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[Despatch Abstract.]

Mr. W.C. Holmes, I.C.S.

Passing orders in regard to the conduct by — of South Canara Sessions cases 33 & 38 of 1894 and 15 of 1895.

despatch No 9

Forwarding to the Rt Hon the Secy of State a copy of Pros: No 180 & Jud. of 14 Nov 96 and soliciting the grant to Mr W.C. Holmes, I.C.S., of permission to resign the Indian Civil Service on a pension proportional to the length of his service.

BACK PAPERS.

G.O.	No	Department.	Date.	G.O.	No.	Department.	Date.
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FURTHER PAPERS.

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Government {1896} of Madras.

JUDICIAL.

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Read. / *Regd.* } 1896. *Enclosures* / *Spare copies*

G.O., No. 1808, 14th November 1896.

NOVEMBER.

Mr. W. C. Homes, I.C.S.

Passing orders in regard to the conduct by — of South Canara Sessions cases 33 and 38 of 1894 and 15 of 1895.

CONFIDENTIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

Read—again the following papers:—

G.O., Mis. No. 2231, Judicial, dated 4th November 1895.

Read—the following paper:—

From D. W. G. COWIE, Esq., Acting Registrar of the High Court of Judicature, Appellate Side, to the Chief Secretary to Government, dated Madras, 14th October 1895, No. 2878.

I am directed to forward, for the information of the Government, copies of the High Court's Proceedings, Nos. 1760 and 1812, Judicial, dated 10th and 16th ultimo, respectively, recording certain observations on the conduct by Mr. W. C. Holmes, Sessions Judge of South Canara, of sessions cases 33 and 38 of 1894 on his file. With regard to sessions case 33 of 1894, the Hon'ble the Judges observed that Mr. Holmes had allowed the proceedings to be protracted to three weeks although the trial, if properly conducted, should not have lasted more than a few days; that he had exercised no control over his bar and was not strong enough to exclude irrelevant matter from the cross-examination of the witnesses.

As to sessions case 38 of 1894, the High Court remarked that Mr. Holmes had no appreciation of the value of public time and was unable to distinguish relevant from irrelevant evidence.

2. I am directed to state that the Hon'ble the Judges have for some time been far from satisfied with Mr. Holmes' judicial work, and think it advisable to bring these instances of his inefficiency to the notice of Government.

3. The Judges have no reason to doubt that Mr. Holmes is a conscientious officer and that he does not spare himself in the performance of his duties, but they are of opinion that he is not suited to judicial work and would suggest that it may be advisable to employ him in some other department on his return from the furlough for which it is understood he has applied.

Enclosures.

IN THE COURT OF SESSIONS, SOUTH CANARA.

Session Case No. 33 of 1894.

Present:

W. C. Holmes, Esq.

Queen-Empress

v.

(1) *Padmaraja* alias *Laxumapparasu Bangara*, (2) *Supi Beary*, (3) *Ali Beary*, (4) *Shidi Beary* (5) *Ucha Beary*, (6) *Sabu Beary*, (7) *Hammade Beary*, (8) *Badava Beary*, (9) *Idine Beary*, (10) *Abd-ullah Beary*, (11) *Venkatramana Bhatta*, (12) *Sanna Ali Beary*, (13) *Ibrayi Beary* and (14) *Sanna Ibrayi Beary*.

(Committed by Mr. H. Koragappa, Second-class Stationary Magistrate of Mangalore.)

Charge—Against accused two to fourteen.—(1) Culpable homicide amounting to murder, section 302, I.P.C.; (2) voluntarily causing grievous hurt, section 326, I.P.C.; (3) rioting, being armed with deadly weapons, section 148, I.P.C.

Against first accused.—Abetment of the above offences, sections 109, 302, 326 and 148, I.P.C.

Against all the accused.—Being members of an unlawful assembly, section 143, I.P.C.

Assessors.—Messrs. (1) Ub. Narasinga Rau (Saraswati Brahman), (2) Akbar Khan (Muhammadan) and (3) D. R. Baptist (Roman Catholic Christian).

Opinion of the Assessors.—Not guilty.

Finding of the Judge.—Concurred with the assessors.

Order—The accused are acquitted and set at liberty.

Judgment.—The charge against the second to fourteenth accused is that at 11 A.M., or about that time on the 3rd September, at Panemangalore, they caused injuries to Narikombu Narsappaya which they knew would be likely to cause his death, and that the said injuries caused his death and that they were guilty of murder (section 302, I.P.C.), *or* that they voluntarily caused grievous hurt to N. Narsappaya with dangerous weapons and that they thereby committed an offence under section 326, I.P.C., *and* that at the same time and place they committed rioting with the common object of causing grievous hurt to Narsappaya and thereby committed an offence under section 148.

The first accused is charged with having abetted the second to fourteenth accused with having committed the aforesaid offences.

All the accused are further charged with having unlawfully assembled together at about 9 A.M. on the 3rd September for the purpose of committing the aforesaid offences and with thereby committing an offence under section 143, I.P.C.

2. The first witness examined for the prosecution, Shivanaya, deposed that the deceased Narsappaya had got possession of lands in Nandavar that formerly belonged to the first accused Padmaraja and his family; that a suit filed by Narsappaya for possession of some more lands was pending; that Narsappaya had got sold at court auction a mulgeni holding of the first accused and had purchased it himself, "five, six, seven or eight months ago;" and that he (witness) had applied in a decree obtained by Narsappaya for the sale of the first accused's house, and that a suit by first accused's brothers to set aside the attachment was pending. The witness also deposed that he had obtained on permanent lease from Narsappaya (who is a relation of his) all the lands he had in Nandavar and that he began the cultivation of the lands in August last with men from his own village of Peramanki, nine or twelve miles from Nandavar, because he could not get men at Nandavar and left his brother Narnappaya and a relation Rangappaya to superintend the cultivation. The cultivation was obstructed by the first accused, his brothers and others, and this witness lodged complaints.

On the night of the 2nd September, in consequence of information he received, the witness went to Kandur, a village three-quarter miles from Nandavar, and there saw Narnappaya and Rangappaya wounded, and the next morning he went to Panemangalore station which he reached at 7 or 8 and made a complaint at the station; before he made the complaint he saw, he deposed, Subbia Shanbhag, a gumastah of the first accused. As the head constable of Panemangalore was ill, the witness went to Bantvál on the other side of the river, an dthere saw the police inspector who sent with him head constable Pereira, of Bantvál station, and he, the witness (as well as the witness's party—Rangappaya's brother and two servants) and a constable or two were returning to Panemangalore. Before they crossed the river by the ferry they got information, and on crossing they went to Ananta Pai's shop at which there was a crowd and saw Narsappaya sitting there wounded. The witness deposed that all he could recollect of what Narsappaya said was "Padmaraja Bangara got people collected, sent people, and got me beaten."

In cross-examination the witness professed not to remember a number of matters about litigations he had been engaged in, and it appeared that he was taking Narsappaya's part or helping Narsappaya in his acquiring land in Nandavar. It also appeared he had a bias in Narsappaya's favour, but as he was his relation that is not of much consequence. What he said in examination-in-chief appeared to be substantially true, but, of course, it does not advance the prosecution case very far.

3. The second witness examined by the prosecution was Ananta Pai. His evidence was that he was sitting in his shop in Panemangalore at about half-past 10 dictating to his son and was facing north. He saw Narsappaya coming down the sloping rock (32 on plan). It is the way, he said, that people come from Narikombu, *i.e.*, the village in which Narsappaya lives. He afterwards said he did not see him coming down the sloping rock, and said he first actually saw him when two fathoms from his shop, and he said his attention was drawn to him (Narsappaya) by a servant speaking. Narsappaya had with him a Sudra servant. When they were two fathoms from his shop, the witness deposed, the servant said "See, they are coming," and, as soon as he said it, Narsappaya at once entered his shop and entered the northern of the two compartments (see plan) and as soon as he had entered "Mappilas came and stood round and in a row."

The witness's evidence then, as recorded on pages 7, 8, 9 and 10 of my notes, was very unsatisfactory in the matter of identification of any particular person.

He said he thought fifteen or sixteen Mappilas came. He said a Bhant came and a Potter and a Brahman. He then said he knew all but two or three. When asked whose names he knew, he repeated a string of names. He was then asked if he could point them out here, and he named a number of persons in the dock. He was then asked "Did you see the others there?" and he said "Yes," and he was asked "Was Bangara there," and he said "No."

What happened according to this witness was this:—

Some one said "beat, beat." He afterwards said Shidi, fourth accused, said so, and that he said so two or three times. Then witness told the crowd not to create a disturbance in his shop and asked why they should create a disturbance in his shop. They said "Shove that dog down." He afterwards said Shidi, fourth accused, said so. Then they took up stones and threw stones and sticks at Narsappaya. He could not say who did so. Two or three got up—Shidi, Puvappa

and another—and they beat Narsappaya who was in the northern room. Shidi stood on the jugli and lunged Narsappaya with a sword. Narsappaya then went to the southern compartment from the northern through the door between the two. Two or three others got up on the jugli, but he could not say who they were, and they all beat Narsappaya with sticks. Some bottles were broken. Others of the crowd stood "this side and that side" and flourished swords and sticks. His son jumped down. Narsappaya took up the pair of scales (produced in court) and parried the blows. The blows became more forcible and the witness jumped down. He did so to see where his boy was. He went to the opposite shop. He cried out there for the first time. The beating still went on. He went to his house and found his son there. A dog-cart passed with a lady in it. Witness followed it and went to his shop and found Narsappaya sitting wounded.

In cross-examination he stated that the offence took place on the Chowti day and that it was an important festival with persons of his caste. He said that he that morning had distributed at his shop 50 or 75 cocoanuts and 8 annas in cash in 3-pie pieces to about 100 people, and that the distribution was finished by 8 o'clock. He said that after the distribution it was usual to go to feast, and he said that it was usual for the Chowti feast to be held at the family house where his undivided brother lived. He said that on the last Chowti day he remained at his shop writing. He said "I was writing the things sold the day before or the day before that. I wanted to see from whom money was due. There was no pressing necessity to write." He said that had it not been for the occurrence he would have closed and gone home as he had to worship Ganapati.

The witness stated that during the struggle Narsappaya did not cry out. He described, but not very clearly, the way things were stored in the two compartments of his shop.

In the southern compartment he said dholl, rice, &c., were stored and he showed how. There was a box near the front, and sloping up from it there were wooden dishes filled with grain. There were four or five big jars in a corner of the room. The witness said these dishes of grain were undisturbed.

One of the jars that was in the southern room was produced in court. It had a big hole, five or six inches in diameter, in one side of it. A stone was also produced. It was four inches or so in diameter and the witness deposed it was found lying in his shop. The jar and stone were produced on the 15th September.

The witness in cross-examination said stones were [illegible] was thrown into the southern compartment also.

On the 15th September some pieces of [illegible] bottles were produced. The witness said that three bottles in the southern room were [illegible] broken.

The witness showed in court what Narsappaya did with the scales. They were hanging to the beam in front of the [illegible] southern compartment, and, presumably, Narsappaya broke the rope by which they were [illegible] hanging. The witness showed the way Narsappaya flourished the pair of scales.

The [illegible] scales are undamaged except for two indentations, one on each pan. As these indentations are exactly similiar and in a similar position on the pans, it is probable they were caused when the pans were put one in the other and the scales hung aside when not in use by the pans knocking against a wall or beam or something like that.

The witness said to the magistrate the scales were broken, but he explained in this court that only a ring had come off a hook.

The amount of property in the shop was worth Rs. 1,000 or Rs. 2,000 and there was Rs. 700 or Rs 800 in cash, but the cash was, he said, in an inner room. The witness said that he did not examine the cash till after meals that evening. The witness said that his son, whom he went to look for, was seventeen or eighteen years old and that no one had told him that he was injured.

The witness said that he did not tell Mr. Macfarlane, nor the overseer Dasappa, what had happened, and he said that he knew the overseer who was of his caste and that he had often spoken to him.

4. The third witness examined by the prosecution was Srinivasa Pai, the son of Ananta Pai. He was examined at great length, his examination occupying an entire day.

His general account of the transaction was the same as his father's, but he gave more particulars of the part he said that the persons in the crowd took in the alleged rioting.

He said that two bottles that hung to the ceiling of the southern room were broken, and that he jumped down from the jugli for fear of the glass hurting him and for fear of blows, and went to a shop opposite, which was closed, and stood on the stones over the drain in front of it "for a minute." From there he says he saw some persons beating Narsappaya and some trying to drag him, and as they were beating and dragging him he caught the scales hanging in front of the shop and he then fell in a sitting position, and two or three others got up and were beating him and, "not being able to see this inhuman business, I went home." He also said, "I could not see as he was beaten worse than a beast and left and, as I was feeling pity, I could not bear to see."

He said that the persons who did not go up into the shop to beat Narsappaya (five) or (six) moved here and there in front of the shop brandishing a sword and sticks, and that north and south a crowd of forty persons gathered.

He said he went back with the bandy and found Narsappaya sitting facing the road, bleeding. He did not know what Narsappaya said, and he soon left and went to a schoolmaster Srinivasa.

He first said that he had to pass through the northern crowd to get to his house, but he afterwards said he went along the middle of the road and the crowd was to the side of the road.

In cross-examination he gave information as to the persons engaged in the shop. There were two employés named Rama and Soiru Shanbhaga, and he and his two brothers also help in the shop. None of them were in the shop when the crowd came. According to the witness the shop was opened that morning to distribute cocoanuts, &c., as it was Chowti day, "nothing was sold that day, it was Chowti day." Giving cocoanuts, &c., to Brahmans went on till 8–30 or 9.

The witness was then cross-examined at considerable length as to the necessity there was for remaining after distribution. His account was not very clear, but perhaps the cross-examining counsel did not want that it should be clear. The witness said he had been that morning looking at the amounts outstanding. He could not tell the names of any debtors, and he did not remember if accounts had been sent to them. He afterwards said that they thought of keeping accounts to be filed for income-tax. They were not produced before the income-tax authorities, and, when asked in re-examination why not, the witness said "If they are written up, we can see what the profit is next year." He also said he was posting the current ledger and that his father was dictating from the day-book.

The witness said he put the ledger he was posting and the journal from which his father was dictating in a box when Narsappaya entered; but he could not say if he took any care of the inkstand, but afterwards he said he found the small box it was in damaged. The nibs of the pens in the box were broken. He did not notice fresh ink stains.

The bottles that were broken contain oil, and oil was on a stone and on the floor below the stone.

He said two of the sticks that were thrown hit Narsappaya and dropped down, and Narsappaya did not take up a stick to defend himself though he was a robust man.

He did not hear Narsappaya cry out.

5. After the examination of the third prosecution witness, Mr. J. B. Macfarlane, Local Fund Engineer, South Canara, was examined as a court witness under the following circumstances: The prosecution first applied that he should be examined, but withdrew the application, and the defence then applied that Mr. Macfarlane should be examined by the court, and that application was granted; and, as it was understood that Mr. Macfarlane was leaving Mangalore for camp, he was examined at an early stage in the case.

Mr. Macfarlane passed through Panemangalore on the 3rd September at about 11–30 A.M. He was walking and was followed by his dog-cart. He noticed that there were more people in the bazaar than he would have expected at that time of the year, and he inquired the reason, and saw in a shop in the part of the bazaar parallel to the river (at about 40 on the plan) some Ganapathees painted. When he turned into the bazaar that runs at right angles to the river, there were then more people about than he would have expected, but he noticed no crowd and saw no wounded man and noticed no signs of any disturbance and no one with clubs or sticks or swords, and no one drew his attention to any wounded man or there having been any disturbance. Mr. Macfarlane did not notice anything particular about Ananta Pai's shop.

Mr. Macfarlane must have passed Ananta Pai's shop a few minutes, if not a few seconds, after the time at which, according to the prosecution, Narsappaya's assailants left the place.

6. The fourth prosecution witness was Koti. He deposed he was a servant of Shivanaya, the first prosecution witness, and that on the morning of the 3rd September he was at Nándavar and went from thence at Shivanaya's orders to Narikombu to Narsappaya and followed him to Panemangalore.

He deposed that at Panemangalore, when near Ananta Pai's shop, he heard Puvappa Shetty say "Our Bhant has come," and he said "Look here, Nandavar people are come to beat you." He deposed there were ten or twenty people to the south and were coming fast, when he said "They are coming, they are coming." He deposed Narsappaya, who was walking with his head down, looked up and went fast to Ananta Pai's shop and people came and stood in a row throwing stones and sticks into the shop. He deposed he was meantime standing on the road and saw three men get into the shop, and as he was attempting to go into the shop he got a blow with a stick on the wrist and he ran away crying "Narsappaya is being beaten and killed," and he stood without crying out for two galiges in a lane, and went back to the shop and when he got there the people were not there.

This witness's evidence was very unsatisfactory. His story was disconnected and his demeanour bad.

7. The fifth prosecution witness, Venkappa Shanbhag, is a shopkeeper living on the opposite side of the road from Ananta Pai's shop and twenty yards or so from it. He deposed that that morning he saw Narsappaya and another man pass his shop, and within quarter galige Ananta Pai's cry was heard saying that Narsappaya was being beaten within his shop by the Mappilas of Nandavar, and he got down from his shop and sat on the plank just in front of it, and saw that Narsappaya was being beaten by some Mappilas and that he was waving scales. He said Narsappaya's body was outside and his legs inside the shop, and one of the Mappilas called out

and said, a coach of the Engineer's department had come and they dispersed. He said, as he was alone, he did not go to see Narsappaya after the occurrence. He said there were some of the Mappilas having sticks in the street, and between them and him there was a crowd of forty or fifty persons including some women and children.

I thought this witness's story, both from the substance of it and from the witness's manner, to be false.

8. The sixth prosecution witness was Naraina Pai. He deposed he was in a shop of one Dasa Naik near the temple at Panemangalore and heard some one crying "There is beating," and he went and stood in front of Venkappa Shanbhag, the fifth witness's shop. He then said in a general way that all the accused were beating Narsappaya.

Nothing could have been more unsatisfactory than this man's evidence. He could give no details of what happened, and he screened himself behind the assertion that there was much confusion. His whining answers in cross-examination and his pretended ignorance, his protestation and his facial expression left the impression on my mind that he was entirely untrustworthy.

As to the substance of his story, if it be true that he heard the cry "There is beating" at the place he was, probably every one in the town would have heard it. His evidence about the arrival of the dog-cart was as unsatisfactory as it could be. He said one of the accused cried out "The dog-cart has come, let us go," and after an immense amount of difficulty it was elicited that the man was in front of Ananta Pai's shop.

9. The seventh prosecution witness, Ganapati Shanbhag, deposed that he was in the shop of Manna Shanbhaga in the lower Peta and people were going about talking and he went towards Ananta Pai's shop and stood in Subba's shop opposite Ananta Pai's and about ten or twenty Mappilas and Ananta Pai were talking. He then told a story of what he alleged happened similar to that told by Ananta Pai. There was no life in his story, and it made no impression on me such as the story of a man relating what he had really seen could hardly fail to have made. The witness is a man of no property. He said he traded, but he gave up his shop four years ago. He once made a complaint of assault, and it was compromised and he got Rs 25. He is a caste man of Ananta Pai's, but denied that he was related to him. He said that at the shop he did nothing, but was in great fear. One naturally asks "If he was so timid, why did he go there?" He said he was told not to come down, and that no one told him to go. He had told the magistrate Narsappaya had been dragged out by the legs to the jugli. Here he said he was only dragged out once, and that his head was on the jugli. He had told the magistrate that some of the accused had said about the gentleman's carriage, and that Shidi said "Let us cut off his head and go to Nandavar." Here his story was that some one from the northern side said "The dhorai's carriage is coming" and he could not say who it was. The evidence has appeared to me to be a tissue of falsehoods.

10. The eighth witness examined by the prosecution was Srinivasa Kudava who has a shop opposite Ananta Pai's. He deposed that as he was approaching his shop, he heard a noise and saw Narsappaya being beaten on the jugli of Ananta Pai's shop. He then gave some details of what each of the accused two to fourteen did. Narsappaya was waving a pair of scales, and some one said "A carriage is coming, let us go," and they left.

The whole of the examination-in-chief of this witness was exceedingly brief. Though he mentioned each of the accused two to fourteen, the examination only extended to one and a quarter pages of my notes. It is incredible that if this man had witnessed a scene such as he says he did, he would not have given a more detailed and a more graphic account of it. His account was as bald as it could be, and I do not think the witness is entitled to any credit.

The cross-examination of this witness made his story ridiculous.

11. The ninth prosecution witness, Cherdappaya, has a shop in Panemangalore on the opposite side of the bazaar to Ananta Pai's and more to the south. He deposed he was in his shop and fifteen or twenty people came from the south armed with sticks and as they came near his shop some one of them said "We have the big tiger" and they ran, or walked fast to the north. He took home his children and left them at home, and within a galige he returned, and the riot was going on in Ananta Pai's shop, and he went and stood ten or twenty koles from Ananta Pai's shop and saw Narsappaya lying on the jugli and being beaten, and after quarter galige he heard a voice like the voice of Supi (the second accused) saying "A carriage is coming, go away soon" and they started and went to the south, and he went and saw Narsappaya lying there and was disgusted and went to his shop.

The opinion I formed of this witness, both from his demeanour in the witness box and from the substance of the answers he gave, was that almost every sentence he uttered in his examination-in-chief was a lie.

The cross-examination confirmed the opinion that his evidence was in all probability totally false.

12. The tenth prosecution witness, Krishnaya Shanbhag, deposed that he had a shop a short distance to the south of Ananta Pai's and on the same side of the bazaar, and that he was in it when the crowd passed, and that he next saw people going here and there and saying "The Mappilas beat Narsappaya. They killed Narsappaya," and he got down and looked towards the

north and "these Mappilas were beating" and one had a sword and he was flourishing it, and others were flourishing sticks. He then, so he deposed, went and sat in his shop and went on settling the wares, and the Mappilas went to the south and after that a carriage came.

This witness was a young man and his demeanour did not betray him, but the substance of his story can in my opinion have only one criticism and that is that it is an utter lie.

The cross-examination demonstrated this.

13. The tenth prosecution witness examined, Timma Padiyara, an old man of 63, has a house on the same side of the bazaar, south of Ananta Pai's. He deposed that he was sitting in his jugli distributing cocoanuts and cash to Brahmans and others, and he deposed "They said there is a noise in the Petta that Narsappaya is being beaten," and he gave cocoanuts to some Brahmans and went out, and as he was going out, ten or twenty persons were going fast to the south, and he at once went back to his shop This man says he identified all the thirteen accused, *i.e.*, accused two to fourteen as they passed him while they and the others were going a distance of five fathoms. That is, I think, palpably false.

14. The twelfth witness, Gopalkrishnaya, deposed that on the Chowti day he was passing through Nandavar, and hearing talking, looked back and saw ten or twenty people coming down from the Anebagalu (or big gate) and they went towards Panemangalore, and as they went the first accused said they must go and anyhow do away with him.

This witness's demeanour was very bad. I inferred from his demeanour that he was probably telling lies.

In cross-examination he stated he could not remember if twenty or more than twenty suits had been brought against him. He did not know if his services had been dispensed with by the Survey department, and he professed ignorance on a number of other matters. It was clearly brought out that he was a partisan, for he produced a letter alleged to have been written to him the day before the Chowti day and which was meant to explain the reason of his going through Nandavar on the Chowti day. He explained that the letter (the only letter he had) had remained in his pocket by accident, but that is not to be credited. The reason he gave for going through Nandavar was not satisfactory.

15. The thirteenth witness, Annappa, lives in Bondal, two miles from first accused's house, and deposed that on the Chowti day, as his child was sick of convulsions, he went to Nandavar and entered the gate and saw ten or twenty persons with sticks and swords sitting in front of first accused. The first accused asked why he came and he said he came for medicine, and the first accused told him to come after three days as he had business then.

In cross-examination it was elicited that he did not go back after three days. He had been only, he said, three times before to the first accused, on each occasion to get medicine. He brought nothing in his hand to give the first accused. He found the gate open and went in.

This story is, I think, on the face of it, obviously false. His manner threw suspicion on him.

16. The fourteenth witness examined for the prosecution was Aitappa Naika. He deposed he lived in Nandavar and that at about 10 o'clock on the Chowti day he went to a shop near the gate of the first accused's house and sat on the jugli. He then recited a string of names and said "all these were." He was asked "where?" and he said "There were others—they came from the gate." After they came as far as the public road they turned east. He was then asked "who is so and so," "who is so and so" and he pointed to various accused. The examination-in-chief then closed.

I shall say nothing more about this witness than express an opinion that it is absurd, I think, to put such evidence before a court of sessions and against men charged with murder too, and that his evidence was thoroughly discredited by cross-examination.

17. The fifteenth witness examined was Parameshra Mayya. He is a Brahman and on the Chowti day he deposed he had been to Panemangalore where he had been given a few cocoanuts and some pieces, and as he was on his way back to Nandavar "Bangara and all the accused were coming." And Bangara (the first accused) said "Give him, he went to give scent of the matter" and Venkatramana Bhatta and Shidi struck him thrice on the right thigh with sticks and Shidi snatched the cocoanuts.

In cross-examination he said Venkatramana Bhatta and he had never quarrelled and that after the beating the friendship continued. He did not complain to the authorities about the beating but told all the villagers. He did not cry out when he was beaten, but said "Don't beat, don't beat, excuse me, I did not tell."

So far as inferences could be drawn from this man's demeanour, his evidence appeared to me quite worthless. I think the same inference is to be drawn from the substance of the evidence. The story cannot, I think, be believed.

18. The sixteenth prosecution witness was head constable Pereira of Bantvál station. On the 3rd September he had been deputed by the inspector to investigate the complaint of Shivanaya, the first prosecution witness. On his way to Panemangalore he heard of this alleged offence, and went to Ananta Pai's shop and found Narsappaya there. Though the offence was not alleged to have been committed within the limits of the station of which he was the head constable, he deposed that he waited at Ananta Pai's shop while a draft complaint was written and read to

Narsappaya and a fair copy made and read to Narsappaya and signed by him, and then questioned Narsappaya and eleven other witnesses, and tried to arrest some of the accused at their houses in Nandavar, and at three in the afternoon he undertook the investigation of the case which he had been deputed to inquire into.

It seems to me to be hardly credible that he could have done all that in such a short time.

His evidence was not satisfactory. There was a great deal of want of directness in his answers.

The complaint presented to this witness, according to him, is brought in as a dying declaration. The witness was not able to say who wrote it. He said it was a Brahman whose name he did not know, and he explained that he had not been long in Bantvál. It has not appeared in evidence who the writer of the complaint was, and I think it is incredible that this witness can be ignorant on the point. It seems to me incredible that he would not have inquired who the man was. The complaint is a suspicious document in this respect, that there are two sections of the Penal Code, viz., sections 143 and 141 quoted in it; and as this witness says that, so far as he recollects, he did not supply the information, it would appear that the writer was some person who was acquainted with cases, possibly with getting up cases.

Another matter that is suspicious in this man's evidence is that his notes of what he says Narsappaya stated to him are identical with the statement in the complaint. It cannot but be one is a copy of the other.

19. During the cross-examination of this witness, after a long time had been spent in questioning the head constable as to the accuracy of a plan he had prepared, I stated in court that, so far as I had seen after three weeks' listening to the evidence in this case, the only conclusion I could draw from the evidence that I had so far heard was that the charge Narsappaya had brought of having been beaten in Ananta Pai's shop was absolutely false, and I stated that if Government wished to press the charge, a proper survey plan should be produced so as to save the time of the court.

20. After an adjournment for tiffin, the Public Prosecutor stated that, after consulting the District Magistrate and the Superintendent of Police, it was determined not to offer any further evidence, and referred the court to section 289, Criminal Procedure Code. I then stated that the case was not one in which I would not be obliged to take the opinion of the assessors, and I accordingly asked the assessors their opinion. The first assessor stated that the evidence against the first accused was unworthy of any credit, and he stated that the story of the prosecution against the accused two to fourteen was at least doubtful. The other two assessors concurred with the opinion of the first.

21. As for the case against the first accused, I need only say that no reliance whatever can be placed on the evidence of the witnesses who implicate him in the transaction.

22. As for the case against the accused two to fourteen, I have stated the substance of the evidence of each witness as he was examined and what I thought of it. It will be seen that I thought each witness for the prosecution successively unworthy of any credit.

23. In my opinion the one clear and distinct inference to be drawn in this case is that Narsappaya's charge that he was beaten in the heart of Panemangalore on the 3rd September is in all probability entirely false.

Mr. Macfarlane's evidence is most important. I see no way of getting over it, or, if not, inferring from it that Narsappaya's charge was not correct. Mr. Macfarlane must have passed by Ananta Pai's shop a few minutes, if not a few seconds, after the time of the alleged rioting, and if such an outrage as Narsappaya alleged had really been committed, it is impossible to suppose that there would not have been gathered there a large crowd round Ananta Pai's shop.

But even if Mr. Macfarlane had not happened to pass, the only conclusion in this case would be that Narsappaya's charge was untrue.

If five or six men had been beating Narsappaya in Ananta Pai's shops which are quite small places, it is perfectly clear that there would have been hardly an article in the shops that would not have upset or broken. A jar with a hole in it is produced, but if it had been really broken by a stone thrown at it, the stone would have smashed right through the jar.

24. False charges are of quite frequent occurrence in India, but it is seldom that a false charge occupies the attention of a Sessions Court for over three weeks. The reason is that such charges seldom get so far as the Sessions Court. The police or the magistrates as a rule detect them. The present case is an exception to what generally happens, but it is in my opinion abundantly clear—it is at least the inference that I clearly draw—that the charge Narsappaya brought was false. I cannot, of course, say when or by whom he was beaten, but I am clearly of opinion that he was not beaten in Ananta Pai's shop.

The accused are acquitted and will be set at liberty.

25. An important question arose in this case, namely, whether the prosecution could, as of right, put into the box and examine as their witness a man who had not been examined before the committing magistrate. The decision of the question depends on the proper construction of section 286, Criminal Procedure Code. That section says that after the prosecutor has stated by what evidence he expects to prove the guilt of the accused, he shall "examine *his* witnesses."

His witnesses include those examined by the committing magistrate originally under section 207 as well as supplementary witnesses examined by the magistrate under section 219, Criminal Procedure Code; but does the expression mean any other person whom the prosecutor may suppose to be acquainted with any fact in the case? One object of the preliminary inquiry is to acquaint the accused with the nature of the evidence he has to meet, and in the case of the examination of supplementary witnesses the accused is to be furnished with a copy of the supplementary evidence if he requires it. This object would be defeated if the prosecutor could call at the sessions a new witness. That this is not contemplated by the Code appears to me to be implied by the absence of a section giving to the prosecutor power similar to that given by the accused under section 291. That section confines the accused to the witnesses of which he gave a list or a further list to the magistrate, except when any person not named by him is in attendance it is provided that he shall be allowed to examine him. Another consideration leads, I think, to the same conclusion. Section 291 says the accused has no right to have other witnesses summoned, but if it were contemplated that the prosecutor could call a new witness, the Code would also have provided for the accused in such circumstances being allowed to call evidence to discredit the new witness. As there is no such provision, I infer that the Code did not contemplate and does not authorise the prosecutor to call as a witness a person not examined by the magistrate.

26. The question then arose whether the man the Public Prosecutor wanted to examine should be examined by the court under the authority given to the court by section 540, Criminal Procedure Code. The court is by that section required to examine any person if it considers it necessary for the just decision of the case, and is given a general power of examining a witness at any stage of the trial. The power given by this section should, I think, be exercised with due discretion. Except to supply an accidental and unimportant omission, it is generally objectionable to bring in at a sessions trial new evidence against the accused. Mr. Justice Trevelyan in a case reported in I.L.R. 14, Cal., 245, declined to call as a court witness a man because he did not think he could put implicit reliance on his evidence, and I think that in the case of a doubtful witness the court would most gravely err if the court examined him. In the present case the man sought to be examined is the overseer who accompanied Mr. Macfarlane as he passed through Panemangalore. This man was summoned for the defence, but the defence has told him that he will not be called and the learned pleader for the first defendant, Rao Bahadur Shiva Rao, explains that this was done because Mr. Macfarlane having been called by the court gave the evidence that Dasappaya was called to give. It was also stated by Mr. Shiva Rao, and was not contradicted on the other side, that an adjournment of the preliminary inquiry was obtained by the prosecution with reference to the examination of the Local Fund Engineer and others presumably including this man Dasappaya, and that the prosecution did not examine Mr. Macfarlane as a prosecution witness. Under these circumstances if Dasappaya gave any evidence in support of the prosecution, it is pretty certain that no one would believe him. I, therefore, am of opinion that it would have been a very grave error for the court to have examined Dasappaya.

Mangalore,
27th November 1894.

(Signed) W. C. HOLMES,
Sessions Judge.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Tuesday, the 10th day of September 1895.

Present:

The Hon'ble Sir Arthur J. H. Collins, *Kt.*, Chief Justice, and the Hon'ble Mr. Justice Parker.

(Criminal Appeal No. 149 of 1895.)

The *Public Prosecutor*, appellant, and (1) *Supi Beary*, (2) *Ali Beary*, (3) *Shidi Beary*, (4) *Ucha Beary*, (5) *Sabu Beary*, (6) *Hammade Beary*, (7) *Badava Beary*, (8) *Idine Beary*, (9) *Abdullah Beary*, (10) *Venkatramana Bhatta*, (11) *Sanna Ali Beary*, (12) *Ibrayi Beary* and (13) *Sanna Ibrayi Beary*, prisoners (prisoners two to fourteen in session case No. 33 of 1894 on the file of the Sessions Court of South Canara).

Appeal under section 417 of the Code of Criminal Procedure against the judgment of acquittal passed on the accused in calendar case No. 33 of 1894 by the Sessions Court of South Canara.

This appeal coming on for hearing on Monday the 2nd September 1895, and counsel not appearing on behalf of the prisoners seventh and eighth; upon perusing the petition of appeal and the record of the evidence and proceedings before the Court of Session; and upon hearing the appellant, and upon hearing the arguments of Mr. R. Kuppusami Aiyar, vakil for Gangamma (widow of the deceased Narikombu Narsappaya) and of Mr. K. Naraina Rao, vakil for prisoners

Narsappaya and a fair copy made and read to Narsappaya and signed by him, and then questioned Narsappaya and eleven other witnesses, and tried to arrest some of the accused at their houses in Nandavar, and at three in the afternoon he undertook the investigation of the case which he had been deputed to inquire into.

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Mangalore,
27th November 1894.

(Signed) W. C. HOLMES,
Sessions Judge.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Tuesday, the 10th day of September 1895.

Present:

The Hon'ble Sir Arthur J. H. Collins, *Kt.*, Chief Justice, and the Hon'ble Mr. Justice Parker.

(Criminal Appeal No. 149 of 1895.)

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Appeal under section 417 of the Code of Criminal Procedure against the judgment of acquittal passed on the accused in calendar case No. 33 of 1894 by the Sessions Court of South Canara.

This appeal coming on for hearing on Monday the 2nd September 1895, and counsel not appearing on behalf of the prisoners seventh and eighth; upon perusing the petition of appeal and the record of the evidence and proceedings before the Court of Session; and upon hearing the appellant, and upon hearing the arguments of Mr. R. Kuppusami Aiyar, vakil for Gangamma (widow of the deceased Narikombu Narsappaya) and of Mr. K. Naraina Rao, vakil for prisoners

(one) to (six) and (nine) to (thirteen), and the case having stood over for consideration till this day, the court delivered the following

Judgment.—This is an appeal by Government against the acquittal of prisoners (two) to (seven) and (ten) to (fourteen) by the Sessions Court of South Canara on charges falling under sections 302, 326, 148 and 143, Indian Penal Code. It is explained by the Public Prosecutor that through a misapprehension no appeal has been presented against the acquittal of the first prisoner and the appeal as regards him is now barred.

The evidence for the prosecution went to show that one Narikombu Narsappaya, now deceased, had acquired lands at Nandavar. Some of these lands had been bought at court auction in execution of decrees against first prisoner who is an influential Jain of that place, but who had got into pecuniary difficulties. The consequence was that matters were made as unpleasant as possible for the auction-purchaser, and his lessee, Shivanaya, first prosecution witness, has only been able to cultivate by obtaining labour from a distant village and has been continually obstructed, so much so that he has been in constant need of police assistance. The case for the prosecution is that prisoners (two) to (fourteen), Mappilas employed by first prisoner to wreak vengeance on the auction-purchaser, went to Panemangalore on the morning of September 3rd to give Narsappaya a beating, and that when the latter saw them coming he took refuge in the shop of one Ananta Pai into which the Mappilas followed him and gave him such a beating that he died in consequence on September 14th.

The witnesses called for the prosecution consisted of Ananta Pai and his son and a number of neighbouring shopkeepers and persons who happened to be in the street at the time. It does not seem to have been suggested that any of them were connected with the factions at Nandavar in consequence of the sales of the first prisoner's lands. The sixteenth witness was a head constable, Mr. Pereira, who arrived on the spot shortly after the beating and took a complaint (G) from Narsappaya before sending him off to the hospital for treatment.

The Sessions Judge did not doubt that Narsappaya had been severely beaten, but he was of opinion that the story that he was beaten in Ananta Pai's shop was altogether false. He has expressed himself in the very strongest terms against the credibility of the prosecution witnesses, but he has made it clear that the bias of his mind was affected by one fact only, and that one fact is, in our opinion, wholly inconclusive.

It appears from the prosecution evidence that while the beating was going on in Ananta Pai's shop the Local Fund Engineer (Mr. Macfarlane) happened to come down the street at Panemangalore. This gentleman was walking and was followed by his carriage. He was accompanied by the overseer and was engaged in check-measuring and in verifying the overseer's book. The prosecution evidence is to the effect that when some one gave the alarm that the "Dhorai" was coming the Mappilas slipped away out of the shop and made off. It was a feast day and there were a good many people about in the street. Mr. Macfarlane deposed that he passed the shop engaged in his own business with his overseer, that his attention was not drawn to any disturbance and that he did not notice anything in particular. It is on this one fact that the Sessions Judge has discredited the whole prosecution testimony.

Mr. Macfarlane was called after the third prosecution witness had been examined as a court witness as he was going out into the district. From that point in the trial the judgment makes it clear that the Judge's mind was strongly biassed against the prosecution. From the fourth witness onwards every person called has been denounced as a "false" witness, his demeanour denounced and his evidence characterised as a tissue of falsehoods. With regard to the fifteenth witness the Judge has recorded in his notes (before a word of the evidence) the remark "lying written in his face." If this remark was recorded before the witness gave his evidence we cannot but characterize it as most improper, but the whole tenor of the remarks made by the Judge in the case shows strong bias and that the case was not approached in a judicial frame of mind. Nor can we endorse the remarks made by the Judge upon the conduct of head constable Pereira. The offence may not have been alleged to have taken place within the limits of his own station, but he had been sent specially to inquire into the disturbance at Nandavar and he was certainly justified as a police officer in taking notice of the complaint of Narsappaya whom he found suffering from severe injuries.

There may be a question as to how far death was the result of the injuries received, but the medical evidence was not considered by the Judge, nor was the defence gone into. The trial was prolonged for three weeks, principally in consequence of the cross-examination (mostly irrelevant) of the pleader who appeared for the first prisoner (Mr. Shiva Rao) and the trial at last came to an end since the Public Prosecutor declined to call any further evidence in consequence of the attitude taken by the Judge.

It appears to us that the case for the prosecution is not in the least affected by Mr. Macfarlane's evidence which may be accepted in its entirety; but it seems to us most improbable that a European gentleman walking through the bazaar street of a native town would specially notice what was going on in any of the shops he passed unless his attention were specially called to it. In this case the evidence is that the Mappilas dispersed when the carriage was seen approaching and that Mr. Macfarlane's attention was engaged with the overseer. Why the Judge would not permit the overseer to be called we are quite unable to understand. Had he given evidence which could fairly be said to take the defence by surprise it was open to the Judge to allow them to call further evidence to meet it.

Since the case has not been tried out, we have no option but to direct a retrial. The acquittal of prisoners (two) to (seven) and (ten) to (fourteen) is set aside and we direct that they be retried by the Sessions Court of North Malabar.

(Ordered accordingly.)

(Signed) C. G. TODHUNTER,
Dy. Registrar, Appellate Side.

Proceedings of the High Court, dated 10th September 1895, No. 1760.

The High Court cannot but observe upon the length to which the Sessions Judge has allowed this case to be protracted. The trial apparently lasted for three weeks though the facts were in a small compass; and, as far as the High Court can perceive, there was no reason, if the trial had been properly conducted, why the case should have lasted more than three or four days.

2. The latitude granted to the pleader for the first prisoner (Mr. Shiva Rao) appears to have been most objectionable. His cross-examination teems with matter which is absolutely irrelevant and which the Sessions Judge should have excluded. The High Court regrets to observe that the record cannot but produce the impression that the Sessions Judge does not exercise a proper control over his bar and is not strong enough to exclude irrelevant matter from the cross-examination of the witnesses.

(True Extract.)

(Signed) D. W. G. COWIE,
Ag. Registrar, Appellate Side.

14th October 1895.

Read judgment in Session Case No. 38 of 1894.

Read judgment in Referred Trial No. 27 of 1895.

Proceedings of the High Court, dated 16th September 1895, No. 1812.

The High Court observes that there are certain matters connected with the trial which ought not to pass without notice.

2. The trial of the case, apart from the speeches at the conclusion, lasted over thirty-eight days, that is, parts of nine weeks. In only one of those weeks was the trial proceeded with for six continuous days. Generally it was taken up on four days in a week, in one week on three days only. This method of dealing with a trial for murder appears to the High Court most improper.

3. If the trial of this case is to be taken as a sample of the Judge's work, it shows, in the opinion of the High Court, that he has no appreciation of the value of public time and exercises no control over the vakils practising before him. His own notes condemn him and the High Court is compelled to note that they justify the further inference that the Judge cannot distinguish relevant from irrelevant evidence.

4. Throughout the notes here and there the examination touching the most trival matters is taken down in full (see for instance pages 153, 197, 311, 208, 104, &c.). It is well that question and answer should be given when specially important matters are spoken to; but the Judge has no such discretion. There must have been a great waste of time occasioned by the way in which the evidence has been recorded.

5. The special attention of the Judge is called to pages 32 *et seq.* It does not appear that the Judge made any remonstrance against the proposal of the vakil to allow the witness to exhibit on his person the methods adopted in strangling the murdered boy! From this instance as also from the endless wrangles about objections to admissibility of evidence it is inferred that the Judge has little or no control over his bar. The enormous duration of the trial and the allowance of ten days to the prisoners' vakils for their addresses point to the same conclusion. Really there was no reason why the case should have been exceptionally long. Probably a good deal of time was wasted by the practice of the Judge in calling as court witnesses persons whom the prosecution wishes to examine, but is not allowed to call because they have not been sent up by the magistrate. No less than seven persons were so examined, partly by the Judge and also by the vakils on both sides.

6. In the result a trial which began on the 12th December 1894 was not closed till the 2nd March 1895.

7. As a natural consequence, the returns for the first quarter are most unsatisfactory. The Judge has sent an explanation which still leaves some days unaccounted for.

(True Extract.)

(Signed) D. W. G. COWIE,
Ag. Registrar, Appellate Side.

