinheriting Sellam.

215. The man who was to produce the box was Perumal, Sellam's cartman (42nd witness). Considering the course of that suit, there can be no question overtures were made to him to produce such a box, and it is probable they were made by 2nd Prisoner who did the dirty work of the fraudulent Rendankattalei claim. Perumal however deposes that when he resisted 2nd Prisoner's advances, the latter took him to 4th Prisoner (a far more influential personage, whose pledge of protection would be considerably more valuable than 2nd Prisoner's) who urged him strongly with offer of a still higher bribe to produce a box in which a Will should be introduced, with some story of Sellam having left it with him. The defence argue that this witness could not have resisted such inducements; but apart from any chance of loyalty to Sellam or honesty, it was a dangerous business for him to touch; and it is rather in support of his alleged refusal that the Injunction Suit was allowed to go by default (for though this has been explained as a mistake, such mistakes are not generally made for rich clients) and that no Will or box was ever put forward in the Possession case which lasted till the middle of March. Indeed, when that was taken up to the High Court, Sellam's title is again asserted.

216. A point in favour of Perumal is that like other residents of Pillur he first espoused the cause of 3rd Prisoner against the Kiranur claimant, and took part in the disturbances which occurred, with the result that he was taken to the lock-up and prosecuted. On the other hand, the estate is now in the hands of the Kiranur claimant, who as proprietor in this district has great power over the residents of the village.

Recapitulation of case against 4th Prisoner.

217. Perumal's evidence was given with apparent truthfulness and candour; and after much consideration I have determined to accept it. I do so however with the express statement that my conclusion as to 4th Prisoner's guilt would not be affected by its exclusion. To justify this opinion I shall shortly recapitulate the case against 4th Prisoner.

218. In his relation of uncle to 3rd Prisoner and as taking part in his affairs, (see also BBB_4) he must have been acquainted with the growth of the fraudulent Rendankattalei claim from an oral gift or Will to a written Will capable of being produced. The two approvers depose to his presence at the concoction of C, which recites just such a Will as had at last been evolved in the Injunction suit. After C has been deposited in the District Court and a certified copy of it obtained by 1st Prisoner the forger, he telegraphs to 4th Prisoner summoning him immediately as the copy has been obtained. Three days later, 4th Prisoner and

1st Prisoner are travelling together with the copy. Three days later again, 4th Prisoner and 2nd Prisoner are taking action together to elicit criticism of the judgment. As soon as Pattan is arrested and a warrant issued against himself 4th Prisoner absconds.

219. On the evidence of the approvers, confirmed by these facts, I find myself driven to disagree with the Assessors and hold that the case against 4th Prisoner is established.

3RD PRISONER ISVARAYA.

Explanation of his counsel checked with conduct.

220. I have now considered the case against the 1st, 2nd and 4th Prisoners and have been compelled to the conclus ion that Prisoners 1 and 2 have conceived the various phases of this fraud, and that 4th Prisoner was an accomplice of theirs in it and in the forgery of C. After the establishment of these facts the learned counsel for the 3rd Prisoner takes up the position that the forgery was carried out without his client's knowledge—or, to use the words of the Penal Code, his instigation, conspiracy or aid. The 3rd Prisoner's manager and his uncle may have had recourse to a forger to establish 3rd Prisoner's claim; of this 3rd Prisoner knew nothing. 1st Prisoner may have helped him in legal matters, but nothing more. (As to such help see BBB_3; evidence of 26th Prosecution witness; vakalat in Injunction suit attested by 1st Prisoner, EE_1; and stamp papers of the value of Rs. 155 bought for that plaint by 1st Prisoner as endorsed upon the back of EE; see also paras 50-51-139). He is a young man whose affairs are in reality conducted entirely by others. This definite statement is capable of check.

221. In the 1st place even before Sellam's death (18th defence witness) he was the Village-magistrate and the Revenue Monigar of his own and three other villages, and in the latter capacity has looked after the collections from some 300 land holders (18th defence witness). He must therefore be a man of some knowledge of affairs. After the 24th July (impounding of C) it might be argued that he would naturally dissociate himself from his former advisers, and therefore I say nothing about his managing his own business in Madras on 2nd August, in Tirukoilur 3rd August, in Tanjore 4th August, and in Tirukoilur 13th October (diary and evidence of Sundramaya and evidence of Krishnaya.). But on 30th June it was he who on the invitation of Krishnaya went to Sundramaya's village to consult that person, and on 18th July it was he who went to Madras for the same purpose.

222. It appears, merely from these facts, that he was capable of taking and did take an intelligent part in the conduct of his own affairs. And it must be presumed that he, then a major, authorized the admission of Sellam's title made in January 91 (KK_2), and was aware of each shifting phase of the false claim put forward in his name, from Sellam's death in August 91 to the dismissal of the

Injunction suit in November 92. Such knowledge would show him privy to that fraud.

223. But apart from presumption let it be seen whether he was present at any of the various assertions of the claim. He signed the petition put in on Sellam's death, (XL) which speaks of the property having been gifted in pursuance of Anapaya's directions. He was present at the consequent Revenue enquiry when two palpably false witnesses spoke to the death-bed instructions. (30th Prosecution witness.) In February of the following year, after having a vakalat witnessed by 1st Prisoner and the stamp-papers bought by him he put in a plaint which is most suspiciously silent as to the origin of his uncle's title. (EE in Negapatam Injunction suit). He also went to the Negapatam Vakil when the latter was instructed by Prisoners 1 and 2 (26th Prosecution witness.) He also of course paid all the expenses of that suit, including the expenses of his three Vakils, and the allowances for the witnesses.

224. Considering these facts I consider it impossible to believe that this intelligent Brahman Munsiff was ignorant of all the highly suspicious circumstances which accompanied the growth of his claim, developing into the assertion of a written Will. It is highly probable that he was aware of the process of the fraud, and knew that 1st Prisoner was to be the means of carrying it out.

225. Whether from Perumal's refusal to become an accomplice, or for other reasons, the idea of producing a Will was dropped, no mention being made of it in the Possession case. On the contrary, indeed, in the Revision Petition a complete *volte-face* was made, it being stated that "the property was the absolute property of the deceased Sellam, whose heir, petitioner, and not Anapaya's is entitled to the property." (LXXXIII drawn up by Sundramaya and Krishnaya after consultation with Prisoners 2 and 3). This is a curious claim to be made by a man who had signed the Revision Petition (XL) which set up an oral Will, and the plaint (EE) introducing a Suit in which a Will disinheriting Sellam was put forward.

The signatures in the copy-applications for C.

226. The course of events must now be taken up from the middle of March when the Possession case went against the Prisoner.

227. The Prosecution has sought to show that the Prisoner signed the three applications for the copy of the forged judgment (CC 15th April. DD 29th April and XXXIX 14th July), and has called Mr. Singaravalu Modaliar of the Bank of Madras as an expert in signatures. On this point I am unable to agree with this gentleman's opinion, and there is no doubt that the Assessors take the same view. A study of handwriting such as this case has necessitated enables me without diffidence to reject his conclusions. And the learned Government Pleader seems no longer to press the contention.

228. Then who wrote 3rd Prisoner's signature in these applications? In the first, probably 2nd Prisoner, to judge from the similarity of writing between the signature and the body of the writing. There is no saying who either wrote

or signed the second. The third seems to be in 1st Prisoner's writing, and the signature by the same hand.

3rd Prisoner's absconding.

229. After C was impounded on 24th July, 3rd Prisoner was summoned to Madras to consult with the District Munsiff and his brother, about the accusation made against him, and took Sundramaya to Tanjore to consult the Vakil who had appeared for him both in the Revenue enquiry and in the Injunction Suit. He should therefore have been fully prepared to meet any Criminal complaint that should arise out of the accusation, and it cannot be pretended that in October he was taken by surprise. On the 13th of that month he is summoned by telegram to Tirukoilur where the brothers were staying, and on the 14th left as Sundramaya tells us for Kumbakonam. That very night a warrant was issued for his arrest, and this had to be followed by a Proclamation a month later. It was not until 18th November that he surrendered. Meanwhile on 31st October the Hon'ble Mr. K. Kalyanasundram Ayar had appeared to watch the case on his behalf (28th Prosecution witness).

230. I see no room to doubt that 3rd Prisoner absconded and concealed himself. He does not indeed deny it, but affects that he concealed himself only for a week. Even if this were so, it must be considered as a fact against him, but he has not attempted to account for his movements. It must be taken therefore that as soon as he heard of Pattan's arrest and the issue of a warrant against himself, he absconded. His excuse that he feared he would have to cook his own meals in the Sub-Jail need not be noticed.

Conclusion as to 3rd Prisoner.

231. We are now in a position te decide whether or not this Prisoner abetted the concoction of C. The evidence of the two approvers against him is confirmed by the probability arising from his previous conduct *viz* his cognizance of the fraud which led up to C and of which C was only a phase; by his subsequent conduct *viz* his absconding; and by the probabilities of the matter in that the fraud was carried on openly in his name, for his interest, and by his private law agent, his manager, and his uncle. I do not press against him the responsibility of his perjured witness, Sundramaya, for that evidence was concocted while he was in jail. But his Manager 2nd Prisoner must have paid large sums to 1st Prisoner, and that money must have been provided by 3rd Prisoner, and he has not attempted to show nor has he even alleged, that in this or in any other way his Manager hoodwinked him.

232. On weighing all the considerations for and against the 3rd Prisoner I am unable to accept the opinion of the Assessors that he is not guilty. The circumstances I have recited culminating in his absconding, appear to me to be sufficient confirmation of the approver's evidence, and compel me to find that 3rd Prisoner abetted the forgery of C.

233. There are a few miscellaneous observations now to be made;

(*a*) The evidence of N. Srinivasaya, theKiranur proprietor's agent, must be discarded as untrustworthy. I have referred to it only once on a very minor point.

(*b*) The report of the Police Inspector on his search of Pattan's house is misleading as omitting mention of the supply to Pattan by the Police of certain materials necessary for copying the Trichinopoly seal. It is doubtful indeed whether this matter was allowed by the Police to come out before the Pattan was examined in this Court.

(*c*) The learned counsel for the 1st Prisoner, Mr. Gantz, has relied upon a discrepancy between C and the undelivered copies of it seized in the District Court, to contend that C could not have been the document they copied. C purports to be a judgment of a Sadr Amin; the copies have a note that the seal was the Principal Sadr Amin's. In fact however, the application concerning a judgment of the Sadr Amin, no copy could possibly have been given of a judgment passed by the Principal Sadr Amin, for the two Courts were quite distinct, and were in fact of different grades. The discrepancy must be due to carelessness in the copyist.

(*d*) The reason why C was placed not in its proper shelf in the Record room, but in a bundle of miscellaneous papers, is probably to be found in the fear lest the newness of its appearance compared with documents half a century old, should betray it. Placed in a bundle of papers mostly of the years1891—3 it would run a better chance of escaping detection.

(*e*) The connection of certain Vakils with 1st Prisoner and with the transparently fraudulent Rendankattalei claim would seen to require investigation.

(*f*) I cannot conclude the judgment of this laborious case without acknowledging the ability and fairness with which the learned Government Pleader presented it to the Assessors and myself, and expressing my thanks to those gentlemen for the patience and care with which they have discharged a most onerous duty.

234. This gigantic fraud by which the due devolution of a rich estate has been delayed for two and a half years, has now been exposed. It culminated in a forgery and fabrication of false evidence which have peculiarly aggravating circumstances; they concerned a record of a Court of Justice; they required the theft of that record; they necessitated the subornation of officials whose duty it is to guard such records; they were so cleverly planned as to involve the destruction of the forged document, which would render detection extraordinarily difficult; the defence has either instigated or availed itself of the most extensive perjury; the expenditure of an immense amount of time has been compelled on the part of public officials, to the detriment of their other work and to the public loss; and the cost to the tax payer of bringing justice home to the criminals has been enormous.

235. I find all the Prisoners guilty under Sections 466 and 193 I. P. C. 1st Prisoner of the substantive offences, the others with Abetment under Sections 109 and 114, and I sentence

1st Prisoner Nageshvaraya to seven years' Rigorous Imprisonment (of which three months shall be in solitary confinement) and five thousand rupees fine; in default, 21 months' additional rigorous imprisonment.

2nd Prisoner Panjuvaya to seven years' Rigorous Imprisonment (of which three months shall be in solitary confinement) and five thousand rupees fine; in default, 21 months' additional rigorous imprisonment.

3rd Prisoner Isvaraya to seven years' Rigorous Imprisonment, and I adjudge the forfeiture to Government of the rents and profits of all his moveable and immoveable estate during the period of his imprisonment, subject to such provision for his family and dependents as the Government may think fit to allow during such period.

4th Prisoner Venkatramaya to seven years' Rigorous Imprisonment and I adjudge the forfeiture to Government of the rents and profits of all his moveable and immoveable estate during the period of his imprisonment, subject to such provisionfor his family and dependents as the Government may think fit to allow during such period.

TANJORE
10—4—1894.

(Signed) J. H. Tremenheere
Ag. Sessions Judge.

(True Copy)
C. Abraham
2nd Clerk for Supt.

Application made: 10 4 94
Copy ready: 19 4 94
do. delivered. 19 4 94

"THE NATIONAL PRESS" TANJORE.

2109.

Calendar Case No. 1 of 1894

SESSIONS COURT, TANJORE,
10th April 1894.

Serial No.	Description of Accused. Name.	Father's name.	Caste or race.	Occupation.	Residence.	Age.	Date of Occurrence.	Complaint.	Apprehension.	Commencement of trial.	Close of trial.	Explanation of delay.
1	1. Nageshvaraya	Sivaramier	Brahmin	Mirasdar	Kumbakonam	42	In or about May 1893	25.7.93	1st accused on 14-10-93 2d - Do. 15-10-93 3d - - Do. 18-11-93 4th - - Do. 11-12-93	9-1-94	10-4-94	
	2. Panjuvaya alias Panjandaya	Ramasamier	Do.	Do.	Uttakalore Kumbakonam Taluq	55						
	3. Isvaraya alias Isvarayyaya alias Nagandaya	Krishnasami Iyer	Do.	Do.	Conjeevaram Kattabai Kumbakonam Taluq	22						
	4. Venkatramaya	Krishnier	Do.	Do.	Nannilam Taluq	50						

(Signed) J. H. Tremenheere
Ag. Sessions Judge.

(True Copy)
C. Abraham
2nd Clerk for Supt.

In Cr appeal 1921
94

Enclosure No. III

Salem Central Jail

Copy of Judgment of the Court of Sessions Tanjore in case No 1 of 1894.

Enclosure No. IV

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Friday, the fourteenth day of December,
One thousand eight hundred and ninety-four.

PRESENT :—

THE HONOURABLE SIR ARTHUR J. H. COLLINS, KNIGHT, *Chief Justice,*

AND

THE HONOURABLE Mr. JUSTICE PARKER.

CRIMINAL APPEALS Nos. 192, 193, 219 AND 275 OF 1894.

Naganadaya *alias* Isvaraya *alias* Isvarapaya ... *Appellant in No.* 192 (*3rd Prisoner.*)
Venkataramaya ... ... *Appellant in No.* 193 (*4th Prisoner.*)
Panjuvaya *alias* Panchanadaya ... ... *Appellant in No.* 219 (*2nd Prisoner.*)
Nageshvaraya ... ... *Appellant in No.* 275 (*1st Prisoner.*)

Appeals against the sentences of the Court of Session of the Tanjore Division in Calendar Case No. 1 of 1894.

These appeals coming on for hearing on Tuesday, Wednesday, Thursday & Friday the 27th, 28th, 29th and 30th days of November and Monday, Tuesday, Wednesday and Thursday, the 3rd, 4th, 5th and 6th days of December 1894, and having stood over for consideration till this day, the Court delivered the following

JUDGMENT.

The facts out of which the present prosecution arose are set out by the Sessions Judge in paragraph 2 of his Judgment. It is not necessary for us to recapitulate them at length, for their correctness has not been challenged. It is sufficient to state that Anappier who died in 1836 was succeeded in possession of the Pillur Estate by his widow Parvatammal. On her death in 1841 the Estate descended to Anappier's posthumous daughter Sellam who held it on an unquestioned title for 50 years until her death on the 30th of August 1891. This lady married Narainasami Iyer of Rendankatlai, but they had no children. On her death the nearest male heir of Anappier became legally entitled to the property,—but there being some doubt as to the proper heir, the Government claimed the Estate as an escheat and took possession of it. The claim of Keranoor Sreenivasa Iyer, Anappier's sister's son, was subsequently admitted by Government and the estate was made over to him in December 1891. Several other claims were set up, but of these it is only necessary to consider that of the 3rd Prisoner. He is the son of Narainasami Iyer's undivided brother and consequently nephew by marriage to the deceased Sellam. He and his mother were staying at Pillur at the time of Sellam's death and they resisted the Tahsildar of Nannilam who went to take possession on behalf of Government. The claim they put forward was that the Estate had really vested in Narainasami Iyer and not in his wife, and hence that Narainasami Iyer's nearest male heir was entitled to succeed on the death of his widow. To account for Anappier's estate having descended to his son-in-law and not to his daughter, it was alleged that the estate had been gifted to Narainasami Iyer at the time of his marriage in pursuance of the directions given by Anappier before his death. Exhibit XL is the petition put forward by the 3rd Prisoner to the Tahsildar on the 8th of September 1891 and it is admitted

that it was signed by the 3rd Prisoner. When it is remembered that Sellam was not even born when her father died, that her mother adopted a son who afterwards died, and that Sellam held the Estate for fifty years in her own right, her right being expressly acknowledged by her husband himself, the preposterous nature of the 3rd Prisoner's claim becomes apparent (See MM series and LL.) Neither in this Court nor in the Court below has it been attempted to contend that the 3rd Prisoner's claim to the Pillur Estate based upon Anappier's alleged Will was other than a false and fraudulent claim.

2. The Government having handed over the Estate to the Keranoor claimant in December 1891, the 3rd Prisoner filed a suit (7 of 1892) in the Negapatam Subordinate Judge's Court on the 19th February 1892 in which he asked for a perpetual injunction against Sreenivasa Iyer prohibiting him from entering upon the properties. The plaint is Exhibit EE and is signed by the 3rd Prisoner. It alleges that the Estate belonged to his uncle Narainasami Iyer, that Sellam succeeded to it as his widow and that at her death the property came into the possession of the 3rd Prisoner who was entitled to the same. It is, however, curiously silent as to the origin of Narainasami Iyer's title. From what has been stated above it is manifest that all these statements were untrue. The suit was eventually dismissed for default in November 1892 and an application to restore it was rejected. No appeal was preferred. It was on the 2nd April in the course of this suit that a written Will was first spoken of and was at once repudiated by the opposite side (see Exhibit Q).

3. Meanwhile, in September 1892, a Possession Case under Section 145 of the Criminal Procedure Code had been taken up by the Sub-Divisional Magistrate of Negapatam in order to prevent breaches of the peace between the adherents of the rival claimants. On March 14th 1893, the Magistrate held that Keranoor Sreenivasa Iyer was in possession and forbade his disturbance. A petition on behalf of the 3rd Prisoner to revise this order was put in in the High Court on the 10th of July—(Criminal Revision Case 417 of 1893), but on the 22nd December the Court declined to interfere.

4. All these facts are undisputed. We now pass to the circumstances attending the discovery of the document for the forgery of which the Prisoners have been convicted.