14th October 1895.

Order—Mis. No. 2231, Judicial, dated 4th November 1895.

The Registrar's letter, together with its enclosures, will be communicated to Mr. W. C. Holmes for any explanation or remarks which he may wish to offer.

(True Extract.)

(Signed) J. F. PRICE,
Chief Secretary.

To the Public Department.

G.O., Mis. No. 2440, Judicial, dated 26th November 1895.

Read—the following paper:—

From W. C. HOLMES, Esq., B.A., I.C.S., District and Sessions Judge, South Canara, to the Chief Secretary to Government, dated 15th November 1895.

I have the honour to acknowledge the receipt of the proceedings of Government, No. 2231, Judicial, dated 4th instant (with its enclosures) calling for any explanation or remarks I may wish to offer on the letter of the Acting Registrar of the High Court to you, dated 14th ultimo, No. 2878.

2. The Hon'ble Judges of the High Court suggest that it would be advisable to employ me, after my return from furlough, in some department other than the judicial. I greatly regret that the Hon'ble Judges wish that I should leave the Judicial department. The work of the Judicial department is work in which I take, and have for many years taken, the deepest interest. Before I came to India I joined one of the Inns of Court and have kept all my terms except one—some before I came to India and some during my last furlough. I have passed the necessary examinations and hope to be called to the bar on the first occasion I am in London. Ever since I came to India I have looked forward to being a District Judge, and since I was first appointed to such a post between five and six years ago I have found the work to be exactly the work I could most wish to do. It is work that gives me the keenest pleasure, and is to me work the mere performance of which is its chief reward. Such being my love (for the expression is not too strong) for the work I am now employed on, it will be understood how keenly I feel the suggestion of the High Court that I should not return to it.

3. If I were myself aware of any inaptitude for dealing with judicial work, I should not hesitate to admit it. I sometimes, it is true, have found the work that came before me exceedingly difficult, but I do not attribute that to any inaptitude on my part in dealing with the work, but to the difficult nature of the work itself. I think the real reason for cases sometimes seeming so difficult to me is that I go so thoroughly into them that difficulties present themselves that would not be otherwise apparent.

How I did my judicial work during the four and a half years I have been in this court can, to a certain extent, be inferred from the statistics showing the number of appealable cases I decided, the decrees which were appealed against, and the result of the appeals.

Out of 82 regular suits disposed of by me appeals were presented in five cases. In three appeals my decisions were confirmed, and two appeals are still pending in the High Court. The suits no doubt were in the majority of cases simple; but that there should have been so few appeals from my decisions and that those few should have been so far unsuccessful shows, I submit, that my work was satisfactorily done.

I now turn to civil miscellaneous appeals. I find that in these cases I gave, since I came to this court 88 appealable decisions. Against 21 of my decisions appeals were preferred. The 21 appeals that were preferred resulted in my decisions being confirmed in sixteen cases, reversed in four and remanded in one. These miscellaneous civil appeals were often vary complicated and difficult, and

that out of 21 appeals disposed of only four should have been reversed and one remanded is a result which I think is not unsatisfactory.

The most important civil judicial work in the court is the disposal of regular appeals. Of regular appeals, I find that since I came to Mangalore I disposed of 637 against which a second appeal lay. Second appeals were presented up to this time so far as we know in this office against 181 of those 637 decisions. Out of 151 appeals already decided my decisions were upheld in 117. In thirteen cases (four of which were connected) the decrees were modified. In ten they were reversed, and in eleven the suits were remanded.

The regular appeals that come up for disposal in this district are generally difficult. This I believe is the general opinion among persons in a position to judge, and it is borne out by the number of decisions from cases from this district that appear in the law reports. This being so, considering that in nearly 72 per cent. of such decisions of mine no second appeal at all was preferred, and that out of 151 cases disposed of I was found right in 117, and my decisions only reversed, varied, or remanded in 34, I think the figures show that my work was satisfactory. Assuming that in the thirty cases still pending before the High Court a proportionate number of my decisions will be confirmed, the result will be that out of 637 regular appeals against which a second appeal lay disposed of by me 93·7 per cent. will have been either accepted by the parties or confirmed by the High Court and only in 6·3 per cent. will any alteration in my decisions have been made.

I find that I passed 808 orders on miscellaneous petitions that were liable to appeal. Four orders were appealed against; one was confirmed, two were compromised in the High Court, and in one case there was a remand.

There were about 1,500 judgments and orders of mine which, though not open to appeal, were subject to revision by the High Court. Only six revision applications were presented, and in all cases my judgments or orders were supported.

I do not think the figures I have given can be held to show an inaptitude for judicial work. The number of my judgments and orders that have been interfered with by the High Court, either in appeal or by way of revision, is only a small fraction of the total, and it must be remembered that the work of this court is often difficult and complicated, that at first I was new to the peculiar customs of the West Coast, and that when I first joined the court, owing to the work of the court being heavily in arrears, I had to work at high pressure. Civil appeals (regular and miscellaneous) form the chief part of the civil work of the court. Shortly after I joined the court I find that on the file of the District Court and Sub-Court (in this matter the work of the two courts must be taken together) there were 526 civil appeals pending, that is to say, there was considerably over a year's work in arrears. On the first day of this year the number was 194. This result was greatly due to the excellent work done by my Sub-Judge Mr. O. Chendu Menon, but I contributed to the result by disposing of 971 civil appeals in the time. I may also be pardoned if I state that the way I got through the work was by commencing almost daily at 7 o'clock in the morning and continuing with short intervals for dressing and meals till five and sometimes six in the evening. Since the beginning of the year the number of appeals pending has risen by about one hundred. This is due to heavy sessions work, to my ill-health, and to Mr. Chendu Menon's illness.

I think I am entitled to submit that the figures I have given show that I had a thorough knowledge of the facts of the various cases that came before me and that I applied to them sound principles of law.

I find that 122 sessions cases were disposed of by me since I came to Mangalore. Out of these, in 71 there were convictions, in 37 acquittals, and fourteen were withdrawn. In one case I disagreed with the verdict of the jury who found the accused guilty, and on a reference by me the High Court set him at liberty. Out of the 71 cases in which there were convictions in 42 cases there were appeals of which the result is known in this office. Twenty-six of the appeals were dismissed. In eight the sentence was varied, in seven the decision reversed wholly and in one as to some appellants. The High Court in revision enhanced the sentence in four cases and released the prisoner in one. Of the 37 acquittals one was

appealed against and another was taken up by the High Court *suo motu*, and in both cases a retrial was ordered. One appeal against an order allowing a withdrawal was dismissed.

The following table will show how the work I did compared with the general work of the Sessions Courts of the Presidency for the last three years of which I have the figures:—

—	Average for the Presidency.			My work for four and a half years.
	1891.	1892.	1893.	
Confirmed	62	58	71·4	62
Varied	21· 6	17·4	16·	19
Reversed	12·16	18·8	9·5	16·7
Do. and remanded	1· 6	·8	1·7	..
Confirmed as regards some appellants	· 9	5·	1·4	2·3
Total ..	99· 7	100	100	100

I think these figures show that my sessions work is not far from the average for the presidency. What I am absolutely positive of is this, that my decision in each case was arrived at after a deep and thorough examination of all the facts of the case, after a patient hearing of both sides, and after very careful thought and consideration. Others may differ from the opinions I formed, but I think it must be allowed that I had unusual opportunities of forming my opinions, and, considering the amount of labour and thought I bestowed on the cases that came before me, I think my opinions are entitled to great weight. I may be allowed to add that deficiencies in criminal work in this country are in my opinion greatly due to grave defects in our rules of procedure.

4. With regard to the specific instances in which the High Court were dissatisfied with my work, and which they brought to the notice of Government, they are, if I understand them correctly—

(1) that two cases were unnecessarily protracted, and
(2) that irrelevant matter was admitted in evidence in them.

5. With regard to the first of these, the principal reason the cases took so long was that they were very important, and, in my opinion, equally difficult, and an exhaustive and thorough investigation of the facts was necessary. The cases followed one another, and they unfortunately began at a time of the year when they could be grappled with with the least amount of vigour. In this district, owing to the recess being generally taken rather early on account of communication being out off in the monsoon, there is a long stretch of seven months' continuous work between the opening of the court after the recess and the Christmas holidays. I can speak from five years' experience of those long stretches of work, and I know how exhausted one gets towards the close of them. It was towards the end of this stretch of work last year that these heavy cases began, and, as I said, it was at a time when they could be grappled with with the least amount of vigour. The defence was conducted by Rai Bahadur N. Shiva Rao, the leader of the local bar in South Canara. Mr. Shiva Rao is a vakil of long experience and of great ability. His ability is equalled by a deliberateness and a tendency to make exhaustive and minute examinations of facts that lead to the cases he is engaged in often being protracted. There were some special reasons for case No. 33 of 1894 occupying the time it did. One was that at the early part of the trial, one of my children was born, and that event and the subsequent state of my wife's health necessitated my being absent from court for a considerable number of hours that would otherwise have been devoted to the case. If I recollect rightly the case was also delayed owing to the unavoidable absence of some of the assessors on some days, but I cannot speak positively about that now from memory, and I have not got the records. Case 38 of 1894 was most protracted, and I unfortunately suffered seriously in my health in consequence; but I do not think I could have prevented it. I sent an explanation to the High Court for the delay and with reference to other matters

connected with the case, and I hoped I had satisfactorily explained all that the High Court had complained of. I beg to append a copy of my letter. I am informed on good authority, though I have not been able to verify the statement, that there have been instances in this court of cases occupying as long or as nearly as long as case No. 38 of 1894 did in the time of Mr J. G. Thompson, in the time of Mr. Walnouse, in the time of Mr. Best, and in the time of Mr. Tate. I am also informed, on good authority, that even in a civil case in this court (*Coelho* v. *Coelho*) one witness was examined at great length—for fifteen days. These facts show that protracted trials in South Canara are not unusual.

I have had a statement prepared in the office of my court showing the number of sessions at which I presided since I came to Mangalore, the number of cases for hearing and the number of days occupied by each sessions. I find that 122 cases were decided on an average of 2·1 days for each case and on an average of 6·5 days for each sessions. Considering that a large proportion of the cases that occur in this district are complicated and difficult, I do not think that these figure show that there was any undue delay in disposing of the cases that came before me. I have ascertained that Mr. W. J. Tate, during the two years he was Judge here, took on an average 2·9 days over each sessions case and 7·9 days over each sessions, and that Mr. J. W. Best in the last two years that he was here (the only period for which I have the figures) took on an average 1·7 days over each sessions case and 5·9 days over each sessions.

6. With regard to the second point it will be apparent that it is impossible that I can deal with it unless I know exactly the evidence that was considered irrelevant. I can say this that I have never known Mr. Shiva Rao ask a question without a definite object. I entirely acquit him of intentionally introducing irrelevant matter. He is a man of the world with a great deal to do and no time to waste. He no doubt often adopts a very round-about-way of getting out of a witness what he wants, but, as he has more than once explained in court, if he puts a question directly to a hostile witness the witness is certain to see the object of the question and to frame his answer accordingly, so he adopts a method of wheedling what he wants out of witnesses. The method is very clever and generally successful, but slow and tedious. I think that this will explain a good deal of what at first sight would appear irrelevant matter; but it is, as I said, impossible for me, except in a general way, to deal with the subject unless I know specifically what is considered irrelevant. It must be remembered that it is very much more easy matter to decide on relevancy or the contrary after a case is finished than on the spur of the moment when the question is put. It must also be remembered that a fact may appear irrelevant standing by itself, but when taken in conjunction with other facts it would be found perfectly relevant, and to understand the relevancy of any particular fact it is often necessary to have an extremely minute knowledge of a number of other facts connected with the case, and I do not think I am saying anything disrespectful to any appellate court if I say that in a long and complicated case an appellate court often cannot have the necessary knowledge unless its attention were particularly directed to the special combination of facts in question. It also often happens that a lawyer brings out one fact and fails to illicit the rest of the combination of facts which would make that one fact relevant, and that one fact standing alone would appear and indeed would be irrelevant, but it would be nevertheless illegal to prevent its being put on the record. I do not think I can say much more about the charge of admitting irrelevant matter. A minute acquaintance with the facts of the case would be necessary before such a charge could be shown to be unfounded, and I think it would be almost practically impossible in any case to deal with such a charge on paper. Whether a fact is relevant or not would be to a great extent a matter for argument, and the argument on each particular item of alleged irrelevant matter might not be very short when the question whether a Judge is to hold office or not is at stake. All I can say now is that I do not admit I was wrong, and that I am prepared to meet if called upon, and if I find I can, any specific charges that may be brought against me.

7. Possibly it would not be practicable to hold an inquiry, and an inquiry to be of the least value to me would require to be thorough. For over twelve months I have not been in my usual health. I received a great shock at the time of Mr. Levy's death which for some days completely unnerved me, and since then I have had a great domestic affliction in the death of one of my children; I have recently felt the strain of work very much and I have had to apply for furlough at an unsuitable time of the year. An inquiry would entail on me a great strain, and might not impossibly, if held now, render me unsuited for judicial or any kind of work. On the other hand, unless I could satisfy the High Court and Government that my work has been satisfactory, I should be serving in India, if I returned, under the great disadvantage of not possessing the confidence of my superiors. Under these circumstances, unless my present explanation is accepted as satisfactory, I feel that it is better for me to respectfully and humbly beg that I may be granted a pension proportionate to my length of actual service in India, and that I may be allowed to resign the service.

8. My passage was taken some time ago for Marseilles by the P. and O. S.S. *Caledonia* leaving Bombay on the 14th December, and I should be greatly obliged by your informing me as soon as possible by wire whether I should cancel my passage and remain in India, or whether I can proceed to Europe. Should Government or the High Court wish that I should give any personal explanation I shall be glad to go to Madras to give it.

9. I return the enclosures of the proceedings under reply, and I am leaving in the office of this court statements showing how the figures given in this letter were arrived at, so that, if necessary, my figures can be verified.

Enclosure.

From W. C. HOLMES, Esq., B.A., I.C.S., Sessions Judge, South Canara, to the Registrar of the High Court of Judicature, Appellate Side, dated Mangalore, 25th September 1895, No. 963.

I have the honour to acknowledge the receipt of the High Court's proceedings, No. 1812, dated 16th instant, and to say that there are some matters which I would respectfully wish to lay before the Hon'ble the Judges of the High Court.

2. With regard to the 2nd paragraph of the proceedings, I can assure their Lordships that there was not a single adjournment given in the case that could have been avoided. The case began on Wednesday, the 12th December, and was continued from day to day till Thursday, the 20th December. It was not taken up on Friday the 21st December as that was the last day before the holidays and the last working day of the year, and there was a good deal of other work that required to be attended to. From Saturday, the 22nd December to Saturday the 5th January, the court was closed on account of public holidays and the case was taken up on the re-opening of the court on Monday, the 7th January, and was continued from day to day till Friday the 11th January. Saturday the 12th January was a general public holiday on account of Pongul, and Monday the 14th January was a general Hindu holiday authorized by the Rules of Practice, page 78, and since by G.O., No. 126, Public, dated 19th February 1895, and it was impossible to take the case on those days as two of the assessors and the defence vakils and indeed almost every one engaged in the case were Hindus. The case was, therefore, adjourned to Tuesday the 15th January, and from that day the case continued from day to day to Friday the 18th January. The 19th was a public holiday. The case was taken up the next court day, namely, Monday the 21st January, and was continued from day to day for eleven days till Friday, the 1st February. On Saturday, the 2nd February one of the assessors was unable to attend as it was an important local holiday for Hindus of the class to which he belonged. The case was taken up on Monday, the 4th February and continued from day to day for ten days till Friday the 15th February. Saturday, the 16th February, was a public holiday. The case was taken up on Monday the 18th February and continued from day to day till the 22nd February. The 23rd was an authorized Hindu holiday (Shivarathiri) and the case was not taken up. The case was taken up again on Monday the 25th, and on Tuesday the 26th. On Wednesday the case could not be taken up as it was a holiday for Muhammadans, and one of the assessors, who was a Muhammadan, could not attend. The case was taken up on Thursday the 28th and continued from day to day till the 2nd March, when the assessors gave their opinion.

The following statement will show in a tabular form the number of working days in each week from the date of the commencement of the trial till the 2nd March, the number of days on which the case was taken up, and the reason for the case not being taken up when it was not taken up on every working day in each week:—

Number of the week.	Actual working days.	Number of days in which the case was taken up.	Remarks.
1st	4	4	
2nd	5	4	The last working day of the year had to be devoted to other work.
3rd	5	5	
4th	5	4	One day was a Hindu holiday.
5th	6	6	
6th	6	5	Do. do.
7th	6	6	
8th	5	5	
9th	6	5	Do. do.
10th	6	5	One day was an authorised Muhammadan holiday and Muhammadan assessor could not come.

I have to explain that on Fridays the Muhammadan assessor could not come till half-past one or two and on Fridays the case was not commenced till that hour. On other days the case began generally at half-past ten and continued till five or six in the evening, except on one day when the case stopped at 2 P.M.

I think that the Hon'ble Judges will be satisfied with my explanation and will acquit me of having granted unnecessary adjournments.

3. With regard to the 3rd paragraph of the High Court proceedings, I would respectfully bring to the notice of the Hon'ble Judges that the case in question was one in which every fact that could possibly be brought out in evidence was minutely gone into. I may have of course inadvertently let in inadmissible evidence, but in a complex case it is very difficult often to draw the line between admissibility and inadmissibility. I have frequently in my experience found that matter that I first thought inadmissible subsequently turned out to be relevant. As to the concluding remark in the paragraph, I would beg to represent that it may be remembered that the subject of evidence is one to which I have for over twenty years given more or less constant attention.

4. In the 4th paragraph of the proceedings, the High Court comment on the examination touching trivial matters being recorded in the form of question and answer. With regard to this I beg to say that I found it absolutely necessary to adopt this form of question and answer in recording the evidence in the case of almost all the examination by the pleader for the first and second defendants. The questions put were generally so involved or so long and so indeterminate that it was necessary to have the question definitely settled before the translator was allowed to put it. If I had not adopted this procedure, the record of the evidence would have been vague and most misleading. The procedure was, of course, quite unusual, but the circumstances were also exceptional.

5. I respectfully beg to explain, with reference to the first sentence of paragraph 5, that the reason I did not remonstrate against the unusual procedure adopted was that the point the pleader for the first and second defendants wanted to bring out was of such moment that although I did not approve of his method, I did not think I should have been justified in interfering. Mr. Shiva Rao wanted to show that the boy was not *gagged* in such a way that he could not have cried out. If he could have established that point, the prosecution case would have been hopelessly damaged, and I did not think I should have been justified in preventing him adopting his own method of trying to establish his point.

With regard to the second sentence of the 5th paragraph, I beg the Hon'ble Judges will remember that the case was most obstinately contested. I submit that I was bound to listen to the arguments as to the relevancy or otherwise of every question objected to. I submit I had no other alternative.

No doubt Mr. Shiva Rao's arguments were exceedingly long, and they were equally involved and difficult to follow, but in an important case in which the lives of his two clients were at stake I did not think it right to interfere.

With regard to the last sentence of the 5th paragraph, I have formed the opinion, and I hope there will soon be a ruling of the High Court on the point, that, according to the Code of Criminal Procedure, the prosecution cannot examine at a sessions trial any person as a witness if objection is taken by the accused, unless the person has been examined by the committing magistrate. I had consequently in the case in question to examine as court witnesses no less than seven persons whose evidence should, in my opinion, have been taken by the committing magistrate. In examining court witnesses the procedure I have always followed is to examine them myself, then to let the Public Prosecutor put questions, and then allow the defence vakils to question the witness. I respectfully submit that this is the correct procedure.

6. I trust that, with this explanation before them, the Hon'ble Judges will be able to take a different view of the way I conducted the case. The case was one in which I considered, I think, rightly that the slightest want of patience on my part would have most materially and probably hopelessly prejudiced the prosecution.

Order—Mis. No. 2440, Judicial, dated 26th November 1895.

With reference to paragraphs 7 and 8 of his explanation, Mr. Holmes will be informed that no formal inquiry at which his presence will be required will take place in respect to this matter. There is therefore no necessity for him to cancel the passage which he has taken to Europe or to defer taking leave. The orders of Government upon the present matter, and upon his conduct of certain other cases which have recently come before Government, and regarding which a reference will shortly be made to him, will be communicated to Mr. Holmes as soon as they are passed, being sent if he has by that time left India to his address in Europe.

(True Extract.)

(Signed) J. F. PRICE,
Chief Secretary.

To W. C. Holmes, Esq., I.C.S.

G.O., Mis. No. 373, Judicial, dated 24th February 1896.

Read—the following paper:—

From W. C. HOLMES, Esq., B.A., I.C.S., District and Sessions Judge, South Canara, to the Chief Secretary to Government, dated 21st November 1895.

In continuation of my letter to you of the 15th instant, I have the honour to say that I have had, since I wrote that letter, a complete analysis of my sessions cases in this court made and an analysis of appeals against them so far as results are known in this office, and I have had four statements prepared showing how my work compared with the figures of the presidency as a whole and of this court for a number of years back. The statements are appended.

2. Statement I shows that of the 122 sessions cases disposed of by me 14 were withdrawn, 63 resulted in conviction, 37 in acquittal, and 8 in the conviction of some accused and the acquittal of others. I have not been able to ascertain the corresponding figures for the presidency or district, but, so far as my general knowledge of the matter goes, these figures are about the average.

Statement I also shows that of the charges against 276 accused persons, the charges against 28 persons were withdrawn. Of the remaining 248 accused persons, 151 were acquitted and 96 were convicted (13 convictions being subject to the confirmation of the High Court). The case of one accused found guilty by a jury I referred to the High Court, and he was set at liberty. The percentage of convictions was 34·7 of the total 276 accused persons. This rather low percentage is due to two causes—one is that I broke up one case and held six trials—18 and 20 to 24 of 1894—in five of which the same five persons were accused and in the sixth two of the five. I did this because the charges were serious charges, being charges of torture against certain police officers, and I thought it advisable to have separate trials for each alleged offence to prevent the possibility of confusion. In two of the six cases the charges were withdrawn. The other cause of the rather low percentage of persons convicted is that two or three trials in which there were a number of accused broke down. One of these cases was 15 of 1892 in which a Muhammadan, who was beaten in a Hindu temple where he was a trespasser, shifted the scene of the offence to his own house where he falsely represented that he was attacked. In another case, in which 22 persons were charged, the true facts, which would have shown the complainants to have been agressors, were suppressed, and the prosecution could not establish the charges actually brought. A third case was 33 of 1894, in which I expressed an opinion which was concurred in by

three assessors—a Hindu, a Muhammadan and a Roman Catholic Native gentleman—that the prosecution had failed to make out their case, and on the expression of this opinion the Public Prosecutor, after consulting the Superintendent of Police and the then acting District Magistrate, stopped the case for the prosecution and consented to the case falling through. An appeal was, however, preferred against the acquittal and a retrial ordered. As the matter must be held to be still *sub judice*, I make no comments on the case.

3. Statement II shows that I differed from the jury in one case out of 22. I find that in ten years of the presidency figures, out of 3,691 in 182 cases the Judge differed wholly or partially from the jury. That is almost in the proportion of one out of 22. In South Canara I find for ten years up to 1892 the Judge differed from the jury in five cases out of 67, that would be equivalent to differing in 1·6 cases out of 22 which is very little over the number in which I differed from the jury. In the case of assessors I find I differed from them either wholly or partially in 33 cases out of 82, whereas out of that number of cases (82) according to the figures for the presidency and South Canara for ten years I should have differed from the assessors only in 21·8 and 24·1 cases respectively.

4. Statement III shows the result of references made by me in cases in which sentences of death were passed compared with the result of such references for the Presidency and for South Canara for nine years up to 1893, the only years for which I have the figures. It will be seen that a different result in one *case* would have made the results of my references almost exactly equal to those of the presidency. In the case of two *persons* two Judges differed as to the correctness of the convictions, and on reference to a third Judge one accused was acquitted and the other sentence supported.

5. Statement IV shows the result of appeals to the High Court from my decisions in sessions cases compared with the figures for the presidency and for South Canara for nine years. It will be seen by comparing the figures given in column 3 with the corresponding figures in columns 6 and 7 how closely my figures correspond either with the figures for the presidency or with the figures for South Canara for nine years. It will be seen that if the result in *one case* had been different and my decision had been confirmed in place of having been reversed the correspondence would have been still more marked.

6. I enclose three statements in manuscript for reference if necessary showing how my figures in the appended statements were arrived at. The figures for the presidency and for South Canara are almost entirely taken from the annual criminal administration reports.

Order—Mis. No. 373, Judicial, dated 24th February 1896.

In G.O., No. 2231, Judicial, dated 4th November 1895, copy of which is attached to this proceedings, the Government referred to Mr. W. C. Holmes, then District and Sessions Judge of South Canara, for explanation and remarks letter, No. 2878 (Confidential), dated 14th October 1895, from the Registrar of the High Court in which it was stated that the Hon'ble the Judges considered that Mr. Holmes was not suited to judicial work, and which enclosed copies of two proceedings of the High Court, No. 1760, dated 10th September 1895, and No. 1812, dated 16th September 1895, commenting adversely upon his conduct of sessions cases Nos. 33 and 38 of 1894 respectively.

2. The two letters read above, copies of which are also appended, form Mr. Holmes' reply. The first of these consists of an explanation addressed to Government in answer to G.O., No. 2231, Judicial, dated 4th November 1895, and of a copy of a letter from Mr. Holmes addressed to the Registrar of the High Court in reply to one* of the proceedings of the Court which formed an enclosure to the Registrar's letter read in that Government Order. The second of them is addressed to Government.

* No. 1812, dated 16th September 1895.

3. The Government would feel obliged if the Hon'ble the Judges of the High Court would favour it with their opinion upon the two letters referred to and would

also transmit to Government a copy of the orders, if any, passed by them upon the letter to the Registrar of which a copy is enclosed in the first of them.

* * * * *

(True Extract.)

(Signed) J. F. PRICE,
Chief Secretary.

To the Hon'ble the Chief Justice with C.L.

Read—the following paper:—

From R. H. SHIPLEY, Esq., I.C.S., Acting Registrar, High Court, Appellate Side, to the Chief Secretary to Government, dated Madras, 10th March 1896, No. 983.

* * * * *

2. The High Court passed no proceedings on the letter from Mr. Holmes, dated 25th September 1895, but addressed the Government on the subject in its letter, No. 2878, dated 14th October 1895.

3. I am to state that the Hon'ble the Chief Justice and the Judges of the High Court have nothing material to add to the opinion they have already expressed on the subject. The reference to figures and statistics is, they consider, irrelevant to the real issue. The complaint against Mr. Holmes is that he fails to exercise due control over his vakils, in the examination of witness, and, generally, in the conduct of his cases. Whether this failure be due simply to weakness, or to incapacity to distinguish between relevant and irrelevant evidence, matters, in the opinion of the High Court, very little: the result is the same, namely, a lamentable waste of public time and a risk of a miscarriage of justice.

4. The High Court is further of opinion that the circumstance of Mr. Holmes' defending his conduct, and not admitting his shortcomings, renders it hopeless to expect any material improvement. As an illustration of this, I am to draw the attention of Government to paragraph 4 of the High Court proceedings, No. 1812, dated 16th September 1895.

5. With these few remarks the Hon'ble the Chief Justice and the Judges of the High Court would leave the matter in the hands of the Government.

G.O., Mis. No. 2441, Judicial, dated 26th November 1895.

Abstract.—Communicating to the District Magistrate, South Canara, the High Court's judgment in the appeal against the acquittal in sessions case No. 33 of 1894 and requesting the Hon'ble the Judges to call upon Mr. W. C. Holmes, I.C.S., to account for the fact noticed in the Government Pleader's letter that the Judge had omitted to record in his notes much of the evidence recorded against the first prisoner.

Read—the following paper:—

From the Acting Registrar, High Court, Appellate Side, dated Madras, 20th December 1895, No. 2631, Judicial.

Abstract.—Forwarding copies of letters Nos. 1205 and 1213 from Mr. Holmes, Sessions Judge of South Canara, in reply to G.O., No. 2441, Judicial, dated 26th November 1895, and observing that the Judge should have taken notes of all material evidence and that the Public Prosecutor, when preferring the appeal, seems to have referred to the Judge's notes rather than to the vernacular record which latter forms the real record in the case.

G.O., Mis. No. 2437, Judicial, dated 26th November 1895.

Read—the following paper:—

From D. W. G. COWIE, Esq., Acting Registrar, High Court, Appellate Side, to the Chief Secretary to Government, dated Madras, 11th November 1895, No. 2297, Judicial.

I am directed to forward, for the consideration of Government, a copy of the decision of the Sessions Court of South Canara in sessions case No. 15 of 1895,

together with this court's order directing a retrial of the accused persons. Copies of the orders of this court, dated 5th September and of other proceedings as well as of the District Magistrate's explanation and proceedings in the transfer case, are also forwarded.

2. As the accused have to be retried, the High Court does not offer any remarks upon the merits of the case; but whether the charge be eventually sustained or not the court thinks it right to draw the attention of His Excellency the Governor in Council to the conduct of the local officers concerned.

Enclosures.

IN THE COURT OF SESSIONS, SOUTH CANARA.

Sessions Case No. 15 of 1895.

Present:

W. C. Holmes, Esq.

Queen-Empress.

v.

(1) *Francis D'Mello*, (2) *Mahomed Usman*, (3) *Paul Machado* and (4) *Linga Bhatta.*

(Committed by Mr. A. Devappa Punja, Stationary Magistrate, Udipi.)

Charge.—Against first, second and third.—Wrongful confinement to constrain a person to cause restoration of stolen property, section 348, I.P.C., and grievous hurt to constrain a person to restore stolen property, section 331, I.P.C.

Against fourth.—Abetment of the above offence, sections 109, 348 and 331, I.P.C.

Charges added in this Court.

First added charge—Against first accused.—Hurt to constrain a person to restore stolen articles, section 330, I.P.C.

Second added charge—Against first, second and third accused.—Hurt to constrain a person to restore stolen articles, section 330, I.P.C.

Third added charge—Against all the accused.—Grievous hurt to constrain a person to restore stolen articles, section 331, I.P.C.

Fourth added charge—Against first and second accused.—Wrongful confinement of a person to constrain the person to restore stolen articles, section 348, I.P.C.

Against third accused.—Wrongful confinement of a person to constrain the person to restore stolen articles, section 348, I.P.C.

Against fourth accused.—Wrongful confinement of a person to constrain the person to restore stolen articles, section 348, I.P.C.

Assessors.—Messrs. (1) Bhardwaja Shiva Rao (Saraswati Brahman) and (2) Martin Souza (Roman Catholic Christian).

Opinion of the Assessors.—First assessor found the first and second accused guilty of wrongful confinement to constrain a person to restore stolen articles, section 348, I.P.C., and found the accused not guilty on all other charges.

Second assessor found all the accused not guilty on all the charges.

Finding of the Judge.—First and second accused guilty of wrongful confinement under section 342, I.P.C. All the accused acquitted of all other charges.

Sentence or order.—First and second accused each sentenced to three months' simple imprisonment; third and fourth accused acquitted and set at liberty.

Judgment.—The first three accused have been committed to this court charged under section 348, I.P.C., with having wrongfully confined a man named Shankara Bhatta from the evening of the 26th February last till about the midnight of the 27th February at Tallur village for the purpose of constraining him to restore certain property. They have also been committed, charged under section 331, I.P C., with having committed grievous hurt to Shankara Bhatta during the night of the 27th February for the same purpose. The fourth accused was committed on charges of having abetted the above offence of the first, second and third accused.

2. The charges on which the accused were committed were not properly framed and did not comply with the requirements of section 222 and section 223 of the Criminal Procedure Code. The charge should, as required by section 222, state such particulars of the time and place of the alleged offence as are reasonably sufficient to give the accused notice of the matter with which he is charged.

The first charge, as framed by the magistrate, mentions the village in which Shankara Bhatta lived as the place where he was wrongfully confined. No doubt a man might be wrongfully confined within the limits of his village, but that is not the allegation, I believe, in this case,

The charge should have stated what particular place in the village it was in which it was alleged Shankara Bhatta was wrongfully confined, or, if it were alleged that he had been confined in more places than one, the charge should have mentioned all those places.

The second charge should have stated more definitely than "on the night of the 27th February," the time at which it was alleged the grievous hurt was caused. The place where it is alleged the grievous hurt was caused is entirely omitted from the charge. This is directly opposed to the provisions of section 222 of the Criminal Procedure Code. It is alleged that Shankara Bhatta was beaten three times at three separate places on the night of the 27th, and it cannot be made out from the magistrate's charge to which alleged beating the charge refers.

These are not merely idle criticisms. After the trial in this case had proceeded for nearly three days, the court was unaware what the exact offences were that the accused were being tried for, except one alleged offence for which the court had framed a specific charge itself. The court did not know whether the offences the court *thought* the prosecution was probably trying to prove were the offences which the prosecution *thought* it was trying to make out, nor indeed whether the prosecution had any definite ideas on the matter at all.

The Code requires (section 210) that the charge should be read and explained to the accused and that a copy of the charge should, if required by the accused, be given to the accused free of cost. This shows the object of the charge, namely, that the accused should clearly know what the exact offence is that he is to be tried for. If the charge be not framed with sufficient distinctness, the object of this provision of the Code is defeated. I should not say so much about this were it not that I think in cases where there are private prosecutions, magistrates should be particularly cautious to frame charges correctly. It is extremely unfair to accused persons to be sent to stand their trial before the court of sessions on vague charges and on vague evidence, and when prosecutions are privately conducted—from some cases that have come to my notice—it seems to me that in such cases evidence of a vague and intangible nature is purposely left before the court and that the object of the prosecution is not, as it always should be, that the truth should be ascertained by true evidence, but that somehow or other in the confusion of vague evidence a conviction might be obtained. Magistrates should be on their guard in such cases to prevent confusion and uncertainty. I personally think private prosecutions are, as a rule, objectionable. In this case the police reported the charges to be false and the Head Assistant Magistrate ordered a magisterial inquiry. I think when a magisterial inquiry was considered necessary, it should have been conducted either by a responsible officer of Government or by a vakil who had the confidence of Government.

Besides, when the charges are not properly prepared, there is great waste of time in the Sessions Court. The Public Prosecutor is in doubt what the charges are and cannot properly open the case, and the case is left for considerable time in a state of confusion until the Judge has gone sufficiently into the details of the evidence to be in a position to frame new charges. Thus the trial, in place of being a trial in the proper sense of the word, has to take to a greater or less extent the form of a preliminary inquiry as well.

3. In the present case a number of new charges had to be framed and added by this court. The court refused to amend the first charge sent by the magistrate though it would appear to be unsustainable, because to amend it as was proposed would have been equivalent to the Public Prosecutor withdrawing from a part of the case as sent up by the magistrate, and as in a recent case in which the Public Prosecutor abandoned the prosecution Government appealed, the court would not allow the withdrawal of any part of the case.

This court refused to add a charge of having caused hurt to Shankara Bhatta's father, because it did not appear that there was either a complaint about that alleged offence or a preliminary inquiry.

This court added a charge against the first accused (for reasons given on page 12 of notes) under section 330, I.P.C., of having caused hurt to Shankara Bhatta for the purpose of compelling the restoration of property by kicking him on the evening of Wednesday, the 27th February, at about 9 o'clock in the yard of the fourth accused. This charge will be referred to as the first added charge.

This court also added another charge (the second added charge) against the first three accused that they, at about 9 or 10 P.M., near the house of one Subbi, in Tallur village, voluntarily caused hurt to Shankara Bhatta by beating him for the like purpose, section 330, I.P.C.

The third added charge was against all the accused, and was that they at about 10 or 11 P.M. on the night of the 27th February near the Asvatakatta in Tallur village voluntarily caused grievous hurt to Shankara Bhatta by beating or kicking him in a way they knew to be likely to endanger his life for the same purpose (section 331, I.P.C.).

The fourth added charge was for wrongful confinement for the like purpose, section 348, I.P.C. It contained three counts. The first charged the first and second accused with having wrongfully confined Shankara Bhatta at certain places specified in the charge during the night of the 26th and up to about midnight on the 27th February. The second count charged the fourth accused with having joined the first and second accused in the wrongful confinement of Shankara Bhatta from about 2 A.M. on the morning of the 27th February. The third count charged the third accused with having joined the first and second accused in the wrongful confinement from the forenoon of the 27th February.

4. The first accused is the head constable of Kundapur police station. The second and third accused are two constables attached to the station. On the afternoon of the 26th February last, the first and second accused were engaged at Tallur in the investigation of a theft that was alleged to have taken place in the house of Shanti Murthappa, a schoolmaster living at Tallur, a village three miles from Kundapur. The third accused, as it now appears, joined them on the morning of the 27th February. The fourth accused Linga Bhatta's house is next Shanti Murthappa's house, and he interested himself in the investigation into the alleged theft at Shanti Murthappa's. It seems that a woman named Putti had shortly before the 26th February been in occupation of Shanti Murthappa's house, and, owing to some alleged intimacy between Shankara Bhatta and Putti's daughter-in-law, it appears that Shankara Bhatta was suspected of having been concerned in the theft. It is certain that Shankara Bhatta was sent for and questioned about the alleged theft.

5. The prosecution case as presented to this court is that Shankara Bhatta was kept in wrongful confinement during the night of the 26th February and till about midnight on the 27th February, and that hurt was caused to him at two places in Tallur and grievous hurt at a third place close to Tallur and that all this was done with the object of constraining him to restore the stolen property.

6. It is certain that, early in the morning of the 28th February, a cry was raised that Shankara Bhatta had fallen into a well. It is also certain that Shankara Bhatta's body was taken from a well in Shanti Murthappa's yard by the ninth prosecution witness, Kusa Billiya, who had been sent for for the purpose and who got down into the well by means of a bamboo. It is also certain that Shankara Bhatta's father, Ramakrishna Bhatta (first prosecution witness), went to the potail and made a complaint to him about his son having been beaten and the potail came in the morning and an inquest was held and a report made that Shankara leapt into the well and committed suicide, but that as the relations of the deceased questioned this decision, the body was sent to the Kundapur hospital for examination.

7. The second prosecution witness, A. S. Vittal Rao, apothecary in charge of the Kundapur hospital, held the *post mortem* examination of Shankara Bhatta's body. The examination began at about 5-20 P.M. on the 28th February. It was partly conducted by lamp-light.

The following external injuries were found on the body :—

(1) A group of small bruises on the right upper arm near the shoulder joint, the diameter of the whole group being about 1 inch.
(2) A similar group of bruises about 1½ inches in diameter a little lower down the right arm.
(3) A similar group of small bruises on the right scapular region 1½ inches in diameter.
(4) A similar group of small bruises on the lower part of the left side of the back or on the upper part of the left leg. The group was 2 inches in diameter.

The apothecary in reply to questions put by the court said that these injuries must have been caused by some substance having a number of small blunt protuberances.

There were also on the body two small bruises ¼ inch long and very narrow on the arm on the inside of the left elbow, a bruise 2 inches long and ¼ broad on the front of the left leg below the knee, and two other small bruises near the right ankle.

There was also a bruise below the left breast 1 inch long and ½ broad, and a bruise 1 inch long by ⅓ broad below the right breast, and 5 smaller bruises ½ inch long by ¼ broad and ¼ inch distant from one another above the right breast.

Internally it was found, according to the witness, that there was an oblique rupture about ⅓ inch long on the left pulmonary artery—about 2 inches from the bifurcation of the pulmonary arteries. The rupture was below the inter-space between the cartilages of the second and third left ribs.

Both lungs were found congested and the membranes of the brain were also congested.

Everything else was normal.

8. The rupture of the left pulmonary artery might possibly, in the witness's opinion, have been the result of the blow that caused the bruise below the left breast; but as that bruise was between the sixth and seventh ribs and so 3 or 4 inches from the alleged rupture, it cannot be said to be at all probable that that blow caused the rupture.

The congestion of the lungs could not possibly be a result of the rupture of the pulmonary artery. How in this case there can have been *both* congestion of the lungs *and* rupture of the left pulmonary artery has not been satisfactorily explained by the prosecution. The defence theory is that there was no rupture of the artery, but that the artery was cut in the *post mortem* examination, and it is argued in support of the theory that an injury to the artery that was oblique (as the injury was in Shankara Bhatta's case) and not either across or along the line of the artery was unlikely to have been caused by a blow or by external violence. In support of the theory it is further argued that the apothecary did not dissect the body himself, but allowed the hospital sweeper to do so, and in support of the argument it is pointed out that the Pariahs who brought the body did not bury it and this was, it is argued, because the body was touched by a person of the sweeper class. As to this theory of the defence it is not necessary for me to say more for, as will presently appear, it will not be necessary for me, for the purposes of this case, to come to any decision about the cause of the injury to the artery.

The third added charge.

9. The most serious charge in the case is the third added charge.

The prosecution theory is that the four accused took Shankara Bhatta to a hill close to Tallur and there near an Asvatakatta (a seat under a Peepul tree) caused grievous hurt to Shankara Bhatta, that they carried him back to Tallur, and, after keeping the body for a short time resting against a pyal at the entrance to Shanti Murthappa's yard, they threw the body into the well in the yard and then raised a cry that Shankara Bhatta had fallen into the well.

This charge, I find, is not supported by any reliable evidence.

Subbi, an old woman aged 60 with bad eyesight, deposes that, as she was sitting in the verandah of her house one night, she heard a cry "Ayyayyo" in front of her house, that she knew it was Shankara Bhatta's cry and that he was taken by some persons to the hill and she heard Shankara Bhatta there cry out four or five times "Ayyayyo," then a loud cry and after that nothing. After that she states she saw some three or four men carrying him by the back of her house. She says she left her house and stood near a palm tree and saw this.

This woman's evidence did not carry the slightest weight with it. The woman is of the prostitute class and is a servant of the temple of which Ramakrishna Bhatta is a moktessor and she lives on temple land, so that practically no weight whatever can be given to her evidence simply because she gave it. If the prosecution wished to have any weight given to her evidence, the prosecution should have made her tell her story in the minutest detail. In place of that her story was vague and indefinite. Her story is in itself very improbable. It is much more likely that if any one was being beaten near her house, she would have gone inside and shut the door than have paid any attention to the beating. It is highly improbable that she would have gone outside to watch what was going on when the men were, as is alleged, returning; and she said nothing to the police inspector, who investigated the case, about her having done so.

The other witness, whose evidence bears directly on this part of the charge, is Timmanna. He is a nephew of the complainant Ramakrishna Bhatta Timmanna says he was sleeping on the pyal of a temple close to his house, that he heard Shankara Bhatta cry out and that he went first to a tamarind tree and then to a lane and from the lane, he says, he saw the beating that is the subject of the charge now under discussion.

The Magistrate of Kundapur went to Tallur on the 1st March and made inquiries as to Shankara Bhatta's death. The witness says he told the magistrate what he saw, but that the magistrate did not record his statement. It is impossible to suppose that that can be true. At any rate the prosecution has not called the magistrate to corroborate the witness. The police inspector deposed that the witness showed him the place where he said he stood and that it would have been impossible to have seen from there a beating going on at the Asvatakatta. It was argued for the prosecution that the police inspector was unreliable, but he seemed to me to give his evidence in a perfectly straightforward and satisfactory way. Timmanna told the inspector that after he heard Shankara Bhatta's cry he wakened his mother. Before this court he denied it. Timmanna also told the inspector that he took a stick with him. Before this court he denied it.

In my opinion Timmanna Bhatta's evidence cannot be credited. It is probably totally false. The charge really rests on the evidence of Subbi and of Timmanna Bhatta, and as their evidence cannot be believed the charge must fail. There is, however, some other evidence bearing on the charge to which I shall now refer.

There seems to be no doubt that the fifth prosecution witness Rama Bhatta was sent for on the night of the 27th February. He took with him to Linga Bhatta's house five rings that Shankara Bhatta had given him, but as soon as Shanti Murthappa said they were not his rings, the rings were returned to him. This witness told the inspector that as soon as his rings were returned he was told to go, and that he went home. This was very likely; but in this court he deposed he was told to stop at Linga Bhatta's and that he sat on the chavadi of Linga Bhatta's house while Shankara Bhatta was taken away and that he heard cries and after some time Linga Bhatta, fourth accused, came back and he was told to go and he left. I think it is much more probable that the story he told the inspector was the truth, for it does not appear that the police could have had any object in keeping him at Linga Bhatta's. On the contrary, if the police were going to beat Shankara Bhatta, they would have had every object in sending the witness away.

The rest of the evidence bearing on this charge is also, I think, in all probability untrue.

Devadiga Venkata, the third prosecution witness, attended the first accused as a servant when he was at Tallur. He deposed that some one of the three policemen told him to sit on the pyal in Shanti Murthappa's yard, that he did so, that the three policemen took away Shankara Bhatta towards the Asvatakatta, that he heard cries of "Ayyayyo" and that afterwards the police carried Shankara Bhatta back and put him sitting leaning against the pyal, and he was told to go. Before the magistrate he deposed he saw from the road Shankara Bhatta's body thrown into the well, but before this court he denied it, that is to say, he said nothing about it, and said he did not know where Shankara Bhatta was when he left.

Devadiga Venkata's evidence, so far as it has any bearing on this charge, is probably totally false. There is no reason why he should have been made to sit on the pyal, and it is the last thing the police would have been likely to have ordered him or to have allowed him to do. If they were going to beat Shankara Bhatta, the witness would have been sent home. He was examined by Police Inspector Boyer, but told him nothing that he now deposes to in support of the charge of grievous hurt.

Another witness, Venkatesha Prabhu, also deposed that he was in Linga Bhatta's when Shankara Bhatta was taken away and he heard cries and was afterwards told by Linga Bhatta to go and he went. He did not tell anything about this to Inspector Boyer. He told Inspector Boyer that after Putti was brought to Linga Bhatta's, Shankara Bhatta prostrated himself at Putti's feet and asked her to return the jewels and that when the police were questioning Shankara Bhatta, he ran away and threw himself into the well. This story is totally different from what he told this court. He told this court that he did not see Putti at Linga Bhatta's that night at all.

Ramakrishna Bhatta, the father of Shankara Bhatta, in this court deposed that he was asleep on the pyal of Subraya Prabhu's house near Linga Bhatta's, and that he heard Linga Bhatta cry out "Shankara Bhatta died having fallen into a well" and that as he was going to the place, some one cried out "Who is that?" and that he got afraid and went home, told his brother to go to Kundapur and he went to the pettail's. There is no doubt that the witness has suppressed almost all that he knew. He told a different story on this point to the Kundapur Magistrate on the 1st March and afterwards to the inspector.

10. It would generally be enough to say that the evidence in support of the charge is unreliable, but in this case I must say a few words about the final part of the theory of the prosecution, namely, that the accused threw Shankara Bhatta's body into the well with the object of representing that he committed suicide. Before this court no witness gave any evidence in support of this theory; but before the magistrate, as I have said, the third prosecution witness, Devadiga Venkata, deposed that he saw this being done. Before this court he denied it.

On the 1st March, Linga Bhatta, the fourth accused, made a sworn statement before the Kundapur Magistrate who went to Tallur to hold an inquiry about Shankara Bhatta's death, and the statement has been filed by the prosecution and marked as exhibit D. He said that after Rama Bhatta left with the rings, Shankara Bhatta went towards the pyal of Shanti Murthappa's house and a moment after the people of the house cried out that something had fallen into the well, and a torch was got and a sound was heard in the water of the well and after that Kusa Billiya descended into the well. Kusa Billiya was examined as the ninth witness before this court. He lives some little distance from Shanti Murthappa's house and there is no doubt that he was called that night and that he got into the well and took out Shankara Bhatta's body. There is also no doubt that attempts according to native ideas were made to restore animation and that with that object the body was covered with rice. The defence did not call witnesses because probably the defence wanted to have the last of the arguments, so that there is hardly any evidence before this court in support of the theory of suicide. I think I have stated all the evidence there is. The medical evidence is not in my opinion in conflict with the theory. Even if the pulmonary artery were ruptured, the rupture may have been caused by the force of the blow with which the water was struck. The blow would be of very considerable violence as the well was rather deep—perhaps 15 feet or 16 feet to the level of the water. There were roughly dressed logs across half the mouth of the well and the diameter of the well was only 6 feet. It was partly cut in laterite rock, and partly built up of laterite stones, and at the bottom of the well there were some loose laterite stones. The depth of the water in the well was up to Kusa Billiya's neck, *i.e.*, less than 5 feet. Under these circumstances, the difficulty is rather to account for there being so few and so trifling injuries on the body. The injuries that there were in several cases—I refer to the groups of smaller bruises—look very much like injuries caused by coming in contact with the uneven surfaces of laterite stones. There is thus on one side the prosecution theory which is not supported by any evidence on which, in my opinion, any reliance can be placed, and on the other side there is the defence theory of suicide which is supported by some evidence and seems, I think, probable.

The second added charge.

11. This charge rests on the same evidence as the third added charge with which I have just dealt. The evidence is, as I have said, in my opinion, totally unreliable.

The first added charge.

12. This charge is that the first accused kicked Shankara Bhatta in the yard of the fourth accused Linga Bhatta's house.

The charge is supported by the evidence of two witnesses who depose they witnessed the assault. These witnesses are Ramakrishna Bhatta and Venkatesha Prabhu.

Ramakrishna Bhatta is the father of Shankara Bhatta, and he deposed he was sitting on a chavadi in Linga Bhatta's yard, that the first accused came to the yard of the house dragging his son and that he kicked him on the left side two or three times, that his son became unconscious and that he interceded and was told to leave, and he left and went to Subraya Prabhu's chavadi.

Venkatesha Prabhu, the fourth prosecution witness, deposed that he was at Linga Bhatta's and had been questioned by the police about the theft, that first accused came dragging Shankara Bhatta and kicked him on the right side, and he fell down unconscious,

The evidence of these two witnesses was in itself very unsatisfactory. The evidence was chiefly remarkable for the vagueness of the account of what they said happened. Even if the evidence stood alone, the only conclusion possible in my opinion would be that it was not reliable.

But the charge is not supported by the medical evidence. It is in conflict with it. There were no marks on Shankara Bhatta's body of his having been dragged along the surface of a yard and there was no mark either on the right side or on the left side of Shankara Bhatta's body that was in even a remote degree probably caused by a kick or kicks.

Besides, nothing was said about this alleged offence in the complaint that was presented to the Kundapur Magistrate on the 28th February. On the 1st March, when the Kundapur Magistrate examined Ramakrishna Bhatta, the story was first told though not in the exact form now deposed to.

If this charge were really true, that is to say, if the complainant had seen his son dragged and kicked so violently that he became unconscious, would the father have remained quietly seated on a neighbouring pyal? Would he not have at once gone off to the potail and complained? From his subsequent conduct in this prosecution, it may be assumed I think, that he would. Moreover, when towards morning after his son's body had been taken from the well he did go to the potail and made a complaint, nothing was said about this charge. What was said, according to the report, was that Kusa Billiya told him his son had been beaten. If Ramakrishna Bhatta had been an eye-witness to his son receiving two or three violent kicks, it may be assumed he would have mentioned it.

The evidence on this charge is in conflict with the evidence of Venkata Subbi and of Timmanna Bhatta, but I do not attach any importance to that as I altogether discredit these witnesses.

Fourth added charge—first count.

13. There is no reason to doubt that the second accused went on the evening or afternoon of the 26th February to Ramakrishna Bhatta's house and brought him and his son Shankara Bhatta to the head constable, the first accused, at Shanti Murthappa's house. There is also, I think, no reason to doubt that the complainant and his son returned for their meals to their house, but went and slept at Linga Bhatta's house on the night of the 26th February. The incident about Shankara Bhatta and Ramakrishna Bhatta going from there to a neighbouring pyal early in the morning of the 27th, where Shankara Bhatta was questioned by the fourth accused, Linga Bhatta, is also, I think, true. I also consider that from there Shankara Bhatta went to Shanti Murthappa's house and that he sat on the pyal of the house during the day except when (accompanied by the third accused) he went home for meals. I also think that from there he went to Linga Bhatta's house some time during the night of the 26th and 27th February and that he remained there for some time, that is to say, till he (as I think probable) left and committed suicide.

I think the prosecution witnesses have suppressed the truth about the occurrences at Linga Bhatta's that night and have given a totally false account of what happened. After Rama Bhatta had been given back the rings, he, as I think, left. I think it is very likely that the story told to the Kundapur Magistrate that Putti was sent for and examined that night is true. The police that night continued, I think, to hold their investigation. I also think that it cannot be believed that any serious violence was offered to Shankara Bhatta.

Three main questions arise with reference to this charge:—*First*, was Shankara Bhatta from the evening of 26th February to about midnight on the 27th February kept under restraint by first and second accused? *Second*, was the restraint wrongful? And *third*, was it restraint with the object alleged in the charge, that is to say, to compel the restoration of the stolen property?

As to the third question, I think there is no sufficient evidence to support it. There is no evidence that the accused or either of them said to Shankara Bhatta "unless you deliver up the property you will not be allowed to leave." I do not consider that there are any facts proved from which it could be reasonably inferred that, although such words were not actually spoken, their meaning was conveyed to Shankara Bhatta. It is not in the least likely that the police could have had any expectation that in consequence of mere confinement Shankara Bhatta would have given up the property if he had it.

With regard to the first question, I think the evidence shows that Shankara Bhatta was under restraint. On the evening of the 26th the head constable, first accused, told Shankara Bhatta to return. It is likely that at that time Linga Bhatta had gone off to Gangoli to consult an astrologer. It is also likely that the head constable told Shankara Bhatta to return in case he might be wanted in connection with the information Linga Bhatta might get from the astrologer. Shankara Bhatta came back with his bedding and slept on Linga Bhatta's chavadi. The confinement, if any, would have begun on his return to Linga Bhatta's. Shankara Bhatta slept in the chavadi and it would appear that the head constable and second accused slept on the same chavadi—one on each side of him—and that his father was not allowed to sleep on that chavadi. I think it must be held that Shankara Bhatta was then restrained from going wherever he wished. It seems to me impossible to say that he was sleeping voluntarily on the pyal. He had been ordered by the head constable to come. He was not merely requested but ordered, and there is evidence the second accused threatened him. I think it must be held he was from the time he came under restraint. I think that restraint continued till midnight on the 27th February,

when Shankara Bhatta threw himself, as I think, into the well. There is satisfactory evidence that Shankara Bhatta was most of the 27th February on the pyal of Shanti Murthappa's house. There is evidence that the second accused forced him to sit there. The evidence that the third accused sat on a pyal near that on which Shankara Bhatta was sitting is also, I think, true, and I think it is also true that when Shankara Bhatta went home for meals the third accused accompanied him. It is also, I think, probable that Shankara Bhatta was not allowed to go for night meals on the 27th February to his house, and that he was taken from the pyal of Shanti Murthappa's house to Linga Bhatta's yard. I do not consider it proved that he was taken to the Asvatakatta at all. I think it probable he was at Linga Bhatta's till he left to commit suicide.

Taking the view of the case most favorable to the accused, namely, that Shankara Bhatta was kept at Linga Bhatta's and other places so that he might be further examined as to the theft in case of necessity, it is a question whether the restraint was wrongful. It does not appear that the head constable had any power to give Shankara Bhatta a *verbal* order to attend at Linga Bhatta's. Under section 161 he could have examined Shankara Bhatta, or under section 160 he could have by a written order required his attendance. The section (160) does not say for what purpose his attendance could be required, but read with the next section it would appear to mean his attendance could be required for the purpose of examining him. The power given by section 160 is far from clear. The word "attendance" implies waiting; but would it be legal at all or for how long would it be legal to keep a person summoned under section 160 waiting? Does it mean till the examination was finished or till he had leave to depart? If the order under section 160 is not obeyed, it does not appear that the police officer who issued it has any legal power to compel the attendance of the person summoned, that is to say, he could not send a constable and bring him under arrest. It would also appear, as it seems to me, that a police officer has no legal power to retain a person whom he has summoned under section 160. I think the retention in this case was wrongful.

Fourth charge—second and third counts.

14. It is argued that there is no evidence againt the third and fourth accused in support of these charges.

The evidence against the third accused is that he sat on one pyal and Shankara Bhatta on another in Shanti Murthappa's yard on the 27th and that he followed Shankara Bhatta to his house and back. It was certainly no offence for the third accused *merely to watch* Shankara Bhatta. So far as I see, it must be held that there is no *evidence* he did more.

There is also, I think, no reliable evidence against the fourth accused. It is argued that there was an admission of guilt in exhibit D, the statement fourth accused made to the Kundapur Magistrate on the 1st March; but that is not so. The alleged admission depends on the meaning of a single word which has been translated "took," but the word does not imply that Linga Bhatta compelled Shankara Bhatta to go with him.

15. The result is that the first and second accused are, with reference to section 238, Criminal Procedure Code, convicted under section 342, I.P.C., of having wrongfully confined Shankara Bhatta and that on all other charges they are acquitted.

16. The first and second accused are men of long service and good character, but it is a matter of so much consequence that police officers should not exceed their powers, that for this reason as well as considering the result in this case that followed the powers being exceeded, I sentence the first accused and second accused to three months' simple imprisonment.

17. I should remark that I think the powers of police officers should be so clearly laid down that there could not be any possibility of their being mistaken. In this case the consequences of this not being done have been most deplorable. One man has committed suicide. The four accused and another man had a false charge of deliberate murder brought against them. The four accused have had to undergo a long trial in this court—the greater part of the charges being probably false. And the first two accused, who seem respectable men, and who have had a long service in the police and have each a good character, are each sentenced to a term of imprisonment.

18. The third and fourth accused are set at liberty.

(Signed) W. C. HOLMES,
Sessions Judge.

Mangalore,
20th June 1895.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday, the 30th October 1895.

Present:

The Hon'ble Sir Arthur J. H. Collins, *Kt.*, Chief Justice, and the Hon'ble Mr. Justice Parker.

(Criminal Appeals Nos. 296 and 308 of 1895.)

Francis D'Mello, appellant in 296 (first prisoner) and *Mahomed Usman*, appellant in 308 (second prisoner).

Appeals against the sentence of the Court of Session of the South Canara division in case No. 15 of the calendar for 1895.

Criminal Revision Case No. 424 *of* 1895 (*taken up No.* 21 *of* 1895).

(1) *Francis D'Mello*, (2) *Mahomed Usman*, (3) *Paul Machado* and (4) *Linga Bhatta*, accused in calendar case No. 15 of 1895 on the file of the Sessions Court of South Canara.

These appeals and this revision case coming on for hearing on Monday, the 21st instant, after the receipt of the report called for in the order of this court, dated 5th September 1895, and counsel not appearing on behalf of the appellant in criminal appeal No. 308 (second accused in criminal revision case No. 424) and the third and fourth accused not appearing in person or by counsel; upon perusing the petitions of appeal and the record of the evidence and proceedings before the Court of Session, and upon hearing the arguments of Mr. H. G Wedderburn, counsel, and of the Hon'ble Mr. C. Sankaran Nair, vakil for the appellant in criminal appeal No. 296 (first accused in criminal revision case No. 424), and of the Public Prosecutor in support of the conviction, and the cases having stood over for consideration till this day, the court made the following

Order.—The appellants in these two appeals were the head constable and another constable of the Kundapur police station in South Canara and were charged with two others (another police constable Paul Machado and one Linga Bhatta) with offences under sections 348 and 331 of the Penal Code. The two latter were acquitted, but the two former were convicted of wrongful confinement under section 342, I.P.C., and were each sentenced to three months' simple imprisonment. On the appeals coming on for hearing, it appeared to us that the judgment of the Sessions Court was seriously defective and that many irregularities had taken place. We therefore directed notice to issue to all the four accused to show cause why they should not be retried, and the whole case is now before us.

It appears that in February last a theft had occurred in the house of one Shanti Murthappa at Tallur and the police were endeavouring to detect the offender. For some reason which does not appear, suspicion fell upon the deceased Shankara Bhatta, which suspicion appears to have been intensified by the opinion given by an astrologer that he was the thief. That Shankara Bhatta was detained by the police on the 26th and 27th February is not denied, and the Sessions Judge finds that he was in wrongful confinement up to the time of his death. This occurred about midnight on the 27th of February, the Judge being of opinion that he then committed suicide by throwing himself into a well. What induced Shankara Bhatta to commit suicide the Judge does not explain, and in his judgment he has ignored, and practically refused to give any weight to, the medical evidence; but the medical evidence is at all events conclusive on this point, namely, that drowning was *not* the cause of death. For some reason, which it is impossible for us to understand or appreciate, the Judge at first refused to allow the question to be put, but the description already given by the witness "that the larynx, trachea and bronchi were normal in appearance and that there were no foreign bodies or disease in them" conclusively shows that death was not caused by drowning (see Taylor's Medical Jurisprudence, 3rd Ed., vol. II, p. 3). The presence of a froth in the pharynx, larynx and bronchial tubes are invariable concomitants of death from drowning. The prosecution evidence was to the effect that Shankara Bhatta had been detained and kicked by the accused, or some of them, in order to make him confess, and that when they found they had gone too far and that the man was dying, they had thrown him—quit unconscious, but with life not quite extinct—into the well, and then raised a hue and cry that he had committed suicide in order to conceal the real cause of his death. The medical evidence was that death was caused by rupture of the left pulmonary artery, the result of external violence to the chest, and the apothecary deposed that the body was covered with masses of bruises and that the injuries were not likely to be caused by a single fall. How this evidence can be reconciled with the theory of suicide adopted by the Judge no attempt has been made to explain.

It was apparently argued that there was no rupture of the pulmonary artery, but only a cut and that this cut was made after death in the *post mortem* examination. The Judge stated that it was not necessary for him to come to any decision upon this point. In this view we are quite unable to agree. The point appears to us to be one of great importance. Besides this, the Judge should have considered how the masses of bruises spoken of by the medical officer could be accounted for.

The Sessions Judge has dwelt upon the discrepancies in the story as told by the prosecution witnesses, and appears to have relied chiefly upon the evidence of Inspector Boyer (eleventh witness), but he has entirely omitted to consider how strongly the medical evidence, unless it can be explained away, supports the prosecution story. The father and friends of the deceased appear to be poor and uneducated rustics and they were placed under every possible disadvantage. It is quite clear that the whole influence and efforts of the superior officers of the police were first directed to prevent any magisterial investigation at all and that when this—through the firmness of the Head Assistant Magistrate—was rendered impossible, the next effort was to prevent, at any rate, a local investigation by the authorities on the spot. Notwithstanding that the Head Assistant Magistrate had refused a transfer, the District Magistrate granted one on the *ex parte* statement of the first accused, forwarded through the Superintendent of Police, to the effect that the Kundapur

Magistrate was prejudiced against him. The District Magistrate in his order accepts this statement without calling upon the Head Assistant Magistrate or the Sub-Magistrate for any explanation and he actually did this on the petition of a public servant, who was at the time evading a warrant and absconding from justice, without requiring that the accused should first surrender to answer to the charge.

In connection with the efforts of the police to burke inquiry into the complaint against members of the force, we find it necessary to refer to the conduct and evidence of Inspector Boyer. He arrived on the 1st of March before the Kundapur Magistrate had completed his local inquiry. On the 2nd of March the Magistrate left, leaving the inspector to go on with the inquiry, but the record shows that he gave positive orders that a charge sheet was to be prepared. Those orders were disobeyed, and on the 8th of March the inspector sent a referred charge sheet to another Magistrate. Mr. Slight, the Head Assistant Magistrate, to whom this was sent, very properly insisted that a magisterial inquiry should be held and refused to transfer the case. Then followed the successful application to the District Magistrate which was supported by Inspector Boyer and by the Superintendent of Police.

We turn now to Inspector Boyer's evidence before the committing magistrate and before the Sessions Court, from which we gather that the inspector was living in the same house with the accused D'Mello at the time he was conducting the inquiry against him. He accompanied the accused's vakil to the court of the District Magistrate on the 18th of March to ask for a transfer. He admits that he saw the accused on that same day and spoke to him. He admits also that the accused had been absconding *from the 15th of March* and that a warrant of arrest had come into his hands on the 16th of March, yet he never arrested him on the 18th of March, and, in fact, the accused was at large until April 5th, on which day he seems to have put in a voluntary appearance before the Sub-Magistrate at Udipi, to whose court the case had been transferred. On March 31st (page 40 of the magisterial record) Inspector Boyer writes to the Udipi Magistrate that "he learns from the Superintendent of Police that it is not unlikely that the head constable would voluntarily appear before the court at Udipi to which tribunal the case was transferred. The warrants were sent to Udipi for execution."

From Inspector Boyer's evidence it appears that, instead of executing the warrant, it was sent to the Superintendent of Police for orders on the 16th of March. It is thus clear that it was held in suspense from March 16th to 31st. From these facts we find it difficult to refrain from drawing the inference that the Superintendent of Police assisted the head constable to evade a local inquiry and at all events passively connived at his absconding after the warrant had been issued for his apprehension.

There is another point as to which Inspector Boyer's evidence calls for notice as showing the spirit in which this case has been treated. In his deposition before the Udipi Magistrate he speaks of the case against the police as "simply a farce." Now even adopting the view most favourable to the defence, Shankara Bhatta was moved to commit suicide after he had been several hours in illegal confinement, there being nothing more tangible against him than the pronouncement of an astrologer, in our opinion such an occurrence is by no means a farce, but an event of very serious import demanding the strictest investigation.

We are fully sensible of the difficulties attending a retrial after so great a lapse of time, but the case is so serious and the Judge has lost sight of so much that was important in the evidence that we feel it our duty to direct that the case be further investigated. We set aside the present convictions and direct that the accused be retried.

The retrial will take place before Mr. Holmes' successor in the office of Sessions Judge of South Canara, and the Sessions Judge will of course be at liberty to add any charge which may seem to him expedient.

(By the Court.)

(Signed) C. G. TODHUNTER,
Dy. Registrar, Appellate Side.

Proceedings of the High Court of Judicature at Madras, dated 4th November 1895, No. 2296.

Read judgment and records in Session Case No. 15 of 1895 on the file of the Session Court of South Canara.

The High Court does not at all understand the difficulty felt by the Sessions Judge as to the charges in this case. The Sessions Judge had the depositions taken on the preliminary inquiry before him before the trial commenced and if he considered that the charges were imperfectly drawn it was his duty, under section 226, Criminal Procedure Code, to alter the charges and bring them into proper shape. From the statement of the Sessions Judge that after the trial had proceeded for nearly three days he was still unaware what were the exact offences for which the accused were being tried, the High Court can only draw the inference that the Judge had not read the depositions taken before the magistrate, and that it was himself rather than the Public Prosecutor who had no definite ideas.

2. The High Court regrets to have again to observe upon the irregular manner in which the examination of witnesses is conducted in the Sessions Court of South Canara. After two or three questions had been asked by the Public Prosecutor of the ninth witness, Kusa Billiya, the Sessions Judge appears, from the record, to have taken the examination altogether out of the hands of the Public Prosecutor, and the next two pages (59 and 60) of the printed record consist entirely of an examination by the court. After that the Public Prosecutor was allowed to ask a few more questions before the cross-examination. Exactly the same course was adopted in the examination of the eleventh witness Inspector Boyer. After the Public Prosecutor had asked a single question the examination was taken up by the court for several pages of printed matter, several of the Judge's own questions being objected to as inadmissible by the accused's vakil, and the court disallowing (quite erroneously) its own questions on the ground that they were inadmissible. The High Court cannot but observe that, assuming the record to be accurate as to the procedure adopted, such procedure is neither regular nor dignified, and tends to show that the Judge cannot exercise proper control when presiding in his own court.

(See also copy of evidence sent up from South Canara, page 99 and following pages.)

(See copy of evidence sent up from South Canara.)

3. The question to the medical witness as to whether there were any signs of death by drowning was a quite permissible question, evidence having been already given that the body had been taken out of a well. The proper form of the question would have been "were there any signs of death by drowning, if so, describe them?" but the objection of the accused's vakil (allowed by the Judge) that it was a leading question was altogether frivolous.

(True Extract.)

(Signed) D. W. G. COWIE,
Ag. Registrar, Appellate Side.

Order—Mis. No. 2437, Judicial, dated 26th November 1895.

* * * * *

3. The District and Sessions Judge of South Canara will be requested to forward to Government any remarks that he may have to offer upon the proceedings of the High Court, dated 4th November, No. 2296, Judicial, copy of which has no doubt already been forwarded to him.

(True Extract.)

(Signed) J. F. PRICE,
Chief Secretary.

To the Sessions Judge, South Canara.

Read—also the following papers:—

From W. C. HOLMES, Esq., B.A., I.C.S., District and Sessions Judge, South Canara, to the Chief Secretary to Government, dated 27th November 1895.

With reference to my two letters of the 15th and 21st instant, replying to G.O., No. 2231, Judicial, dated 4th instant, I have the honour to say that, since I wrote the latter of the two letters, I received from the High Court a proceedings, No. 2296, Judicial, dated 4th November 1895, criticising the way I dealt with session case No. 15 of 1895 on my file. It may be that the High Court will send a copy of its proceedings to Government. At any rate most of the criticisms have been reported in the newspapers, and I think I am entitled, considering the terms of the letter of the Registrar of the High Court, referred to in G.O., No. 2231, Judicial, dated 4th instant, to lay before Government the defence I have made to the criticisms of the High Court, especially as I am anxious that my leave out of India may not be unnecessarily delayed.

2. I therefore beg to enclose a copy of my letter to the Registrar of the High Court, replying to its proceedings, No. 2296, dated 4th November 1895, of this date, No. 1171, with six spare copies.

Enclosure.

From W. C. HOLMES, Esq., B.A., I.C.S., District and Sessions Judge, South Canara, to the Registrar of the High Court of Judicature, Appellate Side, dated 27th November 1895.

I have the honour to acknowledge the receipt of the proceedings of the High Court, No. 2296, Judicial, dated 4th November 1895, with reference to sessions case 15 of 1895 on my file, stating that the High Court did not at all understand the difficulty I felt as to the charges in the case, criticising the extent to which two witnesses were, as the High Court thought, examined by the court, and pointing out that some questions were erroneously disallowed.

2. I am not called on for any explanation, but, as I am about to proceed to Europe on furlough, I beg to be allowed to represent what happened from my point of view.

3. The case to which the proceedings of the High Court refer—15 of 1895—came on in due course on the afternoon of Friday, the 31st May last. Every step laid down in the Procedure Code was, as is invariably done in every case I try, punctiliously and carefully followed.

As is required by section 271, the trial was opened by the reading of the charges against the accused. These charges were the three charges sent up by the committing magistrate. One of them was of abetment against one of the accused. The other two charges against the other accused were as follows:—

"(1) That you from the evening of the 26th February 1895 till about midnight of 27th February 1895 wrongfully confined the deceased Shankara Bhatta at Tallur village for the purpose of constraining the said Shankara Bhatta to cause the restoration of certain jewels stolen from Shanti Murthappa's house, and that you have thereby committed an offence punishable under section 348, I.P.C., and within the cognizance of the Court of Sessions.

"(2) That you on or about the 27th February 1895 at night voluntarily caused grievous hurt to the said deceased Shankara Bhatta for the purpose of constraining the said Shankara Bhatta to restore the said jewels, and that you have thereby committed an offence punishable under section 331, I.P.C., and within the cognizance of the Court of Sessions."

A little consideration will show that the second charge was wholly illegal.

In framing the second charge, the committing magistrate had fallen into a mistake that is frequently made in this country. The complaint against the accused was that they, at several different places in the small village of Tallur, from time to time during a considerable number of hours, had beaten Shankara Bhatta, or had abetted his being beaten, with a view to constraining him to restore certain stolen property. At least three of the alleged beatings would have fallen within the time specified in the second charge—"on or about the 27th February at night." It is evident from the second charge as well as from the magistrate's order of commitment that the magistrate thought that the whole series of alleged beatings, or at any rate the alleged beatings on the night of the 27th February, could be regarded as one offence made up of parts. He probably thought that the case was one to which the first paragraph of section 71 of the Penal Code had some application. That section says that when an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such offences, unless it be so expressly provided. The meaning of the section is made clear by illustration (*a*) which is that, if *A* gives *Z* 50 strokes with a stick, *A*, though each stroke is technically an offence, is liable to only one punishment for *the whole beating;* but the section has no application whatever to the facts of case 15 of 1895, because what was alleged was that there were a series of beatings at different places and at different hours. The magistrate should have considered separately the evidence as to each particular beating and discharged or committed the accused according as he found there were or were not sufficient grounds for doing so in each particular case. Each beating may have been made up of parts, but the series of alleged beatings could not be regarded as parts of a single offence. For each separate beating if approved against him, each accused was liable to a separate punishment, and as each separate beating, if true, constituted a distinct offence, it was necessary, under section 233 of the Code of Criminal Procedure, that there should be a separate charge for each of the alleged beatings for which the accused were to be tried.

Now, here my difficulties about the charges arose. Neither by a perusal of the charges framed by the committing magistrate, nor by a perusal of the magistrate's order of commitment, nor by a persual of the evidence taken by the committing magistrate, was it possible for me to say with any certainty in the case of which of the alleged beatings the committing magistrate considered that there was a *primâ facie* case made out against the accused. The learned vakil who, in the absence of the Public Prosecutor conducted the prosecution, was exactly in the same predicament. He could not tell as to which of the alleged beatings the magistrate considered there was a *primâ facie* case, nor could he tell, any more than I could, for which of the alleged beatings the magistrate would have committed the accused had he thought it necessary to frame a separate charge in the case of whichever of the alleged beatings he considered there were sufficient grounds for committing the accused.

It seems to me to be a question whether it would not have been a more correct procedure for me to have stopped the case altogether and to have referred the case to the High Court on the ground that the commitment should be quashed as illegal. Section 226, Criminal Procedure

Code, however, is very wide and allows a charge to be framed by the Sessions Court, even when there is no charge framed by the magistrate; so that possibly I was right in going on with the case.

Whether right or wrong, the course I followed was to frame, on Saturday the 1st of June, before the evidence began to be heard, a charge which I called the first added charge. That charge referred to one of the alleged beatings on the night of the 27th February as to which, so far as I was able to gather from the order of commitment, the magistrate seemed to think there was a *primâ facie* case. As to the rest of the alleged beatings, I postponed framing charges till the evidence of the most important witness in the case had been taken. By the aid of his evidence, and by the aid of the records of the committing magistrate, I was in a position to see as distinctly as was possible under the circumstances what charges should be framed. I then added five more charges, which seemed to cover the most important of the alleged offences.

I think it will be thus seen that my difficulties in framing the charges were not inconsiderable.

4. In the second paragraph of their proceedings the High Court say that, assuming the record to be accurate, there was an irregularity on my part in taking the examination of two witnesses, the ninth and eleventh, almost altogether out of the hands of the Public Prosecutor.

On referring to the original deposition of the eleventh witness, Inspector Boyer, I find that the vakil conducting the prosecution only asked him two questions to prove a plan of the scene of the alleged offences. I then asked him a few—perhaps six—questions on an exceedingly important point, namely, the dimensions of the well into which Shankara Bhatta either was thrown or threw himself, and I elicited the following information:—"I saw the well in Tallur in the schoolmaster's house. Its diameter was six feet. Its depth to the bed of the well was 22 feet on one side, 21 in the centre and 20¼ on the other side. There were six sticks across the mouth of the well. They were three inches apart and some closer. The sticks very nearly covered one half of the well." The answers to my questions occupy five lines (31 to 35 of page 96) of the printed papers. The cross-examination then began. Where the cross-examination began is shown most distinctly in the original deposition by the usual sign XX^d. A copy of Inspector Boyer's deposition was sent up to the High Court though no copy was, I think, necessary, and unfortunately in the copy the place where the cross-examination began is not shown. The mistake was unfortunately continued in the printed papers and what the High Court were led to think was examination by me was really the cross-examination by the vakil for the first and second accused.

The High Court say that I quite erroneously disallowed some of my own questions put to Inspector Boyer on the ground that they were irrelevant. It will be now seen that that is a mistake. I find I disallowed altogether only two questions put to Inspector Boyer neither of which was put by me. They were questions in re-examination and were disallowed chiefly on the ground that they would introduce new matter and that the new matter proposed to be introduced was not such as would warrant the court's allowing its introduction.

What happened in the case of the ninth witness is not quite so clear. My notes are the most reliable record of what took place, and they do not show that I put a single question to Kusa Billiya, the ninth witness, during the whole of his examination-in-chief. It is my practice to write in my notes "to court" whenever any answers are given to court questions, and to write the answers with a larger margin than in the case of other answers. My notes do not show that I put any question to Kusa Billiya till after the completion of the re-examination, when I asked him two questions. In the vernacular record of Kusa Billiya's evidence, after he said that he was called at night when he was in his lodging, there are the words "to court question" and then the words translated at line three, page 59, of the printed papers thus "I had gone to sleep inside my house when I was called." In the translation of the vernacular deposition as well as in the printed papers, the words "to court question" are translated "to court," and the words "to court" are made to begin a paragraph which they do not in the original. What happened was I believe this. After the witness had said that he was in his house when he was called on the night in question, I suggested to the vakil conducting the prosecution that he should ascertain if he were sleeping. The witness was a very important witness, and it was necessary to elicit from him precise details on every point. I did not put the question myself. I only suggested it. I may have suggested other questions in the examination-in-chief, if any points to which I attached importance were not brought out sufficiently clearly, but I did not take the examination into my own hands as the High Court were led to believe by the error in the printed papers and in the translation of the vernacular deposition.

5. In the third paragraph of the proceedings, the High Court observe that the question to the medical witness as to whether there were any signs of death by drowning was a permissible question, and point out that the proper form of the question would have been "were there any signs of death by drowning, if so, describe them?" and observe that the objection of the accused's vakil (allowed by the Judge) that it was a leading question was frivolous.

The deposition of the apothecary was taken down by me in English, and what was recorded on the point is—

"*Q.*—Were there any signs of death by drowning present?

"*Mr. Mascarenhas.*—There is no charge of that offence. It is leading.

"*Court.*—Ask what are the symptoms of death by drowning."

What happened was this. Mr. Mascarenhas, the vakil for the first and second accused, took two objections to the question "were there any signs of death by drowning present?" One objection was that the question was leading. The other was that there was no charge against his clients that they caused the death of Shankara Bhatta by drowning him and that therefore the question was irrelevant. To understand this objection, it must be remembered that the committing magistrate considered that Shankara Bhatta committed suicide by jumping into the well, and did not commit the accused on a charge of causing Shankara Bhatta's death. I saw that the form of the question was not quite correct—a view of which I think the High Court approve. I did not, strictly speaking, disallow the question. I suggested that its form should be changed, and my suggestion was at once acquiesced in by the vakil conducting the prosecution, and the witness gave in detail the *post mortem* symptoms of death by drowning. He had previously given a detailed account of the result of the *post mortem* examination of Shankara Bhatta's body; so the assessors and I were able to judge for ourselves whether there were signs of death by drowning. After describing the usual symptoms of death by drowning, the witness add "All may be absent and yet death may be due to drowning." He was then asked "Is there any particular mark by which you can say death was or was not the result of drowning?" to which the witness gave an answer to which I need not now refer.

6. I trust the Hon'ble Judges will find this explanation satisfactory.

From W. C. HOLMES, Esq., B.A., I.C.S., District and Sessions Judge, South Canara, to the Chief Secretary to Government, dated 3rd December 1895, No. 1204.

I have the honour to acknowledge the receipt of G.O., No. 2437, Judicial, dated 26th November 1895, requesting me to forward to Government any remarks I have to offer upon the proceedings of the High Court dated the 4th November, No. 2296, Judicial.

2. Immediately on the receipt of the proceedings of the High Court, I prepared an explanation, which I submitted to the High Court on the 27th ultimo. I beg to enclose a copy of my explanation. I trust my explanation will have satisfied the High Court on the points raised in the proceedings, and I trust my explanation will also satisfy Government.

3. I think I am entitled to submit that my procedure in dealing with the case was as flawless as it was possible to be under the circumstances.

Order—No. 1808, Judicial, dated 14th November 1896.

The papers read above relate to the conduct by Mr. W. C. Holmes, I.C.S., District and Sessions Judge of South Canara, of sessions cases 33 and 38 of 1894 and 15 of 1895 on his file.

2. All three cases came before the High Court on appeal, and in each of the three the Hon'ble the Judges adopted the unusual course of recording separate proceedings condemning in strong terms the Sessions Judge's conduct of the original trial and brought the matter to the notice of Government. Mr. Holmes' explanations in reply to the High Court's strictures in each case have been taken, and the matter now comes up for final consideration.

3. The papers printed above show that in its judgment remanding the first of the three cases—session case No. 33 of 1894—for retrial, the High Court passed the following remarks regarding Mr. Holmes' conduct of the trial:—"The Sessions Judge . . . . has made it clear that the bias of his mind was affected by one fact only, and that one fact is, in our opinion, wholly inconclusive . . . . From that point in the trial the judgment makes it clear that the Judge's mind was strongly biassed against the prosecution. From the fourth witness onwards every person called has been denounced as a 'false' witness, his demeanour denounced, and his evidence characterised as a tissue of falsehoods. With regard to the fifteenth witness the Judge has recorded in his notes (before a word of the evidence) the remark 'lying written in his face.' If this remark was recorded

before the witness gave his evidence, we cannot but characterise it as most improper, but the whole tenour of the remarks made by the Judge in the case shows strong bias and that the case was not approached in a judicial frame of mind . . . . The medical evidence was not considered by the Judge, nor was the defence gone into. The trial was prolonged for three weeks—principally in consequence of the cross-examination (wholly irrelevant) of the pleader who appeared for the first prisoner (M. Shiva Rao)—and the trial at last came to an end since the Public Prosecutor declined to call for any further evidence in consequence of the attitude taken by the Judge . . . Why the Judge would not permit the overseer to be called we are quite unable to understand."

In its separate proceedings, No. 1760, Judicial, dated 10th September 1895, regarding the case, the High Court further remarked that if the case had been properly conducted it need not have lasted more than three or four days, whereas it was protracted over three weeks, and that the record showed that the Sessions Judge did not exercise a proper control over his bar and was not strong enough to exclude irrelevant matter from the cross-examination of the witnesses.

4. In its Proceedings, No. 1812, Judicial, dated 16th October 1895, dealing with the second of the three cases—session case No. 38 of 1894—the High Court observed that if the trial of that case was to be taken as a sample of Mr. Holmes' work, it showed that he had no appreciation of the value of public time and exercised no control over the vakils practising before him. His own notes condemned him and justified the further inference that he could not distinguish relevant from irrelevant evidence.

5. In their letter forwarding to Government these two proceedings, the Hon'ble the Judges further observed that they "have for some time been far from satisfied with Mr. Holmes' judicial work, and think it advisable to bring these instances of his inefficiency to the notice of Government. The Judges have no reason to doubt that Mr. Holmes is a conscientious officer and that he does not spare himself in the performance of his duties, but they are of opinion that he is not suited to judicial work and would suggest that it may be advisable to employ him in some other department."

6. These papers were in G.O., No. 2231, Judicial, dated 4th November 1895, referred to Mr. Holmes for such explanations or remarks as he might desire to offer, and his reply is contained in his letters of the 15th and 21st November read above. It will be seen that Mr. Holmes declines to admit that his conduct of the cases in question was defective, and quotes a number of statistics to prove that disposal of work in his court has been prompt and but little interfered with on appeal. He states that he takes the deepest interest in judicial work, and in paragraph 7 of his first letter he requests that if his explanation is considered to be unsatisfactory, he may be permitted to resign the Indian Civil Service on a pension proportionate to the length of his service, as such a course would be preferable to a return to duty after his superiors had lost confidence in him.

7. In G.O., No. 373, Judicial, dated 24th February 1896, these two letters were referred to the Hon'ble the Judges of the High Court for their remarks. In the Registrar's letter of the 16th March it is stated that the Judges consider that Mr. Holmes' reference to figures and statistics is irrelevant to the real issue, and that whatever the causes of the defects in that officer's conduct of his cases may be, "the result is the same, namely, a lamentable waste of public time and a risk of a miscarriage of justice." They further are of opinion that "the circumstance of Mr. Holmes defending his conduct and not admitting his shortcomings renders it hopeless to expect any material improvement."

8. The third of the cases now under consideration—session case No. 15 of 1895—is dealt with in G.O., No. 2437, Judicial, dated 26th November 1895. The conduct of the District Magistrate and the Superintendent of Police and his Inspector have been disposed of in separate proceedings. The Sessions Judge's method of dealing with the case is described in the High Court's proceedings, No. 2296, Judicial, dated 4th November 1895. Mr. Holmes was requested in

G.O., No. 2437, Judicial, dated 26th November 1895, to submit his explanation in regard to these strictures, and his reply is contained in his letters of the 27th November and 3rd December 1895 printed above. Mr. Holmes shows that part of paragraph 2 of the High Court's proceedings was based upon a misapprehension and again declines to admit that his procedure was in any way defective.

9. His Excellency the Governor in Council has considered Mr. Holmes' conduct of these three cases and his explanations with care, and has arrived at the conclusion that the opinion of the Hon'ble the Chief Justice and the Judges of the High Court that Mr. Holmes is not suited to judicial work is warranted by the papers dealt with above and must be accepted. These papers and his previous record show that Mr. Holmes, though he apparently takes an interest in his work and cannot be charged with neglecting it, yet suffers from an absence of that sense of proportion and open mindedness which is essential to the conduct of the affairs of any office of importance under Government, coupled with an inability to perceive his errors when they are pointed out to him, which, as the High Court justly remarks, renders it vain to hope that he will learn by experience. His Excellency in Council is clearly of opinion that it is undesirable in the public interests that, with such defects against him, Mr. Holmes should be employed in the executive branch of the service and entrusted with the care of a district with a population of perhaps two million persons, and he accordingly resolves to request the Right Hon'ble the Secretary of State to grant Mr. Holmes the permission solicited by him in paragraph 7 of his letter of the 15th November 1895 read above, namely, that he should be allowed to resign the Indian Civil Service on a pension proportionate to the service which he has to his credit at the present date.

(True Extract.)

(Signed) A. T. ARUNDEL,
Acting Chief Secretary.

To the Hon'ble the Chief Justice with C.L.

Exd. S. J. Pereira.

GOVERNMENT OF FORT ST. GEORGE

JUDICIAL (1896) *DEPARTMENT.*

Letter to the Right Honourable the Secretary of State for India.