5. On the 24th July a petition (Exhibit JJ) was presented to the District Court of Tanjore on behalt of Keranoor Sreenivasa Iyer in which it was stated that the 3rd Prisoner, who it will be remembered, had then failed in the Injunction Suit and the Possession Case, was threatening him with a suit in which he intended to file a copy of a judgment, which judgment had been forged to support his claim and had been foisted into the records of the District Court. The petition gave the number of the judgment, 138 of 1844 on the file of the Mufti Sudder Amin's Court of Kumbakonam. It was alleged that seven copies of that judgment had been applied for, and that in all probability it was intended to destroy the original (in order to prevent a detection of the forgery) as soon as the copies had been delivered. It was therefore prayed that the document should be impounded. An enquiry was at once made by the District Judge and the alleged forged document (Exhibit C) was seized and impounded. It was found that one copy of it had already been issued on the 10th July and that an application for five more copies had been made on the 14th July (Exhibit XXXIX). These were in course of preparation. The judgment purports to be in a suit brought by Narainasami Iyer and Sellam, children of 10 and 7 years old respectively, by their guardian for a small debt, and it goes out of its way to recite that Anappier had executed a Will on a one Rupee stamped cadjan by which in default of a son, natural or adopted, his whole estate was to be given to Narainaswami Iyer on his marriage with Anappier's yet unborn daughter. It is clear how important the discovery of such a judgment would have been in the claim set up by the 3rd Prisoner to the Pillur Estate on the death of Sellam. We do not think it necessary to follow the Sessions Judge in his remarks on the external and internal evidence that Exhibit C is a forgery. We should regard those observations as conclusive but before us it has not been seriously contended that the judgment is genuine. The questions for our consideration are by whom was it fabricated and by what means it became foisted into the records of the District Court.

The matter was, of course, placed in the hands of the Police, and Inspector Subbier (2nd Defence witness) was entrusted with the detection of the offence. It was observed that the certified copy issued on July 10th was signed for by one Sambasivan. This man is the 1st witness for the Prosecution. A pardon has been tendered to him. But before this happened another man one Sadasiva Pattan, (3rd Prosecution witness) was arrested and to him a pardon was also tendered on the 14th October by the Joint Magistrate at Kumbakonam. It is on the evidence of these two approvers that the case for the Prosecution mainly depends.

6. The story told by these two men is substantially this. They are both hangers on and more or less dependants of the 1st Prisoner Nageshvaraya. This Prisoner is nominally a private Vakil or law-agent but he has the reputation, it is stated, of being a professional forger well-known in Kumbakonam. Sambasivan is nominally a gumastah to his younger brother a Vakil, but as a fact has acted as 1st Prisoner's gumastah for two or three years, and the Pattan has been engaged from time to time to make counterfeit seals for the 1st Prisoner which seals have been used in manufacturing forged documents. Sambasivan states that during the pendency of the Injunction Suit at Negapatam Prisoners 2 to 4 sought the assistance of the 1st Prisoner for the purpose of procuring the forgery of a Will to support the claim put forward by the 3rd Prisoner in that suit and which 3rd Prisoner had first advanced in his petition to the Tahsildar (Exhibit XL). The price was settled at Rupees 5,000, of which Rupees 1,000 was paid down. A Will was forged purporting to be a Will of Anappier and devising the property to Narainasami Iyer who was to marry Anappier's daughter if a daughter were born. The approver states that this Will was taken away for the purposes of consultation, but that accused came back and said that they were advised that such a Will being a private document and produced for the first time 56 years after Anappier's death would have no chance of obtaining credit. The 1st Prisoner then suggested that he should prepare a judgment in which the Will should be recited. He professed to be able to get such a judgment foisted into the records of the District Court and considered that an old judgment coming from proper custody would command credit and would establish the fact of a Will. For this purpose four petitions were prepared asking for copies of four judgments of the Mayaveram Munsif's Court, and one or more judgments (apparently originals) were procured. A document purporting to be a judgment of the Mayaveram Munsif's Court was forged. But after that was done 1st Prisoner stated that he had been unable to procure its substitution in the District Court. This was, he said, because his confederate in the District Court one Kuppusami Iyer (Assistant Record-keeper) was himself in charge of the records of the former North Tanjore District Court, and would not run the risk of having a forged document found among the records of which he had custody. The result of these difficulties was that both the Injunction Suit and the Possession Case ended adversely to the 3rd Prisoner without any forgery having been successfully launched.

7. It was then resolved to forge a Judgment of the old Mufti Sudder Amin's Court of Kumbakonam formerly called the Khaziar's Court. The Kumbakonam records belonging to the South Tanjore District Court were under the charge of another Record-keeper and an application [Exhibit CC] was made on April 15th, 1893 for a copy of the judgment in 138 of 1844. That day was a Saturday and was the last working day before the vacation, the Tanjore District Court being adjourned from Monday, the 17th April. Sambasivan's evidence is to the effect that an original Judgment of the Mufti Sudder Amin's Court was obtained and that, in the month of May, Exhibit C was forged by 1st Prisoner to be substituted for it. He has described the preparation of the document in great detail, and has told how the 2nd approver the Pattan was sent for to make and did make the seal which was impressed upon the document C. This story is corroborated in all its details by the 2nd approver, the Pattan, and both men swear that Prisoners 2 to 4 were present when the forged document was made. It is shown that the Record-keeper, Krishna Row and his Clerk Retnasawmi Pillay were not at first able to find the judgment applied for by petition CC. It was not in its proper place and all through the vacation it could not be found. It is shown that in June 1st Prisoner was making pressing enquiries for it and that on the 1st July Exhibit C was discovered in a miscellaneous bundle of papers of 1892-93. How it came into that bundle there is no evidence to show,—but

on the 1st July it was sent into the Copyist Department to be copied. On the 8th July additional stamps were called for, and on the 10th the copy was handed over to Sambasivan who asked for it, 1st Prisoner being then present and vouching for Sambasivan as one of the agents of the 3rd Prisoner whose name appears in CC as the Petitioner for a copy.

8. The evidence of these approvers has been vehemently attacked. It is pointed out, certainly not unjustly, that they are, by their own showing, men of unscrupulous character and it is argued that their evidence is so full of inconsistencies that it is impossible to believe that they were really present at the events which they profess to describe. Much complaint has also been made against the Police,—especially against Inspector Subbier with reference to the agents employed by him to obtain information. With reference to this last point we may at once say that we do not think that anything can fairly be said against the Peralum Station House Officer, Chinnasawmy Naick. As regards Muruga Pillay, it is not pretended that the information given by him comes from a person of respectable character. But in such cases the Police must look to disreputable persons for information to put them on the track of discovery. It is not the respectable inhabitants of a town who can give information of the manner in which forgeries are committed.

9. The Pattan was arrested on the morning of the 14th October by the Joint Magistrate, Mr. Clegg, who was conducted to his house by the Police Inspector Subbier. He was found in the act of imitating a seal of the Trichinopoly District Court, and in his shop were found other seals capable of being used for preparing forged documents as well as a variety of cadjans also suitable for that purpose. He was taken into custody ostensibly on the ground that he was engaged in concocting a forgery, and late on the same evening he was offered a pardon by the Joint Magistrate on condition of his disclosing all he knew about the charge against the 1st Prisoner as to the forgery of C. The contention for the Defence is that his whole story is false, that the Pattan had no connection at all with Nageshvaraya and cannot in fact do the work which he is supposed to have done for Nageshvaraya, that the whole circumstances of the arrest were pre-arranged by the Police whose dupe Mr. Clegg was, and that the presence of the Joint Magistrate was arranged for in order to give an air of *bonâ fides* to the transaction. The Sessions Judge believed that the Pattan had been negotiating with the Inspector from the 7th October to be taken as an approver though he doubted whether he had concerted his own arrest,—but the contention of the Public Prosecutor is that the negotiations of the Inspector were not with the Pattan at all but with Muruga Pillay, that the Inspector desired to test Muruga Pillay's information and see whether the Pattan was really capable of doing the work which Muruga Pillay said he had done, and that for this purpose a Trichinopoly seal and other materials had been supplied to him. When it was found that he could do such work his arrest was arranged for, but it was never intended to prosecute him for work done at the instigation of the Police.

10. That the Pattan is capable of making such a seal as is impressed upon Exhibit C is, we think, established. His ability was tested in the course of the Sessions trial and by order A A A he was directed to do four different kinds of work. The work was carried out in the presence of the Sheristadar and of the 1st Prisoner's brother who were nominated for the purpose of watching him. He proved himself quite able to do all the work that was required for the seal impressed on Exhibit C. But though he was able to cut letters in relief, he failed in doing this in the manner in which he had said he could do it, namely, by transferring cut letters into relief. It was here suggested that some fraud may have been resorted to at this trial of skill. But this was not suggested before the Sessions Judge, nor is there any evidence in support of it. We accept the witness' capacity as proved.

11. The truth of his connection with the forgery of C is also shown by these facts. First, that he identified the same seal as the one imitated by him in another genuine judgment, but at once said that the signature of the Mufti Sudder Amin was different. There had really been a change of officers. Again, he was able to identify a genuine signature as the one he had attempted to copy and further he picked out Exhibit C from a number of other documents. We see no reason to question the truth of his statement that he was himself concerned in the forgery of Exhibit C.

12. It is pointed out that in his first statement (Exhibit T) the Pattan said nothing of the forgery of the Mayaveram judgment, though he afterwards deposed to having made a seal

for this also. It will be remembered, however, that the Police on the 4th October knew nothing of the forgery of any Mayaveram Judgment. They knew only of the discovery of the forged Judgment C. The questions addressed to the approver and the pardon tendered to him naturally related only to the Judgment which had been discovered. We can see nothing in the statement T. which raises an inference that the Pattan did not believe on the 14th October that he had not been really arrested for forging a copy of the Trichinopoly seal [Exhibit XVIII]. The Inspector's report dated the 15th October [Exhibit FFF] would make it appear that the Sessions Judge was mistaken in supposing that any negotiations had been opened with the Pattan prior to the 14th October. If the Pattan did not know of the trap which had been laid for him it is intelligible why he should have felt uncertain whether the pardon offered related to the forgery of C or to the imitation of the Trichinopoly seal or to both offences. But as he said with regard to the latter "I am taken red-handed-what have I to say?" He apparently believed that Muruga Pillay would get into trouble as well as himself and this tends to negative the idea of any arrangement pre-concerted with him.

Passing to the evidence of the other approver Sambasivan, it is first objected that there is no mention of the forgery of any Will or of the Mayaveram Judgment in the statement Exhibit IX which he made to the Police Inspector when first arrested on the 25th October. As to this, the same observations apply as to the Pattan's first statement. The statement naturally had reference to the forgery of Exhibit C. For taking the copy of it on the 10th July Sambasivan was already fixed. He knew also that the Patfan had been made an approver and that the 1st and 2nd Prisoners had been arrested.

13. It is urged that he retracted that statement on the 31st October before the Joint Magistrate. This is certainly true. But in that very statement he alleged partly as a reason for his retractation "I thought they were going to pardon me. I thought I would be pardoned like the goldsmith." No pardon, however, was then offered him,—but on the 14th November the Joint Magistrate decided to tender one (Exhibit X), and Sambasivan then made another statement (Exhibit III) in which the forgeries of the Will and of the Mayaveram Judgment were mentioned as well as the forgery of C. Evidence given under such circumstances is no doubt open to a good deal of suspicion,—but, as we shall presently show, there is independent corroborative evidence as to all the three acts of forgery.

14. It is next urged that when this approver was examined in chief in the Sessions Court on the 9th January he alleged that a forgery of the Will took place in June—July of 1892. When the deposition was read over to him on the following day he corrected the date to September-October. This change, it is suggested, must have been due to the instigation of the Police in whose custody the approver was kept instead of in the District Jail.

15. As to this, we observe that the approver was not remanded to the Police lock-up but to the Sub-Magistrate's Jail. There is nothing to show that the change of date was due to any prompting on the part of the Police, and no explanation was asked for from the witness as to his reasons for making the change. As a matter of fact the variation, if it is not a mistake, is rather against than in favour of the Prosecution. The witness' list WW2 put in the Negapatam Sub-Court on the 12th August 1892, cites one Perumal of Pillur to produce the box deposited with him by the late Sellam. From Perumal's evidence it is clear that it was intended that the Will should be discovered in this box, but he refused to lend himself to the plot and so was never called. The document WW2 is strong corroboration of the truth of Perumal's evidence and also of the truth of the approver's story regarding the forgery of a Will. It also tends to show that a Will must have been forged before August 1892 and hence that the first date given, June-July, is probably correct. In re-examination the witness put an interval of two months between the forgery of the Will and the forgery of the Mayaveram Judgment, and the date of the latter is fixed by the copy applications B1 to B4—October 1892.

16. Thirdly, it was contended that there were material discrepancies as to the amount of money paid to the 1st Prisoner for his services. In his examination-in-chief the witness stated that before the Will was written Rupees 5,000 had been asked by 1st Prisoner out of which amount "about Rupees 1,000" was paid. In cross-examination it was pointed out that in his statement to the Inspector of the 25th October (Exhibit IX) the witness had spoken only of a sum of "about Rupees 500" as

given to the 1st Prisoner and he was asked to explain the discrepancy. The witness at first stated that he did not remember having so stated, but on a subsequent day when the point was recurred to he admitted that he made the statement and said that he must have given the amount incorrectly as he replied in a hurry. The point was not touched upon in re-examination, and the learned Public Prosecutor admits that he overlooked it. A careful perusal of the evidence, however, shows us that the discrepancy is only apparent. In examination-in-chief the witness was speaking of a sum of money which he put at about Rupees 1,000 as paid for the forgery of a Will which was in June—July 1892, whereas in the statement to the Inspector [Exhibit IX] the witness was speaking of the arrangement to forge a Kumbakonam Judgment after the Possession Case had failed which was in March 1893. It is clear therefore that two distinct payments were alleged and the attention of the witness was not called to this point.

17 Fourthly, it was pointed out that the witness was discredited as to the 3rd Prisoner's alleged signature in the Vakaluts A1 to A4. These were presented on the 28th October with the Petitions B1 to B4 by Vakil Darmanada Moodelliar (24th witness for the Prosecution) for copies of four Mayaveram Judgments, and the petitions were returned after a long interval on the 5th December 1892, with the endorsements that the Judgments were not forthcoming. The Record-keeper's evidence shows that the documents are now really missing; but the facts proved are corroborative of the approver's story. The only point on which this piece of corroboration fails is as regards the complicity of the 3rd Prisoner, since the evidence of the Village Munsif Bava Moidin Sahib that the 3rd Prisoner signed the Vakaluts has not been accepted.

18 Again, it is urged that there are variations in the testimony both as to the place where the forgery was committed and as to the number of days taken to complete the work. We agree with the Sessions Judge that as to the place there is no real discrepancy. Nor does it appear to be a fact that Sambasivan has advanced the number of days taken up from one day to two. In his very first statement to the Inspector (Exhibit IX) which is only a brief statement, he mentions that the fair copy was completed on a second day, though he does not speak of it as being completed on the next consecutive day as in his statement before the Magistrate on the 14th of November. The evidence of the Pattan corroborates this as appears from his very first statement [Exhibit I] which was given on the 14th October before Sambasivan had given any statement at all and before he was arrested. Exhibit C is a long judgment and is manifestly written in a feigned hand. It could not have been written quickly and we can well believe that the forgery took more than one day to accomplish.

19 But the point above all others on which it is sought to discredit the approver's evidence is as to the events of the 10th July. Sambasivan states that on that day he went in the morning from Kumbakonam to Tanjore. On his way to the Railway Station at Kumbakonam he saw Prisoners 2 and 3 in a carriage and was asked by them to enquire at the District Court whether the copy of the judgment in Suit No. 138 of 1844 of the Mufti Sudder Amin's file for which they had applied was ready, the 2nd Prisoner stating that he was himself coming to Tanjore by the midday train. Sambasivan states that after receiving the copy he gave it to the 2nd Prisoner at the Railway Station and that they with 1st Prisoner returned by the 8-30 P. M. train to Kumbakonam. On that evening the 1st Prisoner's *Grahapravesam* ceremony was celebrated. When asked in examination-in-chief how they spent the evening, the witness said "we all went" to the ceremony. These words would certainly appear to include the 2nd Prisoner. In cross-examination, however, the witness stated that the 2nd Prisoner did not go to the Grahapravesam ceremony but went on by the Mail train to Madras. The Defence alleges that the witness' whole story as to the events of this day is absolutely false. It is contended that on the 10th July the 2nd Prisoner was not in Kumbakonum or in Tanjore at all but in Madras, that he had gone to Madras on the 6th July for the purpose of preparing and filing a Criminal Revision Petition in the High Court, that the petition was actually put in on the 10th July and that 2nd Prisoner swore an affidavit in support of it before the Deputy Registrar on the 11th. As regards the 1st Prisoner, it is alleged that on the morning of the 10th he was at Tiruvadi where he had been married on the 6th and where his bride's family lived. It is admitted that the house-warming ceremony was celebrated at Kumbakonam on that evening, but

1st Prisoner contends that he did not pass through Tanjore that day, but that he and all the bridal party went in four bullock carts by road from Tiruvadi to Kumbakonam through Aduthorai arriving at Kumbakonam in the evening just before sunset. If these two *alibis* are satisfactorily established, there can be no doubt that the approver's evidence has been discredited on a most material point. In support of the *alibi* set up by the 1st Prisoner he called his father-in-law (9th Defence witness), his brother (12th Defence witness) and other members of the bridal party—also three bandy-men and a priest. The evidence of these witnesses is to the effect that the bridal party—20 or 25 people in all—went in bullock carts from Tiruvadi to Kumbakonam by road. The Sessions Judge in paragraphs 103 to 112 has given his reasons for discrediting this evidence and it is no doubt open to the observations he has made. It seems to us very improbable that the wedding party would have elected to travel a tedious journey of 21 miles through Aduthorai over a heavy sandy road on a hot July day. The journey must have taken at least 9 to 10 hours without change of bullocks, whereas they were able to reach their destination in about 3 hours' time by driving into Tanjore and taking the train. It may be noted, too, that the 1st Prisoner had a season Railway ticket between Kumbakonam and Tanjore. But as against this story there is the evidence of the Copyist Superintendent Abraham that 1st Prisoner came to the District Court and asked if the copy of the Judgment C was ready and vouched for Sambasivan being one of the Agents of the 3rd Prisoner who had applied for the copy. That evidence is corroborated by the copyist Doraisawmy Pillay. These persons gave this information to the Subordinate Judge on the 27th July just after Exhibit C was impounded (*vide* Exhibits LII and TTI). It is utterly impossible to suppose that on that day any evidence can have been concocted by the Police to meet this *alibi* which indeed was not set up at all till after the case for the Prosecution in the Sessions Court had ended. A great deal was made of the fact that the evidence of the 23rd witness shows that the 1st Prisoner had not taken his meal at the club (eating-house) on the evening of the 10th July before the departure of the train although he appears to have had a running account. But if 1st Prisoner was going back to Kumbakonam accompanied by his bride and a wedding party, it is not astonishing that he did not go and take a solitary meal at the club before getting into the train. If the wedding party also went to Kumbakonam by the 8-30 P. M. train on the evening of the 10th, it would be intelligible why the approver should have used the expression "we all went to the *Grahapravesam*" without intending to include the 2nd Prisoner. It is noticeable that as soon as he was asked [for the first time on the 15th January] whether the 2nd Prisoner was included in the term "we all went" he at once replied in the negative and said that 2nd Prisoner had gone on by the Mail train to Madras. There is nothing whatever to show that he was then aware that evidence was to be adduced that 2nd Prisoner was at Madras on that day, and in point of fact this *alibi* had not been put forward as a defence. For all these reasons we accept the evidence of the Prosecution that 1st Prisoner was in Tanjore on the 10th July and was present at the District Court when the copy was delivered to Sambasivan.

20 In support of the *alibi* set up by the 2nd Prisoner reliance is principally placed upon the testimony of the High Court Vakil, Sundaramaiyar, and his brother Kristnaiyar, the District Munsiff of Tirukoilur, and also upon the evidence of the Vakil's Gumastah Ramasawmy Sastri. The Assessors accepted the evidence of these gentlemen,—but the Sessions Judge for reasons which he has given at considerable length felt compelled to reject it.