Dated 30th November, No. 9 of 1896.

Forwarding to the Right Honourable the Secretary of State a copy of Proceedings No. 1808, Judicial, dated 14th November 1896 and soliciting the grant to Mr. W. C. Holmes, I.C.S., of permission to resign the Indian Civil Service on a pension proportionate to the length of his service.

JUDICIAL DEPARTMENT.

Letter—to

The Right Hon'ble the SECRETARY of STATE for INDIA.

My Lord,

We have the honour to transmit herewith, for your Lordship's perusal, a copy of our proceedings of the 14th instant, No. 1808, Judicial, and, with reference thereto, to solicit the grant to Mr. W. C. Holmes, I.C.S., of permission to resign his position in the Indian Civil Service on a pension proportionate to the length of time which he has served up to date.

2. Mr. Holmes joined the Indian Civil Service in this presidency at the end of 1877. For parts of the years 1881 and 1882 he was employed in the Financial department of the Government of India; but as he was not successful in the work there allotted to him, he was recalled at the request of the Government of India and placed again in the ordinary line in this presidency.

3. In 1885, when he was Head Assistant Magistrate of Cuddapah, a case came under the notice of Government in which he had sentenced a man to two years' rigorous imprisonment upon charges of criminal intimidation and interrupting a public servant in the discharge of his duty, because he had employed threats to a medical subordinate who was endeavouring to vaccinate his child, vaccination not being compulsory by law at the place where the occurrence happened. Not only was the conviction technically illegal, but it was also evident from Mr. Holmes' judgment that the extreme severity of the penalty inflicted by him was due to his suspicion that the accused was a disorderly character who had been concerned in some recent riots in the town. It is unnecessary to point out that whether this was so or not, Mr. Holmes was entirely wrong in allowing his suspicions on the point to affect the sentence inflicted for a totally different offence. In palliation of his grave want of judgment in this case it was urged by the Collector of the district that he was of a sensitive disposition and was labouring under great excitement caused by these riots, and that he was also in indifferent health. It appeared, however, on inquiry that he had also been guilty of grave disrespect to the Sessions Judge of the same district and of insubordination to the High Court in refusing to re-try a case remanded to him for that purpose and endeavouring to discuss with the Hon'ble the Judges the propriety of their order. Mr. Holmes shortly afterwards went on furlough on medical certificate for a year, and on his return he was formally censured for his conduct and informed that the Government had entertained doubts whether he was fit to continue as a first-class magistrate. He was, however, eventually given another trial, his promotion being stopped for some months, and was warned that any further shortcomings on his part would result in his case being reported to the Secretary of State.

4. In 1890, the Hon'ble the Judges of the High Court reported to Government that Mr. Holmes' work as District and Sessions Judge in Bellary was unsatisfactory, and that his judgments "indicated a tendency to approach the consideration of evidence with a prepossession against its trustworthiness and to judge of its value by a purely arbitrary standard of credibility." They also observed that he exhibited "a deficiency in the power of discriminating evidence." The Government thereupon decided that Mr. Holmes, who was shortly to revert to a Sub-Collectorate, should not again be made a Judge, and should not be promoted in his turn. In June 1891, however, on the Hon'ble the Judges stating that they had no objection to his being employed in a light court, he was posted to the appointment which he now holds, namely, that of District and Sessions Judge, South Canara.

5. Towards the end of 1895, the Government received from the High Court the judgments, proceedings and letters which are printed in our proceedings enclosed herewith, commenting in terms which could scarcely be stronger upon the inefficiency displayed by Mr. Holmes in his conduct of the work in his court. It is extremely seldom that the Hon'ble the Judges adopt the course of reporting to Government judicial officers serving under their orders, and this fact gives additional force to their representations. Their conclusion that Mr. Holmes is not fit to be a District Judge is in our opinion clearly borne out by the record of the three cases which are dealt with in our proceedings already referred to, and to which we would invite your Lordship's attention. Mr. Holmes' various explanations amount to little more than a mere denial that his procedure was in any way defective or blameworthy, and we are unable to consider them satisfactory. South Canara is one of the lightest courts in the presidency, and it is thus impossible to suppose that the quality of Mr. Holmes' work is due to any overburdening excess in the quantity of it which is demanded of him. We have accordingly, after careful deliberation upon the matter, arrived at the conclusion that it is impossible in the public interests to reappoint Mr. Holmes on his return from the furlough which he is now taking as a judge in any district in the presidency.

6. It is, however, difficult to discover any other post to which Mr. Holmes could be appointed in which his defects would not occasion great mischief. The papers already referred to show that though he undoubtedly takes an interest in his work and endeavours to perform it satisfactorily, he is nevertheless without sense of proportion and lacks an evenly-balanced mind, and that his inability to perceive his faults when they are pointed out to him leaves no hope that he will materially improve. With such defects against him it appears to us to be most undesirable that he should be appointed Collector of a district and entrusted with the welfare of perhaps two millions of persons, the more so as he has preference for the judicial side of the service which is so strong as almost to amount to a dislike of executive work. As has already been observed, he has been tried outside the ordinary line in the Financial department and failed. To permanently reduce him to the grade of a Sub-Collector and Joint Magistrate would be a most severe punishment and would moreover occasion further opportunities for injury to the public interests through his inefficiency.

7. In paragraph 7 of his letter of the 15th November printed in our proceedings enclosed Mr. Holmes has asked that if his present explanations are deemed to be unsatisfactory, he may be permitted to resign the Indian Civil Service on a pension proportionate to his service. He states that he would prefer this course to a return to duty after he had lost the confidence of his superiors. In all the circumstances of the case, we are of opinion that the adoption of this proposal would effect the most satisfactory solution of the difficulty.

8. We accordingly have the honour to recommend the adoption of this course to your Lordship's most favourable consideration. Mr. Holmes' total service from the date of his arrival was, on the 1st November 1895, eighteen years and nine months, and as he is required by the rules to complete 25 years' total service before

he is entitled to the usual pension of £1,000 *per annum*, a pension proportionate to the length of his service would amount to some £746 *per annum*.

His case is not however governed by any of the usual rules on the subject.

We have the honour to be,

My Lord,

Your Lordship's most obedient, humble servants,

(Signed) A. E. HAVELOCK.
(,,) H. W. BLISS.
(,,) J. GROSE.

FORT ST. GEORGE,
30th November 1896.

G 118 1,000—17-7-96.

TELEPHONE MESSAGE.

From W. Francis

To CHIEF SECRETARIAT,
Registrar High Court

Dated 2/12 1895

Reference yo. 2441
26 inst
about Holmes' work.
Can you let me know

Exd. S. J. Pereira.

Judicial Dept

From

CHIEF SECRETARY'S GOVERNMENT OF MADRAS
25 NOV. 1895

W. C. Holmes Esquire,

Dat
Rec

To

T

INDIAN TELEGRAPHS. Monthly Number.

Code Class

To (Person)

From (Office) Telephonic message

S. | Day. 2 | Hour. 15+ | Minute. 8 | Official Instructions.

To (Person) Hon'ble W. Francis

From (Person) The Registrar High court appellate side

Read your message which quite clear. Copy of the G.O. has been sent to Holmes and his explanation called for

Will be sent to Mr. Holmes

764 Word Form.

Recd. from ... H.M. | Sent to ... H.M.

At ... Hrs. ... Mts. by ... | At ... Hrs. ... Mts. by ... Telegraph Master.

he is entitled to the usual pension of £1,000 *per annum*, a pension proportionate to the length of his service would amount to some £746 *per annum*.
His case is not however governed by any of the usual rules on the subject.

We have the honour to be,
My Lord,
Your Lordship's most obedient, humble servants,

(Signed) A. E. HAVELOCK.
(,,) H. W. BLISS.
(,,) J. GROSE.

FORT ST. GEORGE,
30th November 1896.

if the Judges agree to
Course proposed in
para 4 ~~2~~ 3 & ~~4~~ 5 of Sec
Chetty orders have gone
to ~~Holmes~~ Holmes. He writes
that he is postponing
taking leave till he
can send in explanation
Sent
Opt.
2/x4/25
14/4/25
Return to S with reply

Engd. S. J. Pereira.

CURRENT No. 5573

Judicial Dept

From

CHIEF SECRETARY TO GOVERNMENT OF MADRAS
25 NOV. 1895

W. C. Holmes Esquire,

Code Class | INDIAN TELEGRAPHS. Monthly Number.

To | From Telephonic message (Office)

S. | Day. 2 | Hour. 15 | Minute. 8 | Official Instructions.

To (Person) ~~Hon~~ Mr W. Francis

From (Person) The Registrar High court appellate side

Dat
Rece

To

Yours your message Rob quite clear.
Copies of the T.O. has been sent to
Holmes and his explanation called for

Oct
2/xii/25

ments
instan

Recd. from I.N. | Sent to I.N.

At Hrs. Mts. by | At Hrs. Mts. by | Telegraph Master.

764 Word Form.

FC 2

PJO

C. G. P.—No. 30 T—17-5 24—12,00,000

CS.

Current 5604 3.

Order.

Despd 2/12

The following telegram will be sent to Mr. Holmes.

"730. Your telegram 30th R. Reference referred to in GO. 2440 is about Sessions case 33, & has now been sent on by the High Court."

Hy 2.12.95 2.12.95.

Judicial Dept

From

CHIEF SECRETARY'S GOVERNMENT OF MADRAS 25 NOV. 1895

W. C. Holmes Esquire,

District and Sessions Judge,

South Canara.

Dated 21 Nov 1895
Received 25 Nov 1895

To

Encls 3.
& &c. of letter

The Chief Secretary to Government

Fort Saint George.

with 3 enclosures
ans

Submitting with covering letter certain statements in continuation of his letter of the 15th instant.

Statement No. 1

Showing for cases disposed of by W. B. Holmes Esquire while Sessions Judge of South Canara the number of cases and persons received, disposed of and pending.

No. of case.	Cases.			Persons.							No. of witnesses examined.		Remarks.
	Received by commitment or on reference.	Disposed of	Pending.	Under trial	Disposed of.				Pending.				
					Acquitted or discharged.	Convicted.	Committed or referred.	Bind, to keep the peace and transferred.	In custody	Not in custody.	Examined.	Detained beyond 3 days.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14.
1891.													
11	1	1	"	1	"	"	1	"	"	"	15	10	
12	1	1	"	2	1	1	"	"	"	"	5	5	
13	1	1	"	1	1	"	"	"	"	"	9	"	
14	1	1	"	4	"	3	1	"	"	"	19	23	
15	1	1	"	1	1	"	"	"	"	"	11	20	
16	1	1	"	6	6	"	"	"	"	"	4	12	
17.	1	1	"	1	"	1	"	"	"	"	7	"	
18.	1	1	"	1	1	"	"	"	"	"	"	"	
19.	1	1	"	1	"	1	"	"	"	"	10	"	
20.	1	1	"	1	"	1	"	"	"	"	4	"	
21.	1	1	"	2	2	"	"	"	"	"	8	"	
22.	1	1	"	13	8	5	"	"	"	"	11	"	
23.	1	1	"	1	"	1	"	"	"	"	4	"	
24	1	1	"	1	"	1	"	"	"	"	13	24	
25	1	1	"	1	"	1	"	"	"	"	9	"	
26.	1	1	"	1	1	"	"	"	"	"	8	"	
27.	1	1	"	1	"	1	"	"	"	"	4	"	
28.	1	1	"	1	"	1	"	"	"	"	7	"	
29.	1	1	"	1	1	"	"	"	"	"	14	13	
1892													
	1	1	"	1	"	"	1	"	"	"	29		

Statement No. 1

Showing for cases disposed of by W. C. Holmes Esquire while Sessions Judge of South Canara the number of cases and persons received, disposed of and pending.

No. of case.	Cases.			Persons.							No. of witnesses examined.		Remarks.
	Received by commitment or on reference.	Disposed of	Pending.	Under trial	Disposed of.				Pending.				
					Acquitted or discharged.	Convicted.	Committed or referred.	Died, escaped or transferred to another province.	Se pending	Not in custody.	Examined.	Detained beyond 3 days.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14.
1891.													
11	1	1	"	1	"	"	1	"	"	"	15	10	
12	1	1	"	2	1	1	"	"	"	"	5	5	
13	1	1	"	1	1	"	"	"	"	"	9	"	
14	1	1	"	4	"	3	1	"	"	"	19	23	
15	1	1	"	1	1	"	"	"	"	"	11	20	
16	1	1	"	6	6	"	"	"	"	"	4	12	
17.	1	1	"	1	"	1	"	"	"	"	7	"	
18.	1	1	"	1	1	"	"	"	"	"	"	"	
19.	1	1	"	1	"	1	"	"	"	"	10	"	
20.	1	1	"	1	"	1	"	"	"	"	4	"	
21.	1	1	"	2	2	"	"	"	"	"	8	"	
22.	1	1	"	13	8	5	"	"	"	"	11	"	
23.	1	1	"	1	"	1	"	"	"	"	4	"	
24.	1	1	"	1	"	1	"	"	"	"	13	24	
25	1	1	"	1	"	1	"	"	"	"	9	"	
26.	1	1	"	1	1	"	"	"	"	"	8	"	
27.	1	1	"	1	"	1	"	"	"	"	4	"	
28.	1	1	"	1	"	1	"	"	"	"	7	"	
29.	1	1	"	1	1	"	"	"	"	"	14	13	
1892													
	1	1	"	1	"	"	1	"	"	"	29		

No. of case.	Cases. Received by commitment or on Reference.	Cases. Disposed of	Cases. Pending.	Persons. Under trial	Persons. Disposed of. Acquitted or discharged.	Persons. Disposed of. Convicted	Persons. Disposed of. Committed or referred.	Persons. Disposed of. Died, escaped or transferred to another prison	Persons. Pending. In custody	Persons. Pending. Not in custody	No. of witnesses examined. Examined	No. of witnesses examined. Detained beyond 3 days.	Remarks.
1	2	3	4	5	6	7	8	9	10	11	12	13	14.
1892 Contd:													
2	1	1	..	1	1	..					8		
3	1	1	..	1	1	..					12		
4	1	1	..	1	1	..					4		
5	1	1	..	1	..	1					8		
6	1	1	..	1	1	..					7		
7	1	1	..	1	..	1					9		
8	1	1	..	2	..	2					8		
9	1	1	..	2	..	1	1				11		
10	1	1	..	1	..	1					5		146
11	1	1	..	2	..	2					9		
12	1	1	..	1	1	..					15		
13	1	1	..	1	..	1					..		
14	1	1	..	3	..	3					32		
15	1	1	..	22	18	4					30		
16	1	1	..	1	..	1					4		
17	1	1	..	1	..	1					4		
18	1	1	..	1	..	1					5		
19	1	1	..	2	..	..	2				21		
20	1	1	..	1	1	..					8		
21	1	1	..	1	..	..	1				5		
22	1	1	..	1	1	..					11		
23	1	1	..	1	..	1					10		
1893													
8	1	1	..	1	1	..					8		
9	1	1	..	22	22	..					30		
10	1	1	..	2	..	2					8		
11	1	1	..	1	..	1					7		
12	1	1	..	1	1	..					..		
13	1	1	..	1	..	1					8		
14	1	1	..	1	..	1					7		
15	1	1	..	1	1	..					4		
16	1	1	..	2	..	2					9		
17	1	1	..	1	..	1					4		
18	1	1	..	1	..	1					3		
19	1	1	..	6	6	..					4		
20	1	1	..	1	..	1					5		
21	1	1	..	2	2	..					2		64
22	1	1	..	1	..	1					7		
23	1	1	..	1	..	1					3		
24	1	1	..	1	..	1					13		
25	1	1	..	1	1	..					6		
26	1	1	..	4	4	..					9		
27	1	1	..	7	7	..					..		
28	1	1	..	2	2	..					1		
29	1	1	..	1	..	1					11		
30	1	1	..	1	..	1					8		
31	1	1	..	1	..	1					6		
1894													
1	1	1	..	1	..	1					7		
2	1	1	..	1	..	1					3		

No. of case.	Cases.			Persons.							No. of witnesses examined.		Remarks.
	Received by commitment or on reference.	Disposed of	Pending.	Under trial	Disposed of				Pending.				
					Acquitted or Discharged.	Convicted.	Committed or Referred.	Died, escaped or transferred or sent to Lunatic Asylum	In custody	Not in custody	Examined	Detained beyond 3 days.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14.
3	1	1	"	1	"	1					4		
4	1	1	"	1	"	1					9		
5	1	1	"	1	"	1					6		
6	1	1	"	3	3	"					14		
7	1	1	"	1	1	"					5		
8	1	1	"	1	"	1					4		
9	1	1	"	5	1	4					8		
10	1	1	"	1	"	"	1				15		
11	1	1	"	4	4	"	"				12		
12	1	1	"	2	2	"	"				3		
13	1	1	"	1	"	1	"				5		82
14	1	1	"	1	"	1					6		
15	1	1	"	1	"	1					6		
16	1	1	"	1	"	"	1				9		
17	1	1	"	3	3	"					"		
18	1	1	"	5	5								
20	1	1	"	5	5								
21	1	1	"	5	5								20
22	1	1	"	5	5								
23	1	1	"	5	5								
24	1	1	"	2	2								
19	1	1	"	1	1								
25	1	1	"	1	"	"	1				1		
26	1	1	"	1	1						13		
27	1	1	"	1	"	1					2		
28	1	1	"	2	"	1	1				"		
											12		

No. of case.	Cases.			Persons.							No. of witnesses examined.		Remarks.
	Received by commitment or on reference.	Disposed of	Pending.	Under trial	Disposed of				Pending.				
					Acquitted or Discharged.	Convicted.	Committed or Referred.	Died, escaped or transferred or sent to Lunatic Asylum	In custody	Not in custody	Examined	Detained beyond 3 days.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14.
29	1	1	"	1	1						8		
30	1	1	"	1	1						"		
31	1	1	"	1	1						16		
32	1	1	"	1	1						7		
33	1	1	"	14	14						7		
34	1	1	"	1	1						8		
35	1	1	"	1	"	1					11		
36	1	1	"	1	"	1					44	42	
37	1	1	"	1	1								
39	1	1	"	1	1						16	13	
38	1	1	"	4	"	2	2				8	2	
1895													
1	1	1	"	2	2						1	16	
3	1	1	"	4	2	2					"	5	
4	1	1	"	1	1	"					12	6	
5	1	1	"	1	1	0					6	"	
6	1	1	"	1	"	1					5	"	
7	1	1	"	1	"	1					11	16	
14	1	1	"	1	"	"	1				22	29	
15	1	1	"	4	2	2					"	"	
16	1	1	"	6	6						13	11	
17	1	transferred		1	"	"	"	1			11	10	
18	1	1	"	3	3	"					7	"	
19	1	1	"	1	"	1					7	"	
20	1	1	"	1	1								
21	1	1	"	1	"	1							

No. of case	Cases.			Pending.							No. of witnesses examined.		Remarks
					Disposed of				Pending				
	Received by commitment or on reference.	Disposed of	Pending.	Under trial	Acquitted or discharged.	Convicted.	Committed or referred.	Bind, sought or case stopped by competent power	Lucratively	Not lucratively	Examined.	Detained beyond 3 days.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14.
22	1	1	..	1	..	1					10	..	
23	1	1	..	1	..	1					11		
24	1	1	..	3	2	1					5		
25	1	1	..	1	1	..					11		
Total	123	122	..	277	179	83	14	1	..	..	995	549	

D. S. Stokes
D.J.

Statement No 3.

1895
Naval Dept.
Enclos. No 3
To
C. No 5573

1st Enclosure to letter dated
21st November '95 from
W. C. Holmes R.N.S. to
Chief Secretary.

Statement No 3

Showing Casewar the result of Appeals to High Court from the decisions of W. C. Holmes Esquire while Sessions Judge of South Canara.

Year	No of Sessions case	No of Appeal.	Cases. In cases summarily rejected.	Convictions. Confirmed.	Convictions. Sentence Varied.	Convictions. Sentence Reversed.	Convictions. Reversed & remanded.	Convictions. Confirming in part & Acquitting in part.	Acquittals. Confirmed.	Acquittals. Reversed & new trial ordered.	Acquittals. Reversed, conviction recorded & sentence passed.	Verdict of Jury. Upheld.	Verdict of Jury. Modified.	Verdict of Jury. Set aside.	Total.	Persons. In cases summarily rejected.	Convictions. Confirmed.	Convictions. Sentence Varied.	Convictions. Sentence Reversed.	Convictions. Reversed & remanded.	Acquittals. Confirmed.	Acquittals. Reversed & new trial ordered.	Acquittals. Reversed, conviction recorded & sentence passed.	Verdict of Jury. Upheld.	Verdict of Jury. Modified.	Verdict of Jury. Set aside.	Total.	Remarks.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
1891	11 of 1891	210 of 1891	"	1	"	"	"	"	"	"	"	"	"	"	1	"	1	"	"	"	"	"	"	"	"	"	1
	14 " "	255 " "	"	"	"	1	"	"	"	"	"	"	"	"	1	"	"	"	1	"	"	"	"	"	"	"	1
		262 " "	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	2	"	"	"	"	"	"	2
		281 " "	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	1	"	"	"	"	"	"	1
	17 " "	347 " "	"	1	"	"	"	"	"	"	"	"	"	"	1	"	1	"	"	"	"	"	"	"	"	1
	25 " "	16 of 1892	1	"	"	"	"	"	"	"	"	"	"	"	1	"	"	"	"	"	"	"	"	"	"	1
	28 " "	520 of 1891	"	"	"	1	"	"	"	"	"	"	"	"	1	"	1	"	"	"	"	"	"	"	"	1
	1 of 1892	30 of 1892	"	1	"	"	"	"	"	"	"	"	"	"	1	"	"	"	1	"	"	"	"	"	"	1
	9 " "	266 " "	"	1	"	"	"	"	"	"	"	"	"	"	1	"	1	"	"	"	"	"	"	"	"	1
1892	14 " "	306 " "	1	"	"	"	"	"	"	"	"	"	"	"	1	"	14	"	"	"	"	"	"	"	"	14
	5 " "	207 " "	"	"	"	1	"	"	"	"	"	"	"	"	1	"	3	"	"	"	"	"	"	"	"	3
	19 " "	568 " "	"	"	"	"	1	"	"	"	"	"	"	"	1	"	"	"	1	"	"	"	"	"	"	1
	17 " "	533 " "	"	1	"	"	"	"	"	"	"	"	"	"	1	"	"	"	"	2	"	"	"	"	"	2
	18 " "	571 " "	"	1	"	"	"	"	"	"	"	"	"	"	1	"	1	"	"	"	"	"	"	"	"	1
	21 " "	12 of 1893	"	"	1	"	"	"	"	"	"	"	"	"	1	"	1	"	"	"	"	"	"	"	"	1
	23 " "	62 " "	"	1	"	"	"	"	"	"	"	"	"	"	1	"	"	"	1	"	"	"	"	"	"	1
	16 " "	157 " "	1	"	"	"	"	"	"	"	"	"	"	"	1	"	1	"	"	"	"	"	"	"	"	1
1893	17 of 1893	341 " "	"	1	"	"	"	"	"	"	"	"	"	"	1	"	1	"	"	"	"	"	"	"	"	1
	18 " "	342 " "	"	"	1	"	"	"	"	"	"	"	"	"	1	"	1	"	"	"	"	"	"	"	"	1
	14 " "	362 " "	"	"	"	1	"	"	"	"	"	"	"	"	1	"	"	"	1	"	"	"	"	"	"	1
	23 " "	481 " "	1	"	"	"	"	"	"	"	"	"	"	"	1	"	"	"	"	1	"	"	"	"	"	1
	16 " "	403 " "	"	"	"	"	"	"	"	"	"	"	"	"	1	"	1	"	"	"	"	"	"	"	"	1
	22 " "	431 " "	"	"	"	1	"	"	"	"	"	"	"	"	1	"	"	"	"	2	"	"	"	"	"	2
1894	29 " "	632 " "	"	"	"	1	"	"	"	"	"	"	"	"	1	"	"	"	1	"	"	"	"	"	"	1

Statement No 3

Showing caseswar the result of Appeals to High Court from the decisions of W. C. Holmes Esquire while Sessions Judge of South Canara.

Year	No of Sessions case	No of Appeal.	Cases.													Persons.												Remarks.
			In cases summarily rejected.	Convictions.					Acquittals			Verdict of Jury				In cases summarily rejected.	Convictions.				Acquittals			Verdict of Jury				
				Confirmed.	Sentence Varied.	Sentence Reversed.	Reversed & remanded.	Confirmed as regards Conviction & Appellant's Appeal.	Confirmed.	Reversed & new trial ordered.	Reversed, conviction recorded & Sentence passed.	Upheld.	Modified.	Set aside.	Total.		Confirmed.	Sentence Varied.	Sentence Reversed.	Reversed & remanded.	Confirmed.	Reversed & new trial ordered.	Reversed, conviction recorded & Sentence passed.	Upheld.	Modified.	Set aside.	Total.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
1894	31 of 1893	66 of 1894				1									1				1								1	
	2 of 1894	68 " "		1											1												1	
	3 " "	67 " "		1											1		1										1	
	8 " "	242 " "	1												1		1										1	
	13 " "	243 " "		1											1												1	
	5 " "	241 " "	1												1		1										1	
	10 " "	244 " "				1									1		1										1	
	16 " "	294 " "		1											1				1								1	
	14 " "	262 " "	1												1		1										1	
	9 "	245 " "													1		1										1	
		246 " "		1											1		1										1	
		247 " "													1		1										1	
	4 " "	261 " "		1											1		1										1	
	25 " "	510 " "		1											1		1										1	
	28 "	515 " "													1		1										1	
		578 " "												1	1											1	1	
	27 " "	539 " "				1									1		1										1	
1895	36 of 1894	5 of 1895		1											1				1								1	
	3 of 1895	161 " "													1		1										1	
		162 " "		1											1												1	
	14 " "	286 " "				1									1		2										1	
	21 " "	325 " "		1											1				1								1	
	19 " "	324 " "		1											1		1										1	
	33 of 1894	149 " "													1		1										1	
										1					1							13					13	

Statement No 3

Showing Caseswan the result of Appeals to High Court from the decisions of W. C. Holmes Esquire while Sessions Judge of South Canara.

Year	No of Sessions case	No of Appeal.	Cases.													Persons.												Remarks.
			In cases summarily rejected.	Convictions.					Acquittals			Verdict of Jury				In cases summarily rejected.	Convictions				Acquittals			Verdict of Jury				
				Confirmed.	Sentence Varied.	Sentence Reversed.	Reversed & remanded.	Confirmed as regards Appellant &c.	Confirmed.	Reversed on new trial or Appeal.	Reversed, conviction quashed & Sentence passed	Upheld.	Modified.	Set aside.	Total.		Confirmed.	Sentence Varied.	Sentence Reversed.	Reversed & remanded.	Confirmed.	Reversed on new trial ordered.	Reversed, conviction quashed & Sentence passed	Upheld.	Modified.	Set aside.	Total.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
1895	34 of 1894	150 of 1895	1	"	"	"	"	"	"	"	"	"	"	1	1	"	"	"	"	"	"	"	"	"	"	"	1	
		177 " "	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	1	"	"	"	"	"	"	"	1	
	38 " "	178 " "	"	"	"	"	"	1	"	"	"	"	"	"	1	"	1	"	"	"	"	"	"	"	"	"	1	
		179 " "	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	1	"	"	"	"	"	"	"	1	
		180 " "	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	1	"	"	"	"	"	"	"	1	
Total	44		9	18	7	7	"	1	"	1	"	"	"	1	44	13	22	7	15	"	"	13	"	"	"	1	71	
Referred trials	11		"	5	2	3	"	1	"	"	"	"	"	"	11	"	6	2	5	"	"	"	"	"	"	"	13	See statement No 2
	33		9	13	5	4	"	"	"	1	"	"	"	1	33	13	16	5	10	"	"	13	"	"	"	1	58	

W. C. Holmes
"D.J"

Statement No. 2.

Showing, casewar the mode of disposal of Sentences of death referred for confirmation by W. C. Holmes Esquire, while Sessions Judge of South Cumara.

Number of Session case.	Cases.						Persons.						Remarks.
	Confirmed.	Modified.	Reversed and acquittal ordered.	Confirmed as regards some Appellants	Reversed + new trial ordered.	Total.	Confirmed.	Commuted to Transportation.	Commuted to rigorous imprisonment.	Reversed + acquittal ordered.	Reversed and new trial ordered.	Total.	
11 of 1891	1	"	"	"	"	1	1	"	"	"	"	1	
14 of 1891	"	"	1	"	"	1	"	"	"	1	"	1	
1 " 1892	1	"	"	"	"	1	1	"	"	"	"	1	
9 " "	1	"	"	"	"	1	1	"	"	"	"	1	
19 " "	"	"	1	"	"	1	"	"	"	2	"	2	
21 " "	"	1	"	"	"	1	"	1	"	"	"	1	
10 of 1894	"	"	1	"	"	1	"	"	"	1	"	1	
16 " "	1	"	"	"	"	1	1	"	"	"	"	1	
25 " "	1	"	"	"	"	1	1	"	"	"	"	1	
38 " "	"	"	"	1	"	1	1	"	"	1	"	2	
14 " 1895	"	1	"	"	"	1	"	"	1	"	"	1	
11 Cases.	5	2	3	1	"	11	6	1	1	5	"	13	

W. C. Holmes
87.

1895
Judl. Dept.
Enclosure 1
G. 5573

3rd enclosure to letter dated 21st Nov '95 from W. C. Holmes to Chief Secretary.

1895
Jud Dept
Enclos. No 2
To
C. No 55 73

2nd Enclosure White
dated 21st Nov 95 from
W.C Holmes Esq Chief
Secretary.

District and Sessions Court,
South Canara, 21st November 1895.

FROM

W. C. Holmes Esquire, B. A., I. C. S.,
District and Sessions Judge,
South Canara.

To

The Chief Secretary to Government,
Fort Saint George,
MADRAS.

Sir,

In continuation of my letter to you of the 15th Instant, I have the honour to say that I have had, since I wrote that letter, a complete analysis of my Sessions Cases in this Court made, and an analysis of appeals against them so far as results are known in this office, and I have had 4 statements prepared, showing how my work compared with the figures of the Presidency as a whole and of this Court for a number of years back. The statements are appended.

2. Statement I shows that of the 122 Sessions Cases disposed of by me 14 were withdrawn, 63 resulted in conviction, 37 in acquittal, and 8 in the conviction of some accused and the acquittal of others. I have not been able to ascertain the corresponding figures for the Presidency or District, but so far as my general knowledge of the matter goes, these figures are about the average.

Statement I also shows that of the charges against 276 accused persons, the charges against 28 persons were withdrawn. Of the remaining 248 accused persons, 151 were acquitted and 96 were convicted (13 convictions being subject to the confirmation of the High Court). The case of one accused, found guilty by a Jury, I referred to the High Court, and he was set at liberty. The percentage of convictions was 34·7 of the total 276 accused persons. This rather low percentage is due to two causes. One is that I broke up one case, and held 6 trials—18 and 20 to 24 of 1894—in 5 of which the same five persons were accused and in the 6th two of the five. I did this because the charges were serious charges, being charges of torture against certain Police Officers, and I thought it advisable to have separate trials for each alleged offence to prevent the possibility of confusion. In 2 of the 6 cases the charges were withdrawn. The other cause of the rather low percentage of persons convicted is that two or three trials in which there were a number of accused, broke down. One of these cases was 15 of 1892 in which a Mahomedan who was beaten in a Hindu temple where he was a trespasser shifted the scene of the offence to his own house where he falsely represented that he was attacked. In another case, in which 22 persons were charged, the true facts, which would have shown the complainants to have been agressors, were suppressed, and the prosecution could not establish the charges actually brought. A third case was 33 of 1894, in which I expressed an opinion which was

concurred in by 3 Assessors—a Hindu, a Mahomedan and a Roman Catholic Native gentlemen—that the prosecution had failed to make out their case, and on the expression of this opinion the Public Prosecutor, after consulting the Superintendent of Police and the then acting District Magistrate, stopped the case for the prosecution and consented to the case falling through. An appeal was however preferred against the acquittal, and a retrial ordered. As the matter must be held to be still *sub judice* I make no comments on the case.

3. Statement II shows that I differed from the Jury in one case out of 22. I find that in 10 years of the Presidency figures, out of 3,691, in 182 cases the Judge differed wholly or partially from the Jury. That is almost in the proportion of 1 out of 22. In South Canara I find for 10 years up to 1892 the Judge differed from the Jury in 5 cases out of 67, that would be equivalent to differing in 1.6 cases out of 22 which is very little over the number in which I differed from the Jury. In the case of Assessors I find I differed from them either wholly or partially in 33 cases out of 82, whereas out of that number of cases (82) according to the figures for the Presidency and South Canara for 10 years I should have differed from the Assessors only in 21.8 and 24.1 cases respectively.

4. Statement III shows the result of references made by me in cases in which sentences of death were passed compared with the result of such references for the Presidency, and for South Canara for 9 years up to 1893 the only years for which I have the figures. It will be seen that a different result in one *case* would have made the results of my references almost exactly equal to those of the Presidency. In the case of two *persons* two Judges differed as to the correctness of the convictions, and on reference to a 3rd Judge one accused was acquitted and the other sentence supported.

5. Statement IV shows the result of appeals to the High Court from my decisions in Sessions Cases compared with the figures for the Presidency and for South Canara for 9 years. It will be seen by comparing the figures given in column 3 with the corresponding figures in columns 6 and 7 how closely my figures correspond either with the figures for the Presidency or with the figures for South Canara for 9 years. It will be seen that if the result in *one case* had been different and my decision had been confirmed in place of having been reversed the correspondence would have been still more marked.

6. I enclose 3 statements in manuscript for reference if necessary showing how my figures in the appended statements were arrived at. The figures for the Presidency and for South Canara are almost entirely taken from the Annual Criminal Administration Reports.

I have the honor to be,
Sir,
Your most obedient Servant,

W. C. Holmes

District and Sessions Judge.

Statement No. I.

Showing the result of trials before W. C. Holmes Esquire, while Sessions Judge of South Canara compared with the general result for the Presidency for 10 years ending 1893 and for South Canara for 11 years ending 1894.

			Mr. Holmes's actual figures.	Actual figures for the Presidency for 10 years ending 1893.	Actual figures for South Canara for 11 years ending 1894.	What the figures would be were the results according to the	
						Average for Presidency for 10 years.	Average for South Canara for 11 years.
CASES.		No. brought up	123				
	Disposed of	Withdrawn	14	Figures not available.	Figures not available.	Figures not available.	Figures not available.
		Acquitted	37				
		Convicted	63				
		Partly convicted and partly acquitted.	8				
		Total	122				
	Transferred		1				
		Total	123				
PERSONS.	Under trial		277	25,527	756	277	277
	Disposed of	Withdrawn	28	13,039	391	141·49	143·2
		Acquitted	151				
		Convicted	83	10,507	306	114·3	112·1
		Committed or referred	14	1,074	33	11·6	12.09
		Died, escaped or transferred	1	92	..	·9	..
		Total	277	24,712	730	..	..
	Pending	In custody	..	615	7	6·6	2·56
		Not in custody	..	200	19	2·1	6·9
		Total	277	25,527	756	276·99	276·85

Statement No. II.

Shewing the result of trials by Jury and with the aid of assessors before or by W. C. Holmes Esquire, while Sessions Judge of South Canara, compared with the results for the Presidency and for South Canara for 10 years up to 1892 inclusive.

			Mr. Holmes's actual figures.	Actual figures for the Presidency for 10 years.	Actual figures for South Canara for 10 years.	What the figures would be were the results according to the	
						Average for the Presidency for 10 years.	Average for South Canara for 10 years.
CASES TRIED BY JURY.	Number of cases tried.	In which the Court approved of the Verdict	21	3514	62	20·9	20·36
		In which the Court did not approve of the verdict — Wholly	..	104	2	·6	·66
		In which the Court did not approve of the verdict — Partially	1	78	3	·5	·98
		In which the Court did not approve of the verdict — *Total*	1	182	5	1·1	1·64
		Grand Total	22	3696	67	22	22
	Number of persons of the verdict in respect to whom the Court disapproved.	Whose cases were referred under Section 307 Cr. P. C.	1	358	5	·8	1
		Whose cases were not referred under Section 307 Cr. P. C.	..	89	..	·2	..
		Total	1	447	5	1	1
CASES TRIED WITH AID OF ASSESSORS.	Number of cases in which the Court agreed with the assessors		49	4434	168	60·2	57·9
	Number of cases in which the Court differed from	One assessor	8	450	35	6·1	1·7
		Majority of assessors	..	32	5	·5	1·7
		All assessors	25	1117	30	15·2	10·4
		Total	33	1599	70	21·8	24·1
		Grand Total	82	6033	238	82	82

Statement No. III.

Showing the mode of disposal of Sentences of death passed by W. C. Holmes Esquire while Sessions Judge of South Canara compared with the general result for the Presidency for 9 years and of South Canara for 9 years to 1893 inclusive.

	Mode of disposal.	Mr. Holmes's actual figures.	Actual figures for the Presidency for 9 years.	Actual figures for South Canara for 9 years.	What the figures would be were the results according to the	
					Average for the Presidency for 9 years.	Average for South Canara for 9 years.
CASES.	Confirmed	5	300	14	6·27	6·69
	Modified	2	103	4	2·15	1·91
	Reversed and acquittal ordered	3	89	3	1·96	1·43
	Confirmed &c. as regards some Appellants	1	11	0	·23	..
	Reversed and new trial ordered	0	23	2	·48	·95
	Total	11	526	23	11	11
PERSONS.	Confirmed	6	340	14	7·06	7·58
	Commuted to transportation	1	111	4	2·3	2·16
	,, to Rigorous Imprisonment	1	6	0	·12	..
	Reversed and acquittal ordered	5	138	4	2·86	2·16
	,, and new trial ,,	0	31	2	·64	1·08
	Total	13	626	24	13	13

Statement No. IV.

Shewing the number and result of appeals to the High Court from decisions of W. C. Holmes Esquire while Sessions Judge of South Canara compared with the general result of such appeals for the Presidency and for South Canara for 9 years ending 1893.

			Mr. Holmes's actual figures.	Actual figures for the Presidency for 9 years to 1893 inclusive.	Actual figures for South Canara for 9 years to 1893 inclusive.	What the figures would be were the results according to	
						General result of the Presidency for 9 years.	General result of South Canara for 9 years.
CASES.		In cases summarily rejected	9	1428	9	10·01	4·37
	Convictions.	Confirmed	13	1940	30	13·61	14·57
		Sentence. Varied	5	582	9	4·08	4·37
		Sentence. Reversed	4	348	10	2·45	4·86
		Reversed and remanded	..	58	2	0·41	0·97
		Confirmed as regards some Appellants	..	81	1	0·57	0·48
	Acquittals.	Confirmed	..	37	1	0·26	0·48
		Reversed and new trial ordered	1	75	2	0·52	0·97
		Reversed, conviction recorded and sentence passed	..	28	1	0·20	0·48
	Verdict of Jury.	Upheld	..	54	2	0·38	0·97
		Modified	..	5	..	0·03	0·00
		Set aside	1	69	1	0·48	0·48
		Total	33	4705	68	33	33
PERSONS.		In cases Summarily rejected	13	2256	11	16·60	7·01
	Convictions.	Confirmed	16	3196	44	23·52	28·02
		Sentence. Varied	5	966	9	7·10	5·73
		Sentence. Reversed	10	690	14	5·07	8·91
		Reversed and remanded	..	151	2	1·11	1.27
	Acquittals.	Confirmed	..	66	2	0·48	1·27
		Reversed and new trial ordered	13	188	2	1·38	1·27
		Reversed, conviction recorded and sentence passed	..	38	3	0·28	1·91
	Verdict of Jury.	Upheld	..	174	3	1·28	1·91
		Modified	..	2	..	0·01	0·00
		Set aside	1	155	1	1·14	0·64
		Total	58	7882	91	57·97	57·98

[G/9]
2,600—15-8-95.

Current No. 5643 Judl. Department.

Telegram
From
W. C. Holmes Esq ICS

No.

Dated 30 Nov.
Received 30 Nov. Regd 2 Dec } 95
Enclosures

SUBJECT.

Requests that, as the submission of satisfactory explanation from Europe is impracticable, govt. will expedite the reference alluded to in Govt. No. 2440 Jud Dl.

No.

District and Sessions Court,
South Canara, 27th November 1895.

INDIAN TELEGRAPHS.

Code Class. | Monthly Number.

To (Office) | From (Office)

Words.	Day.	Hour.	Minute.	Official Instructions.

To (Person) | From (Person)

32 Word Form.

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At ... Hrs. ... Min. by | At ... Hrs. ... Min. by

Telegraph Master.

C. G. P.—No. 29 T—25-5-94—60,00,000.

MADRAS FORT 30-11-95

laid down in the Procedure Code was, as is invariably done in every case I try, punctiliously and carefully followed.

As is required by Section 271, the trial was opened by the reading of the charges against the accused. These charges were the three charges sent up by the committing Magistrate. One of them was of abetment against one of the accused. The other two charges against the other accused were as follows:—

"(1). That you from the evening of the 26th February 1895 till about mid-"night of 27th February 1895 wrongfully confined the deceased Shankara Bhatta at "Tallur village for the purpose of constraining the said Shankara Bhatta to cause the "restoration of certain jewels stolen from Shantimurtiappa's house, and that you have "thereby committed an offence punishable under Section 348 I. P. C. and within the "cognizance of the Court of Sessions.

No.

District and Sessions Court,
South Canara, 27th November 1895.

From

W. C. Holmes Esquire, B. A., I. C. S.,

District and Sessions Judge,

South Canara.

To

The Registrar of the

High Court of Judicature,

Appellate Side,

MADRAS.

Sankara Bhatta's case
(Sess. case 15.)

Sir,

I have the honor to acknowledge the receipt of the Proceedings of the High Court No. 2,296, Judicial, dated 4th November 1895, with reference to Sessions Case 15 of 1895 on my file, stating that the High Court did not at all understand the difficulty I felt as to the charges in the case, criticising the extent to which two witnesses were, as the High Court thought, examined by the Court, and pointing out that some questions were erroneously disallowed.

2. I am not called on for any explanation, but, as I am about to proceed to Europe on furlough, I beg to be allowed to represent what happened from my point of view.

3. The case to which the Proceedings of the High Court refer—15 of 1895—came on in due course on the afternoon of Friday, the 31st May last. Every step laid down in the Procedure Code was, as is invariably done in every case I try, punctiliously and carefully followed.

As is required by Section 271, the trial was opened by the reading of the charges against the accused. These charges were the three charges sent up by the committing Magistrate. One of them was of abetment against one of the accused. The other two charges against the other accused were as follows:—

"(1). That you from the evening of the 26th February 1895 till about mid-"night of 27th February 1895 wrongfully confined the deceased Shankara Bhatta at "Tallur village for the purpose of constraining the said Shankara Bhatta to cause the "restoration of certain jewels stolen from Shantimurtiappa's house, and that you have "thereby committed an offence punishable under Section 348 I. P. C. and within the "cognizance of the Court of Sessions.