21 There is no doubt that the Criminal Revision Petition was filed by Mr. Rozario on the 10th July which was the date of the re-opening of the High Court after the vacation, and no doubt also that the affidavit of the 2nd Prisoner in support of paragraph 5 of that petition was both sworn and filed on the following day, the 11th. If the 2nd Prisoner was in Madras on the 10th July, it might naturally have been expected that the affidavit would have been sworn and given to Mr. Rozario on that day. Various excuses are made to explain why this was not done, namely, that the 2nd Prisoner went back to the Vakil's chamber for the key, that he afterwards fell asleep, *etc.* The Sessions Judge did not accept them and believed that the real reason why the affidavit was not filed on the 10th was that the 2nd Prisoner was not in Madras on that day. As against this the learned Counsel argues that there was no reason whatever why the 2nd Prisoner should have gone to Tanjore on the 10th July. He points out that the copy of the judgment had been applied for in April and

that the judgment had not been found, and hence there was nothing to show that the 2nd Prisoner knew that it had been discovered on the 1st July or that the copy might be expected to be ready on the 10th. We find, however, that this argument will not stand examination. The evidence of the Copyist and the book D show that only four stamps had been put in with the copy application CC and these were not sufficient. The Copyist used these four stamps on the 6th July, and on the 8th he put up a notice calling for the additional stamps required. These were supplied on the same day, so that some one must have been on the watch for the copy being prepared, and therefore must have known that it might be expected to be ready on the 10th. A great deal has been said about the diary kept by the Vakil Sundram Iyer and we are bound to say that in our opinion it does not support his testimony. The diary records a great variety of minute details about his health, the visitors he received, his companions in his walks, &c. It mentions that the 3rd Prisoner came to his village near Kumbakonam on the 30th June to consult him about filing an appeal; that the 2nd Prisoner came there on the 3rd July; that they went to Tirukoilur on the 4th to consult Krishnier and that the Vakil himself went to Madras on the 5th for the Revision Petition. It mentions also that Krishnier arrived in Madras on the 8th, that they prepared the Revision Petition together and that it was filed on the 10th. But there is no mention whatever that the 2nd Prisoner accompanied him to Madras, was staying in his house, was present at the preparation of the petition or went to Court to file it and the affidavit on the 10th July. There is, moreover, internal evidence which tends to show that the 2nd Prisoner could not have been present when the petition was drafted. Most important of all is the complete *'volte face'* with reference to the basis of the 3rd Prisoner's claim; for in paragraph 4 it is alleged that the Pillur Estate had been the absolute property of Sellam. This was the truth. But it is quite irreconcileable with the claim set up by the 3rd Prisoner in Exhibit XL, and in his plaint EE in which it was alleged that she had only a widow's estate. It is inconsistent too with the statements made by the 2nd Prisoner in ZZ1 and R. We find it impossible to believe that this paragraph would have been inserted in the petition if the 2nd Prisoner had seen it, as it is so completely at variance with his own former statements. But the mistake was not an unnatural one for Sundramier and Krishnier to make if they knew nothing of any intention to base the claim upon a forged Will or a forged judgment. It will be remembered that no forged Will had been brought forward at all and that the judgment C was not impounded till a fortnight later. There is nothing to show that these gentlemen had any knowledge on the 10th July that any fraud had been resorted to, and hence possibly may have come the allegation that the Estate was Sellam's absolute property coupled with an attempt to make out that the 3rd Prisoner was her heir. Further, it appears that the petition and the affidavit were prepared by the same person and the Sessions Judge points out that blanks were left in the affidavit to fill in the number and description of the case and particulars as to dates. Our observation of the Petition leads us to the same conclusion. If 2nd Prisoner were not on the spot to give the necessary details it is intelligible why these blanks should have been left. The only mention of the 2nd Prisoner in the Vakil's diary during this week is on the 13th, when it is said that he saw the 2nd Prisoner; but there is not a word to show that the 2nd Prisoner was staying in the house or left that day on his return as is stated by the Vakil in his evidence.

22 It was strongly pressed upon us that the evidence of persons of respectable position such as a High Court Vakil and a District Munsif should outweigh that of an approver who is admittedly a witness of disreputable character. The force of this contention would no doubt be generally admitted. But in this case it is pointed out that the evidence was put forward at a very late stage and that no satisfactory explanation has been given why the witnesses were not named before the Committing Magistrate. In the application to summon them put in on the 23rd January it is stated that their names had been mentioned to Mr. Norton in December and that he declined to enter them in the list until satisfied "in greater detail" of the evidence which each could give. We are far from saying that the learned Counsel did not exercise a prudent caution in requiring to be satisfied on such a matter; but the fact remains that Sundramier could at once have given the information which would support the *alibi*. It is true that one Subbiar alleged to be a gumastah of Sundramier was cited to produce his diary (Exhibit JJJ);

but no such witness has been called. And it appears that gumastah Subbiar is Mr. Rozario's gumastah,—whereas the Subbiar who is related to the Vakil is not his gumastah. As we have already shown, the diary does not support the *alibi*.

23 In estimating the value to be given to the evidence of these witnesses, the relations existing between them and the 3rd Prisoner must be considered. The family connection alleged is very remote, and according to the District Munsif he had never even met the 3rd Prisoner until June 1893. Up to that time though distantly connected they were not acquainted, and yet we find that in June 1893, he and his brother (the Vakil), became all on a sudden the 3rd Prisoner's most confidential advisers. The District Munsif states that he did not accept this position on account of their relationship, but goes on to say that the 3rd Prisoner appealed to him on the ground that he has no one else to help him and also promised to employ his brother in his litigation. The Sessions Judge observes that these reasons are unsatisfactory; and seeing that the 3rd Prisoner is a wealthy man who has been able all through to command good legal assistance and has had besides his agent, the 2nd Prisoner, and uncle, the 4th Prisoner, to assist him, the plea of helplessness hardly appears valid. Moreover, the 3rd Prisoner has not in fact on any occasion employed Sundaram Aiyar in his professional capacity,—so that even this inducement has been wanting. According to his own account, the District Munsiff first began to advise in this matter in consequence of a conversation he had with the 1st Prisoner in the early part of June when he invited the 1st Prisoner to bring or send the records of the Possession Case, promising to go through them and advise upon them. He says he did this on account of the promise that his brother should be engaged as Vakil—a promise which has never been kept,—and from that time he has been constantly leaving his station, travelling to Madras and back to Kumbakonam and back to give advice about this litigation. When the forged document C was impounded in July he at once went to Madras and with 2nd Prisoner consulted Vakils on the 29th July. He again went to Madras on the 19th August. When in October warrants were issued, we find him going off to Kumbakonam arriving at 3-30 A. M. on the 17th and having to leave again at 6 15 A. M., spending, as the Judge points out, 15 hours in the train for a two hours' consultation. Such a manifestation of gratuitous interest in the affairs of remote connections is strange. And still less desirable is it that a District Munsiff should allow himself to be drawn into confidential relations with a private law-agent like the 1st Prisoner; and we cannot feel much surprised that the Sessions Judge did not regard his evidence as free from suspicion. It was urged that the Sessions Judge did so far accept his testimony as to believe that the 2nd Prisoner was in Madras on the 9th July,—but we do not so read his observations. The Judge points out that the 2nd Prisoner may have been at Tanjore on the 10th July even if Krishnier's evidence be true in other respects; but when he goes on to say "his evidence cannot be taken *as rendering it even probable* that the 2nd Prisoner was in Madras on the 10th July," we cannot think that he accepted the District Munsiff as a witness of truth. We may point out further that Krishnier's evidence is not consistent with that of Ramaswamy Sastri who deposes that Krishnier was himself in Madras on the 10th July whereas the District Munsiff deposes that he left Madras for South Arcot by the evening train on the 9th. With great regret we have come to the conclusion that it is not safe to accept the testimony of these gentlemen. We cannot but feel doubt whether the 2nd Prisoner was in Madras at all before 11th July. But however that may be, we accept Sambasivan's evidence that he was at Tanjore on the 10th and went through to Madras by the Mail train on the evening of that day.

24. We have now reviewed at some length the objections raised to the testimony of the two approvers. In the Sessions Court they were cross-examined 7 and 8 days respectively,—and so far as cross-examination can be regarded as a test of truth, that test has been most rigorously applied. The four accused persons were separately represented, and we find that the statements of the witnesses were challenged over and over again by the different Counsel engaged. That some discrepancies should not be found in the depositions of the witnesses who have passed through such an ordeal is not to be expected,—but we are bound to say that we find little material variation, and we do not think that the cross-examination has seriously shaken their testimony. The story told by them must be looked at as a whole, and we find material corroboration of the general truth of their story. As to the alleged forgery of the Will we find corrobora-

tion in the fact that the claim based upon the alleged death-bed disposition of Anappier was put forward on the death of Sellam, reiterated in the plaint EE, developed into the assertion of a written Will in April 1892 (Exhibit Q) and was followed by a more definite assertion of the same title in Exhibit R. (October 1892). That a Will was really forged to support the claim is confirmed by the evidence of Perumal [42nd witness] and by the witness' list WW2 filed on 12th August 1892.

25. The next step in the approver's story is the forgery of the Mayaveram Judgment which is supported by the copy applications (B1 to B4), by the fact that these Judgments are really missing and by the evidence of the copyist Dorasawmy Pillay brought forward on the 4th August 1893, as to the 1st Prisoner's statements with respect to them.

26. That the Judgment C is a forgery is proved by overwhelming evidence, and all the evidence as to the circumstances under which it was found go to corroborate the approver's story. That the forgery can have been made for any other purpose than that of supporting the 3rd Prisoner's claim to the Pillur Estate is inconceivable. This being so, there is the strongest probability in favour of the truth of the case for the Prosecution. But we shall now consider how far the approvers are corroborated with regard to each individual Prisoner.

27. Against the 1st Prisoner there is first of all the evidence of experts that the hand-writing in Exhibit C resembles his, next, the evidence of Vakil Darmanada Moodelly that 1st Prisoner had come with a Vakalut to instruct him to get copies of the Mayaveram Judgments; the evidence of the Record-keeper, Krishna Rao, and of the Copyist Dorasawmy Pillay that in June 1st Prisoner was pressing for a copy of the Judgment in Suit No. 138 of 1844 on the file of the Kumbakonam Mufti Sudder Amin's Court alleging as a reason to the latter that he wanted it to produce in an encroachment case which the Municipality of Kumbakonam had filed against himself; the evidence of Abraham and the Copyist that he was present on the 10th July when the copy was delivered and that he vouched for Sambasivan as being one of 3rd Prisoner's agents, the false *alibi* he has set up for the 10th July, his conversations in the train with Vedantachari (12th witness) in June, with Nilakanti Sastri (7th witness) on the 11th July, with Vakil S. A. Anantanarayana Iyer (8th witness) and Sivaramakrishnan (9th witness) on the 14th July; his sending the telegram E to the 4th Prisoner at Mayaveram on the 11th July and his purchase of a large number of stamps to obtain the five additional copies applied for on the 14th July.