"(2). That you on or about the 27th February 1895 at night voluntarily "caused grievous hurt to the said deceased Shankara Bhatta, for the purpose of con- "straining the said Shankara Bhatta to restore the said jewels, and that you have thereby "committed an offence punishable under Section 331 I. P. C. and within the cognizance "of the Court of Sessions."

A little consideration will show that the 2nd charge was wholly illegal.

In framing the 2nd charge, the committing Magistrate had fallen into a mistake that is frequently made in this country. The complaint against the accused was that they, at several different places in the small village of Tallur, from time to time during a considerable number of hours, had beaten Shankara Bhatta, or had abetted his being beaten, with a view to constraining him to restore certain stolen property. At least three of the alleged beatings would have fallen within the time specified in the 2nd charge—"on or about the 27th February at night." It is evident from the 2nd charge as well as from the Magistrate's order of commitment that the Magistrate thought that the whole series of alleged beatings, or at any rate the alleged beatings on the night of the 27th February, could be regarded as one offence made up of parts. He probably thought that the case was one to which the first paragraph of Section 71 of the Penal Code had some application. That section says that when an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such offences, unless it be so expressly provided. The meaning of the section is made clear by illustration (*a*) which is that, if A gives Z 50 strokes with a stick, A, though each stroke is technically an offence, is liable to only one punishment for *the whole beating*. But the section has no application whatever to the facts of Case 15 of 1895, because what was alleged was that there were a series of beatings at different places and at different hours. The Magistrate should have considered separately the evidence as to each particular beating and discharged or committed the accused according as he found there were or were not sufficient grounds for doing so in each particular case. Each beating may have been made up of parts, but the series of alleged beatings could not be regarded as parts of a single offence. For each separate beating, if proved against him, each accused was liable to a separate punishment, and as each separate beating, if true, constituted a distinct offence, it was necessary under Section 233 of the Code of Criminal Procedure that there should be a separate charge for each of the alleged beatings for which the accused were to be tried.

Now, here my difficulties about the charges arose. Neither by a perusal of the charges framed by the committing Magistrate, nor by a perusal of the Magistrate's order of commitment, nor by a perusal of the evidence taken by the committing Magistrate was it possible for me to say with any certainty in the case of which of the alleged beatings the committing Magistrate considered that there was a *prima facie* case made out against the accused. The learned Vakil who, in the absence of the Public Prosecutor, conducted the prosecution was exactly in the same predicament.

He could not tell as to which of the alleged beatings the Magistrate considered there was a *prima facie* case, nor could he tell, any more than I could, for which of the alleged beatings the Magistrate would have committed the accused, had he thought it necessary to frame a separate charge in the case of whichever of the alleged beatings he considered there were sufficient grounds for committing the accused.

It seems to me to be a question whether it would not have been a more correct procedure for me to have stopped the case altogether, and to have referred the case to the High Court on the ground that the commitment should be quashed as illegal. Section 226 Cr. P. C., however, is very wide and allows a charge to be framed by the Sessions Court, even when there is no charge framed by the Magistrate; so that possibly I was right in going on with the case.

Whether right or wrong, the course I followed was to frame, on Saturday the 1st of June before the evidence began to be heard, a charge which I called the 1st added charge. That charge referred to one of the alleged beatings on the night of the 27th February as to which, so far as I was able to gather from the order of commitment, the Magistrate seemed to think there was a *prima facie* case. As to the rest of the alleged beatings, I postponed framing charges till the evidence of the most important witness in the case had been taken. By the aid of his evidence, and by the aid of the records of the committing Magistrate, I was in a position to see as distinctly as was possible under the circumstances what charges should be framed. I then added five more charges, which seemed to cover the most important of the alleged offences.

I think it will be thus seen that my difficulties in framing the charges were not inconsiderable.

4. In the 2nd paragraph of their Proceedings the High Court say that, assuming the record to be accurate, there was an irregularity on my part in taking the examination of two witnesses, the 9th and 11th, almost altogether out of the hands of the Public Prosecutor.

On referring to the original deposition of the 11th witness, Inspector Boyer, I find that the Vakil conducting the Prosecution only asked him two questions to prove a plan of the scene of the alleged offences. I then asked him a few—perhaps six—questions on an exceedingly important point, namely, the dimensions of the well into which Shankara Bhatta either was thrown or threw himself, and I elicited the following information:—"I saw the well in Tallur in the Schoolmaster's house. Its "diameter was 6 feet. Its depth to the bed of the well was 22 feet on one side, 21 in "the centre and 20¼ on the other side. There were six sticks across the mouth of the "well. They were 3 inches apart and some closer. The sticks very nearly covered one "half of the well." The answers to my questions occupy five lines (31 to 35 of page 96) of the printed papers. The cross-examination then began. Where the cross-examination began is shown most distinctly in the original deposition by the usual sign XX^{d}. A copy of Inspector Boyer's deposition was sent up to the High Court though

From

W. C. Holmes Esquire,

District and Sessions Judge,

South Canara.

To

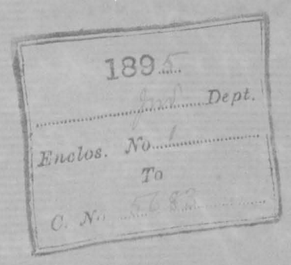
The Registrar of the

High Court of Judicature,

Appellate Side,

Madras.

Submitting an explanation with reference to H. C. Proceedings No. 2,296, Judicial, dated 14th November 1895.



District & Sessions Court
South Canara 27th November '95.

CHIEF SECRETARY'S
2 DEC 1895
GOVERNMENT OF MADRAS
CURRENT NO. 5683
46 P.

From

W. C. Holmes Esquire B.A., I.C.S.

District and Sessions Judge,

South Canara.

To

The Chief Secretary

to Government,

Fort Saint George,

Madras.

Sir,

in G.O. 2490 26.11.95 at beginning of this file.—

With reference to my two letters of the 15th and 21st Instant replying to G.O. No 2231 Judicial, dated 4th Instant, I have the honour to say that, since I wrote the latter of the two letters, I received from the High Court a Proceedings No 2296 Judicial, dated 4th November 1895 criticising the way I dealt with Session Case No 15 of 1895 on my

Sankata Bhatta's case

file. It may be that the High Court will send a copy of its Proceedings to Government. At any rate most of the criticisms have been reported in the newspapers and I think I am entitled, Considering the terms of the letter of the Registrar of the High Court, referred to in G. O. No 2231 Judicial dated 4th Instant, to lay before Government the defence I have made to the criticisms of the High Court, especially as I am anxious that my leave out of India may not be unnecessarily delayed.

x for the H. C. bid them. 9/0
2037
26.11.95

2. I therefor beg to enclose a copy of my letter to the Registrar of the High Court, replying to its Proceedings No 2296 dated 4th November 1895, of this date No 1171 with 6 spare copies

I have the honour to be
Sir
Your most obedient Servant

L. V. Holmes
I.C.S.
District & Sessions Judge

CURRENT No. 5683

Judicial Dept

From

W. C Holmes Esq
Dt + Sessions Judge
South Canara.

To The Chief Secretary
to Government
Fort Saint George
Madras

No.

Enclosures: 1 + six sp-copies of Encl.

Dated 27th November 1895

Despatched. " "
Received 2nd Decr 1895

Submitting a further communication to Government with reference to G. O No 2231 Judicial dated 4th November 1895.

W 2441 26.11.95 — To await High Court's reply to go. 2437 26.11.95 — Sessions Judge's reply to go. WR 4/12/95

Print A

No.

District and Sessions Court,
South Canara, 27th November 1895.

47 SP

FROM

W. C. Holmes Esquire, B. A., I. C. S.,
District and Sessions Judge,
South Canara.

TO

The Registrar of the
High Court of Judicature,
Appellate Side,
MADRAS.

Sir,

I have the honor to acknowledge the receipt of the Proceedings of the High Court No. 2,296, Judicial, dated 4th November 1895, with reference to Sessions Case 15 of 1895 on my file, stating that the High Court did not at all understand the difficulty I felt as to the charges in the case, criticising the extent to which two witnesses were, as the High Court thought, examined by the Court, and pointing out that some questions were erroneously disallowed.

2. I am not called on for any explanation, but, as I am about to proceed to Europe on furlough, I beg to be allowed to represent what happened from my point of view.

3. The case to which the Proceedings of the High Court refer—15 of 1895—came on in due course on the afternoon of Friday, the 31st May last. Every step laid down in the Procedure Code was, as is invariably done in every case I try, punctiliously and carefully followed.

As is required by Section 271, the trial was opened by the reading of the charges against the accused. These charges were the three charges sent up by the committing Magistrate. One of them was of abetment against one of the accused. The other two charges against the other accused were as follows:—

"(1). That you from the evening of the 26th February 1895 till about mid-"night of 27th February 1895 wrongfully confined the deceased Shankara Bhatta at "Tallur village for the purpose of constraining the said Shankara Bhatta to cause the "restoration of certain jewels stolen from Shantimurtiappa's house, and that you have "thereby committed an offence punishable under Section 348 I. P. C. and within the "cognizance of the Court of Sessions.

"(2). That you on or about the 27th February 1895 at night voluntarily "caused grievous hurt to the said deceased Shankara Bhatta, for the purpose of con- "straining the said Shankara Bhatta to restore the said jewels, and that you have thereby "committed an offence punishable under Section 331 I. P. C. and within the cognizance "of the Court of Sessions."

A little consideration will show that the 2nd charge was wholly illegal.

In framing the 2nd charge, the committing Magistrate had fallen into a mistake that is frequently made in this country. The complaint against the accused was that they, at several different places in the small village of Tallur, from time to time during a considerable number of hours, had beaten Shankara Bhatta, or had abetted his being beaten, with a view to constraining him to restore certain stolen property. At least three of the alleged beatings would have fallen within the time specified in the 2nd charge—"on or about the 27th February at night." It is evident from the 2nd charge as well as from the Magistrate's order of commitment that the Magistrate thought that the whole series of alleged beatings, or at any rate the alleged beatings on the night of the 27th February, could be regarded as one offence made up of parts. He probably thought that the case was one to which the first paragraph of Section 71 of the Penal Code had some application. That section says that when an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such offences, unless it be so expressly provided. The meaning of the section is made clear by illustration (*a*) which is that, if A gives Z 50 strokes with a stick, A, though each stroke is technically an offence, is liable to only one punishment for *the whole beating*. But the section has no application whatever to the facts of Case 15 of 1895, because what was alleged was that there were a series of beatings at different places and at different hours. The Magistrate should have considered separately the evidence as to each particular beating and discharged or committed the accused according as he found there were or were not sufficient grounds for doing so in each particular case. Each beating may have been made up of parts, but the series of alleged beatings could not be regarded as parts of a single offence. For each separate beating, if proved against him, each accused was liable to a separate punishment, and as each separate beating, if true, constituted a distinct offence, it was necessary under Section 233 of the Code of Criminal Procedure that there should be a separate charge for each of the alleged beatings for which the accused were to be tried.

Now, here my difficulties about the charges arose. Neither by a perusal of the charges framed by the committing Magistrate, nor by a perusal of the Magistrate's order of commitment, nor by a perusal of the evidence taken by the committing Magistrate was it possible for me to say with any certainty in the case of which of the alleged beatings the committing Magistrate considered that there was a *prima facie* case made out against the accused. The learned Vakil who, in the absence of the Public Prosecutor, conducted the prosecution was exactly in the same predicament.

48 SP

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It seems to me to be a question whether it would not have been a more correct procedure for me to have stopped the case altogether, and to have referred the case to the High Court on the ground that the commitment should be quashed as illegal. Section 226 Cr. P. C., however, is very wide and allows a charge to be framed by the Sessions Court, even when there is no charge framed by the Magistrate; so that possibly I was right in going on with the case.

Whether right or wrong, the course I followed was to frame, on Saturday the 1st of June before the evidence began to be heard, a charge which I called the 1st added charge. That charge referred to one of the alleged beatings on the night of the 27th February as to which, so far as I was able to gather from the order of commitment, the Magistrate seemed to think there was a *prima facie* case. As to the rest of the alleged beatings, I postponed framing charges till the evidence of the most important witness in the case had been taken. By the aid of his evidence, and by the aid of the records of the committing Magistrate, I was in a position to see as distinctly as was possible under the circumstances what charges should be framed. I then added five more charges, which seemed to cover the most important of the alleged offences.

I think it will be thus seen that my difficulties in framing the charges were not inconsiderable.

4. In the 2nd paragraph of their Proceedings the High Court say that, assuming the record to be accurate, there was an irregularity on my part in taking the examination of two witnesses, the 9th and 11th, almost altogether out of the hands of the Public Prosecutor.

On referring to the original deposition of the 11th witness, Inspector Boyer, I find that the Vakil conducting the Prosecution only asked him two questions to prove a plan of the scene of the alleged offences. I then asked him a few—perhaps six—questions on an exceedingly important point, namely, the dimensions of the well into which Shankara Bhatta either was thrown or threw himself, and I elicited the following information:—"I saw the well in Tallur in the Schoolmaster's house. Its "diameter was 6 feet. Its depth to the bed of the well was 22 feet on one side, 21 in "the centre and 20¼ on the other side. There were six sticks across the mouth of the "well. They were 3 inches apart and some closer. The sticks very nearly covered one "half of the well." The answers to my questions occupy five lines (31 to 35 of page 96) of the printed papers. The cross-examination then began. Where the cross-examination began is shown most distinctly in the original deposition by the usual sign XX^{d}. A copy of Inspector Boyer's deposition was sent up to the High Court though

no copy was, I think, necessary, and, unfortunately, in the copy the place where the cross-examination began is not shown. The mistake was unfortunately continued in the printed papers and what the High Court were led to think was examination by me was really the cross-examination by the Vakil for the 1st and 2nd accused.

The High Court say that I quite erroneously disallowed some of my own questions put to Inspector Boyer on the ground that they were irrelevant. It will be now seen that that is a mistake. I find I disallowed altogether only two questions put to Inspector Boyer neither of which was put by me. They were questions in re-examination and were disallowed chiefly on the ground that they would introduce new matter and that the new matter proposed to be introduced was not such as would warrant the Court's allowing its introduction.

What happened in the case of the 9th witness is not quite so clear. My notes are the most reliable record of what took place, and they do not show that I put a single question to Kusa Beliya the 9th witness during the whole of his examination-in-chief. It is my practice to write in my notes "To Court" whenever any answers are given to Court questions, and to write the answers with a larger margin than in the case of other answers. My notes do not show that I put any question to Kusa Beliya till after the completion of the re-examination, when I asked him two questions. In the vernacular record of Kusa Beliya's evidence, after he said that he was called at night when he was in his lodging, there are the words "To Court question" and then the words translated at line 3 page 59 of the printed papers thus "I had gone to sleep inside my house when I was called." In the translation of the vernacular deposition as well as in the printed papers, the words "To Court question" are translated "To Court," and the words "To Court" are made to begin a paragraph which they do not in the original. What happened was I believe this—after the witness had said that he was in his house when he was called on the night in question, I suggested to the Vakil conducting the prosecution that he should ascertain if he were sleeping. The witness was a very important witness, and it was necessary to elicit from him precise details on every point. I did not put the question myself. I only suggested it. I may have suggested other questions in the examination-in-chief, if any points to which I attached importance were not brought out sufficiently clearly, but I did not take the examination into my own hands as the High Court were led to believe by the error in the printed papers and in the translation of the vernacular deposition.

5. In the 3rd paragraph of the Proceedings, the High Court observe that the question to the Medical witness as to whether there were any signs of death by drowning was a permissible question, and point out that the proper form of the question would have been "Were there any signs of death by drowning? if so, describe them," and observe that the objection of the accused's Vakil (allowed by the Judge) that it was a leading question was frivolous.

The deposition of the Apothecary was taken down by me in English, and what was recorded on the point is:—

"*Q.* Were there any signs of death by drowning present?

"*Mr. Mascarenhas.* There is no charge of that offence. It is leading.

"*Court.* Ask what are the symptoms of death by drowning."

What happened was this. Mr. Mascarenhas, the Vakil for the 1st and 2nd accused, took two objections to the question "Were there any signs of death by drowning present?" One objection was that the question was leading. The other was that there was no charge against his clients that they caused the death of Shankara Bhatta by drowning him, and that therefore the question was irrelevant. To understand this objection, it must be remembered that the committing Magistrate considered that Shankara Bhatta committed suicide by jumping into the well, and did not commit the accused on a charge of causing Shankara Bhatta's death. I saw that the form of the question was not quite correct—a view of which I think the High Court approve. I did not, strictly speaking, disallow the question. I suggested that its form should be changed, and my suggestion was at once acquiesced in by the Vakil conducting the prosecution, and the witness gave in detail the *post mortem* symptoms of death by drowning. He had previously given a detailed account of the result of the *post mortem* examination of Shankara Bhatta's body; so, the Assessors and I were able to judge for ourselves whether there were signs of death by drowning. After describing the usual symptoms of death by drowning, the witness added "All may be absent and yet death may be due "to drowning". He was then asked "Is there any particular mark by which you can say "death was or was not the result of drowning?", to which the witness gave an answer to which I need not now refer.

6. I trust the Honorable Judges will find this explanation satisfactory.

I have the honor to be,

Sir,

Your Most Obedient Servant,

Sd/ W. C. Holmes

District and Sessions Judge.

(True copy)

W. C. Holmes

District and Sessions Judge.

3-12-95

Sessions Judge, South Canara

From

W. C. Holmes Esquire,
District and Sessions Judge,
South Canara.

To

The Registrar of the
High Court of Judicature,
Appellate Side,
Madras.

CHIEF SECRETARY'S OFFICE
-6 DEC. 1895
GOVERNMENT OF MADRAS

Submitting an explanation with reference to H. C. Proceedings No. 2,296, Judicial, dated 4th November 1895.

5767
Print
50

District and Sessions Court

South Canara 3rd December 1895.

No 1204.

From

The District and Sessions Judge

South Canara.

To

The Chief Secretary.
to Government.
Fort Saint George.
Madras.

Sir,

I have the honour to — acknowledge the receipt of G. O. No 2437, Judicial, dated 26th November 1895, requesting me to forward to Government any remarks I have to offer upon the Proceedings of the High Court dated the 4th November No 2296, Judicial.

2. Immediately on the receipt of the Proceedings of the High Court, I prepared an explanation, which I submitted to the High Court on the 27th ultimo. I beg to enclose a copy of my explanation. I trust my explanation

will have satisfied the High Court on the points raised in the Proceedings, and I trust my explanation will also satisfy Government.

3. I think I am entitled to. Submit that my procedure in dealing with the case was as flawless as it was possible to be under the circumstances.

I have the honour to be
Sir
Your most obedient Servant.

Wm Holmes

Dt & Sessions Judge.

Lost

Grenada

CURRENT NO. 5767

From

The District Sessions Judge
South Canara.

To

The Chief Secretary
to Government
Fort Saint George
Madras.

Dated 3rd December 1895.

Despatched
Recd 6/12

No 1204

Enclosures one

Mr. Holmes
Submitting reply to G.O.
No 2437 Judicial, dated
26th November 1895.

[G/9]
2,600—15-8-95.

Current No. 5789 Public DEPARTMENT.

Telegram
From
W.E. Holmes Esq ICS

No.

Dated 6 } Decr 95
Received 7 }

Enclosures

SUBJECT.

Regarding his explanation called for in certain cases.

Submitted to C.S. The explanation referred to in this telegram is in reply to G.O. 2464 26.11.95 it has to come through the High Court & to have the Judges remarks upon it. This is the last of the explanations called for, & as soon as it comes the papers can all go up for orders. But orders cannot possibly be passed by Monday, nor can it be found out by then whether any personal or further explanation will be thought necessary by Govt's. It is not likely, however that any is

CURRENT No. 5769.

UNDER SECRETARY
7 DEC 95
PUBLIC & Tg DEPTS.

0316.9

INDIAN TELEGRAPHS.

Code Class. 10/2 Monthly Number.

To (Office) Madras | From (Office) Mangalore

Words.	Day.	Hour.	Minute.	Official Instruction
103	6	12	43	Defd 1 Rma

To (Person) Madras. | From (Person) W. C. Holmes

Your telegram 2nd explanation submitted to high court leave for bombay monday will remain in india if any further explanation is required am ready to give any personal explanation wanted and am willing and anxious to go from bombay to madras for that purpose if in the least necessary beg matter be laid before his excellency personally bombay address great western hotel.

Ofd Send me all papers about this again today

Subs 7/12

Recd. from LN. | Sent to MADRAS LN. 6-12-95.

At Hrs. Mts. by | At Hrs. Mts. by

Telegraph Master.

64 Word Form. F. C 2.

C & P.—No. 368 T—23.12-94—24,00,000

[C. / 25]
300—5-10-95

Judicial Department.

C. No.'s 5573, 5643, 5683, 5767 & 5787

FOR ORDERS.

Please see U.S's note on the current. I submit that there is no necessity for detaining Mr Holmes in India and that he can go. A personal explanation is out of the question - If the Secretary to this Paper is submitted to Mr Holmes for Orders

10/12/95

9/12/95.

Recd 11/12

Telegraph to Mr. Holmes at the Great Western Hotel, Bombay.

"Your telegram 6th. No necessity to remain in India or to give personal explanation."

11/12/95

[G/9]
2,600—15-8-95.

Current No. 4228 Public
DEPARTMENT.

FOR ORDERS.

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

From H. Holmes Esq. Bombay.

No.

Dated 14-12-95
Received 16-12-95
Reg.d 17-12-95
Enclosures

SUBJECT.

Informing that he is leaving India by the P&O SS "Caledonia" on the 16th Dec 95.

awaiting High Court's reply to
G.O. 2441/26-11-95

Mr. Bright
Cus. 6078.

CURRENT No. 4228.

GREAT WESTERN HOTEL,
BOMBAY.

CHIEF SECRETARY * BOMBAY GOVERNMENT * DEPARTMENT OF MARINE
16 DEC. 1895

15th Dec 95

Sir

I have to thank you for your telegram of 13th inst. which I received on my arrival at Bombay on the 12th and to inform you that in consequence I have not postponed the date of my departure from India I sail today by the P & O s s "Caledonia" for Marseilles. My address in Europe will be

c/o Messrs P Macfadyen & Co
Winchester House
Old Broad St E.C.
London

I am the honor Sir
your most obt Servt

W. Holmes

Chief Secy to Govt of Madras

CURRENT No. 6078

Judicial {189} Department.

No. 4

FROM

CHIEF SECRETARY * BOMBAY GOVERNMENT * DEPARTMENT OF
23 DEC. 1895

THE Registrar OF THE HIGH COURT
OF JUDICATURE AT MADRAS,
APPELLATE SIDE.

31

Dated 20 December } 1895.
Received 23rd

Rep 24/95

No. 2631 Judl
Enc Two

Abstract.-

Forwarding copies of letters nos 1205 & 1213 from Mr Holmes Sess. Judge of South Canara observing stating that the Judge should have taken notes of all material evidence and that the Public prosecutor does not seem to have referred to the Vernacular record which forms the real record in the case.

in reply to 90. 2441. J. 26.11.95

The Judge's notes rather than

When forwarding the a

letter

A/S
b/Mr Holmes replies to 90's
2441

District and Sessions Court
South Canara, 3rd December
95

№ 1205

From

W. C. Holmes Esqr B. a. I. C. S
District & Sessions Judge
South Canara

To

The Registrar of the High Court
of Judicature Appellate side
Madras.

Sir,

I have the honour to acknowledge the receipt of your letter № 3413 dated 28th ultimo forwarding to me a copy of G. O. № 2441 Judicial, dated 26th ultimo and requesting, that I should submit the explanation called for.

2. What I am called on

to

to explain is, why I omitted to record in my notes of the evidence of Head Constable Pereira, examined as the 16th witness for the Prosecution in Sessions Case No 33 of 1894, anything referring to the first prisoner's connection with other prisoners, whereas in the deposition there was a considerable body of evidence to incriminate the first accused.

3. It is my invariable practice to enter on my notes — everything in the evidence that I consider important and the fact that I did not enter the matters in question in my notes, is no doubt due to my not considering the matters important.

4. The case against the first accused rested solely on the evidence of the 12th, 13th, 14th and 15th witnesses for the Prosecution. I totally and utterly discredited them and I do not think any person who heard their evidence could possibly have formed a different opinion. That being so, what the Head Constable Pereira deposed to, was really immaterial, because no conviction could by any possibility have been based on that evidence alone. That is no doubt the reason, I did not enter the matters referred to on my notes.

(vide para 3 of Govt. Pleader's letter in G.O. 566 dt. 14.3.95)

5. I have wired to Tellicherry for copies of my notes of the 16th witness's evidence and of his deposition

deposition and if I find on getting them, I have anything to add I shall submit a further explanation.

I have the honour to be,
Sir
Your most obedient Servant
(Signed) W. C. Holmes.
District and Sessions Judge

(A true copy)
C Todhunter
Dy: Registrar
21.12. Appl. side

KK 24/12

KK 24/12

~~R. C. No 6450~~

From

W. C. Holmes Esq: B.A. I.C.S

Dist Sessions Judge

South Canara

To

The Registrar of the High

Court of Judicature

Madras.

Dated 3rd December 1895

Despatched

Received 6th December 1895-

No 1205-

Submitting explanation

called for in High Court's

letter No 3413 dated 28th

Ultimo.

Enclosure I to the High Court's letter dated 20 December 95 No. 2631.

Judicial.

169 b
Judl
Enclos. No.
C. No. 6078

Sessions Court.
South Canara.
5th December 1895.

No 1213.

From

W. C. Holmes Esquire I.C.S.
Sessions Judge
South Canara.

To

The Registrar of the High Court
of Judicature
at Madras.

Sir,

In continuation of my letter of the 3rd Instant, I have the honor to say that I received yesterday from Jellicherry the original deposition of Head Constable Pereira the 16th witness in Sessions Case No 33 of 1894 on my file, and my notes of his evidence.

2. I find that the explanation I gave in my letter of the 3rd as to the reason of my having omitted to take notes of part of his evidence, namely that I considered that part of his evidence unimportant, is borne out by a marginal note (on page 113) which shows that at the time I considered the matter only remotely if at

at all relevant.

3. It seems to me there has been some mis-apprehension about the value of the part of the evidence of Head Constable Pereira that I omitted from my notes. What was omitted related to the arrest of some of the accused 13 days after the alleged offence in, or in the precincts of, the first accused's house. It was never disputed in the case that most of the accused were dependants of the first prisoner, and the fact that some of the accused were arrested in or about his house or "Palace" as it is called some 13 days after the date of the alleged offence was a fact from which no material inferences as to the guilt of such persons could be drawn. They were the first

accused's dependents and their being in or about his house was to be accounted for otherwise than as conduct indicative of either of their guilt or of the guilt of the first accused. I therefore considered it was quite unnecessary to enter on my notes the details of the circumstances under which they were arrested. The evidence of Head Constable Pereira with regard to the first accused was that half an hour after his brother had, on the demand of the Superintendent of the Police opened the front door of the house, he came from inside the house and that afterwards he produced a gun, a sword and a "banku" (a kind of spear). These are not facts from which any inferences of guilt could be drawn

drawn. There was nothing suspicious in the first accused's having a gun, a sword or a "bauker" in his house, nor was his coming from the inner part of his house half an hour after the front door had been opened by his brother, a circumstance to which, as I apprehend, any importance could be attached. As I pointed out in my letter of the 3rd no Court could by any possibility have based a conviction on that evidence alone that the first accused had abetted the alleged rioting of 13 days before and the rest of the evidence against him was worthless.

4. I beg to enclose Headconstable Pereira's original deposition and my original notes.

I have the honorable Sir,
Your most obedient servant
(Signed) W.C. Holmes
Sessions Judge.

(True Copy)

~~H C J 10/80 1/95~~

From

W. C. Holmes Esquire I.C.S.
Sessions Judge
Nilgiris Canara

To

The Registrar of the
High Court of Judicature
Appellate Side.
Madras.

No 1213

Dated 5th December
Despatched.

Enclosures: two

Submitting further explanation
in reply to High Court letter
No 3413 dated 28th Ultimo.

Enclosure II to the High Court's letter dated 20 December/95 No. 2631

Judicial.

No: 2631/Jud. 6078

High Court of Judicature,
Madras: 20th December 1895.

From.

R. H. Shipley Esquire,
Ag: Registrar, High Court,
Appellate side.

To.

The Honourable Mr. J. F. Price, C.S.I.
Chief Secretary to Government,
Fort St. George, Madras.

Honble Sir.

With reference to your letter No. 2441, Judicial, dated the 26th ultimo, I have the honour to forward copies of letters Nos. 1205 and 1213 dated respectively the 3rd and the 5th instant from Mr Holmes, Sessions Judge of Tinnevelly, submitting his explanation for not having taken notes of certain evidence in Session Case No 33 of 1896.

(with two enclosures, to be returned)

2. I am directed to state that the Judge should have taken notes of all material evidence; and though the credit to be given to a witness is another matter,

he

he should not have omitted to take notes of one witness's Evidence merely because previous witnesses on the same point had been disbelieved. At the same time it has to be observed that the Vernacular record, and not the notes taken by the Judge, formed the real record in the Case, and the Public Prosecutor does not seem to have referred to it, but went by the Judge's notes only.

I think the Judge's notes alone were put up when the appeal was requested that might be made.

I have the honour to be,
Honourable Sir,
Your most obedient Servant
R H Shipley
Ag: Registrar,
Appellate side.

CURRENT No. 1263

Judicial Dept

From

The Ag Registrar,

High Court, Appellate side.

To

The Honorable the Chief Secretary,

to the Government of Madras.

(5)

Dated 16th March

Despatched, 16th March 1896.

Received,

UNDER SECRETARY
17 MAR 96
PUBLIC & JUDICIAL

No 983.

Enclosures. ~~one.~~ five.

Subject.

Forwarding with remarks, copies of the Judgments of the Sessions Court of S. Canara in sessions cases Nos. 33 & 38 of 1894.

No 6078

CURRENT No. 1263

Judicial Dept

From

The Ag Registrar,

High Court, Appellate side.

To

The Honorable the Chief Secretary,

to the Government of Madras.

(5)

Dated 16th March

Despatched, 16th March 1896.

Received, 17 MAR 96

No 983.

Enclosures. ~~one.~~ five.

Subject.

Forwarding with remarks, 1/1 copies of the Judgments of the Sessions Court of S. Canara in sessions cases Nos. 33 & 38 of 1894.

No 6078

Enclosure No. 1 , *to letter from the*
High Court of Judicature, Appellate Side, Madras,
dated 16th March 1896, *No.* 983 .

UNDER SECRETARY
17 MAR 96
PUBLIC & JUDL DEPT

Placed in
G.O. 1231
4.11.96

Copy of the appeal
judgment in criminal
appeal no 149 of 1895

1896
Jud. Dept.
Enclos. No. 1
To
G.O. 1263

300—8-4-95.

Enclosure No. 3 *, to letter from the*
High Court of Judicature, Appellate Side, Madras,
dated 16th March *1896, No.* 983 .

FROM UNDER SECRETARY
17 MAR
PUBLIC DEPT

2251
4-11-95
Govt

Pet with GO.

Copy of Judgment in
Session case No 33 of 1894

1896
Jud Dept.
Enclos. No. 3
To.
C. No. 1263

Enclosure No. 4 , to letter from the
High Court of Judicature, Appellate Side, Madras,
dated 16th March 1896, No. 983 .

UNDER SECRETARY
17 MAR 96
PUBLIC ETC DEPT

1

Please see
2251
W. W. 96

Copy of the decision Judgment
in case No 38 of 1894.

1896
Jud
Encles. No. 2
To
O. No. 1263

300—8-4-95.

Enclosure No. 5 ; to letter from the High Court of Judicature, Appellate Side, Madras, dated 16th March 1896, No. 983 :

UNDER SECRETARY'S 17 MAR 96 PUBLIC ETS DEPT.

Jud. 2231 11.11.95

Note current-numbering in front 44

27/3/96

Copy of the H. C. Judgment in Referred Trial No 27 of 1895

1896 Jud Dept. Enclos. No. 1 To G. O. No. 1263.

300—3.1.95.

Confidential.

Print paras 2-5 only

CURRENT No. 1263

No. 983

High court of Judicature,
Madras, 16th March, 1896.

291P

From

R. H. Shipley Esquire, I. C. S.,
Acting Registrar, High Court,
Appellate Side. Madras.

To

The Honourable Mr. J. F. Price, I. C. S., C. S. I.,
Chief Secretary to the Government of Madras,
Fort St. George.

Honourable Sir,

1. In compliance with the request expressed in G. O. No. 373, Judicial, dated 24th February 1896, I am directed to send you copies of the Judgments of the Sessions Court of South Canara in sessions cases Nos. 33 and 38 of 1894 (Criminal Appeal No. 149 of 1895 and Referred Trial No. 27 of 1895, on the file of this Court).

* Jud. G.O. 2231 4.11.95

* Jud. G.O. 2442 26.11.95 Print

2. The High Court passed no proceedings on the letter from Mr. Holmes, dated 25th September 1895, but addressed the Government on the subject in its letter No. 2878, dated 14th October 1895.

3. I am to state that the Honourable the Chief Justice and the Judges of the High Court have nothing material to add to the opinion they have already expressed on the subject. The reference to figures and statistics is, they consider, irrelevant to the real issue. The complaint against Mr. Holmes is that he fails to excercise due control over his Vakils, in the examination of witnesses, and, generally, in the conduct of his cases. Whether this failure be due simply to weakness, or to incapacity to distinguish between relevant and irrelevant evidence, matters, in the opinion of the High Court, very little: the result is the same, namely, a lamentable waste of public time and a risk of a miscarriage of justice.

4. The High Court is further of opinion that the circumstance of Mr. Holmes' defending his conduct, and not admitting his shortcomings, renders it hopeless to expect any material improvement. As an illustration of this, I am to draw the attention of Government to para: 4 of the High Court proceedings No. 1812, dated 16th September 1895.

5. With these few remarks the Honourable the Chief Justice and the Judges of the High Court would leave the matter in the hands of the Government.

I have the honor to be,

Honorable Sir,

Your most obedient servant,

R. H. Shipley

Acting Registrar.

[G. 24.]
500—22-4-96.

Judl. DEPARTMENT.

Papers to be read in proceedings:—

Except judgment & appeal judgment in s.c. 38 - of which 2a!

Again G.O., dated 4. 11. 1895, No. 2231. J. (A. of q's. + all enclosures)
" — — 26. 11. — 5 — 2440. J. (ditto)
~~Again G.O., dated 189 , No.~~

Current No. 5573 of 189 5, dated 21.11.95, from Dist. Judge. Canara. (1. omit statement).

Again go. Dated 26. 11. 1895, No. 2441. J. (P.) (~~para 2 + into accounts as marked in blue pencil~~).
Current No. 6078. of 1895, Dated 20.12.95., from Regr. High Court (P) (~~1 of it + all encls.~~).
Again go. 2437. J. Dated 26.11.95. (para. 3. only. A. of Cust. + Enclosures I. II. ~~IV.~~ omit 2nd).
Current No. 5633. from Canara Dist. Judge (1 of it & endo.)
— — 5767 — — (A.)
Again q's. 373 / 24.2.96 J. (Paras 1-3 only)
Cust. No. 1263 (A. of paras 2-5 only)

~~ORDER.~~

Order.

P.S.

3 P.

The above papers relate to the conduct by W. W. C. Holmes Esq., Dist. & Sessions Judge of S. Canara, of Sessions cases 33 & 38 of 1894 and 75 of 1895 on his file.

2. All three cases came before the High Court on appeal & in each of the three the Hon. the Judges adopted the unusual course of recording a separate proceeding condemning in strong terms the Sessions Judge's conduct of the original trial & ~~of bringing~~ brought the matter to the notice of Govt. Mr. Holmes' explanations in reply to the High Court's strictures in each case have been taken & the matter

now comes up for final consideration.

3) The papers printed above show that in its ~~proceedings~~ judgment remarking the first of the three cases — Sessions Case No. 33 of 1894 — for retrial, ~~in its proceedings there on~~ the High Court passed the following remarks regarding Mr. Holmes' conduct of the trial :- "The Sessions Judge ..... has made it clear that the bias of his mind was affected by one fact only, that one fact is in our opinion wholly inconclusive ..... From that point in the trial the judgment makes it clear that the Judge's mind was strongly biassed against the prosecution. From the fourth witness onwards every person called has been denounced as a "false" witness, his demeanour denounced, his evidence characterised as a tissue of falsehoods. With regard to the 15th witness the Judge has recorded in his notes (before a word of the evidence) the remark "lying written in his face". If this remark was recorded before the witness gave his evidence we cannot but characterise it as most improper, but the whole tenour of the remarks made by the Judge in the case shows strong bias & that the case was not approached in a judicial frame of mind ..... the medical evidence was not considered by the judge nor was the defence gone into. The trial was prolonged for three weeks - principally in consequence of the cross examination (wholly irrelevant) of the pleader who appeared for the first prisoner (M. Shiva Rao) & the trial at last came to an end since the Public Prosecutor declined to call for any further evidence in consequence of the attitude taken by the Judge. ..... that the Judge could not permit the overseer to be called we are quite unable to understand." 11644.

~~..... The High Court cannot but observe upon the lengths to which the Sessions Judge has allowed this case to be protracted~~

In its separate proceedings No. 1760. Fol. 10.9.95 regarding the case the High Court further remarked that

if the case had been properly conducted it need not have lasted more than three or four days, whereas it was protracted over three weeks, & that the record showed that the Sessions Judge did not exercise a proper control over his bar, & was not strong enough to exclude irrelevant matter from the cross examination of the witnesses.

In his proceedings No. 1812. Jud. 16.10.95
4. In the second of the three cases, — the Sessions case No. 38. of 1894, — dealing with both the High Court observed that if the trial of that case was to be taken as a sample of the Judge's Mr. Holmes' work it showed that he had no appreciation of the value of public time & exercised no control over the pleaders practising before him. His own notes condemned him, & justified the further inference that he could not distinguish relevant from irrelevant evidence

5. In their letter for reasons 15 Hon. the Judges
Govt. these two proceedings the High Court further observed that they have for some time been far from satisfied with Mr. Holmes' judicial work, & think that he takes the deepest interest in Judicial work, and it advisable to bring these instances of his inefficiency to the notice of Govt. The Judges have no reason to doubt that Mr. Holmes is a conscientious officer & that he does not spare himself in the performance of his duties, but they are of opinion that he is not suited to judicial work & would suggest that it may be advisable to employ him in some other department.

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6. These papers were referred to Mr. Holmes for such explanations or remarks as he might desire to offer, and his reply is contained in his letters of the 15th and 21st November read above. It will be seen that Mr. Holmes declines to admit that his conduct of the cases in question was defective, & quotes a number of statistics to prove that disposal of work in the Court has been prompt & but little interfered with on appeal. He states in para 7. of the first letter that if his explanation is con-

In go. 223. J. 4.11.95
referred to

he requests that unless

to be
sidered unsatisfactory, ~~he could~~
prefer, rather than return to
India after the furlough which he
is now taking on his return from
the furlough which he is now taking
he may be permitted to resign the Indian Civil
Service on a pension proportionate
to the length of his service, as such
a course would be preferable to a
return to duty ~~without~~ after his
superiors had lost confidence in him.

In Gō. 373. J. 24. 2. 96

The three
letters were referred by the Hon'ble
Judges of the High Court for their
remarks. ~~and~~ In the Registrar's letter of
the 6th March it is stated that
the Judges consider that Mr. Holmes'
reference to figures & statistics is irrelevant
to the real issue & that on a review
the causes of the defects in that spirit
conduct of his cases may be "the result
of the same, namely, a lamentable waste
of public time and a risk of a further
miscarriage of justice". They also are
of opinion that the circumstances of Mr.
Holmes defence, his conduct & not
admitting his shortcomings renders it

hopeless to get out any material
alteration."

8. The third of the cases
now under consideration — Sessions
Case No. 15 of 1895 — is dealt with
in Gō. 2437. J. 26. 11. 95 The conduct of
the District Magistrate & the Supt. of
Police & his Inspector have been dis-
posed of in separate proceedings. The
Sessions Judge's method of dealing
with the case is described in the
High Courts proceedings No. 2296. J. 4. 11. 95
Mr. Holmes was requested in Gō.
2437. J. 26. 11. 95 to submit his explanation
in regard to these strictures, & his
reply is contained in his letters of the
27th Nov. & 3rd Dec. 1895 printed
above. Mr. Holmes again declines
to admit that his procedure was
in any way defective.

Q. Will the Govr. in Council
have considered Mr. Holmes conduct of
these three cases, & his explanation
with care & has arrived at
the conclusion that the opinion &

shows that part of para 2.
of the High Courts proceedings
was based upon a
misapprehension, and

side of the Hon the Chief Justice & the
pro Judges of the High Court that
Judges Mr. Holmes is not suited to Judicial
ca- work is warranted by the papers
that dealt with above, & must be + his previous record
be accepted. These papers show that
see Mr. Holmes, though he apparently
to take an interest in his work &
a does not be charged with actually
reflecting it, yet suffers from an
superabundance of that sense of proportion
open mindedness which is essential
letters to the conduct of the affairs of any
Judicial office of importance under Govt., coupled
remarks with an inability to perceive his errors
the when they are pointed out to him, which,
to as the High Court & justly remarks,
refer renders it vain to hope that he
to will improve learn by experience.
the Cond Act, in C. is clearly of opinion that it
cc It is undesirable in the public interests
of that with such defects against him, Mr. Holmes
must should be employed in the Secretary
of branch of the Service, & entrusted
Hol with the care of a district with a
tal population of perhaps two million
& he accordingly resolves

to address the Rt. Hon the
Secretary of State to grant Mr.
Holmes the permission solicited
by him in para 7. of his letter of the
15th November 1895 read above,
namely that he should be
allowed to resign the Indian
Civil Service on a pension
proportionate to the service which
he has shown to his credit at
the present date.

(f.o.)

W 24 i 96

To the Hon the C.J. with C.L.

Despatch.

To the Rt. Hon. the Sec. of State. —

My Lord

We have the honour to transmit herewith for your Lordship's perusal a copy of our proceedings of this date No. — Judicial, & with reference thereto to solicit your ~~former~~ the grant to Mr. W.C Holmes, ICS. of permission to resign his position in the Indian Civil Service on a pension proportionate to the length of ~~service~~ time which he has served up to date.