28. Against this mass of testimony the learned Counsel argues that had first Prisoner been really guilty of forgery he would not have been so reckless as to draw public attention to the forged document by going out of his way to talk about it to persons whom he happened to meet in railway carriages. He denies that Sambasivan was ever 1st Prisoner's gumastah and complains that the whole case has been got up by the 11th Prosecution witness in conjunction with the Police. All this is due, the learned Counsel argues, to a widely—spread, but unjust,—prejudice against his client's character, and he complains that the late Acting District Judge by his letter of the 27th September 1893 to the Defence 2nd witness (Exhibit LXXXI) showed that he had been influenced by this prejudice and was unduly anxious to obtain a conviction against the 1st Prisoner who was suspected of having tampered with the officials in the District Court Record Room.

29. Mr. O'Farrell was rightly anxious to recover the genuine original Judgment in Suit No. 138 of 1844; but we do not think his letter LXXXI was a very prudent one. There is, however, nothing in it to show that the 1st Prisoner was the person to be negotiated with. Though the Judge did not rely on the evidence of the 11th witness, this letter, if the learned Counsel is right, would rather tend to show that there may have been some truth in the witness's statement that 1st Prisoner had made overtures to be made an approver, a position hardly consistent with innocence. We consider that the 1st Prisoner's connection with Sambasivan is abundantly proved. Nothing has been adduced to impeach the personal credit of the witnesses who spoke to the 1st Prisoner's remarks to them as fellow-passengers, and it is obvious that the discovery

of the forged document C was not meant to remain a secret. On the contrary, it was necessary to spread the news of the discovery in order to justify the resumption of litigious proceedings, the former proceedings having ended in failure.

30. The frequent visits of the 1st Prisoner to the Record-room during May and his interviews with Kupusawmy Iyer, were proved by Chinnasawmy Pillay and by the deposition of the deceased witness Jagannatha Pillay [Exhibit PP]. For all these reasons, we have no hesitation in confirming the conviction of the 1st Prisoner.

31. The 2nd Prisoner is the 3rd Prisoner's agent and has been for nearly forty years in the service of the Rendankatlai family. He has not been represented at the hearing of this appeal. We find him however instructing Vakil Krishnier and supporting the 3rd Prisoner in his unfounded claim to the Pillur Estate in September 1891. His statement then given is ZZ1 and in this he makes no mention whatever of any *written* Will but alleges that the estate was gifted to Narainswami Iyer in pursuance of directions [presumably oral] given by Anappier before he died. In XX [a petition drawn up two months later by High Court Vakil, Mr. Kalyanasundra Iyer under the instructions of the 2nd Prisoner] it is distinctly stated that the Will was an *oral* Will. But in April 1892 in the Injunction Suit at Negapatam a *written* Will was first alleged [see Exhibit Q] It is proved that instructions in this suit were given by the 2nd Prisoner and he filed the witness' list WW2 in which Perumal was cited to produce the box, On the 11th October 1892, the 2nd Prisoner made the statement R before the Sub-Judge in which he spoke of a *written* Will and stated *that he had known of it since* 1854. It will be observed that the approver's evidence shows that the Will was actually forged between April and October 1892. Perumal's evidence shows that the 2nd Prisoner offered him a bribe to produce the box. The evidence of Vakil Darmanada Moodelly connects the 2nd Prisoner with the application for the Mayaveram Judgment. It is further proved that the 2nd Prisoner wrote the application CC in April 1893, received the copy of Exhibit C at Tanjore on the 10th July as soon as it was obtained from the District Court, and a few days later he is found showing it to Vakil Krishnier (27th witness) in company with the 4th Prisoner and asking his advice upon it. The evidence connecting him with the fraud appears overwhelming.

32. The main contention on behalf of the 3rd Prisoner is that as regards him the evidence of the two approvers is uncorroborated, and it is urged that in the absence of corroboration the conviction should not be upheld. The view which we are asked to take is that the 3rd Prisoner is an inexperienced youth who does not really manage his own affairs, that he is ignorant of the history of the Pillur Estate and of his own family and may have had *bonâ fide* belief that he was the next heir to the property, that his manager and uncle may have resorted to forgery in order to establish his claim, but that he himself may be ignorant of the transaction. It is not denied that he would be civilly liable for the acts of his agents,—but it is urged that, apart from the evidence of the two approvers, there is nothing to fix him with criminal responsibility.

33. It is not denied that a conviction upon the uncorroborated evidence of an approver would be valid in law. But it is urged that the Courts should not act upon such testimony, and that the Sessions Judge would not have acted upon it unless he had believed (erroneously as it is contended) that the evidence was corroborated.

34. In the present case, we have not to depend upon the approvers' testimony to establish the *factum* of the forgery. That is proved by independent evidence and we may almost say that it is an admitted fact. The Prosecution relies upon the evidence of the accomplices to show by whom and for what purposes the forgery was committed.

35. What was the object of the crime? The approvers say that the judgment was forged in order to support the 3rd Prisoner's claim to the Pillur Estate, to which estate he could have had no sort of title unless the estate had vested in his uncle Narayanasami by means of some testamentary disposition made by Anappier. It is proved by independent testimony that immediately on the death of Narayanasami's widow, the 3rd Prisoner did come forward with precisely such a claim;—that he brought a suit in the Negapatam Sub-Court

based upon such a claim;—and that, while at first only an oral disposition of property was alleged, the claim afterwards developed into one founded on a written Will which Will has never seen the light and is inconsistent with Sellam's enjoyment of the estate in her own right for fifty years. All this litigation was carried on in the 3rd Prisoner's interest on lines which the forged Judgment C was manifestly designed to support. Though it is not proved that the 3rd Prisoner personally gave instructions to his Negapatam Vakil to allege the existence of a written Will, it is shown that he went to Negapatam from time to time with the other Prisoners to give directions about the suit and that he was present in person and signed the application for its restoration (Exhibit LXIV) on the 2nd of November 1892.

36 Again, the approver's testimony is to the effect that the 3rd Prisoner paid a large sum of money to the 1st Prisoner for carrying out this forgery. It is absolutely certain that the plot could not have been carried out without a considerable expenditure of money, and that the person to be profited by the fraud was the 3rd Prisoner and the 3rd Prisoner alone. Who else could or would have paid such sums?

37. Further, we have to consider the conduct of the 3rd Prisoner in absconding. Had this fact stood alone, we might not have attached great importance to it, but considered with the previous history of the 3rd Prisoner's claim it is significant.

38. In judging of corroboration much must depend upon the nature of the crime and upon the circumstances of the particular case. In the present case it is the conduct of the 3rd Prisoner both before and after the discovery of C that has to be considered. Regard must be had to the common course of human conduct, and we have to ask ourselves whether, having regard to the Prisoner's conduct, we can entertain a *bonâ fide* and reasonable doubt as to the truth of the approvers' testimony. We have considered this question most carefully and have come to the conclusion that we cannot entertain such a doubt.

39. The 4th Prisoner is the 3rd Prisoner's maternal uncle and as such is not personally interested in the success of the 3rd Prisoner's claim to the Pillur Estate. It is not denied that he has taken friendly interest as a relation in the 3rd Prisoner's litigation, but it is contended that he has no interest in, and was ignorant of, the commission of any fraud.

40. With regard to the telegram E despatched by the 1st Prisoner to the 4th Prisoner on the morning of the 11th July it is objected by the learned Counsel that as against the 4th Prisoner it is not receivable in evidence. In this we are not able to agree. The evidence of the approvers showed reasonable ground for belief in the existence of a conspiracy—and under Section 10 of the Evidence Act the despatch of a telegram by 1st Prisoner to 4th Prisoner regarding the receipt of the copy was relevant. The attempt to show that the telegram related to a different matter failed. There is direct proof that the 4th Prisoner received the telegram and as it was never returned to the Post Office, the presumption is that it was duly delivered. This is rendered more probable as we find on the 14th July that the 4th Prisoner was travelling with the 1st Prisoner by train from the direction of Mayaveram to Kumbakonam and that they had the copy of Exhibit C with them. It is also proved that the 4th Prisoner objected to the document being shown to a man interested on the opposite side and that he accompanied the 2nd Prisoner on the 17th July when Vakil Krishnier was consulted as to the effect of the judgment.

41. All this—it is urged—is consistent with innocence. The 4th Prisoner may have *bonâ fide* believed that a judgment had been discovered which would support his nephew's claim and have desired to know a Vakil's opinion upon it. He may have thought public discussion of such a discovery imprudent.

42. Unfortunately, however, the evidence of Perumal brings home to the 4th Prisoner guilty knowledge with respect to the forged Will, which was only the first stage in the same conspiracy. It is suggested that Perumal's evidence may have been true as regards the 2nd Prisoner but

untrue as regards the 4th. We cannot accept this suggestion. The evidence of the Vakil shows that the 4th Prisoner was interesting himself in the Negapatam litigation and it was not unnatural that 2nd Prisoner when he found Perumal difficult to manage, should have taken him to the 4th Prisoner who was a man of much greater authority and influence. Though Sambasivan does not allege that the 4th Prisoner was present at the forgery of the Will or of the Mayaveram judgment, he does allege his presence when it was decided to try the effect of a forged judgment on account of the difficulties about launching a forged Will.

43. Further, it is pointed out by the Sessions Judge in paragraph 203 that the 4th Prisoner's conduct as well as his absconding is inconsistent with the interpretation he wishes to put upon it. For all these reasons we have come to the conclusion that the conviction was right.

44. No exception has been taken in appeal to the sentences which have been passed. An adjudication of forfeiture is no doubt an unusual penalty; but viewed as a punishment for such gigantic fraud and corruption it is certainly not undeserved, and we see no reason to interfere with it.

45. We therefore dismiss these appeals; and in doing so it is only right to place on record our appreciation of the ability and thoroughness displayed by the Sessions Judge in his examination into every phase of this complicated case.

By the Court.

(Signed) A. J. Forbes,
Deputy Registrar,
Appellate Side.

(True Copy)

Exd. A. Ramaswami Aiyar.

A. J. Forbes.
Dy: Registrar
Appellate Side.

A/3/3

Enclosure No. IV

Salem Central Jail.

Copy of Judgment of the High Court of Judicature at Madras, in Criminal Appeals Nos. 192, 193, 219 & 275/1894.

HIGH COURT OF JUDICATURE
AT
MADRAS.

JUDGMENT
IN
CRIMINAL APPEALS Nos. 192, 193, 219 *and* 275 *of* 1894.
(From Calendar Case No. 1 *of* 1894, *Sessions Court of Tanjore).*

Dated 14*th December* 1894.

Sent

HIGH COURT, APPELLATE SIDE.
C. D. No. 727/95.
Application made 6. 3. 1895
Stamp papers called for
Do. deposited 189
Copy ready 189
Do. delivered 14. 3. 1895
S. Rajagopalachariar
SUPERINTENDENT.

5 Jud. 1 5502

2nd D. 253 of 96

No. 69.

Petition for pardon

Enclosure No. 5502

To

His Excellency The Right Hon'ble Beilby Baron Wenlock, G.C.I.E.,
Governor in Council of the Presidency of
FORT SAINT GEORGE.

The humble Petition of NAGHANATHAIER *alias* ESVARA AIYAR, *a Prisoner in the Central Jail, Salem.*

MOST HUMBLY SHOWETH:—

That Your Excellency's Petitioner is a young man, aged 22 years, and belongs to a respectable family of Mirasidars in the Tanjore District.

2. That Petitioner having been convicted of abetment of forgery by the Sessions Court of Tanjore in Calendar Case No. 1 of 1894, is now undergoing a sentence of seven years' rigorous imprisonment and the rents and profits of his estate have also been adjudged to be forfeited to Government during the said period.

3. That though Your Excellency's Government is already aware of this case, the Petitioner in submitting this Petition for Your Excellency's mercy, respectfully and earnestly craves Your Excellency's gracious attention to *his* position in the case and the facts bearing upon him which are as follow.

4. That Petitioner's father died when Petitioner was ten years of age, leaving him, an only son, and a widow; since then Petitioner's property consisting of nearly 800 acres of land, worth two lacs of Rupees, was managed according to his father's wishes by Panju Aiyer, the second prisoner in the abovesaid case, who had been the agent of his family for over 40 years, under the supervision and guidance of his uncle (mother's sister's husband) Venketaramaier, the fourth prisoner in the abovesaid case, and as both Panju Aiyer and Venkatarama Aiyer were greatly respected by Petitioner's father, Petitioner was naturally brought up to respect and hold them in great esteem.

5. That Petitioner attained the legal age of majority (18) in 1891, and being by nature a man of retired habits and being young and inexperienced, devoted most of his time and attention to the study of Sanskrit and left his estate to be managed by the trusted agent of the family and by his uncle in whom he had every confidence and to whom he looked for help and guidance in the management of his affairs.

6. That the agent Panju Aiyer had not only been managing the family property for over 40 years, but had also been living during all that time as a member of Petitioner's family, and Petitioner therefore naturally placed entire confidence in him as one who had been his father's adviser and put himself unhesitatingly and entirely under his guidance.

pleased to notice that there has been no proof except what the approver has stated (*vide* para. 231 of the Sessions Court's Judgment and para. 36 of the High Court's Judgment) to the effect that he so paid and this statement of the approver is shown by para. 41 of the Sessions Court's Judgment not to be altogether trustworthy. Petitioner further begs to submit that his uncle Venketaramaier, a wealthy man owning 400 acres of land, was in a position to have met the expenses himself or obtained the same from Petitioner's agent Panju Aiyer who had practically absolute management of Petitioner's property and funds.

21. That the fact of Petitioner's absconding (paras. 229 and 230 of the Sessions Court's Judgment and para. marked 37 of the High Court's Judgment) should not, Petitioner respectfully submits, be construed against him as it was a natural result of the influence of terror and the advice of his relatives.

22. That Petitioner respectfully invites Your Excellency's particular attention to paras. 227 and 228 of the Sessions Court's Judgment wherein the Sessions Judge has found that even the application for copy of the forged document (C) was *not* put in by Petitioner but that it was forged by agent Panju Aiyer (*vide* paragraph 134 also) in conjunction with first prisoner Nagesvaraiyer. If the Petitioner was cognizant of the forgery, there is no reason at all why an application for copy of the document with Petitioner's signature should have been forged, and this circumstance affords, Petitioner submits, a strong presumption in favour of the innocence of Your Excellency's humble Petitioner and establishes the inference that the uncle and agent resorted to presenting a forged application for copy of the document fearing their plans might be upset if the matter was brought to the knowledge of the Petitioner.

23. That had Petitioner been instrumental to the forgery and paid the first prisoner for it, the intimation of having obtained a copy of the forged document—an important item of news doubtless—would have been sent by him (the first prisoner) to Petitioner, but it was not. Your Excellency will be pleased to observe that intimation was sent only to the fourth prisoner—uncle Venketaramaier (*vide* para. 188 of the Sessions Court's Judgment). This is another strong circumstance which Petitioner begs to urge for Your Excellency's consideration, to show that he (Petitioner) had not any previous knowledge of the fraud.

24. That it has been viewed that the forgery having been intended for Petitioner, it must have been done at his instance, but, Petitioner submits that really his case stands as if his own father was alive and the transaction had taken place, when, it would not be argued that because the transaction was intended for his benefit, he should have been concerned in it. In exactly the position of a parent, stood the uncle Venketaramaier and the agent Panju Aiyer and transacted all business upon their own responsibility.

25. That Your Excellency's Petitioner deeply laments the circumstance that his estate, though it was of more than the required value, was not taken under the Court of Wards, but was allowed to be managed by the second prisoner in accordance with his father's wishes and to this untoward circumstance Your Petitioner attributes the misfortune that has now befallen him. Instead of being still a Ward of the Court

(Petitioner not having attained the age of 21 at the time of the offence) he is now undergoing rigorous imprisonment for the long period of seven years. But the Petitioner has still a hope in the mercy of Your Excellency's Government.

26. That besides the above circumstances, Petitioner begs to invite Your Excellency's merciful consideration to the following *viz*:—

1. **That if regard be had to Petitioner's age, character and status in life, the immense influence which both his uncle and his agent possessed in regard to Petitioner and his affairs and the part believed to have been taken by Petitioner in the transaction, he did not, even were he guilty of the crime laid to his charge, deserve the *maximum* sentence of the law passed upon him and justice has been fully vindicated by the nearly two years incarceration in jail of the Petitioner.**
2. **That he does not deserve to be punished to the same extent as the first prisoner Nagesvaraier, the author of the forgery, and the second and fourth prisoners Panju Aiyer and Venketaramaier who are found to have planned and carried out the nefarious deed.**
3. **That the fact that the forfeiture of the rents and profits of the estate could not be ordered by the Courts under Section 62 of the Penal Code unless at least 7 years' imprisonment was inflicted, may have probably been a consideration in sentencing the prisoner to seven years' imprisonment.**

27. That should Your Excellency's Government be so gracious as to consider that the Petitioner's case deserves Your Excellency's mercy, it is competent to Your Excellency's Government to grant the limited relief that he prays for under Section 401* of the Criminal Procedure Code *viz.* **the remission of the remaining portion of the sentence of imprisonment without affecting the order in regard to the forfeiture of the rents and profits of his property during the prescribed period of seven years.**

28. That Petitioner respectfully ventures to submit with confidence that the officers of Government who initiated and conducted the prosecution namely MR. H. M. WINTERBOTHAM who was then District Magistrate, Tanjore, and MR. DEWAN BAHADUR JUSTICE SUBRAMANIA AIYAR, C. I. E., who then conducted the prosecution on behalf of the Crown, who are fully conversant with the whole facts of the case apart from what appears on the face of the records would be in a position, should Your Excellency's Government be so graciously pleased as to make a reference to them, to say how far the Petitioner is responsible for the fraud and whether the Petitioner is not deserving of mercy from Your Excellency's Government.

29. That Petitioner fervently prays that under the foregoing circumstances Your Excellency's Government will be graciously pleased to order that Petitioner be released from Jail without having to undergo the rest of the imprisonment inflicted upon him considering:—

(1.) That it has not been proved that Petitioner was a party to the fraud or that he instigated it;

(2.) That the Assessors found Petitioner "not guilty";

(3.) That Petitioner's uncle and family agent were the persons solely responsible for the whole transaction;

* Section 401, Criminal Procedure Code. When any person has been sentenced to punishment for an offence, the Governor-General in Council or the Local Government, may at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

7. That on the death of one Sellathammal, the widow of Petitioner's paternal uncle, in August 1891, Petitioner who, it will be noted, had just then attained the majority age of 18, was put forward as a claimant to the estate left by her.

8. That Petitioner was unacquainted with his own family history and ~~much less~~ also with that of the property of Sellathammal abovementioned.

9. That Petitioner's uncle Venketaramaier and his agent Panju Aiyer were solely responsible for putting forward a claim on his behalf to the estate of Sellathammal and for all the proceedings which they took in connection therewith, and believing that such claim was just for the reason that the same was put forward by men whom his father and he had implicitly trusted, Petitioner took no exception to their proceedings believing them to be *bonâ-fide*.

10. That in the proceedings so taken by them the said Panju Aiyer and Venketaramaier, it was held by the Sessions Court of Tanjore and the High Court that they caused a judgment of the Tanjore old Mufti Sadir Amin's Court to be forged, for which they were convicted. Your Excellency's most unfortunate Petitioner was convicted along with them as having aided and abetted them in the commission of such crime of which your Petitioner still affirms that he was entirely innocent.

11. That the grounds of Petitioner's conviction are contained in paras. 220 to 232 of the Sessions Court's Judgment and paras. marked 32 to 38 of the Honourable the High Court's judgment herein enclosed and to them your Petitioner would respectfully invite Your Excellency's kind attention.

12. That it will be observed that Petitioner has been convicted only upon the testimony of two approvers and upon the presumption that he must have been concerned in it as the forgery was intended for his benefit.