2. Mr. Holmes joined the Indian Civil Service in the Presidency ~~in~~ at the end of 1877. For parts of the years 1881 and 1882 he was employed in the Financial Dept. ~~in Bombay~~ of the Govt. of India, but as he has not been successful in the time allotted to him he was

at the request of the Govt. of India)
recalled & placed again in the
ordinary line in the Presidency. (3) In
1885, ~~a case tried by him~~ when he was
Head Asst Magte of Cuddapah, a case
came under the notice of Govt. in
which he had sentenced a man to
two years' rigorous imprisonment
upon charges of criminal intimidation
& interruptions a public servant in the
discharge of his duty because he
had emplaced threats to a medical
subordinate who was endeavouring to
vaccinate her child — vaccination
at being compulsory by law at the
place where the occurrence happened.
~~The conviction was illegal~~, ~~& was upset~~ Not only was the conviction technically illegal
~~on appeal~~, but it was also evident from
Mr. Holmes' judgment that the extreme
severity of the penalty inflicted by
him was due to his suspicion that
the accused was a disorderly character
who had been concerned in some
recent riots in the town. In addition
to his grave want of judgment in
this case it was urged by the
Collector of the District that he was
of a sensitive disposition & was labouring

It is unnecessary to point out that whether this was so or not Mr. Holmes was entirely wrong in allowing his suspicions on the point to affect the sentence ~~and~~ inflicted for a totally different offence.

under great excitement caused
~~Connection with~~ by these riots, &
that he was also in indifferent
health. It however appeared
On enquiry that he had also been
guilty of grave disrespect to the
Sessions Judge (of the same district)
& of insubordination
to the High Court in refusing to
obey a case remanded to him
for that purpose & endeavouring
to discuss with the Hon the
Judges the propriety of their
order. Mr. Holmes shortly after-
wards went on furlough on
medical certificate for a year, &
on his return he was formally to
censured for his conduct & informed
that the Govt. had entertained
doubts whether he was fit to
continue as a first class Magte.
He was eventually allowed given a further
trial & was warned that any
further short comings on his part
would result in his case being
reported to the Sec. of State.
In 1890 the Hon the
Judges (of the High Court) reported to Govt. that it

M. Holmes' work as a District Sessions Judge in Bellary was unsatisfactory, that his judgments indicated a tendency to approach the consideration of evidence with a preposession against its trustworthiness and to judge of its value by a purely arbitrary standard of credibility". They also observed that he exhibited "a deficiency in the power of discriminating evidence." The Govt. thereupon decided that M. Holmes, shortly to revert to a Sub Collectorate, should not again be made a Judge, but in June 1891, on the Hon'ble Judges stating that they had no objection to his being employed in a light Court he was posted to the appointment which he now holds, namely, that of Dist. & Sessions Judge, S. Canara.

5. Towards the end of 1895 the Govt. received from the High Court the judgments, proceedings & letters which are printed in our proceedings enclosed herewith commenting in terms which could scarcely be stronger upon the inefficiency displayed by M. Holmes in his conduct of the work in his Court. It is extremely seldom that the Hon'ble Judges adopt the course of reporting to Govt. judicial officers serving under their orders, & this fact ~~renders their representations of exceptional force.~~ gives additional force to their representations. Their conclusion that M. Holmes is not fit to be a District Judge is in our opinion clearly borne out by the record of the three cases dealt with in our proceedings already referred to. We would especially invite your Lordships' attention to the original judgment in Sessions Case No. 33 of 1894 which appears to us to be a most ~~be characteristic as an~~ instructive document. M. Holmes' ordinary ~~production~~. various explanations amount to little more than a denial that his procedure was in any way defective or blameworthy, & we are unable to consider them satisfactory. We have accordingly, after careful deliberation upon the matter, arrived at the conclusion that it

South Canara is one of the lightest Courts in the Presidency & we are this it is impossible to suppose that the quality of M. Holmes' work is due to any overburdening excess in the quantity of it which is demanded of him.

is impossible in the public interests to reappoint Mr. Holmes on his return from the furlough which he is now taking as a Judge in any district in the Presidency.

6. It is, however, difficult at this stage to discover any other post to which Mr. Holmes' defects would not occasion great mischief. The papers already referred to show that he is wanting in sense of proportion and is wanting in that balanced state of mind which is indispensable in a Judge. It is impossible to overlook this fault when they are pointed out to him, but we may eventually hope that he may materially improve in that respect. With such defects against him it appears to us to be undesirable in the interests of the public that he should be appointed Collector of a district with a population of two millions of persons, as has already been pointed out he has been tried outside the ordinary line in the Financial Dept. & failed. To reduce him to the grade of a Sub Collector & Joint Magte permanently would be a most severe punishment, & would moreover occasion further opportunities

could be appointed in which his thought he undoubtedly takes an interest in his work & endeavours to perform it satisfactorily

to such an extent

the more so as he has a strong preference for the judicial side of the service which is so strong as almost to amount to a dislike of executive work.

while it would result in a pecuniary saving to the State,

for inspiring to the public in- terests through this, in- efficiency.

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7. In para 7. of his letter of the 15th Nov. printed in our proceedings enclosed Mr. Holmes has asked that if his present explanations are deemed to be unsatisfactory he may be permitted to resign the Indian Civil Service on a pension proportionate to his service. He states that he would prefer this course to a return to duty after he has lost the con- fidence of his superiors. In all the circumstances of the case we are of opinion that the adoption of this proposal would be the most satisfactory solution of the difficulty. Mr. Holmes is believed to be possessed of private means, so that the reduction in his pension would not act as a heavy punishment to him, & his resignation would relieve this Presidency of an officer for whom it is most difficult to find suitable employment.

8. We accordingly have the

honour to recommend the adoption
of this course to your Lordships most
favourable consideration. W. Holmes'
total service from the date of his
arrival was, on the 1st Oct. 1875, Eighteen
years & eight months, and as he is
required by the rules to have served 25
years total service before he is
entitled to pension of £1000 per annum
a pension proportionate to the length of
his service would amount to some
£746 per annum.

WP 25 Feb

Do.

My Dear (W.) Holmes

Directed
I am to inform you that
the Govt has meaning requested the Sec. of State
will be requested
to permit you to retire on a proportionate
pension, as you desired that it should
asked
The despatch goes by the next Mail

has found itself unable to accept
as satisfactory
your explanations regarding your
Criminal work in S. Canary
and has agreed to the adoption
of the course proposed by you in
this eventuality, viz. that

WP 26 Feb

B.C. Holmes Esq 1 Cs.

P. Rackham & Co
Home, Old Broad St.

ACCOUNTANT GENERAL'S OFFICE,
FORT ST. GEORGE,
the 5th of Nov 1876.

UNDER SECRETARY
5 NOV 76
PUBLIC DEPT

My dear Sir

W Holmes joined the service on
the 17 Aug. 1877. He has therefore
served 19 years and would if entitled
under art 623 C.S.R. get 150 £ +
20 £ + 14 = 430 £ year. If he
stays on until the 16 Aug. 1897 he is
entitled to the maximum admissible for
uninterrupted service viz £ 450.

Yours sincerely
E. Ellmanson

Mr Holmes' case

(Drafts from orders)

H.K.'s case

For notes
vide go no
1806 fwd
8 14-11-96

CONFIDENTIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—again the following papers:—

G.O., Mis. No. 2231, Judicial, dated 4th November 1895.

Read—the following paper:—

From D. W. G. COWIE, Esq., Acting Registrar of the High Court of Judicature, Appellate Side, to the Chief Secretary to Government, dated Madras, 14th October 1895, No. 2878.

I am directed to forward, for the information of the Government, copies of the High Court's Proceedings, Nos. 1760 and 1812, Judicial, dated 10th and 16th ultimo, respectively, recording certain observations on the conduct by Mr. W. C. Holmes, Sessions Judge of South Canara, of sessions cases 33 and 38 of 1894 on his file. With regard to sessions case 33 of 1894, the Hon'ble the Judges observed that Mr. Holmes had allowed the proceedings to be protracted to three weeks although the trial, if properly conducted, should not have lasted more than a few days; that he had exercised no control over his bar and was not strong enough to exclude irrelevant matter from the cross-examination of the witnesses.

As to sessions case 38 of 1894, the High Court remarked that Mr. Holmes had no appreciation of the value of public time and was unable to distinguish relevant from irrelevant evidence.

2. I am directed to state that the Hon'ble the Judges have for some time been far from satisfied with Mr. Holmes' judicial work, and think it advisable to bring these instances of his inefficiency to the notice of Government.

3. The Judges have no reason to doubt that Mr. Holmes is a conscientious officer and that he does not spare himself in the performance of his duties, but they are of opinion that he is not suited to judicial work and would suggest that it may be advisable to employ him in some other department on his return from the furlough for which it is understood he has applied.

ENCLOSURES.

IN THE COURT OF SESSIONS, SOUTH CANARA.

SESSION CASE NO. 33 OF 1894.

Present:

W. C. HOLMES, ESQ.

Queen-Empress

v.

(1) *Padmaraja* alias *Laxumapparasu Bangara*, (2) *Supi Beary*, (3) *Ali Beary*, (4) *Shidi Beary* (5) *Ucha Beary*, (6) *Sabu Beary*, (7) *Hammade Beary*, (8) *Badava Beary*, (9) *Idine Beary*, (10) *Abd-ullah Beary*, (11) *Venkatramana Bhatta*, (12) *Sanna Ali Beary*, (13) *Ibrayi Beary* and (14) *Sanna Ibrayi Beary*.

(Committed by Mr. H. Koragappa, Second-class Stationary Magistrate of Mangalore.)

Charge—Against accused two to fourteen.—(1) Culpable homicide amounting to murder, section 302, I.P.C.; (2) voluntarily causing grievous hurt, section 326, I.P.C.; (3) rioting, being armed with deadly weapons, section 148, I.P.C.

Against first accused.—Abetment of the above offences, sections 109, 302, 326 and 148, I.P.C.

Against all the accused.—Being members of an unlawful assembly, section 143, I.P.C.

Assessors.—Messrs. (1) Ub. Narasinga Rau (Saraswati Brahman), (2) Akbar Khan (Muhammadan) and (3) D. R. Baptist (Roman Catholic Christian).

Opinion of the Assessors.—Not guilty.

Finding of the Judge.—Concurred with the assessors.

Order—The accused are acquitted and set at liberty.

Judgment.—The charge against the second to fourteenth accused is that at 11 A.M., or about that time on the 3rd September, at Panemangalore, they caused injuries to Narikombu Narsappaya which they knew would be likely to cause his death, and that the said injuries caused his death and that they were guilty of murder (section 302, I.P.C.), *or* that they voluntarily caused grievous hurt to N. Narsappaya with dangerous weapons and that they thereby committed an offence under section 326, I.P.C., *and* that at the same time and place they committed rioting with the common object of causing grievous hurt to Narsappaya and thereby committed an offence under section 148.

The first accused is charged with having abetted the second to fourteenth accused with having committed the aforesaid offences.

All the accused are further charged with having unlawfully assembled together at about 9 A.M. on the 3rd September for the purpose of committing the aforesaid offences and with thereby committing an offence under section 143, I.P.C.

2. The first witness examined for the prosecution, Shivanaya, deposed that the deceased Narsappaya had got possession of lands in Nandavar that formerly belonged to the first accused Padmaraja and his family; that a suit filed by Narsappaya for possession of some more lands was pending; that Narsappaya had got sold at court auction a mulgeni holding of the first accused and had purchased it himself, "five, six, seven or eight months ago;" and that he (witness) had applied in a decree obtained by Narsappaya for the sale of the first accused's house, and that a suit by first accused's brothers to set aside the attachment was pending. The witness also deposed that he had obtained on permanent lease from Narsappaya (who is a relation of his) all the lands he had in Nandavar and that he began the cultivation of the lands in August last with men from his own village of Peramanki, nine or twelve miles from Nandavar, because he could not get men at Nandavar and left his brother Narnappaya and a relation Rangappaya to superintend the cultivation. The cultivation was obstructed by the first accused, his brothers and others, and this witness lodged complaints.

On the night of the 2nd September, in consequence of information he received, the witness went to Kandur, a village three-quarter miles from Nandavar, and there saw Narnappaya and Rangappaya wounded, and the next morning he went to Panemangalore station which he reached at 7 or 8 and made a complaint at the station; before he made the complaint he saw, he deposed, Subbia Shanbhag, a gumastah of the first accused. As the head constable of Panemangalore was ill, the witness went to Bantvál on the other side of the river, an dthere saw the police inspector who sent with him head constable Pereira, of Bantvál station, and he, the witness (as well as the witness's party—Rangappaya's brother and two servants) and a constable or two were returning to Panemangalore. Before they crossed the river by the ferry they got information, and on crossing they went to Ananta Pai's shop at which there was a crowd and saw Narsappaya sitting there wounded. The witness deposed that all he could recollect of what Narsappaya said was "Padmaraja Bangara got people collected, sent people, and got me beaten."

In cross-examination the witness professed not to remember a number of matters about litigations he had been engaged in, and it appeared that he was taking Narsappaya's part or helping Narsappaya in his acquiring land in Nandavar. It also appeared he had a bias in Narsappaya's favour, but as he was his relation that is not of much consequence. What he said in examination-in-chief appeared to be substantially true, but, of course, it does not advance the prosecution case very far.

3. The second witness examined by the prosecution was Ananta Pai. His evidence was that he was sitting in his shop in Panemangalore at about half-past 10 dictating to his son and was facing north. He saw Narsappaya coming down the sloping rock (32 on plan). It is the way, he said, that people come from Narikombu, *i.e.*, the village in which Narsappaya lives. He afterwards said he did not see him coming down the sloping rock, and said he first actually saw him when two fathoms from his shop, and he said his attention was drawn to him (Narsappaya) by a servant speaking. Narsappaya had with him a Sudra servant. When they were two fathoms from his shop, the witness deposed, the servant said "See, they are coming," and, as soon as he said it, Narsappaya at once entered his shop and entered the northern of the two compartments (see plan) and as soon as he had entered "Mappilas came and stood round and in a row."

The witness's evidence then, as recorded on pages 7, 8, 9 and 10 of my notes, was very unsatisfactory in the matter of identification of any particular person.

He said he thought fifteen or sixteen Mappilas came. He said a Bhant came and a Potter and a Brahman. He then said he knew all but two or three. When asked whose names he knew, he repeated a string of names. He was then asked if he could point them out here, and he named a number of persons in the dock. He was then asked "Did you see the others there?" and he said "Yes," and he was asked "Was Bangara there," and he said "No."

What happened according to this witness was this:—

Some one said "beat, beat." He afterwards said Shidi, fourth accused, said so, and that he said so two or three times. Then witness told the crowd not to create a disturbance in his shop and asked why they should create a disturbance in his shop. They said "Shove that dog down." He afterwards said Shidi, fourth accused, said so. Then they took up stones and threw stones and sticks at Narsappaya. He could not say who did so. Two or three got up—Shidi, Puvappa

and another—and they beat Narsappaya who was in the northern room. Shidi stood on the jugli and lunged Narsappaya with a sword. Narsappaya then went to the southern compartment from the northern through the door between the two. Two or three others got up on the jugli, but he could not say who they were, and they all beat Narsappaya with sticks. Some bottles were broken. Others of the crowd stood "this side and that side" and flourished swords and sticks. His son jumped down. Narsappaya took up the pair of scales (produced in court) and parried the blows. The blows became more forcible and the witness jumped down. He did so to see where his boy was. He went to the opposite shop. He cried out there for the first time. The beating still went on. He went to his house and found his son there. A dog-cart passed with a lady in it. Witness followed it and went to his shop and found Narsappaya sitting wounded.

In cross-examination he stated that the offence took place on the Chowti day and that it was an important festival with persons of his caste. He said that he that morning had distributed at his shop 50 or 75 cocoanuts and 8 annas in cash in 3-pie pieces to about 100 people, and that the distribution was finished by 8 o'clock. He said that after the distribution it was usual to go to feast, and he said that it was usual for the Chowti feast to be held at the family house where his undivided brother lived. He said that on the last Chowti day he remained at his shop writing. He said "I was writing the things sold the day before or the day before that. I wanted to see from whom money was due. There was no pressing necessity to write." He said that had it not been for the occurrence he would have closed and gone home as he had to worship Ganapati.

The witness stated that during the struggle Narsappaya did not cry out. He described, but not very clearly, the way things were stored in the two compartments of his shop.

In the southern compartment he said dholl, rice, &c., were stored and he showed how. There was a box near the front, and sloping up from it there were wooden dishes filled with grain. There were four or five big jars in a corner of the room. The witness said these dishes of grain were undisturbed.

One of the jars that was in the southern room was produced in court. It had a big hole, five or six inches in diameter, in one side of it. A stone was also produced. It was four inches or so in diameter and the witness deposed it was found lying in his shop. The jar and stone were produced on the 15th September.

The witness in cross-examination said stones were thrown into the southern compartment also.

On the 15th September some pieces of bottles were produced. The witness said that three bottles in the southern room were broken.

The witness showed in court what Narsappaya did with the scales. They were hanging to the beam in front of the southern compartment, and, presumably, Narsappaya broke the rope by which they were hanging. The witness showed the way Narsappaya flourished the pair of the scales.

The scales are undamaged except for two indentations, one on each pan. As these indentations are exactly similiar and in a similar position on the pans, it is probable they were caused when the pans were put one in the other and the scales hung aside when not in use by the pans knocking against a wall or beam or something like that.

The witness said to the magistrate the scales were broken, but he explained in this court that only a ring had come off a hook.

The amount of property in the shop was worth Rs. 1,000 or Rs. 2,000 and there was Rs. 700 or Rs 800 in cash, but the cash was, he said, in an inner room. The witness said that he did not examine the cash till after meals that evening. The witness said that his son, whom he went to look for, was seventeen or eighteen years old and that no one had told him that he was injured.

The witness said that he did not tell Mr. Macfarlane, nor the overseer Dasappa, what had happened, and he said that he knew the overseer who was of his caste and that he had often spoken to him.

4. The third witness examined by the prosecution was Srinivasa Pai, the son of Ananta Pai. He was examined at great length, his examination occupying an entire day.

His general account of the transaction was the same as his father's, but he gave more particulars of the part he said that the persons in the crowd took in the alleged rioting.

He said that two bottles that hung to the ceiling of the southern room were broken, and that he jumped down from the jugli for fear of the glass hurting him and for fear of blows, and went to a shop opposite, which was closed, and stood on the stones over the drain in front of it "for a minute." From there he says he saw some persons beating Narsappaya and some trying to drag him, and as they were beating and dragging him he caught the scales hanging in front of the shop and he then fell in a sitting position, and two or three others got up and were beating him and, "not being able to see this inhuman business, I went home." He also said, "I could not see as he was beaten worse than a beast and left and, as I was feeling pity, I could not bear to see."

He said that the persons who did not go up into the shop to beat Narsappaya (five) or (six) moved here and there in front of the shop brandishing a sword and sticks, and that north and south a crowd of forty persons gathered.

He said he went back with the bandy and found Narsappaya sitting facing the road, bleeding. He did not know what Narsappaya said, and he soon left and went to a schoolmaster Srinivasa.

He first said that he had to pass through the northern crowd to get to his house, but he afterwards said he went along the middle of the road and the crowd was to the side of the road.

In cross-examination he gave information as to the persons engaged in the shop. There were two employés named Rama and Soiru Shanbhaga, and he and his two brothers also help in the shop. None of them were in the shop when the crowd came. According to the witness the shop was opened that morning to distribute cocoanuts, &c., as it was Chowti day, "nothing was sold that day, it was Chowti day." Giving cocoanuts, &c., to Brahmans went on till 8–30 or 9.

The witness was then cross-examined at considerable length as to the necessity there was for remaining after distribution. His account was not very clear, but perhaps the cross-examining counsel did not want that it should be clear. The witness said he had been that morning looking at the amounts outstanding. He could not tell the names of any debtors, and he did not remember if accounts had been sent to them. He afterwards said that they thought of keeping accounts to be filed for income-tax. They were not produced before the income-tax authorities, and, when asked in re-examination why not, the witness said "If they are written up, we can see what the profit is next year." He also said he was posting the current ledger and that his father was dictating from the day-book.

The witness said he put the ledger he was posting and the journal from which his father was dictating in a box when Narsappaya entered; but he could not say if he took any care of the inkstand, but afterwards he said he found the small box it was in damaged. The nibs of the pens in the box were broken. He did not notice fresh ink stains.

The bottles that were broken contain oil, and oil was on a stone and on the floor below the stone.

He said two of the sticks that were thrown hit Narsappaya and dropped down, and Narsappaya did not take up a stick to defend himself though he was a robust man.

He did not hear Narsappaya cry out.

5. After the examination of the third prosecution witness, Mr. J. B. Macfarlane, Local Fund Engineer, South Canara, was examined as a court witness under the following circumstances: The prosecution first applied that he should be examined, but withdrew the application, and the defence then applied that Mr. Macfarlane should be examined by the court, and that application was granted; and, as it was understood that Mr. Macfarlane was leaving Mangalore for camp, he was examined at an early stage in the case.

Mr. Macfarlane passed through Panemangalore on the 3rd September at about 11–30 A.M. He was walking and was followed by his dog-cart. He noticed that there were more people in the bazaar than he would have expected at that time of the year, and he inquired the reason, and saw in a shop in the part of the bazaar parallel to the river (at about 40 on the plan) some Ganapathees painted. When he turned into the bazaar that runs at right angles to the river, there were then more people about than he would have expected, but he noticed no crowd and saw no wounded man and noticed no signs of any disturbance and no one with clubs or sticks or swords, and no one drew his attention to any wounded man or there having been any disturbance. Mr. Macfarlane did not notice anything particular about Ananta Pai's shop.

Mr. Macfarlane must have passed Ananta Pai's shop a few minutes, if not a few seconds, after the time at which, according to the prosecution, Narsappaya's assailants left the place.

6. The fourth prosecution witness was Koti. He deposed he was a servant of Shivanaya, the first prosecution witness, and that on the morning of the 3rd September he was at Nándavar and went from thence at Shivanaya's orders to Narikombu to Narsappaya and followed him to Panemangalore.

He deposed that at Panemangalore, when near Ananta Pai's shop, he heard Puvappa Shetty say "Our Bhant has come," and he said "Look here, Naudavar people are come to beat you." He deposed there were ten or twenty people to the south and were coming fast, when he said "They are coming, they are coming." He deposed Narsappaya, who was walking with his head down, looked up and went fast to Ananta Pai's shop and people came and stood in a row throwing stones and sticks into the shop. He deposed he was meantime standing on the road and saw three men get into the shop, and as he was attempting to go into the shop he got a blow with a stick on the wrist and he ran away crying "Narsappaya is being beaten and killed," and he stood without crying out for two galiges in a lane, and went back to the shop and when he got there the people were not there.

This witness's evidence was very unsatisfactory. His story was disconnected and his demeanour bad.

7. The fifth prosecution witness, Venkappa Shanbhag, is a shopkeeper living on the opposite side of the road from Ananta Pai's shop and twenty yards or so from it. He deposed that that morning he saw Narsappaya and another man pass his shop, and within quarter galige Ananta Pai's cry was heard saying that Narsappaya was being beaten within his shop by the Mappilas of Nandavar, and he got down from his shop and sat on the plank just in front of it, and saw that Narsappaya was being beaten by some Mappilas and that he was waving scales. He said Narsappaya's body was outside and his legs inside the shop, and one of the Mappilas called out

and said, a coach of the Engineer's department had come and they dispersed. He said, as he was alone, he did not go to see Narsappaya after the occurrence. He said there were some of the Mappilas having sticks in the street, and between them and him there was a crowd of forty or fifty persons including some women and children.

I thought this witness's story, both from the substance of it and from the witness's manner, to be false.

8. The sixth prosecution witness was Naraina Pai. He deposed he was in a shop of one Dasa Naik near the temple at Panemangalore and heard some one crying "There is beating," and he went and stood in front of Venkappa Shanbhag, the fifth witness's shop. He then said in a general way that all the accused were beating Narsappaya.

Nothing could have been more unsatisfactory than this man's evidence. He could give no details of what happened, and he screened himself behind the assertion that there was much confusion. His whining answers in cross-examination and his pretended ignorance, his protestation and his facial expression left the impression on my mind that he was entirely untrustworthy.

As to the substance of his story, if it be true that he heard the cry "There is beating" at the place he was, probably every one in the town would have heard it. His evidence about the arrival of the dog-cart was as unsatisfactory as it could be. He said one of the accused cried out "The dog-cart has come, let us go," and after an immense amount of difficulty it was elicited that the man was in front of Ananta Pai's shop.

9. The seventh prosecution witness, Ganapati Shanbhag, deposed that he was in the shop of Manna Shanbhaga in the lower Peta and people were going about talking, and he went towards Ananta Pai's shop and stood in Subba's shop opposite Ananta Pai's and about ten or twenty Mappilas and Ananta Pai were talking. He then told a story of what he alleged happened similar to that told by Ananta Pai. There was no life in his story, and it made no impression on me such as the story of a man relating what he had really seen could hardly fail to have made. The witness is a man of no property. He said he traded, but he gave up his shop four years ago. He once made a complaint of assault, and it was compromised and he got Rs. 25. He is a caste man of Ananta Pai's, but denied that he was related to him. He said that at the shop he did nothing, but was in great fear. One naturally asks "If he was so timid, why did he go there?" He said he was told not to come down, and that no one told him to go. He had told the magistrate Narsappaya had been dragged out by the legs to the jugli. Here he said he was only dragged out once, and that his head was on the jugli. He had told the magistrate that some of the accused had said about the gentleman's carriage, and that Shidi said "Let us cut off his head and go to Nandavar." Here his story was that some one from the northern side said "The dhorai's carriage is coming" and he could not say who it was. The evidence has appeared to me to be a tissue of falsehoods.

10. The eighth witness examined by the prosecution was Srinivasa Kudava who has a shop opposite Ananta Pai's. He deposed that as he was approaching his shop, he heard a noise and saw Narsappaya being beaten on the jugli of Ananta Pai's shop. He then gave some details of what each of the accused two to fourteen did. Narsappaya was waving a pair of scales, and some one said "A carriage is coming, let us go," and they left.

The whole of the examination-in-chief of this witness was exceedingly brief. Though he mentioned each of the accused two to fourteen, the examination only extended to one and a quarter pages of my notes. It is incredible that if this man had witnessed a scene such as he says he did, he would not have given a more detailed and a more graphic account of it. His account was as bald as it could be, and I do not think the witness is entitled to any credit.

The cross-examination of this witness made his story ridiculous.

11. The ninth prosecution witness, Cherdappaya, has a shop in Panemangalore on the opposite side of the bazaar to Ananta Pai's and more to the south. He deposed he was in his shop and fifteen or twenty people came from the south armed with sticks and as they came near his shop some one of them said "We have the big tiger" and they ran, or walked fast to the north. He took home his children and left them at home, and within a galige he returned, and the riot was going on in Ananta Pai's shop, and he went and stood ten or twenty koles from Ananta Pai's shop and saw Narsappaya lying on the jugli and being beaten, and after quarter galige he heard a voice like the voice of Supi (the second accused) saying "A carriage is coming, go away soon" and they started and went to the south, and he went and saw Narsappaya lying there and was disgusted and went to his shop.

The opinion I formed of this witness, both from his demeanour in the witness box and from the substance of the answers he gave, was that almost every sentence he uttered in his examination-in-chief was a lie.

The cross-examination confirmed the opinion that his evidence was in all probability totally false.

12. The tenth prosecution witness, Krishnaya Shanbhag, deposed that he had a shop a short distance to the south of Ananta Pai's and on the same side of the bazaar, and that he was in it when the crowd passed, and that he next saw people going here and there and saying "The Mappilas beat Narsappaya. They killed Narsappaya," and he got down and looked towards the

north and "these Mappilas were beating" and one had a sword and he was flourishing it, and others were flourishing sticks. He then, so he deposed, went and sat in his shop and went on settling the wares, and the Mappilas went to the south and after that a carriage came.

This witness was a young man and his demeanour did not betray him, but the substance of his story can in my opinion have only one criticism and that is that it is an utter lie.

The cross-examination demonstrated this.

13. The tenth prosecution witness examined, Timma Padiyara, an old man of 63, has a house on the same side of the bazaar, south of Ananta Pai's. He deposed that he was sitting in his jugli distributing cocoanuts and cash to Brahmans and others, and he deposed "They said there is a noise in the Petta that Narsappaya is being beaten," and he gave cocoanuts to some Brahmans and went out, and as he was going out, ten or twenty persons were going fast to the south, and he at once went back to his shop. This man says he identified all the thirteen accused, *i.e.*, accused two to fourteen as they passed him while they and the others were going a distance of five fathoms. That is, I think, palpably false.

14. The twelfth witness, Gopalkrishnaya, deposed that on the Chowti day he was passing through Nandavar, and hearing talking, looked back and saw ten or twenty people coming down from the Anebagalu (or big gate) and they went towards Panemangalore, and as they went the first accused said they must go and anyhow do away with him.

This witness's demeanour was very bad. I inferred from his demeanour that he was probably telling lies.

In cross-examination he stated he could not remember if twenty or more than twenty suits had been brought against him. He did not know if his services had been dispensed with by the Survey department, and he professed ignorance on a number of other matters. It was clearly brought out that he was a partisan, for he produced a letter alleged to have been written to him the day before the Chowti day and which was meant to explain the reason of his going through Nandavar on the Chowti day. He explained that the letter (the only letter he had) had remained in his pocket by accident, but that is not to be credited. The reason he gave for going through Nandavar was not satisfactory.

15. The thirteenth witness, Annappa, lives in Bondal, two miles from first accused's house, and deposed that on the Chowti day, as his child was sick of convulsions, he went to Nandavar and entered the gate and saw ten or twenty persons with sticks and swords sitting in front of first accused. The first accused asked why he came and he said he came for medicine, and the first accused told him to come after three days as he had business then.

In cross-examination it was elicited that he did not go back after three days. He had been only, he said, three times before to the first accused, on each occasion to get medicine. He brought nothing in his hand to give the first accused. He found the gate open and went in.

This story is, I think, on the face of it, obviously false. His manner threw suspicion on him.

16. The fourteenth witness examined for the prosecution was Aitappa Naika. He deposed he lived in Nandavar and that at about 10 o'clock on the Chowti day he went to a shop near the gate of the first accused's house and sat on the jugli. He then recited a string of names and said "all these were." He was asked "where?" and he said "There were others—they came from the gate." After they came as far as the public road they turned east. He was then asked "who is so and so," "who is so and so" and he pointed to various accused. The examination-in-chief then closed.

I shall say nothing more about this witness than express an opinion that it is absurd, I think, to put such evidence before a court of sessions and against men charged with murder too, and that his evidence was thoroughly discredited by cross-examination.

17. The fifteenth witness examined was Parameshra Mayya. He is a Brahman, and on the Chowti day he deposed he had been to Panemangalore where he had been given a few cocoanuts and some pieces, and as he was on his way back to Nandavar "Bangara and all the accused were coming." And Bangara (the first accused) said "Give him, he went to give scent of the matter" and Venkatramana Bhatta and Shidi struck him thrice on the right thigh with sticks and Shidi snatched the cocoanuts.

In cross-examination he said Venkatramana Bhatta and he had never quarrelled and that after the beating the friendship continued. He did not complain to the authorities about the beating but told all the villagers. He did not cry out when he was beaten, but said "Don't beat, don't beat, excuse me, I did not tell."

So far as inferences could be drawn from this man's demeanour, his evidence appeared to me quite worthless. I think the same inference is to be drawn from the substance of the evidence. The story cannot, I think, be believed.

18. The sixteenth prosecution witness was head constable Pereira of Bantvál station. On the 3rd September he had been deputed by the inspector to investigate the complaint of Shivanaya, the first prosecution witness. On his way to Panemangalore he heard of this alleged offence, and went to Ananta Pai's shop and found Narsappaya there. Though the offence was not alleged to have been committed within the limits of the station of which he was the head constable, he deposed that he waited at Ananta Pai's shop while a draft complaint was written and read to

Narsappaya and a fair copy made and read to Narsappaya and signed by him, and then questioned Narsappaya and eleven other witnesses, and tried to arrest some of the accused at their houses in Nandavar, and at three in the afternoon he undertook the investigation of the case which he had been deputed to inquire into.

It seems to me to be hardly credible that he could have done all that in such a short time.

His evidence was not satisfactory. There was a great deal of want of directness in his answers.

The complaint presented to this witness, according to him, is brought in as a dying declaration. The witness was not able to say who wrote it. He said it was a Brahman whose name he did not know, and he explained that he had not been long in Bantvál. It has not appeared in evidence who the writer of the complaint was, and I think it is incredible that this witness can be ignorant on the point. It seems to me incredible that he would not have inquired who the man was. The complaint is a suspicious document in this respect, that there are two sections of the Penal Code, viz., sections 143 and 141 quoted in it; and as this witness says that, so far as he recollects, he did not supply the information, it would appear that the writer was some person who was acquainted with cases, possibly with getting up cases.

Another matter that is suspicious in this man's evidence is that his notes of what he says Narsappaya stated to him are identical with the statement in the complaint. It cannot but be one is a copy of the other.

19. During the cross-examination of this witness, after a long time had been spent in questioning the head constable as to the accuracy of a plan he had prepared, I stated in court that, so far as I had seen after three weeks' listening to the evidence in this case, the only conclusion I could draw from the evidence that I had so far heard was that the charge Narsappaya had brought of having been beaten in Ananta Pai's shop was absolutely false, and I stated that if Government wished to press the charge, a proper survey plan should be produced so as to save the time of the court.

20. After an adjournment for tiffin, the Public Prosecutor stated that, after consulting the District Magistrate and the Superintendent of Police, it was determined not to offer any further evidence, and referred the court to section 289, Criminal Procedure Code. I then stated that the case was not one in which I would not be obliged to take the opinion of the assessors, and I accordingly asked the assessors their opinion. The first assessor stated that the evidence against the first accused was unworthy of any credit, and he stated that the story of the prosecution against the accused two to fourteen was at least doubtful. The other two assessors concurred with the opinion of the first.

21. As for the case against the first accused, I need only say that no reliance whatever can be placed on the evidence of the witnesses who implicate him in the transaction.

22. As for the case against the accused two to fourteen, I have stated the substance of the evidence of each witness as he was examined and what I thought of it. It will be seen that I thought each witness for the prosecution successively unworthy of any credit.

23. In my opinion the one clear and distinct inference to be drawn in this case is that Narsappaya's charge that he was beaten in the heart of Panemangalore on the 3rd September is in all probability entirely false.

Mr. Macfarlane's evidence is most important. I see no way of getting over it, or, if not, inferring from it that Narsappaya's charge was not correct. Mr. Macfarlane must have passed by Ananta Pai's shop a few minutes, if not a few seconds, after the time of the alleged rioting, and if such an outrage as Narsappaya alleged had really been committed, it is impossible to suppose that there would not have been gathered there a large crowd round Ananta Pai's shop.

But even if Mr. Macfarlane had not happened to pass, the only conclusion in this case would be that Narsappaya's charge was untrue.

If five or six men had been beating Narsappaya in Ananta Pai's shops which are quite small places, it is perfectly clear that there would have been hardly an article in the shops that would not have upset or broken. A jar with a hole in it is produced, but if it had been really broken by a stone thrown at it, the stone would have smashed right through the jar.

24. False charges are of quite frequent occurrence in India, but it is seldom that a false charge occupies the attention of a Sessions Court for over three weeks. The reason is that such charges seldom get so far as the Sessions Court. The police or the magistrates as a rule detect them. The present case is an exception to what generally happens, but it is in my opinion abundantly clear—it is at least the inference that I clearly draw—that the charge Narsappaya brought was false. I cannot, of course, say when or by whom he was beaten, but I am clearly of opinion that he was not beaten in Ananta Pai's shop.

The accused are acquitted and will be set at liberty.

25. An important question arose in this case, namely, whether the prosecution could, as of right, put into the box and examine as their witness a man who had not been examined before the committing magistrate. The decision of the question depends on the proper construction of section 286, Criminal Procedure Code. That section says that after the prosecutor has stated by what evidence he expects to prove the guilt of the accused, he shall "examine *his* witnesses."

His witnesses include those examined by the committing magistrate originally under section 207 as well as supplementary witnesses examined by the magistrate under section 219, Criminal Procedure Code; but does the expression mean any other person whom the prosecutor may suppose to be acquainted with any fact in the case? One object of the preliminary inquiry is to acquaint the accused with the nature of the evidence he has to meet, and in the case of the examination of supplementary witnesses the accused is to be furnished with a copy of the supplementary evidence if he requires it. This object would be defeated if the prosecutor could call at the sessions a new witness. That this is not contemplated by the Code appears to me to be implied by the absence of a section giving to the prosecutor power similar to that given by the accused under section 291. That section confines the accused to the witnesses of which he gave a list or a further list to the magistrate, except when any person not named by him is in attendance it is provided that he shall be allowed to examine him. Another consideration leads, I think, to the same conclusion. Section 291 says the accused has no right to have other witnesses summoned, but if it were contemplated that the prosecutor could call a new witness, the Code would also have provided for the accused in such circumstances being allowed to call evidence to discredit the new witness. As there is no such provision, I infer that the Code did not contemplate and does not authorise the prosecutor to call as a witness a person not examined by the magistrate.

26. The question then arose whether the man the Public Prosecutor wanted to examine should be examined by the court under the authority given to the court by section 540, Criminal Procedure Code. The court is by that section required to examine any person if it considers it necessary for the just decision of the case, and is given a general power of examining a witness at any stage of the trial. The power given by this section should, I think, be exercised with due discretion. Except to supply an accidental and unimportant omission, it is generally objectionable to bring in at a sessions trial new evidence against the accused. Mr. Justice Trevelyan in a case reported in I.L.R. 14, Cal., 245, declined to call as a court witness a man because he did not think he could put implicit reliance on his evidence, and I think that in the case of a doubtful witness the court would most gravely err if the court examined him. In the present case the man sought to be examined is the overseer who accompanied Mr. Macfarlane as he passed through Panemangalore. This man was summoned for the defence, but the defence has told him that he will not be called and the learned pleader for the first defendant, Rao Bahadur Shiva Rao, explains that this was done because Mr. Macfarlane having been called by the court gave the evidence that Dasappaya was called to give. It was also stated by Mr. Shiva Rao, and was not contradicted on the other side, that an adjournment of the preliminary inquiry was obtained by the prosecution with reference to the examination of the Local Fund Engineer and others presumably including this man Dasappaya, and that the prosecution did not examine Mr. Macfarlane as a prosecution witness. Under these circumstances if Dasappaya gave any evidence in support of the prosecution, it is pretty certain that no one would believe him. I, therefore, am of opinion that it would have been a very grave error for the court to have examined Dasappaya.

Mangalore,
27th November 1894.

(Signed) W. C. HOLMES,
Sessions Judge.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Tuesday, the 10th day of September 1895.

Present:

The Hon'ble Sir Arthur J. H. Collins, *Kt.*, Chief Justice, and the Hon'ble Mr. Justice Parker.

(Criminal Appeal No. 149 of 1895.)

The *Public Prosecutor*, appellant, and (1) *Supi Beary*, (2) *Ali Beary*, (3) *Shidi Beary*, (4) *Ucha Beary*, (5) *Sabu Beary*, (6) *Hammade Beary*, (7) *Badava Beary*, (8) *Idine Beary*, (9) *Abdullah Beary*, (10) *Venkatramana Bhatta*, (11) *Sanna Ali Beary*, (12) *Ibrayi Beary* and (13) *Sanna Ibrayi Beary*, prisoners (prisoners two to fourteen in session case No. 33 of 1894 on the file of the Sessions Court of South Canara).

Appeal under section 417 of the Code of Criminal Procedure against the judgment of acquittal passed on the accused in calendar case No. 33 of 1894 by the Sessions Court of South Canara.

This appeal coming on for hearing on Monday the 2nd September 1895, and counsel not appearing on behalf of the prisoners seventh and eighth; upon perusing the petition of appeal and the record of the evidence and proceedings before the Court of Session; and upon hearing the appellant, and upon hearing the arguments of Mr. R. Kuppusami Aiyar, vakil for Gangamma (widow of the deceased Narikombu Narsappaya) and of Mr. K. Naraina Rao, vakil for prisoners

(one) to (six) and (nine) to (thirteen), and the case having stood over for consideration till this day, the court delivered the following

Judgment.—This is an appeal by Government against the acquittal of prisoners (two) to (seven) and (ten) to (fourteen) by the Sessions Court of South Canara on charges falling under sections 302, 326, 148 and 143, Indian Penal Code. It is explained by the Public Prosecutor that through a misapprehension no appeal has been presented against the acquittal of the first prisoner and the appeal as regards him is now barred.

The evidence for the prosecution went to show that one Narikombu Narsappaya, now deceased, had acquired lands at Nandavar. Some of these lands had been bought at court auction in execution of decrees against first prisoner who is an influential Jain of that place, but who had got into pecuniary difficulties. The consequence was that matters were made as unpleasant as possible for the auction-purchaser, and his lessee, Shivanaya, first prosecution witness, has only been able to cultivate by obtaining labour from a distant village and has been continually obstructed, so much so that he has been in constant need of police assistance. The case for the prosecution is that prisoners (two) to (fourteen), Mappilas employed by first prisoner to wreak vengeance on the auction-purchaser, went to Panemangalore on the morning of September 3rd to give Narsappaya a beating, and that when the latter saw them coming he took refuge in the shop of one Ananta Pai into which the Mappilas followed him and gave him such a beating that he died in consequence on September 14th.

The witnesses called for the prosecution consisted of Ananta Pai and his son and a number of neighbouring shopkeepers and persons who happened to be in the street at the time. It does not seem to have been suggested that any of them were connected with the factions at Nandavar in consequence of the sales of the first prisoner's lands. The sixteenth witness was a head constable, Mr. Pereira, who arrived on the spot shortly after the beating and took a complaint (G) from Narsappaya before sending him off to the hospital for treatment.

The Sessions Judge did not doubt that Narsappaya had been severely beaten, but he was of opinion that the story that he was beaten in Ananta Pai's shop was altogether false. He has expressed himself in the very strongest terms against the credibility of the prosecution witnesses, but he has made it clear that the bias of his mind was affected by one fact only, and that one fact is, in our opinion, wholly inconclusive.

It appears from the prosecution evidence that while the beating was going on in Ananta Pai's shop the Local Fund Engineer (Mr. Macfarlane) happened to come down the street at Panemangalore. This gentleman was walking and was followed by his carriage. He was accompanied by the overseer and was engaged in check-measuring and in verifying the overseer's book. The prosecution evidence is to the effect that when some one gave the alarm that the "Dhorai" was coming the Mappilas slipped away out of the shop and made off. It was a feast day and there were a good many people about in the street. Mr. Macfarlane deposed that he passed the shop engaged in his own business with his overseer, that his attention was not drawn to any disturbance and that he did not notice anything in particular. It is on this one fact that the Sessions Judge has discredited the whole prosecution testimony.

Mr. Macfarlane was called after the third prosecution witness had been examined as a court witness as he was going out into the district. From that point in the trial the judgment makes it clear that the Judge's mind was strongly biassed against the prosecution. From the fourth witness onwards every person called has been denounced as a "false" witness, his demeanour denounced and his evidence characterised as a tissue of falsehoods. With regard to the fifteenth witness the Judge has recorded in his notes (before a word of the evidence) the remark "lying written in his face." If this remark was recorded before the witness gave his evidence we cannot but characterize it as most improper, but the whole tenor of the remarks made by the Judge in the case shows strong bias and that the case was not approached in a judicial frame of mind. Nor can we endorse the remarks made by the Judge upon the conduct of head constable Pereira. The offence may not have been alleged to have taken place within the limits of his own station, but he had been sent specially to inquire into the disturbance at Nandavar and he was certainly justified as a police officer in taking notice of the complaint of Narsappaya whom he found suffering from severe injuries.

There may be a question as to how far death was the result of the injuries received, but the medical evidence was not considered by the Judge, nor was the defence gone into. The trial was prolonged for three weeks, principally in consequence of the cross-examination (mostly irrelevant) of the pleader who appeared for the first prisoner (Mr. Shiva Rao) and the trial at last came to an end since the Public Prosecutor declined to call any further evidence in consequence of the attitude taken by the Judge.

It appears to us that the case for the prosecution is not in the least affected by Mr. Macfarlane's evidence which may be accepted in its entirety; but it seems to us most improbable that a European gentleman walking through the bazaar street of a native town would specially notice what was going on in any of the shops he passed unless his attention were specially called to it. In this case the evidence is that the Mappilas dispersed when the carriage was seen approaching and that Mr. Macfarlane's attention was engaged with the overseer. Why the Judge would not permit the overseer to be called we are quite unable to understand. Had he given evidence which could fairly be said to take the defence by surprise it was open to the Judge to allow them to call further evidence to meet it.

Since the case has not been tried out, we have no option but to direct a retrial. The acquittal of prisoners (two) to (seven) and (ten) to (fourteen) is set aside and we direct that they be retried by the Sessions Court of North Malabar.

(Ordered accordingly.)

(Signed) C. G. TODHUNTER,
Dy. Registrar, Appellate Side.

Proceedings of the High Court, dated 10th September 1895, No. 1760.

The High Court cannot but observe upon the length to which the Sessions Judge has allowed this case to be protracted. The trial apparently lasted for three weeks though the facts were in a small compass; and, as far as the High Court can perceive, there was no reason, if the trial had been properly conducted, why the case should have lasted more than three or four days.

2. The latitude granted to the pleader for the first prisoner (Mr. Shiva Rao) appears to have been most objectionable. His cross-examination teems with matter which is absolutely irrelevant and which the Sessions Judge should have excluded. The High Court regrets to observe that the record cannot but produce the impression that the Sessions Judge does not exercise a proper control over his bar and is not strong enough to exclude irrelevant matter from the cross-examination of the witnesses.

(True Extract.)

(Signed) D. W. G. COWIE,
14th October 1895. *Ag. Registrar, Appellate Side.*

Read judgment in Session Case No. 38 of 1894.

Read judgment in Referred Trial No. 27 of 1895.

Proceedings of the High Court, dated 16th September 1895, No. 1812.

The High Court observes that there are certain matters connected with the trial which ought not to pass without notice.

2. The trial of the case, apart from the speeches at the conclusion, lasted over thirty-eight days, that is, parts of nine weeks. In only one of those weeks was the trial proceeded with for six continuous days. Generally it was taken up on four days in a week, in one week on three days only. This method of dealing with a trial for murder appears to the High Court most improper.

3. If the trial of this case is to be taken as a sample of the Judge's work, it shows, in the opinion of the High Court, that he has no appreciation of the value of public time and exercises no control over the vakils practising before him. His own notes condemn him and the High Court is compelled to note that they justify the further inference that the Judge cannot distinguish relevant from irrelevant evidence.

4. Throughout the notes here and there the examination touching the most trival matters is taken down in full (see for instance pages 153, 197, 311, 208, 104, &c.). It is well that question and answer should be given when specially important matters are spoken to; but the Judge has no such discretion. There must have been a great waste of time occasioned by the way in which the evidence has been recorded.

5. The special attention of the Judge is called to pages 32 *et seq.* It does not appear that the Judge made any remonstrance against the proposal of the vakil to allow the witness to exhibit on his person the methods adopted in strangling the murdered boy! From this instance as also from the endless wrangles about objections to admissibility of evidence it is inferred that the Judge has little or no control over his bar The enormous duration of the trial and the allowance of ten days to the prisoners' vakils for their addresses point to the same conclusion. Really there was no reason why the case should have been exceptionally long. Probably a good deal of time was wasted by the practice of the Judge in calling as court witnesses persons whom the prosecution wishes to examine, but is not allowed to call because they have not been sent up by the magistrate. No less than seven persons were so examined, partly by the Judge and also by the vakils on both sides.

6. In the result a trial which began on the 12th December 1894 was not closed till the 2nd March 1895.

7. As a natural consequence, the returns for the first quarter are most unsatisfactory. The Judge has sent an explanation which still leaves some days unaccounted for.

(True Extract.)

(Signed) D. W. G. COWIE,
14th October 1895. *Ag. Registrar, Appellate Side.*

Order—Mis. No. 2231, Judicial, dated 4th November 1895.

The Registrar's letter, together with its enclosures, will be communicated to Mr. W. C. Holmes for any explanation or remarks which he may wish to offer.

(True Extract.)

(Signed) J. F. PRICE,
Chief Secretary.

To the Public Department.

G.O., Mis. No. 2440, Judicial, dated 26th November 1895.

Read—the following paper:—

From W. C. HOLMES, Esq., B.A., I.C.S., District and Sessions Judge, South Canara, to the Chief Secretary to Government, dated 15th November 1895.

I have the honour to acknowledge the receipt of the proceedings of Government, No. 2231, Judicial, dated 4th instant (with its enclosures) calling for any explanation or remarks I may wish to offer on the letter of the Acting Registrar of the High Court to you, dated 14th ultimo, No. 2878.

2. The Hon'ble Judges of the High Court suggest that it would be advisable to employ me, after my return from furlough, in some department other than the judicial. I greatly regret that the Hon'ble Judges wish that I should leave the Judicial department. The work of the Judicial department is work in which I take, and have for many years taken, the deepest interest. Before I came to India I joined one of the Inns of Court and have kept all my terms except one—some before I came to India and some during my last furlough. I have passed the necessary examinations and hope to be called to the bar on the first occasion I am in London. Ever since I came to India I have looked forward to being a District Judge, and since I was first appointed to such a post between five and six years ago I have found the work to be exactly the work I could most wish to do. It is work that gives me the keenest pleasure, and is to me work the mere performance of which is its chief reward. Such being my love (for the expression is not too strong) for the work I am now employed on, it will be understood how keenly I feel the suggestion of the High Court that I should not return to it.

3. If I were myself aware of any inaptitude for dealing with judicial work, I should not hesitate to admit it. I sometimes, it is true, have found the work that came before me exceedingly difficult, but I do not attribute that to any inaptitude on my part in dealing with the work, but to the difficult nature of the work itself. I think the real reason for cases sometimes seeming so difficult to me is that I go so thoroughly into them that difficulties present themselves that would not be otherwise apparent.

How I did my judicial work during the four and a half years I have been in this court can, to a certain extent, be inferred from the statistics showing the number of appealable cases I decided, the decrees which were appealed against, and the result of the appeals.

Out of 82 regular suits disposed of by me appeals were presented in five cases. In three appeals my decisions were confirmed, and two appeals are still pending in the High Court. The suits no doubt were in the majority of cases simple; but that there should have been so few appeals from my decisions and that those few should have been so far unsuccessful shows, I submit, that my work was satisfactorily done.

I now turn to civil miscellaneous appeals. I find that in these cases I gave, since I came to this court 88 appealable decisions. Against 21 of my decisions appeals were preferred. The 21 appeals that were preferred resulted in my decisions being confirmed in sixteen cases, reversed in four and remanded in one. These miscellaneous civil appeals were often vary complicated and difficult, and

that out of 21 appeals disposed of only four should have been reversed and one remanded is a result which I think is not unsatisfactory.

The most important civil judicial work in the court is the disposal of regular appeals. Of regular appeals, I find that since I came to Mangalore I disposed of 637 against which a second appeal lay. Second appeals were presented up to this time so far as we know in this office against 181 of those 637 decisions. Out of 151 appeals already decided my decisions were upheld in 117. In thirteen cases (four of which were connected) the decrees were modified. In ten they were reversed, and in eleven the suits were remanded.

The regular appeals that come up for disposal in this district are generally difficult. This I believe is the general opinion among persons in a position to judge, and it is borne out by the number of decisions from cases from this district that appear in the law reports. This being so, considering that in nearly 72 per cent. of such decisions of mine no second appeal at all was preferred, and that out of 151 cases disposed of I was found right in 117, and my decisions only reversed, varied, or remanded in 34, I think the figures show that my work was satisfactory. Assuming that in the thirty cases still pending before the High Court a proportionate number of my decisions will be confirmed, the result will be that out of 637 regular appeals against which a second appeal lay disposed of by me 93·7 per cent. will have been either accepted by the parties or confirmed by the High Court and only in 6·3 per cent. will any alteration in my decisions have been made.

I find that I passed 808 orders on miscellaneous petitions that were liable to appeal. Four orders were appealed against; one was confirmed, two were compromised in the High Court, and in one case there was a remand.

There were about 1,500 judgments and orders of mine which, though not open to appeal, were subject to revision by the High Court. Only six revision applications were presented, and in all cases my judgments or orders were supported.

I do not think the figures I have given can be held to show an inaptitude for judicial work. The number of my judgments and orders that have been interfered with by the High Court, either in appeal or by way of revision, is only a small fraction of the total, and it must be remembered that the work of this court is often difficult and complicated, that at first I was new to the peculiar customs of the West Coast, and that when I first joined the court, owing to the work of the court being heavily in arrears, I had to work at high pressure. Civil appeals (regular and miscellaneous) form the chief part of the civil work of the court. Shortly after I joined the court I find that on the file of the District Court and Sub-Court (in this matter the work of the two courts must be taken together) there were 526 civil appeals pending, that is to say, there was considerably over a year's work in arrears. On the first day of this year the number was 194. This result was greatly due to the excellent work done by my Sub-Judge Mr. O. Chendu Menon, but I contributed to the result by disposing of 971 civil appeals in the time. I may also be pardoned if I state that the way I got through the work was by commencing almost daily at 7 o'clock in the morning and continuing with short intervals for dressing and meals till five and sometimes six in the evening. Since the beginning of the year the number of appeals pending has risen by about one hundred. This is due to heavy sessions work, to my ill-health, and to Mr. Chendu Menon's illness.

I think I am entitled to submit that the figures I have given show that I had a thorough knowledge of the facts of the various cases that came before me and that I applied to them sound principles of law.

I find that 122 sessions cases were disposed of by me since I came to Mangalore. Out of these, in 71 there were convictions, in 37 acquittals, and fourteen were withdrawn. In one case I disagreed with the verdict of the jury who found the accused guilty, and on a reference by me the High Court set him at liberty. Out of the 71 cases in which there were convictions in 42 cases there were appeals of which the result is known in this office. Twenty-six of the appeals were dismissed. In eight the sentence was varied, in seven the decision reversed wholly and in one as to some appellants. The High Court in revision enhanced the sentence in four cases and released the prisoner in one. Of the 37 acquittals one was

appealed against and another was taken up by the High Court *suo motu*, and in both cases a retrial was ordered. One appeal against an order allowing a withdrawal was dismissed.

The following table will show how the work I did compared with the general work of the Sessions Courts of the Presidency for the last three years of which I have the figures:—

	Average for the Presidency.			My work for four and a half years.
	1891.	1892.	1893.	
Confirmed	62	58	71·4	62
Varied	21·6	17·4	16·	19
Reversed	12·16	18·8	9·5	16·7
Do. and remanded	1·6	·8	1·7	..
Confirmed as regards some appellants	·9	5·	1·4	2·3
Total ..	99·7	100	100	100

I think these figures show that my sessions work is not far from the average for the presidency. What I am absolutely positive of is this, that my decision in each case was arrived at after a deep and thorough examination of all the facts of the case, after a patient hearing of both sides, and after very careful thought and consideration. Others may differ from the opinions I formed, but I think it must be allowed that I had unusual opportunities of forming my opinions, and, considering the amount of labour a thought I bestowed on the cases that came before me, I think my opinions are titled to great weight. I may be allowed to add that deficiencies in criminal rk in this country are in my opinion greatly due to grave defects in our rules of procedure.

4. With regard to the specific instances in which the High Court were dissatisfied with my work, and which they brought to the notice of Government, they are, if I understand them correctly—

(1) that two cases were unnecessarily protracted, and
(2) that irrelevant matter was admitted in evidence in them.

5. With regard to the first of these, the principal reason the cases took so long was that they were very important, and, in my opinion, equally difficult, and an exhaustive and thorough investigation of the facts was necessary. The cases followed one another, and they unfortunately began at a time of the year when they could be grappled with with the least amount of vigour. In this district, owing to the recess being generally taken rather early on account of communication being out off in the monsoon, there is a long stretch of seven months' continuous work between the opening of the court after the recess and the Christmas holidays. I can speak from five years' experience of those long stretches of work, and I know how exhausted one gets towards the close of them. It was towards the end of this stretch of work last year that these heavy cases began, and, as I said, it was at a time when they could be grappled with with the least amount of vigour. The defence was conducted by Rai Bahadur N. Shiva Rao, the leader of the local bar in South Canara. Mr. Shiva Rao is a vakil of long experience and of great ability. His ability is equalled by a deliberateness and a tendency to make exhaustive and minute examinations of facts that lead to the cases he is engaged in often being protracted. There were some special reasons for case No. 33 of 1894 occupying the time it did. One was that at the early part of the trial, one of my children was born, and that event and the subsequent state of my wife's health necessitated my being absent from court for a considerable number of hours that would otherwise have been devoted to the case. If I recollect rightly the case was also delayed owing to the unavoidable absence of some of the assessors on some days, but I cannot speak positively about that now from memory, and I have not got the records. Case 38 of 1894 was most protracted, and I unfortunately suffered seriously in my health in consequence; but I do not think I could have prevented it. I sent an explanation to the High Court for the delay and with reference to other matters

connected with the case, and I hoped I had satisfactorily explained all that the High Court had complained of. I beg to append a copy of my letter. I am informed on good authority, though I have not been able to verify the statement, that there have been instances in this court of cases occupying as long or as nearly as long as case No. 38 of 1894 did in the time of Mr J. G. Thompson, in the time of Mr. Walhouse, in the time of Mr. Best, and in the time of Mr. Tate. I am also informed, on good authority, that even in a civil case in this court (*Coelho* v. *Coelho*) one witness was examined at great length—for fifteen days. These facts show that protracted trials in South Canara are not unusual.

I have had a statement prepared in the office of my court showing the number of sessions at which I presided since I came to Mangalore, the number of cases for hearing and the number of days occupied by each sessions. I find that 122 cases were decided on an average of 2·1 days for each case and on an average of 6·5 days for each sessions. Considering that a large proportion of the cases that occur in this district are complicated and difficult, I do not think that these figure show that there was any undue delay in disposing of the cases that came before me. I have ascertained that Mr. W. J. Tate, during the two years he was Judge here, took on an average 2·9 days over each sessions case and 7·9 days over each sessions, and that Mr. J. W. Best in the last two years that he was here (the only period for which I have the figures) took on an average 1·7 days over each sessions case and 5·9 days over each sessions.

6. With regard to the second point it will be apparent that it is impossible that I can deal with it unless I know exactly the evidence that was considered irrelevant. I can say this that I have never known Mr. Shiva Rao ask a question without a definite object. I entirely acquit him of intentionally introducing irrelevant matter. He is a man of the world with a great deal to do and no time to waste. He no doubt often adopts a very round-about-way of getting out of a witness what he wants, but, as he has more than once explained in court, if he puts a question directly to a hostile witness the witness is certain to see the object of the question and to frame his answer accordingly, so he adopts a method of wheedling what he wants out of witnesses. The method is very clever and generally successful, but slow and tedious. I think that this will explain a good deal of what at first sight would appear irrelevant matter; but it is, as I said, impossible for me, except in a general way, to deal with the subject unless I know specifically what is considered irrelevant. It must be remembered that it is very much more easy matter to decide on relevancy or the contrary after a case is finished than on the spur of the moment when the question is put. It must also be remembered that a fact may appear irrelevant standing by itself, but when taken in conjunction with other facts it would be found perfectly relevant, and to understand the relevancy of any particular fact it is often necessary to have an extremely minute knowledge of a number of other facts connected with the case, and I do not think I am saying anything disrespectful to any appellate court if I say that in a long and complicated case an appellate court often cannot have the necessary knowledge unless its attention were particularly directed to the special combination of facts in question. It also often happens that a lawyer brings out one fact and fails to illicit the rest of the combination of facts which would make that one fact relevant, and that one fact standing alone would appear and indeed would be irrelevant, but it would be nevertheless illegal to prevent its being put on the record. I do not think I can say much more about the charge of admitting irrelevant matter. A minute acquaintance with the facts of the case would be necessary before such a charge could be shown to be unfounded, and I think it would be almost practically impossible in any case to deal with such a charge on paper. Whether a fact is relevant or not would be to a great extent a matter for argument, and the argument on each particular item of alleged irrelevant matter might not be very short when the question whether a Judge is to hold office or not is at stake. All I can say now is that I do not admit I was wrong, and that I am prepared to meet if called upon, and if I find I can, any specific charges that may be brought against me.

7. Possibly it would not be practicable to hold an inquiry, and an inquiry to be of the least value to me would require to be thorough. For over twelve months I have not been in my usual health. I received a great shock at the time of Mr. Levy's death which for some days completely unnerved me, and since then I have had a great domestic affliction in the death of one of my children; I have recently felt the strain of work very much and I have had to apply for furlough at an unsuitable time of the year. An inquiry would entail on me a great strain, and might not impossibly, if held now, render me unsuited for judicial or any kind of work. On the other hand, unless I could satisfy the High Court and Government that my work has been satisfactory, I should be serving in India, if I returned, under the great disadvantage of not possessing the confidence of my superiors. Under these circumstances, unless my present explanation is accepted as satisfactory, I feel that it is better for me to respectfully and humbly beg that I may be granted a pension proportionate to my length of actual service in India, and that I may be allowed to resign the service.

8. My passage was taken some time ago for Marseilles by the P. and O. S.S. *Caledonia* leaving Bombay on the 14th December, and I should be greatly obliged by your informing me as soon as possible by wire whether I should cancel my passage and remain in India, or whether I can proceed to Europe. Should Government or the High Court wish that I should give any personal explanation I shall be glad to go to Madras to give it.

9. I return the enclosures of the proceedings under reply, and I am leaving in the office of this court statements showing how the figures given in this letter were arrived at, so that, if necessary, my figures can be verified.

Enclosure.

From W. C. HOLMES, Esq., B.A., I.C.S., Sessions Judge, South Canara, to the Registrar of the High Court of Judicature, Appellate Side, dated Mangalore, 25th September 1895, No. 963.

I have the honour to acknowledge the receipt of the High Court's proceedings, No. 1812, dated 16th instant, and to say that there are some matters which I would respectfully wish to lay before the Hon'ble the Judges of the High Court.

2. With regard to the 2nd paragraph of the proceedings, I can assure their Lordships that there was not a single adjournment given in the case that could have been avoided. The case began on Wednesday, the 12th December, and was continued from day to day till Thursday, the 20th December. It was not taken up on Friday the 21st December as that was the last day before the holidays and the last working day of the year, and there was a good deal of other work that required to be attended to. From Saturday, the 22nd December to Saturday the 5th January, the court was closed on account of public holidays and the case was taken up on the re-opening of the court on Monday, the 7th January, and was continued from day to day till Friday the 11th January. Saturday the 12th January was a general public holiday on account of Pongul, and Monday the 14th January was a general Hindu holiday authorized by the Rules of Practice, page 78, and since by G.O., No. 126, Public, dated 19th February 1895, and it was impossible to take the case on those days as two of the assessors and the defence vakils and indeed almost every one engaged in the case were Hindus. The case was, therefore, adjourned to Tuesday the 15th January, and from that day the case continued from day to day to Friday the 18th January. The 19th was a public holiday. The case was taken up the next court day, namely, Monday the 21st January, and was continued from day to day for eleven days till Friday, the 1st February. On Saturday, the 2nd February one of the assessors was unable to attend as it was an important local holiday for Hindus of the class to which he belonged. The case was taken up on Monday, the 4th February and continued from day to day for ten days till Friday the 15th February. Saturday, the 16th February, was a public holiday. The case was taken up on Monday the 18th February and continued from day to day till the 22nd February. The 23rd was an authorized Hindu holiday (Shivarathiri) and the case was not taken up. The case was taken up again on Monday the 25th, and on Tuesday the 26th. On Wednesday the case could not be taken up as it was a holiday for Muhammadans, and one of the assessors, who was a Muhammadan, could not attend. The case was taken up on Thursday the 28th and continued from day to day till the 2nd March, when the assessors gave their opinion.

The following statement will show in a tabular form the number of working days in each week from the date of the commencement of the trial till the 2nd March, the number of days on which the case was taken up, and the reason for the case not being taken up when it was not taken up on every working day in each week:—

Number of the week.	Actual working days.	Number of days in which the case was taken up.	Remarks.
1st	4	4	
2nd	5	4	The last working day of the year had to be devoted to other work.
3rd	5	5	
4th	5	4	One day was a Hindu holiday.
5th	6	6	
6th	6	5	Do. do.
7th	6	6	
8th	5	5	
9th	6	5	Do. do.
10th	6	5	One day was an authorised Muhammadan holiday and Muhammadan assessor could not come.

I have to explain that on Fridays the Muhammadan assessor could not come till half-past one or two and on Fridays the case was not commenced till that hour. On other days the case began generally at half-past ten and continued till five or six in the evening, except on one day when the case stopped at 2 P.M.

I think that the Hon'ble Judges will be satisfied with my explanation and will acquit me of having granted unnecessary adjournments.

3. With regard to the 3rd paragraph of the High Court proceedings, I would respectfully bring to the notice of the Hon'ble Judges that the case in question was one in which every fact that could possibly be brought out in evidence was minutely gone into. I may have of course inadvertently let in inadmissible evidence, but in a complex case it is very difficult often to draw the line between admissibility and inadmissibility. I have frequently in my experience found that matter that I first thought inadmissible subsequently turned out to be relevant. As to the concluding remark in the paragraph, I would beg to represent that it may be remembered that the subject of evidence is one to which I have for over twenty years given more or less constant attention.

4. In the 4th paragraph of the proceedings, the High Court comment on the examination touching trivial matters being recorded in the form of question and answer. With regard to this I beg to say that I found it absolutely necessary to adopt this form of question and answer in recording the evidence in the case of almost all the examination by the pleader for the first and second defendants. The questions put were generally so involved or so long and so indeterminate that it was necessary to have the question definitely settled before the translator was allowed to put it. If I had not adopted this procedure, the record of the evidence would have been vague and most misleading. The procedure was, of course, quite unusual, but the circumstances were also exceptional.

5. I respectfully beg to explain, with reference to the first sentence of paragraph 5, that the reason I did not remonstrate against the unusual procedure adopted was that the point the pleader for the first and second defendants wanted to bring out was of such moment that although I did not approve of his method, I did not think I should have been justified in interfering. Mr. Shiva Rao wanted to show that the boy was not *gagged* in such a way that he could not have cried out. If he could have established that point, the prosecution case would have been hopelessly damaged, and I did not think I should have been justified in preventing him adopting his own method of trying to establish his point.

With regard to the second sentence of the 5th paragraph, I beg the Hon'ble Judges will remember that the case was most obstinately contested. I submit that I was bound to listen to the arguments as to the relevancy or otherwise of every question objected to. I submit I had no other alternative.

No doubt Mr. Shiva Rao's arguments were exceedingly long, and they were equally involved and difficult to follow, but in an important case in which the lives of his two clients were at stake I did not think it right to interfere.

With regard to the last sentence of the 5th paragraph, I have formed the opinion, and I hope there will soon be a ruling of the High Court on the point, that, according to the Code of Criminal Procedure, the prosecution cannot examine at a sessions trial any person as a witness if objection is taken by the accused, unless the person has been examined by the committing magistrate. I had consequently in the case in question to examine as court witnesses no less than seven persons whose evidence should, in my opinion, have been taken by the committing magistrate. In examining court witnesses the procedure I have always followed is to examine them myself, then to let the Public Prosecutor put questions, and then allow the defence vakils to question the witness. I respectfully submit that this is the correct procedure.

6. I trust that, with this explanation before them, the Hon'ble Judges will be able to take a different view of the way I conducted the case. The case was one in which I considered, I think, rightly that the slightest want of patience on my part would have most materially and probably hopelessly prejudiced the prosecution.

Order—Mis. No. 2440, Judicial, dated 26th November 1895.

With reference to paragraphs 7 and 8 of his explanation, Mr. Holmes will be informed that no formal inquiry at which his presence will be required will take place in respect to this matter. There is therefore no necessity for him to cancel the passage which he has taken to Europe or to defer taking leave. The orders of Government upon the present matter, and upon his conduct of certain other cases which have recently come before Government, and regarding which a reference will shortly be made to him, will be communicated to Mr. Holmes as soon as they are passed, being sent if he has by that time left India to his address in Europe.

(True Extract.)

(Signed) J. F. PRICE,
Chief Secretary.

To W. C. Holmes, Esq., I.C.S.

G.O., Mis. No. 373, Judicial, dated 24th February 1896.

Read—the following paper:—

From W. C. HOLMES, Esq., B.A., I.C.S., District and Sessions Judge, South Canara, to the Chief Secretary to Government, dated 21st November 1895.

In continuation of my letter to you of the 15th instant, I have the honour to say that I have had, since I wrote that letter, a complete analysis of my sessions cases in this court made and an analysis of appeals against them so far as results are known in this office, and I have had four statements prepared showing how my work compared with the figures of the presidency as a whole and of this court for a number of years back. The statements are appended.

2. Statement I shows that of the 122 sessions cases disposed of by me 14 were withdrawn, 63 resulted in conviction, 37 in acquittal, and 8 in the conviction of some accused and the acquittal of others. I have not been able to ascertain the corresponding figures for the presidency or district, but, so far as my general knowledge of the matter goes, these figures are about the average.

Statement I also shows that of the charges against 276 accused persons, the charges against 28 persons were withdrawn. Of the remaining 248 accused persons, 151 were acquitted and 96 were convicted (13 convictions being subject to the confirmation of the High Court). The case of one accused found guilty by a jury I referred to the High Court, and he was set at liberty. The percentage of convictions was 34·7 of the total 276 accused persons. This rather low percentage is due to two causes—one is that I broke up one case and held six trials—18 and 20 to 24 of 1894—in five of which the same five persons were accused and in the sixth two of the five. I did this because the charges were serious charges, being charges of torture against certain police officers, and I thought it advisable to have separate trials for each alleged offence to prevent the possibility of confusion. In two of the six cases the charges were withdrawn. The other cause of the rather low percentage of persons convicted is that two or three trials in which there were a number of accused broke down. One of these cases was 15 of 1892 in which a Muhammadan, who was beaten in a Hindu temple where he was a trespasser, shifted the scene of the offence to his own house where he falsely represented that he was attacked. In another case, in which 22 persons were charged, the true facts, which would have shown the complainants to have been agressors, were suppressed, and the prosecution could not establish the charges actually brought. A third case was 33 of 1894, in which I expressed an opinion which was concurred in by

three assessors—a Hindu, a Muhammadan and a Roman Catholic Native gentleman—that the prosecution had failed to make out their case, and on the expression of this opinion the Public Prosecutor, after consulting the Superintendent of Police and the then acting District Magistrate, stopped the case for the prosecution and consented to the case falling through. An appeal was, however, preferred against the acquittal and a retrial ordered. As the matter must be held to be still *sub judice*, I make no comments on the case.

3. Statement II shows that I differed from the jury in one case out of 22. I find that in ten years of the presidency figures, out of 3,691 in 182 cases the Judge differed wholly or partially from the jury. That is almost in the proportion of one out of 22. In South Canara I find for ten years up to 1892 the Judge differed from the jury in five cases out of 67, that would be equivalent to differing in 1·6 cases out of 22 which is very little over the number in which I differed from the jury. In the case of assessors I find I differed from them either wholly or partially in 33 cases out of 82, whereas out of that number of cases (82) according to the figures for the presidency and South Canara for ten years I should have differed from the assessors only in 21·8 and 24·1 cases respectively.

4. Statement III shows the result of references made by me in cases in which sentences of death were passed compared with the result of such references for the Presidency and for South Canara for nine years up to 1893, the only years for which I have the figures. It will be seen that a different result in one *case* would have made the results of my references almost exactly equal to those of the presidency. In the case of two *persons* two Judges differed as to the correctness of the convictions, and on reference to a third Judge one accused was acquitted and the other sentence supported.

5. Statement IV shows the result of appeals to the High Court from my decisions in sessions cases compared with the figures for the presidency and for South Canara for nine years. It will be seen by comparing the figures given in column 3 with the corresponding figures in columns 6 and 7 how closely my figures correspond either with the figures for the presidency or with the figures for South Canara for nine years. It will be seen that if the result in *one case* had been different and my decision had been confirmed in place of having been reversed the correspondence would have been still more marked.

6. I enclose three statements in manuscript for reference if necessary showing how my figures in the appended statements were arrived at. The figures for the presidency and for South Canara are almost entirely taken from the annual criminal administration reports.

Order—Mis. No. 373, Judicial, dated 24th February 1896.

In G.O., No. 2231, Judicial, dated 4th November 1895, copy of which is attached to this proceedings, the Government referred to Mr. W. C. Holmes, then District and Sessions Judge of South Canara, for explanation and remarks letter, No. 2878 (Confidential), dated 14th October 1895, from the Registrar of the High Court in which it was stated that the Hon'ble the Judges considered that Mr. Holmes was not suited to judicial work, and which enclosed copies of two proceedings of the High Court, No. 1760, dated 10th September 1895, and No. 1812, dated 16th September 1895, commenting adversely upon his conduct of sessions cases Nos. 33 and 38 of 1894 respectively.

2. The two letters read above, copies of which are also appended, form Mr. Holmes' reply. The first of these consists of an explanation addressed to Government in answer to G.O., No. 2231, Judicial, dated 4th November 1895, and of a copy of a letter from Mr. Holmes' addressed to the Registrar of the High Court in reply to one * of the proceedings of the Court which formed an enclosure to the Registrar's letter read in that Government Order. The second of them is addressed to Government.

* No. 1812, dated 16th September 1895.

3. The Government would feel obliged if the Hon'ble the Judges of the High Court would favour it with their opinion upon the two letters referred to and would

also transmit to Government a copy of the orders, if any, passed by them upon the letter to the Registrar of which a copy is enclosed in the first of them.

* * * * *

(True Extract.)

(Signed) J. F. PRICE,
Chief Secretary.

To the Hon'ble the Chief Justice with C.L.

Read—the following paper:—

From R. H. SHIPLEY, Esq., I.C.S., Acting Registrar, High Court, Appellate Side, to the Chief Secretary to Government, dated Madras, 16th March 1896, No. 983.

* * * * *

2. The High Court passed no proceedings on the letter from Mr. Holmes, dated 25th September 1895, but addressed the Government on the subject in its letter, No. 2878, dated 14th October 1895.

3. I am to state that the Hon'ble the Chief Justice and the Judges of the High Court have nothing material to add to the opinion they have already expressed on the subject. The reference to figures and statistics is, they consider, irrelevant to the real issue. The complaint against Mr. Holmes is that he fails to exercise due control over his vakils, in the examination of witness, and, generally, in the conduct of his cases. Whether this failure be due simply to weakness, or to incapacity to distinguish between relevant and irrelevant evidence, matters, in the opinion of the High Court, very little: the result is the same, namely, a lamentable waste of public time and a risk of a miscarriage of justice.

4. The High Court is further of opinion that the circumstance of Mr. Holmes' defending his conduct, and not admitting his shortcomings, renders it hopeless to expect any material improvement. As an illustration of this, I am to draw the attention of Government to paragraph 4 of the High Court proceedings, No. 1812, dated 16th September 1895.

5. With these few remarks the Hon'ble the Chief Justice and the Judges of the High Court would leave the matter in the hands of the Government.

G.O., Mis. No. 2441, Judicial, dated 26th November 1895.

ABSTRACT.—Communicating to the District Magistrate, South Canara, the High Court's judgment in the appeal against the acquittal in sessions case No. 33 of 1894 and requesting the Hon'ble the Judges to call upon Mr. W. C. Holmes, I.C.S., to account for the fact noticed in the Government Pleader's letter that the Judge had omitted to record in his notes much of the evidence recorded against the first prisoner.

Read—the following paper:—

From the Acting Registrar, High Court, Appellate Side, dated Madras, 20th December 1895, No. 2631, Judicial.

ABSTRACT.—Forwarding copies of letters Nos. 1205 and 1213 from Mr. Holmes, Sessions Judge of South Canara, in reply to G.O., No. 2441, Judicial, dated 26th November 1895, and observing that the Judge should have taken notes of all material evidence and that the Public Prosecutor, when preferring the appeal, seems to have referred to the Judge's notes rather than to the vernacular record which latter forms the real record in the case.

G.O., Mis. No. 2437, Judicial, dated 26th November 1895.

Read—the following paper:—

From D. W. G. COWIE, Esq., Acting Registrar, High Court, Appellate Side, to the Chief Secretary to Government, dated Madras, 11th November 1895, No. 2297, Judicial.

I am directed to forward, for the consideration of Government, a copy of the decision of the Sessions Court of South Canara in sessions case No. 15 of 1895,

together with this court's order directing a retrial of the accused persons. Copies of the orders of this court, dated 5th September and of other proceedings as well as of the District Magistrate's explanation and proceedings in the transfer case, are also forwarded.

2. As the accused have to be retried, the High Court does not offer any remarks upon the merits of the case; but whether the charge be eventually sustained or not the court thinks it right to draw the attention of His Excellency the Governor in Council to the conduct of the local officers concerned.

ENCLOSURES.

IN THE COURT OF SESSIONS, SOUTH CANARA.

SESSIONS CASE No. 15 OF 1895.

Present:

W. C. HOLMES, Esq.

Queen-Empress.

v.

(1) *Francis D'Mello*, (2) *Mahomed Usman*, (3) *Paul Machado* and (4) *Linga Bhatta.*

(Committed by Mr. A. Devappa Punja, Stationary Magistrate, Udipi.)

Charge.—Against first, second and third.—Wrongful confinement to constrain a person to cause restoration of stolen property, section 348, I.P.C., and grievous hurt to constrain a person to restore stolen property, section 331, I.P.C.

Against fourth.—Abetment of the above offence, sections 109, 348 and 331, I.P.C.

Charges added in this Court.

First added charge—Against first accused.—Hurt to constrain a person to restore stolen articles, section 330, I.P.C.

Second added charge—Against first, second and third accused.—Hurt to constrain a person to restore stolen articles, section 330, I.P.C.

Third added charge—Against all the accused.—Grievous hurt to constrain a person to restore stolen articles, section 331, I.P.C.

Fourth added charge—Against first and second accused.—Wrongful confinement of a person to constrain the person to restore stolen articles, section 348, I.P.C.

Against third accused.—Wrongful confinement of a person to constrain the person to restore stolen articles, section 348, I.P.C.

Against fourth accused.—Wrongful confinement of a person to constrain the person to restore stolen articles, section 348, I.P.C.

Assessors.—Messrs. (1) Bhardwaja Shiva Rao (Saraswati Brahman) and (2) Martin Souza (Roman Catholic Christian).

Opinion of the Assessors.—First assessor found the first and second accused guilty of wrongful confinement to constrain a person to restore stolen articles, section 348, I.P.C., and found the accused not guilty on all other charges.

Second assessor found all the accused not guilty on all the charges.

Finding of the Judge.—First and second accused guilty of wrongful confinement under section 342, I.P.C. All the accused acquitted of all other charges.

Sentence or order.—First and second accused each sentenced to three months' simple imprisonment; third and fourth accused acquitted and set at liberty.

Judgment.—The first three accused have been committed to this court charged under section 348, I.P.C., with having wrongfully confined a man named Shankara Bhatta from the evening of the 26th February last till about the midnight of the 27th February at Tallur village for the purpose of constraining him to restore certain property. They have also been committed, charged under section 331, I.P.C., with having committed grievous hurt to Shankara Bhatta during the night of the 27th February for the same purpose. The fourth accused was committed on charges of having abetted the above offence of the first, second and third accused.

2. The charges on which the accused were committed were not properly framed and did not comply with the requirements of section 222 and section 223 of the Criminal Procedure Code. The charge should, as required by section 222, state such particulars of the time and place of the alleged offence as are reasonably sufficient to give the accused notice of the matter with which he is charged.

The first charge, as framed by the magistrate, mentions the village in which Shankara Bhatta lived as the place where he was wrongfully confined. No doubt a man might be wrongfully confined within the limits of his village, but that is not the allegation, I believe, in this case.

The charge should have stated what particular place in the village it was in which it was alleged Shankara Bhatta was wrongfully confined, or, if it were alleged that he had been confined in more places than one, the charge should have mentioned all those places.

The second charge should have stated more definitely than "on the night of the 27th February," the time at which it was alleged the grievous hurt was caused. The place where it is alleged the grievous hurt was caused is entirely omitted from the charge. This is directly opposed to the provisions of section 222 of the Criminal Procedure Code. It is alleged that Shankara Bhatta was beaten three times at three separate places on the night of the 27th, and it cannot be made out from the magistrate's charge to which alleged beating the charge refers.

These are not merely idle criticisms. After the trial in this case had proceeded for nearly three days, the court was unaware what the exact offences were that the accused were being tried for, except one alleged offence for which the court had framed a specific charge itself. The court did not know whether the offences the court *thought* the prosecution was probably trying to prove were the offences which the prosecution *thought* it was trying to make out, nor indeed whether the prosecution had any definite ideas on the matter at all.

The Code requires (section 210) that the charge should be read and explained to the accused and that a copy of the charge should, if required by the accused, be given to the accused free of cost. This shows the object of the charge, namely, that the accused should clearly know what the exact offence is that he is to be tried for. If the charge be not framed with sufficient distinctness, the object of this provision of the Code is defeated. I should not say so much about this were it not that I think in cases where there are private prosecutions, magistrates should be particularly cautious to frame charges correctly. It is extremely unfair to accused persons to be sent to stand their trial before the court of sessions on vague charges and on vague evidence, and when prosecutions are privately conducted—from some cases that have come to my notice—it seems to me that in such cases evidence of a vague and intangible nature is purposely left before the court and that the object of the prosecution is not, as it always should be, that the truth should be ascertained by true evidence, but that somehow or other in the confusion of vague evidence a conviction might be obtained. Magistrates should be on their guard in such cases to prevent confusion and uncertainty. I personally think private prosecutions are, as a rule, objectionable. In this case the police reported the charges to be false and the Head Assistant Magistrate ordered a magisterial inquiry. I think when a magisterial inquiry was considered necessary, it should have been conducted either by a responsible officer of Government or by a vakil who had the confidence of Government.

Besides, when the charges are not properly prepared, there is great waste of time in the Sessions Court. The Public Prosecutor is in doubt what the charges are and cannot properly open the case, and the case is left for considerable time in a state of confusion until the Judge has gone sufficiently into the details of the evidence to be in a position to frame new charges. Thus the trial, in place of being a trial in the proper sense of the word, has to take to a greater or less extent the form of a preliminary inquiry as well.

3. In the present case a number of new charges had to be framed and added by this court. The court refused to amend the first charge sent by the magistrate though it would appear to be unsustainable, because to amend it as was proposed would have been equivalent to the Public Prosecutor withdrawing from a part of the case as sent up by the magistrate, and as in a recent case in which the Public Prosecutor abandoned the prosecution Government appealed, the court would not allow the withdrawal of any part of the case.

This court refused to add a charge of having caused hurt to Shankara Bhatta's father, because it did not appear that there was either a complaint about that alleged offence or a preliminary inquiry.

This court added a charge against the first accused (for reasons given on page 12 of notes) under section 330, I.P.C., of having caused hurt to Shankara Bhatta for the purpose of compelling the restoration of property by kicking him on the evening of Wednesday, the 27th February, at about 9 o'clock in the yard of the fourth accused. This charge will be referred to as the first added charge.

This court also added another charge (the second added charge) against the first three accused that they, at about 9 or 10 P.M., near the house of one Subbi, in Tallur village, voluntarily caused hurt to Shankara Bhatta by beating him for the like purpose, section 330, I.P.C.

The third added charge was against all the accused, and was that they at about 10 or 11 P.M. on the night of the 27th February near the Asvatakatta in Tallur village voluntarily caused grievous hurt to Shankara Bhatta by beating or kicking him in a way they knew to be likely to endanger his life for the same purpose (section 331, I.P.C.).

The fourth added charge was for wrongful confinement for the like purpose, section 348, I.P.C. It contained three counts. The first charged the first and second accused with having wrongfully confined Shankara Bhatta at certain places specified in the charge during the night of the 26th and up to about midnight on the 27th February. The second count charged the fourth accused with having joined the first and second accused in the wrongful confinement of Shankara Bhatta from about 2 A.M. on the morning of the 27th February. The third count charged the third accused with having joined the first and second accused in the wrongful confinement from the forenoon of the 27th February.

4. The first accused is the head constable of Kundapur police station. The second and third accused are two constables attached to the station. On the afternoon of the 26th February last, the first and second accused were engaged at Tallur in the investigation of a theft that was alleged to have taken place in the house of Shanti Murthappa, a schoolmaster living at Tallur, a village three miles from Kundapur. The third accused, as it now appears, joined them on the morning of the 27th February. The fourth accused Linga Bhatta's house is next Shanti Murthappa's house, and he interested himself in the investigation into the alleged theft at Shanti Murthappa's. It seems that a woman named Putti had shortly before the 26th February been in occupation of Shanti Murthappa's house, and, owing to some alleged intimacy between Shankara Bhatta and Putti's daughter-in-law, it appears that Shankara Bhatta was suspected of having been concerned in the theft. It is certain that Shankara Bhatta was sent for and questioned about the alleged theft.

5. The prosecution case as presented to this court is that Shankara Bhatta was kept in wrongful confinement during the night of the 26th February and till about midnight on the 27th February, and that hurt was caused to him at two places in Tallur and grievous hurt at a third place close to Tallur and that all this was done with the object of constraining him to restore the stolen property.

6. It is certain that, early in the morning of the 28th February, a cry was raised that Shankara Bhatta had fallen into a well. It is also certain that Shankara Bhatta's body was taken from a well in Shanti Murthappa's yard by the ninth prosecution witness, Kusa Billiya, who had been sent for for the purpose and who got down into the well by means of a bamboo. It is also certain that Shankara Bhatta's father, Ramakrishna Bhatta (first prosecution witness), went to the potail and made a complaint to him about his son having been beaten and the potail came in the morning and an inquest was held and a report made that Shankara leapt into the well and committed suicide, but that as the relations of the deceased questioned this decision, the body was sent to the Kundapur hospital for examination.

7. The second prosecution witness, A. S. Vittal Rao, apothecary in charge of the Kundapur hospital, held the *post mortem* examination of Shankara Bhatta's body. The examination began at about 5-20 P.M. on the 28th February. It was partly conducted by lamp-light.

The following external injuries were found on the body :—

(1) A group of small bruises on the right upper arm near the shoulder joint, the diameter of the whole group being about 1 inch.
(2) A similar group of bruises about 1½ inches in diameter a little lower down the right arm.
(3) A similar group of small bruises on the right scapular region 1½ inches in diameter.
(4) A similar group of small bruises on the lower part of the left side of the back or on the upper part of the left leg. The group was 2 inches in diameter.

The apothecary in reply to questions put by the court said that these injuries must have been caused by some substance having a number of small blunt protuberances.

There were also on the body two small bruises ¼ inch long and very narrow on the arm on the inside of the left elbow, a bruise 2 inches long and ¼ broad on the front of the left leg below the knee, and two other small bruises near the right ankle.

There was also a bruise below the left breast 1 inch long and ½ broad, and a bruise 1 inch long by ⅓ broad below the right breast, and 5 smaller bruises ½ inch long by ¼ broad and ¼ inch distant from one another above the right breast.