13. That this presumption, though doubtless natural, does not, the Petitioner respectfully asserts apply in his peculiar case as the persons who acted for him were his uncle and the long trusted agent of the family who had practically the absolute management of the affairs of his family and whose interest in it was paramount. From a perusal of paras. 116 to 138 (para. 131 especially) and paras. 183 to 219 of the Sessions Court's judgment, it will be seen how and under what circumstances the agent Panju Aiyer and uncle Venketaramaier are said to have committed the offence with which they were charged and Petitioner humbly submits that there is not the least evidence-not even an allegation-that *Petitioner* either directly or indirectly induced them to commit the fraud or promised to remunerate them for it or in any way came to terms with them which would have doubtless been the case if Petitioner, as the party to be benefited by the transaction, had moved them to it.

14. That as regards the approvers' testimony, Petitioner can only submit that the approvers have been made to implicate Petitioner also in view to make the case complete, he being apparently the party to be benefited (as supposed) by the transaction. It is moreover with some amount of misgiving that the Sessions Judge accepts their evidence (para. 47 of the Sessions Court's Judgment) and to connect Petitioner with the offence, the Sessions Judge depends mainly upon the presumption arising from

the single circumstance that the transaction was for the benefit of Petitioner. The Petitioner can only further invite Your Excellency's consideration as to what value may be attached to an approver's testimony.

15. With reference to the remark in para. 221 of the Sessions Court's Judgment that Petitioner was the Village Monegar and therefore capable of managing his own business, Petitioner begs to state that he was only nominally so, the work being done wholly by a Gumastah. Such an arrangement often exists in the Tanjore District and is well known to the authorities. Respectable Mirasidars for the sake of the dignity supposed to be attached to the office of a Village Munsif, take up the appointment, the work of collecting money etc., being done by Gumastahs.

16. In the same para. 221, the Sessions Judge refers to Petitioner's going to Madras and Thirukovilur on the 2nd, 3rd, and 4th August, and 13th October 1893 to look after his own business, but it will be seen that the Sessions Judge himself attaches no importance to it as Petitioner's visit to those places was after the impounding of C (forged document). As regards Petitioner's visit to Madras on the 30th June and 18th July, Petitioner begs to submit that there was then nothing to raise any suspicion in his mind as to the proceedings of his uncle and his agent.

17. The admission of Sellam's title in June 1891 referred to in para. 222 of the Sessions Court Judgment was made by Petitioner's agent, 2nd prisoner (*vide* para. 120 of the same Judgment), and not by Petitioner, and the Sessions Judge presumes it should have been authorised by the 3rd prisoner, but Your Petitioner states as a fact that the agent, 2nd prisoner, acted in this as in other respects upon his own responsibility.

18. That in signing the papers referred to in para. 223 of the Sessions Court's Judgment and in being present at the Revenue enquiry alluded to therein (and repeated in para. marked 35 of the High Court's Judgment), Petitioner acted upon the representations of his uncle and agent in regard to his claim which he firmly believed to be true. There was nothing in them to raise the least suspicion in Petitioner's mind that there was any fraud contemplated. The papers were drawn up by them (the 2nd and the 4th prisoners) in consultation with Vakils of standing and not being himself able to understand the force of the contentions on his behalf and the value of the innumerable papers which his uncle Venketaramaier and agent Panju Aiyer had with them and others which were presented in Court, he did what he was asked to do; for in his mind, no suspicion of any fraud was raised to put him upon his guard and induce him to scrutinize their acts.

19. That the Revision Petition referred to in para. 225 of the Sessions Court's Judgment was drawn up by Petitioner's relation Mr. Sundaram Aiyer, High Court Vakil, and he (Petitioner) positively understood nothing of the technical distinctions that were made in regard to his claim to Sellathammal's property and was not therefore aware of the bearings of the different phases of his claim in the manner referred to in para. 222 of the Sessions Court's Judgment.

20. That it has been presumed that as the transaction was for the benefit of Petitioner, he must have paid large sums of money; but Your Excellency will be

(4.) That Petitioner was but a youth of between 18 and 19 years of age at the time of the offence charged against him and was under the influence of the said family agent Panju Aiyer and uncle Venkatarama Aiyer;

(5.) That Petitioner does not deserve to be punished so severely as he has been;

(6.) That to a man of Petitioner's family and status in life one year and seven months which he has already passed in Jail—not to mention the mere disgrace of a public heinous charge followed by a conviction—is a most severe punishment; *

(7.) That by his incarceration in jail, Petitioner's unfortunate old mother and his innocent young wife only 16 years of age, have been plunged in the deepest sorrow and misery;

(8.) And lastly that justice in his case will, under the above circumstances, be done only by the exercise of Your Excellency's prerogative of mercy.

For this act of grace and mercy
Your Excellency's humble Petitioner
shall as in duty bound ever pray.

P. Thiruvengadam

Salem Central Jail
11th November 1895.

W. M. Standen
Ag. Superintendent of Jail.

H. G. Weddenburn
Counsel for Petitioner.
8. Nov. 1895.

* Petitioner's uncle Venkatarama Aiyer ~~deceased~~ died in Vellore Jail about two months ago.

Petition for pardon

Enclosure No 1

C Nos 5302 & 5100.
Incl Indian appeals & Cr Vl
manuals & adms. Vol II

From,

Naganathaiyar alias
Iswaraiyar, alias Es-
-warappaiyar, Convict
No. 8777, Central Jail, Salem

To,

His Excellency, The Right Honble
The Governor in Council
Madras.

No. 69.

The Humble Petition of

Naganathair, prisoner in

the Central Jail, Salem.

Praying for ~~mercy~~ pardon

CHIEF SECRETARY
20 NOV. 1895
GOVERNMENT OF MADRAS

No 5873

Submitted for the orders of
Government.

Ootacamund
17th Nov. 1895

A.G. Carden
Inspr Genl of Prisons.

Rec'd 20
Rep'd 21 11-95

Encls 2

[J/14]
1,000—5-2-94.

JUDICIAL DEPARTMENT.

CURRENT NOS 5100 & 5312 & 5502 OF 1895.

No 8777

Application for remission of sentence from convict in the Central Jail, Salem

FOR ORDERS.

I don't see any reason for supposing that the petr has been improperly convicted, & could dismiss his petition — but I think the H.C. should be asked what, if anything, has been done in respect of para 233(c) of the judgment of the Sess. Judge and regarding the witnesses Sundramaya and Krishnaya (see pages 139 to 182 of the judgment of the Sess. Judge and pages 20—23 of the judgment of the H.C.) — The first of these minors a H.C. Vakil, the second a district Muff. of the first, the Sess. J. does not hesitate to say that he was a "perjured witness" (para 231). It is clear that he believed the second to be the same. The H.C. evidently accepted his view. Is the first still borne on the roll of the Vakils of the H.C.? The second has been transferred from Tinnevelly in S. Arcot to Vaka (Cuddalore) that is to say, after the manner of the H.C., to a district of the language of which he knows not a word!), and has since (vide p. 149 of the Quarterly Civil List for October, first entry in the third grade) apparently been promoted!

If these matters have not been gone into, I can only suppose that it is because Mr. Hemingway left Tanjore on the conclusion of his trial of the Sessions case.

RR
28/11/95

I have been very carefully thro' the petition & the judgments — and as I find that the points raised by the petitioner

Name of the Convict

Naganatha aiyar alias Eswaraya alias Eswarayya, No 8777, Jail

Offence committed.

Abetment of fabricating false evidence (Secs 193, 109 & 114 I.P.C.) & abetment of forgery (Secs 466, 109 & 114 I.P.C.).

Adjudicating Court.

Sessions Court, Tanjore

Sentence imposed.

7 years R.I. & forfeiture to Govt of the rents & profits of his property during the period of imprisonment.

Result of appeal to High Court.

appeal dismissed.

Previous Convictions. —

The petn from the convict has not been accompanied by a nominal Roll as required by Rule 701 of the Jail Code. The omission will be pointed

2. C. No 5100 seems to be a rough copy of the petn presented to H.C. on behalf of the convict.

have been placed before the two Courts and closely examined into by them. I do not think it is possible to set their judgments aside, if a different view from theirs could be taken. I would reject the petition. I agree with the hon. Mr. Bliss that the D. C. Sh. be asked about the individuals mentioned.

2 Dec

PETITION FROM CONVICT

H. M. & H. E. The Gov.

[J/15]
500—18-3-95.

Judicial Department.

CHIEF SECRETARIAT MADRAS.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

READ the following endorsement :—

From the Inspector-General of Prisons, dated 189 ,

No. C. Nos 5100, 5302 & 5502 - X

ORDER, dated 11th Decr 1895, R. No. 2554

THE Inspector-General of Prisons will cause convict No. 8777 Raganatha aiyar alias Ramarayasalu Ramarayar confined in the Central Jail at Salem to be informed that the Government declines to interfere with the sentence passed upon him

2. The petn from the convict was not accompanied by the usual nominal roll as it should have been

3. The Hon. the Judges of the High Court will be requested to be so good as to ~~state~~ furnish the Govt with information as to whether any action has been taken ~~for Chief Secretary~~. in respect of para 233 (c) of the Judgment in Tanjore Sessions case No 107 1894 and regarding the witnesses Seendamaya & Krishnayya Distt. Munsiff whose evidence has been unfavourably commented upon in paras 14 & 16-18 of the Judgment of the Sessions Court

To the Inspector-General of Prisons, with judgment.

H.C. Vakil

paras. 20-22 of the judgment (2 enclosures) of the High Court in appeal therefrom.

Hon. the C. J. and (J.)

5/12/95.

11/12/95

9/12/95.

P.T.O.

Note for CS.

With ref^e to H.E's remark, marked with blue chalk, it is submitted that the exercise by Govt of the prerogative of mercy under sec. 401. Cr. P. is not a reversal of the conviction but a modification of the sentence. Govt. does not act under the section as an appellate court. H.E. does not apparently consider that Govt should in any case move in this instance, so it is not perhaps necessary to point this aspect of the matter out to H.E.

C.S.'s draft be put up and a recommendation solicited.

Nothing need be said about Lt Ds and 5/12/95

5/12/95

Lt Ds

5/12/95

(from orders)

CS.

Copied from Conviction

...en given for copying ——
...n copies ——
... examined ——
...hen signed ——
} 189.

...D AGAIN G.O., No. DATED
189 ,

CURRENT No.

...CLOSURE TO C. No

ORDER OF GOVERNMENT	A	A	A	A	A	A	A
LETTER OF GOVERNMENT.							
STATEMENT WITH DITTO.							
PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.							

N.B.—
A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.