Internally it was found, according to the witness, that there was an oblique rupture about ⅓ inch long on the left pulmonary artery—about 2 inches from the bifurcation of the pulmonary arteries. The rupture was below the inter-space between the cartilages of the second and third left ribs.

Both lungs were found congested and the membranes of the brain were also congested.

Everything else was normal.

8. The rupture of the left pulmonary artery might possibly, in the witness's opinion, have been the result of the blow that caused the bruise below the left breast; but as that bruise was between the sixth and seventh ribs and so 3 or 4 inches from the alleged rupture, it cannot be said to be at all probable that that blow caused the rupture.

The congestion of the lungs could not possibly be a result of the rupture of the pulmonary artery. How in this case there can have been *both* congestion of the lungs *and* rupture of the left pulmonary artery has not been satisfactorily explained by the prosecution. The defence theory is that there was no rupture of the artery, but that the artery was cut in the *post mortem* examination, and it is argued in support of the theory that an injury to the artery that was oblique (as the injury was in Shankara Bhatta's case) and not either across or along the line of the artery was unlikely to have been caused by a blow or by external violence. In support of the theory it is further argued that the apothecary did not dissect the body himself, but allowed the hospital sweeper to do so, and in support of the argument it is pointed out that the Pariahs who brought the body did not bury it and this was, it is argued, because the body was touched by a person of the sweeper class. As to this theory of the defence it is not necessary for me to say more for, as will presently appear, it will not be necessary for me, for the purposes of this case, to come to any decision about the cause of the injury to the artery.

The third added charge.

9. The most serious charge in the case is the third added charge.

The prosecution theory is that the four accused took Shankara Bhatta to a hill close to Tallur and there near an Asvatakatta (a seat under a Peepul tree) caused grievous hurt to Shankara Bhatta, that they carried him back to Tallur, and, after keeping the body for a short time resting against a pyal at the entrance to Shanti Murthappa's yard, they threw the body into the well in the yard and then raised a cry that Shankara Bhatta had fallen into the well.

This charge, I find, is not supported by any reliable evidence.

Subbi, an old woman aged 60 with bad eyesight, deposes that, as she was sitting in the verandah of her house one night, she heard a cry "Ayyayyo" in front of her house, that she knew it was Shankara Bhatta's cry and that he was taken by some persons to the hill and she heard Shankara Bhatta there cry out four or five times "Ayyayyo," then a loud cry and after that nothing. After that she states she saw some three or four men carrying him by the back of her house. She says she left her house and stood near a palm tree and saw this.

This woman's evidence did not carry the slightest weight with it. The woman is of the prostitute class and is a servant of the temple of which Ramakrishna Bhatta is a moktessor and she lives on temple land, so that practically no weight whatever can be given to her evidence simply because she gave it. If the prosecution wished to have any weight given to her evidence, the prosecution should have made her tell her story in the minutest detail. In place of that her story was vague and indefinite. Her story is in itself very improbable. It is much more likely that if any one was being beaten near her house, she would have gone inside and shut the door than have paid any attention to the beating. It is highly improbable that she would have gone outside to watch what was going on when the men were, as is alleged, returning; and she said nothing to the police inspector, who investigated the case, about her having done so.

The other witness, whose evidence bears directly on this part of the charge, is Timmanna. He is a nephew of the complainant Ramakrishna Bhatta. Timmanna says he was sleeping on the pyal of a temple close to his house, that he heard Shankara Bhatta cry out and that he went first to a tamarind tree and then to a lane and from the lane, he says, he saw the beating that is the subject of the charge now under discussion.

The Magistrate of Kundapur went to Tallur on the 1st March and made inquiries as to Shankara Bhatta's death. The witness says he told the magistrate what he saw, but that the magistrate did not record his statement. It is impossible to suppose that that can be true. At any rate the prosecution has not called the magistrate to corroborate the witness. The police inspector deposed that the witness showed him the place where he said he stood and that it would have been impossible to have seen from there a beating going on at the Asvatakatta. It was argued for the prosecution that the police inspector was unreliable, but he seemed to me to give his evidence in a perfectly straightforward and satisfactory way. Timmanna told the inspector that after he heard Shankara Bhatta's cry he wakened his mother. Before this court he denied it. Timmanna also told the inspector that he took a stick with him. Before this court he denied it.

In my opinion Timmanna Bhatta's evidence cannot be credited. It is probably totally false.

The charge really rests on the evidence of Subbi and of Timmanna Bhatta, and as their evidence cannot be believed the charge must fail. There is, however, some other evidence bearing on the charge to which I shall now refer.

There seems to be no doubt that the fifth prosecution witness Rama Bhatta was sent for on the night of the 27th February. He took with him to Linga Bhatta's house five rings that Shankara Bhatta had given him, but as soon as Shanti Murthappa said they were not his rings, the rings were returned to him. This witness told the inspector that as soon as his rings were returned he was told to go, and that he went home. This was very likely; but in this court he deposed he was told to stop at Linga Bhatta's and that he sat on the chavadi of Linga Bhatta's house while Shankara Bhatta was taken away and that he heard cries and after some time Linga Bhatta, fourth accused, came back and he was told to go and he left. I think it is much more probable that the story he told the inspector was the truth, for it does not appear that the police could have had any object in keeping him at Linga Bhatta's. On the contrary, if the police were going to beat Shankara Bhatta, they would have had every object in sending the witness away.

The rest of the evidence bearing on this charge is also, I think, in all probability untrue.

Devadiga Venkata, the third prosecution witness, attended the first accused as a servant when he was at Tallur. He deposed that some one of the three policemen told him to sit on the pyal in Shanti Murthappa's yard, that he did so, that the three policemen took away Shankara Bhatta towards the Asvatakatta, that he heard cries of "Ayyayyo" and that afterwards the police carried Shankara Bhatta back and put him sitting leaning against the pyal, and he was told to go. Before the magistrate he deposed he saw from the road Shankara Bhatta's body thrown into the well, but before this court he denied it, that is to say, he said nothing about it, and said he did not know where Shankara Bhatta was when he left.

Devadiga Venkata's evidence, so far as it has any bearing on this charge, is probably totally false. There is no reason why he should have been made to sit on the pyal, and it is the last thing the police would have been likely to have ordered him or to have allowed him to do. If they were going to beat Shankara Bhatta, the witness would have been sent home. He was examined by Police Inspector Boyer, but told him nothing that he now deposes to in support of the charge of grievous hurt.

Another witness, Venkatesha Prabhu, also deposed that he was in Linga Bhatta's when Shankara Bhatta was taken away and he heard cries and was afterwards told by Linga Bhatta to go and he went. He did not tell anything about this to Inspector Boyer. He told Inspector Boyer that after Putti was brought to Linga Bhatta's, Shankara Bhatta prostrated himself at Putti's feet and asked her to return the jewels and that when the police were questioning Shankara Bhatta, he ran away and threw himself into the well. This story is totally different from what he told this court. He told this court that he did not see Putti at Linga Bhatta's that night at all.

Ramakrishna Bhatta, the father of Shankara Bhatta, in this court deposed that he was asleep on the pyal of Subraya Prabhu's house near Linga Bhatta's, and that he heard Linga Bhatta cry out "Shankara Bhatta died having fallen into a well" and that as he was going to the place, some one cried out "Who is that?" and that he got afraid and went home, told his brother to go to Kundapur and he went to the potail's. There is no doubt that the witness has suppressed almost all that he knew. He told a different story on this point to the Kundapur Magistrate on the 1st March and afterwards to the inspector.

10. It would generally be enough to say that the evidence in support of the charge is unreliable, but in this case I must say a few words about the final part of the theory of the prosecution, namely, that the accused threw Shankara Bhatta's body into the well with the object of representing that he committed suicide. Before this court no witness gave any evidence in support of this theory; but before the magistrate, as I have said, the third prosecution witness, Devadiga Venkata, deposed that he saw this being done. Before this court he denied it.

On the 1st March, Linga Bhatta, the fourth accused, made a sworn statement before the Kundapur Magistrate who went to Tallur to hold an inquiry about Shankara Bhatta's death, and the statement has been filed by the prosecution and marked as exhibit D. He said that after Rama Bhatta left with the rings, Shankara Bhatta went towards the pyal of Shanti Murthappa's house and a moment after the people of the house cried out that something had fallen into the well, and a torch was got and a sound was heard in the water of the well and after that Kusa Billiya descended into the well. Kusa Billiya was examined as the ninth witness before this court. He lives some little distance from Shanti Murthappa's house and there is no doubt that he was called that night and that he got into the well and took out Shankara Bhatta's body. There is also no doubt that attempts according to native ideas were made to restore animation and that with that object the body was covered with rice. The defence did not call witnesses because probably the defence wanted to have the last of the arguments, so that there is hardly any evidence before this court in support of the theory of suicide. I think I have stated all the evidence there is. The medical evidence is not in my opinion in conflict with the theory. Even if the pulmonary artery were ruptured, the rupture may have been caused by the force of the blow with which the water was struck. The blow would be of very considerable violence as the well was rather deep—perhaps 15 feet or 16 feet to the level of the water. There were roughly dressed logs across half the mouth of the well and the diameter of the well was only 6 feet. It was partly cut in laterite rock, and partly built up of laterite stones, and at the bottom of the well there were some loose laterite stones. The depth of the water in the well was up to Kusa Billiya's neck, *i.e.*, less than 5 feet. Under these circumstances, the difficulty is rather to account for there being so few and so trifling injuries on the body. The injuries that there were in several cases—I refer to the groups of smaller bruises—look very much like injuries caused by coming in contact with the uneven surfaces of laterite stones. There is thus on one side the prosecution theory which is not supported by any evidence on which, in my opinion, any reliance can be placed, and on the other side there is the defence theory of suicide which is supported by some evidence and seems, I think, probable.

The second added charge.

11. This charge rests on the same evidence as the third added charge with which I have just dealt. The evidence is, as I have said, in my opinion, totally unreliable.

The first added charge.

12. This charge is that the first accused kicked Shankara Bhatta in the yard of the fourth accused Linga Bhatta's house.

The charge is supported by the evidence of two witnesses who depose they witnessed the assault. These witnesses are Ramakrishna Bhatta and Venkatesha Prabhu.

Ramakrishna Bhatta is the father of Shankara Bhatta, and he deposed he was sitting on a chavadi in Linga Bhatta's yard, that the first accused came to the yard of the house dragging his son and that he kicked him on the left side two or three times, that his son became unconscious and that he interceded and was told to leave, and he left and went to Subraya Prabhu's chavadi.

Venkatesha Prabhu, the fourth prosecution witness, deposed that he was at Linga Bhatta's and had been questioned by the police about the theft, that first accused came dragging Shankara Bhatta and kicked him on the right side, and he fell down unconscious.

The evidence of these two witnesses was in itself very unsatisfactory. The evidence was chiefly remarkable for the vagueness of the account of what they said happened. Even if the evidence stood alone, the only conclusion possible in my opinion would be that it was not reliable.

But the charge is not supported by the medical evidence. It is in conflict with it. There were no marks on Shankara Bhatta's body of his having been dragged along the surface of a yard and there was no mark either on the right side or on the left side of Shankara Bhatta's body that was in even a remote degree probably caused by a kick or kicks.

Besides, nothing was said about this alleged offence in the complaint that was presented to the Kundapur Magistrate on the 28th February. On the 1st March, when the Kundapur Magistrate examined Ramakrishna Bhatta, the story was first told though not in the exact form now deposed to.

If this charge were really true, that is to say, if the complainant had seen his son dragged and kicked so violently that he became unconscious, would the father have remained quietly seated on a neighbouring pyal? Would he not have at once gone off to the potail and complained? From his subsequent conduct in this prosecution, it may be assumed I think, that he would. Moreover, when towards morning after his son's body had been taken from the well he did go to the potail and made a complaint, nothing was said about this charge. What was said, according to the report, was that Kusa Billiya told him his son had been beaten. If Ramakrishna Bhatta had been an eye-witness to his son receiving two or three violent kicks, it may be assumed he would have mentioned it.

The evidence on this charge is in conflict with the evidence of Venkata Subbi and of Timmanna Bhatta, but I do not attach any importance to that as I altogether discredit these witnesses.

Fourth added charge—first count.

13. There is no reason to doubt that the second accused went on the evening or afternoon of the 26th February to Ramakrishna Bhatta's house and brought him and his son Shankara Bhatta to the head constable, the first accused, at Shanti Murthappa's house. There is also, I think, no reason to doubt that the complainant and his son returned for their meals to their house, but went and slept at Linga Bhatta's house on the night of the 26th February. The incident about Shankara Bhatta and Ramakrishna Bhatta going from there to a neighbouring pyal early in the morning of the 27th, where Shankara Bhatta was questioned by the fourth accused, Linga Bhatta, is also, I think, true. I also consider that from there Shankara Bhatta went to Shanti Murthappa's house and that he sat on the pyal of the house during the day except when (accompanied by the third accused) he went home for meals. I also think that from there he went to Linga Bhatta's house some time during the night of the 26th and 27th February and that he remained there for some time, that is to say, till he (as I think probable) left and committed suicide.

I think the prosecution witnesses have suppressed the truth about the occurrences at Linga Bhatta's that night and have given a totally false account of what happened. After Rama Bhatta had been given back the rings, he, as I think, left. I think it is very likely that the story told to the Kundapur Magistrate that Putti was sent for and examined that night is true. The police that night continued, I think, to hold their investigation. I also think that it cannot be believed that any serious violence was offered to Shankara Bhatta.

Three main questions arise with reference to this charge:—*First*, was Shankara Bhatta from the evening of 26th February to about midnight on the 27th February kept under restraint by first and second accused? *Second*, was the restraint wrongful? And *third*, was it restraint with the object alleged in the charge, that is to say, to compel the restoration of the stolen property?

As to the third question, I think there is no sufficient evidence to support it. There is no evidence that the accused or either of them said to Shankara Bhatta "unless you deliver up the property you will not be allowed to leave." I do not consider that there are any facts proved from which it could be reasonably inferred that, although such words were not actually spoken, their meaning was conveyed to Shankara Bhatta. It is not in the least likely that the police could have had any expectation that in consequence of mere confinement Shankara Bhatta would have given up the property if he had it.

With regard to the first question, I think the evidence shows that Shankara Bhatta was under restraint. On the evening of the 26th the head constable, first accused, told Shankara Bhatta to return. It is likely that at that time Linga Bhatta had gone off to Gangoli to consult an astrologer. It is also likely that the head constable told Shankara Bhatta to return in case he might be wanted in connection with the information Linga Bhatta might get from the astrologer. Shankara Bhatta came back with his bedding and slept on Linga Bhatta's chavadi. The confinement, if any, would have begun on his return to Linga Bhatta's. Shankara Bhatta slept in the chavadi and it would appear that the head constable and second accused slept on the same chavadi—one on each side of him—and that his father was not allowed to sleep on that chavadi. I think it must be held that Shankara Bhatta was then restrained from going wherever he wished. It seems to me impossible to say that he was sleeping voluntarily on the pyal. He had been ordered by the head constable to come. He was not merely requested but ordered, and there is evidence the second accused threatened him. I think it must be held he was from the time he came under restraint. I think that restraint continued till midnight on the 27th February,

when Shankara Bhatta threw himself, as I think, into the well. There is satisfactory evidence that Shankara Bhatta was most of the 27th February on the pyal of Shanti Murthappa's house. There is evidence that the second accused forced him to sit there. The evidence that the third accused sat on a pyal near that on which Shankara Bhatta was sitting is also, I think, true, and I think it is also true that when Shankara Bhatta went home for meals the third accused accompanied him. It is also, I think, probable that Shankara Bhatta was not allowed to go for night meals on the 27th February to his house, and that he was taken from the pyal of Shanti Murthappa's house to Linga Bhatta's yard. I do not consider it proved that he was taken to the Asvatakatta at all. I think it probable he was at Linga Bhatta's till he left to commit suicide.

Taking the view of the case most favorable to the accused, namely, that Shankara Bhatta was kept at Linga Bhatta's and other places so that he might be further examined as to the theft in case of necessity, it is a question whether the restraint was wrongful. It does not appear that the head constable had any power to give Shankara Bhatta a *verbal* order to attend at Linga Bhatta's. Under section 161 he could have examined Shankara Bhatta, or under section 160 he could have by a written order required his attendance. The section (160) does not say for what purpose his attendance could be required, but read with the next section it would appear to mean his attendance could be required for the purpose of examining him. The power given by section 160 is far from clear. The word "attendance" implies waiting; but would it be legal at all or for how long would it be legal to keep a person summoned under section 160 waiting? Does it mean till the examination was finished or till he had leave to depart? If the order under section 160 is not obeyed, it does not appear that the police officer who issued it has any legal power to compel the attendance of the person summoned, that is to say, he could not send a constable and bring him under arrest. It would also appear, as it seems to me, that a police officer has no legal power to retain a person whom he has summoned under section 160. I think the retention in this case was wrongful.

Fourth charge—second and third counts.

14. It is argued that there is no evidence againt the third and fourth accused in support of these charges.

The evidence against the third accused is that he sat on one pyal and Shankara Bhatta on another in Shanti Murthappa's yard on the 27th and that he followed Shankara Bhatta to his house and back. It was certainly no offence for the third accused *merely to watch* Shankara Bhatta. So far as I see, it must be held that there is no *evidence* he did more.

There is also, I think, no reliable evidence against the fourth accused. It is argued that there was an admission of guilt in exhibit D, the statement fourth accused made to the Kundapur Magistrate on the 1st March; but that is not so. The alleged admission depends on the meaning of a single word which has been translated "took," but the word does not imply that Linga Bhatta compelled Shankara Bhatta to go with him.

15. The result is that the first and second accused are, with reference to section 238, Criminal Procedure Code, convicted under section 342, I.P.C., of having wrongfully confined Shankara Bhatta and that on all other charges they are acquitted.

16. The first and second accused are men of long service and good character, but it is a matter of so much consequence that police officers should not exceed their powers, that for this reason as well as considering the result in this case that followed the powers being exceeded, I sentence the first accused and second accused to three months' simple imprisonment.

17. I should remark that I think the powers of police officers should be so clearly laid down that there could not be any possibility of their being mistaken. In this case the consequences of this not being done have been most deplorable. One man has committed suicide. The four accused and another man had a false charge of deliberate murder brought against them. The four accused have had to undergo a long trial in this court—the greater part of the charges being probably false. And the first two accused, who seem respectable men, and who have had a long service in the police and have each a good character, are each sentenced to a term of imprisonment.

18. The third and fourth accused are set at liberty.

(Signed) W. C. HOLMES,
Sessions Judge.

MANGALORE,
20th June 1895.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

WEDNESDAY, THE 30TH OCTOBER 1895.

Present:

The Hon'ble Sir ARTHUR J. H. COLLINS, *Kt.*, Chief Justice, and the Hon'ble Mr. Justice PARKER.

(Criminal Appeals Nos. 296 and 308 of 1895.)

Francis D'Mello, appellant in 296 (first prisoner) and *Mahomed Usman*, appellant in 308 (second prisoner).

Appeals against the sentence of the Court of Session of the South Canara division in case No. 15 of the calendar for 1895.

Criminal Revision Case No. 424 *of* 1895 (*taken up No.* 21 *of* 1895).

(1) *Francis D'Mello*, (2) *Mahomed Usman*, (3) *Paul Machado* and (4) *Linga Bhatta*, accused in calendar case No. 15 of 1895 on the file of the Sessions Court of South Canara.

These appeals and this revision case coming on for hearing on Monday, the 21st instant, after the receipt of the report called for in the order of this court, dated 5th September 1895, and counsel not appearing on behalf of the appellant in criminal appeal No. 308 (second accused in criminal revision case No. 424) and the third and fourth accused not appearing in person or by counsel; upon perusing the petitions of appeal and the record of the evidence and proceedings before the Court of Session, and upon hearing the arguments of Mr. H. G. Wedderburn, counsel, and of the Hon'ble Mr. C. Sankaran Nair, vakil for the appellant in criminal appeal No. 296 (first accused in criminal revision case No. 424), and of the Public Prosecutor in support of the conviction, and the cases having stood over for consideration till this day, the court made the following

Order.—The appellants in these two appeals were the head constable and another constable of the Kundapur police station in South Canara and were charged with two others (another police constable Paul Machado and one Linga Bhatta) with offences under sections 348 and 331 of the Penal Code. The two latter were acquitted, but the two former were convicted of wrongful confinement under section 342, I.P.C., and were each sentenced to three months' simple imprisonment. On the appeals coming on for hearing, it appeared to us that the judgment of the Sessions Court was seriously defective and that many irregularities had taken place. We therefore directed notice to issue to all the four accused to show cause why they should not be retried, and the whole case is now before us.

It appears that in February last a theft had occurred in the house of one Shanti Murthappa at Tallur and the police were endeavouring to detect the offender. For some reason which does not appear, suspicion fell upon the deceased Shankara Bhatta, which suspicion appears to have been intensified by the opinion given by an astrologer that he was the thief. That Shankara Bhatta was detained by the police on the 26th and 27th February is not denied, and the Sessions Judge finds that he was in wrongful confinement up to the time of his death. This occurred about midnight on the 27th of February, the Judge being of opinion that he then committed suicide by throwing himself into a well. What induced Shankara Bhatta to commit suicide the Judge does not explain, and in his judgment he has ignored, and practically refused to give any weight to, the medical evidence; but the medical evidence is at all events conclusive on this point, namely, that drowning was *not* the cause of death. For some reason, which it is impossible for us to understand or appreciate, the Judge at first refused to allow the question to be put, but the description already given by the witness "that the larynx, trachea and bronchi were normal in appearance and that there were no foreign bodies or disease in them" conclusively shows that death was not caused by drowning (see Taylor's Medical Jurisprudence, 3rd Ed., vol. II, p. 3). The presence of a froth in the pharynx, larynx and bronchial tubes are invariable concomitants of death from drowning. The prosecution evidence was to the effect that Shankara Bhatta had been detained and kicked by the accused, or some of them, in order to make him confess, and that when they found they had gone too far and that the man was dying, they had thrown him—quit unconscious, but with life not quite extinct—into the well, and then raised a hue and cry that he had committed suicide in order to conceal the real cause of his death. The medical evidence was that death was caused by rupture of the left pulmonary artery, the result of external violence to the chest, and the apothecary deposed that the body was covered with masses of bruises and that the injuries were not likely to be caused by a single fall. How this evidence can be reconciled with the theory of suicide adopted by the Judge no attempt has been made to explain.

It was apparently argued that there was no rupture of the pulmonary artery, but only a cut and that this cut was made after death in the *post mortem* examination. The Judge stated that it was not necessary for him to come to any decision upon this point. In this view we are quite unable to agree. The point appears to us to be one of great importance. Besides this, the Judge should have considered how the masses of bruises spoken of by the medical officer could be accounted for.

The Sessions Judge has dwelt upon the discrepancies in the story as told by the prosecution witnesses, and appears to have relied chiefly upon the evidence of Inspector Boyer (eleventh witness), but he has entirely omitted to consider how strongly the medical evidence, unless it can be explained away, supports the prosecution story. The father and friends of the deceased appear to be poor and uneducated rustics and they were placed under every possible disadvantage. It is quite clear that the whole influence and efforts of the superior officers of the police were first directed to prevent any magisterial investigation at all and that when this—through the firmness of the Head Assistant Magistrate—was rendered impossible, the next effort was to prevent, at any rate, a local investigation by the authorities on the spot. Notwithstanding that the Head Assistant Magistrate had refused a transfer, the District Magistrate granted one on the *ex parte* statement of the first accused, forwarded through the Superintendent of Police, to the effect that the Kundapur

Magistrate was prejudiced against him. The District Magistrate in his order accepts this statement without calling upon the Head Assistant Magistrate or the Sub-Magistrate for any explanation, and he actually did this on the petition of a public servant, who was at the time evading a warrant and absconding from justice, without requiring that the accused should first surrender to answer to the charge.

In connection with the efforts of the police to burke inquiry into the complaint against members of the force, we find it necessary to refer to the conduct and evidence of Inspector Boyer. He arrived on the 1st of March before the Kundapur Magistrate had completed his local inquiry. On the 2nd of March the Magistrate left, leaving the inspector to go on with the inquiry, but the record shows that he gave positive orders that a charge sheet was to be prepared. Those orders were disobeyed, and on the 8th of March the inspector sent a referred charge sheet to another Magistrate. Mr. Slight, the Head Assistant Magistrate, to whom this was sent, very properly insisted that a magisterial inquiry should be held and refused to transfer the case. Then followed the successful application to the District Magistrate which was supported by Inspector Boyer and by the Superintendent of Police.

We turn now to Inspector Boyer's evidence before the committing magistrate and before the Sessions Court, from which we gather that the inspector was living in the same house with the accused D'Mello at the time he was conducting the inquiry against him. He accompanied the accused's vakil to the court of the District Magistrate on the 18th of March to ask for a transfer. He admits that he saw the accused on that same day and spoke to him. He admits also that the accused had been absconding *from the 15th of March* and that a warrant of arrest had come into his hands on the 16th of March, yet he never arrested him on the 18th of March, and, in fact, the accused was at large until April 5th, on which day he seems to have put in a voluntary appearance before the Sub-Magistrate at Udipi, to whose court the case had been transferred. On March 31st (page 40 of the magisterial record) Inspector Boyer writes to the Udipi Magistrate that "he learns from the Superintendent of Police that it is not unlikely that the head constable would voluntarily appear before the court at Udipi to which tribunal the case was transferred. The warrants were sent to Udipi for execution."

From Inspector Boyer's evidence it appears that, instead of executing the warrant, it was sent to the Superintendent of Police for orders on the 16th of March. It is thus clear that it was held in suspense from March 16th to 31st. From these facts we find it difficult to refrain from drawing the inference that the Superintendent of Police assisted the head constable to evade a local inquiry and at all events passively connived at his absconding after the warrant had been issued for his apprehension.

There is another point as to which Inspector Boyer's evidence calls for notice as showing the spirit in which this case has been treated. In his deposition before the Udipi Magistrate he speaks of the case against the police as "simply a farce." Now even adopting the view most favourable to the defence, Shankara Bhatta was moved to commit suicide after he had been several hours in illegal confinement, there being nothing more tangible against him than the pronouncement of an astrologer, in our opinion such an occurrence is by no means a farce, but an event of very serious import demanding the strictest investigation.

We are fully sensible of the difficulties attending a retrial after so great a lapse of time, but the case is so serious and the Judge has lost sight of [illegible] that was important in the evidence that we feel it our duty to direct that the case be further investigated. We set aside the present convictions and direct that the accused be retried.

The retrial will take place before Mr. Holmes' successor in the office of Sessions Judge of South Canara, and the Sessions Judge will of course be at liberty to add any charge which may seem to him expedient.

(By the Court.)

(Signed) C. G. TODHUNTER,
Dy. Registrar, Appellate Side.

Proceedings of the High Court of Judicature at Madras, dated 4th November 1895, No. 2296.

Read judgment and records in Session Case No. 15 of 1895 on the file of the Session Court of South Canara.

The High Court does not at all understand the difficulty felt by the Sessions Judge as to the charges in this case. The Sessions Judge had the depositions taken on the preliminary inquiry before him before the trial commenced and if he considered that the charges were imperfectly drawn it was his duty, under section 226, Criminal Procedure Code, to alter the charges and bring them into proper shape. From the statement of the Sessions Judge that after the trial had proceeded for nearly three days he was still unaware what were the exact offences for which the accused were being tried, the High Court can only draw the inference that the Judge had not read the depositions taken before the magistrate, and that it was himself rather than the Public Prosecutor who had no definite ideas.

2. The High Court regrets to have again to observe upon the irregular manner in which the examination of witnesses is conducted in the Sessions Court of South Canara. After two or three questions had been asked by the Public Prosecutor of the ninth witness, Kusa Billiya, the Sessions Judge appears, from the record, to have taken the examination altogether out of the hands of the Public Prosecutor, and the next two pages (59 and 60) of the printed record consist entirely of an examination by the court. After that the Public Prosecutor was allowed to ask a few more questions before the cross-examination. Exactly the same course was adopted in the examination of the eleventh witness Inspector Boyer. After the Public Prosecutor had asked a single question the examination was taken up by the court for several pages of printed matter, several of the Judge's own questions being objected to as inadmissible by the accused's vakil, and the court disallowing (quite erroneously) its own questions on the ground that they were inadmissible. The High Court cannot but observe that, assuming the record to be accurate as to the procedure adopted, such procedure is neither regular nor dignified, and tends to show that the Judge cannot exercise proper control when presiding in his own court.

(See also copy of evidence sent up from South Canara, page 99 and following pages.)

(See copy of evidence sent up from South Canara.)

3. The question to the medical witness as to whether there were any signs of death by drowning was a quite permissible question, evidence having been already given that the body had been taken out of a well. The proper form of the question would have been "were there any signs of death by drowning, if so, describe them?" but the objection of the accused's vakil (allowed by the Judge) that it was a leading question was altogether frivolous.

(True Extract.)

(Signed) D. W. G. COWIE,
Ag. Registrar, Appellate Side.

Order—Mis. No. 2437, Judicial, dated 26th November 1895.

* * * * *

3. The District and Sessions Judge of South Canara will be requested to forward to Government any remarks that he may have to offer upon the proceedings of the High Court, dated 4th November, No. 2296, Judicial, copy of which has no doubt already been forwarded to him.

(True Extract.)

(Signed) J. F. PRICE,
Chief Secretary.

To the Sessions Judge, South Canara.

READ—also the following papers:—

From W. C. HOLMES, Esq., B.A., I.C.S., District and Sessions Judge, South Canara, to the Chief Secretary to Government, dated 27th November 1895.

With reference to my two letters of the 15th and 21st instant, replying to G.O., No. 2231, Judicial, dated 4th instant, I have the honour to say that, since I wrote the latter of the two letters, I received from the High Court a proceedings, No. 2296, Judicial, dated 4th November 1895, criticising the way I dealt with session case No. 15 of 1895 on my file. It may be that the High Court will send a copy of its proceedings to Government. At any rate most of the criticisms have been reported in the newspapers, and I think I am entitled, considering the terms of the letter of the Registrar of the High Court, referred to in G.O., No. 2231, Judicial, dated 4th instant, to lay before Government the defence I have made to the criticisms of the High Court, especially as I am anxious that my leave out of India may not be unnecessarily delayed.

2. I therefore beg to enclose a copy of my letter to the Registrar of the High Court, replying to its proceedings, No. 2296, dated 4th November 1895, of this date, No. 1171, with six spare copies.

ENCLOSURE.

From W. C. HOLMES, Esq., B.A., I.C.S., District and Sessions Judge, South Canara, to the Registrar of the High Court of Judicature, Appellate Side, dated 27th November 1895.

I have the honour to acknowledge the receipt of the proceedings of the High Court, No. 2296, Judicial, dated 4th November 1895, with reference to sessions case 15 of 1895 on my file, stating that the High Court did not at all understand the difficulty I felt as to the charges in the case, criticising the extent to which two witnesses were, as the High Court thought, examined by the court, and pointing out that some questions were erroneously disallowed.

2. I am not called on for any explanation, but, as I am about to proceed to Europe on furlough, I beg to be allowed to represent what happened from my point of view.

3. The case to which the proceedings of the High Court refer—15 of 1895—came on in due course on the afternoon of Friday, the 31st May last. Every step laid down in the Procedure Code was, as is invariably done in every case I try, punctiliously and carefully followed.

As is required by section 271, the trial was opened by the reading of the charges against the accused. These charges were the three charges sent up by the committing magistrate. One of them was of abetment against one of the accused. The other two charges against the other accused were as follows:—

"(1) That you from the evening of the 26th February 1895 till about midnight of 27th February 1895 wrongfully confined the deceased Shankara Bhatta at Tallur village for the purpose of constraining the said Shankara Bhatta to cause the restoration of certain jewels stolen from Shanti Murthappa's house, and that you have thereby committed an offence punishable under section 348, I.P.C., and within the cognizance of the Court of Sessions.

"(2) That you on or about the 27th February 1895 at night voluntarily caused grievous hurt to the said deceased Shankara Bhatta for the purpose of constraining the said Shankara Bhatta to restore the said jewels, and that you have thereby committed an offence punishable under section 331, I.P.C., and within the cognizance of the Court of Sessions."

A little consideration will show that the second charge was wholly illegal.

In framing the second charge, the committing magistrate had fallen into a mistake that is frequently made in this country. The complaint against the accused was that they, at several different places in the small village of Tallur, from time to time during a considerable number of hours, had beaten Shankara Bhatta, or had abetted his being beaten, with a view to constraining him to restore certain stolen property. At least three of the alleged beatings would have fallen within the time specified in the second charge—"on or about the 27th February at night." It is evident from the second charge as well as from the magistrate's order of commitment that the magistrate thought that the whole series of alleged beatings, or at any rate the alleged beatings on the night of the 27th February, could be regarded as one offence made up of parts. He probably thought that the case was one to which the first paragraph of section 71 of the Penal Code had some application. That section says that when an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such offences, unless it be so expressly provided. The meaning of the section is made clear by illustration (*a*) which is that, if *A* gives *Z* 50 strokes with a stick, *A*, though each stroke is technically an offence, is liable to only one punishment for *the whole beating;* but the section has no application whatever to the facts of case 15 of 1895, because what was alleged was that there were a series of beatings at different places and at different hours. The magistrate should have considered separately the evidence as to each particular beating and discharged or committed the accused according as he found there were or were not sufficient grounds for doing so in each particular case. Each beating may have been made up of parts, but the series of alleged beatings could not be regarded as parts of a single offence. For each separate beating if approved against him, each accused was liable to a separate punishment, and as each separate beating, if true, constituted a distinct offence, it was necessary, under section 233 of the Code of Criminal Procedure, that there should be a separate charge for each of the alleged beatings for which the accused were to be tried.

Now, here my difficulties about the charges arose. Neither by a perusal of the charges framed by the committing magistrate, nor by a perusal of the magistrate's order of commitment, nor by a persual of the evidence taken by the committing magistrate, was it possible for me to say with any certainty in the case of which of the alleged beatings the committing magistrate considered that there was a *primâ facie* case made out against the accused. The learned vakil who, in the absence of the Public Prosecutor conducted the prosecution, was exactly in the same predicament. He could not tell as to which of the alleged beatings the magistrate considered there was a *primâ facie* case, nor could he tell, any more than I could, for which of the alleged beatings the magistrate would have committed the accused had he thought it necessary to frame a separate charge in the case of whichever of the alleged beatings he considered there were sufficient grounds for committing the accused.

It seems to me to be a question whether it would not have been a more correct procedure for me to have stopped the case altogether and to have referred the case to the High Court on the ground that the commitment should be quashed as illegal. Section 226, Criminal Procedure

Code, however, is very wide and allows a charge to be framed by the Sessions Court, even when there is no charge framed by the magistrate; so that possibly I was right in going on with the case.

Whether right or wrong, the course I followed was to frame, on Saturday the 1st of June, before the evidence began to be heard, a charge which I called the first added charge. That charge referred to one of the alleged beatings on the night of the 27th February as to which, so far as I was able to gather from the order of commitment, the magistrate seemed to think there was a *primâ facie* case. As to the rest of the alleged beatings, I postponed framing charges till the evidence of the most important witness in the case had been taken. By the aid of his evidence, and by the aid of the records of the committing magistrate, I was in a position to see as distinctly as was possible under the circumstances what charges should be framed. I then added five more charges, which seemed to cover the most important of the alleged offences.

I think it will be thus seen that my difficulties in framing the charges were not inconsiderable.

4. In the second paragraph of their proceedings the High Court say that, assuming the record to be accurate, there was an irregularity on my part in taking the examination of two witnesses, the ninth and eleventh, almost altogether out of the hands of the Public Prosecutor.

On referring to the original deposition of the eleventh witness, Inspector Boyer, I find that the vakil conducting the prosecution only asked him two questions to prove a plan of the scene of the alleged offences. I then asked him a few—perhaps six—questions on an exceedingly important point, namely, the dimensions of the well into which Shankara Bhatta either was thrown or threw himself, and I elicited the following information:—"I saw the well in Tallur in the schoolmaster's house. Its diameter was six feet. Its depth to the bed of the well was 22 feet on one side, 21 in the centre and 20½ on the other side. There were six sticks across the mouth of the well. They were three inches apart and some closer. The sticks very nearly covered one half of the well." The answers to my questions occupy five lines (31 to 35 of page 96) of the printed papers. The cross-examination then began. Where the cross-examination began is shown most distinctly in the original deposition by the usual sign XX*d*. A copy of Inspector Boyer's deposition was sent up to the High Court though no copy was, I think, necessary, and unfortunately in the copy the place where the cross-examination began is not shown. The mistake was unfortunately continued in the printed papers and what the High Court were led to think was examination by me was really the cross-examination by the vakil for the first and second accused.

The High Court say that I quite erroneously disallowed some of my own questions put to Inspector Boyer on the ground that they were irrelevant. It will be now seen that that is a mistake. I find I disallowed altogether only two questions put to Inspector Boyer neither of which was put by me. They were questions in re-examination and were disallowed chiefly on the ground that they would introduce new matter and that the new matter proposed to be introduced was not such as would warrant the court's allowing its introduction.

What happened in the case of the ninth witness is not quite so clear. My notes are the most reliable record of what took place, and they do not show that I put a single question to Kusa Billiya, the ninth witness, during the whole of his examination-in-chief. It is my practice to write in my notes "to court" whenever any answers are given to court questions, and to write the answers with a larger margin than in the case of other answers. My notes do not show that I put any question to Kusa Billiya till after the completion of the re-examination, when I asked him two questions. In the vernacular record of Kusa Billiya's evidence, after he said that he was called at night when he was in his lodging, there are the words "to court question" and then the words translated at line three, page 59, of the printed papers thus "I had gone to sleep inside my house when I was called." In the translation of the vernacular deposition as well as in the printed papers, the words "to court question" are translated "to court," and the words "to court" are made to begin a paragraph which they do not in the original. What happened was I believe this. After the witness had said that he was in his house when he was called on the night in question, I suggested to the vakil conducting the prosecution that he should ascertain if he were sleeping. The witness was a very important witness, and it was necessary to elicit from him precise details on every point. I did not put the question myself. I only suggested it. I may have suggested other questions in the examination-in-chief, if any points to which I attached importance were not brought out sufficiently clearly, but I did not take the examination into my own hands as the High Court were led to believe by the error in the printed papers and in the translation of the vernacular deposition.

5. In the third paragraph of the proceedings, the High Court observe that the question to the medical witness as to whether there were any signs of death by drowning was a permissible question, and point out that the proper form of the question would have been "were there any signs of death by drowning, if so, describe them?" and observe that the objection of the accused's vakil (allowed by the Judge) that it was a leading question was frivolous.

The deposition of the apothecary was taken down by me in English, and what was recorded on the point is—

"*Q.*—Were there any signs of death by drowning present?

"*Mr. Mascarenhas.*—There is no charge of that offence. It is leading.

"*Court.*—Ask what are the symptoms of death by drowning."

What happened was this. Mr. Mascarenhas, the vakil for the first and second accused, took two objections to the question "were there any signs of death by drowning present?" One objection was that the question was leading. The other was that there was no charge against his clients that they caused the death of Shankara Bhatta by drowning him and that therefore the question was irrelevant. To understand this objection, it must be remembered that the committing magistrate considered that Shankara Bhatta committed suicide by jumping into the well, and did not commit the accused on a charge of causing Shankara Bhatta's death. I saw that the form of the question was not quite correct—a view of which I think the High Court approve. I did not, strictly speaking, disallow the question. I suggested that its form should be changed, and my suggestion was at once acquiesced in by the vakil conducting the prosecution, and the witness gave in detail the *post mortem* symptoms of death by drowning. He had previously given a detailed account of the result of the *post mortem* examination of Shankara Bhatta's body; so the assessors and I were able to judge for ourselves whether there were signs of death by drowning. After describing the usual symptoms of death by drowning, the witness add "All may be absent and yet death may be due to drowning." He was then asked "Is there any particular mark by which you can say death was or was not the result of drowning?" to which the witness gave an answer to which I need not now refer.

6. I trust the Hon'ble Judges will find this explanation satisfactory.

From W. C. HOLMES, Esq., B.A., I.C.S., District and Sessions Judge, South Canara, to the Chief Secretary to Government, dated 3rd December 1895, No. 1204.

I have the honour to acknowledge the receipt of G.O., No. 2437, Judicial, dated 26th November 1895, requesting me to forward to Government any remarks I have to offer upon the proceedings of the High Court dated the 4th November, No. 2296, Judicial.

2. Immediately on the receipt of the proceedings of the High Court, I prepared an explanation, which I submitted to the High Court on the 27th ultimo. I beg to enclose a copy of my explanation. I trust my explanation will have satisfied the High Court on the points raised in the proceedings, and I trust my explanation will also satisfy Government.

3. I think I am entitled to submit that my procedure in dealing with the case was as flawless as it was possible to be under the circumstances.

ORDER—No. 1808, Judicial, dated 14 Nov 1896.

The above papers relate to the conduct by Mr. W. C. Holmes, I.C.S., District and Sessions Judge of South Canara, of sessions cases 33 and 38 of 1894 and 15 of 1895 on his file.

2. All three cases came before the High Court on appeal, and in each of the three the Hon'ble the Judges adopted the unusual course of recording separate proceedings condemning in strong terms the Sessions Judge's conduct of the original trial and brought the matter to the notice of Government. Mr. Holmes' explanations in reply to the High Court's strictures in each case have been taken, and the matter now comes up for final consideration.

3. The papers printed above show that in its judgment remanding the first of the three cases—session case No. 33 of 1894—for retrial, the High Court passed the following remarks regarding Mr. Holmes' conduct of the trial:—"The Sessions Judge . . . . has made it clear that the bias of his mind was affected by one fact only, and that one fact is, in our opinion, wholly inconclusive . . . From that point in the trial the judgment makes it clear that the Judge's mind was strongly biassed against the prosecution. From the fourth witness onwards every person called has been denounced as a 'false' witness, his demeanour denounced, and his evidence characterised as a tissue of falsehoods. With regard to the fifteenth witness the Judge has recorded in his notes (before a word of the evidence) the remark 'lying written in his face.' If this remark was recorded

before the witness gave his evidence, we cannot but characterise it as most improper, but the whole tenour of the remarks made by the Judge in the case shows strong bias and that the case was not approached in a judicial frame of mind . . . . The medical evidence was not considered by the Judge, nor was the defence gone into. The trial was prolonged for three weeks—principally in consequence of the cross-examination (wholly irrelevant) of the pleader who appeared for the first prisoner (M. Shiva Rao)—and the trial at last came to an end since the Public Prosecutor declined to call for any further evidence in consequence of the attitude taken by the Judge . . . Why the Judge would not permit the overseer to be called we are quite unable to understand."

In its separate proceedings, No. 1760, Judicial, dated 10th September 1895, regarding the case, the High Court further remarked that if the case had been properly conducted it need not have lasted more than three or four days, whereas it was protracted over three weeks, and that the record showed that the Sessions Judge did not exercise a proper control over his bar and was not strong enough to exclude irrelevant matter from the cross-examination of the witnesses.

4. In its Proceedings, No. 1812, Judicial, dated 16th October 1895, dealing with the second of the three cases—session case No. 38 of 1894—the High Court observed that if the trial of that case was to be taken as a sample of Mr. Holmes' work, it showed that he had no appreciation of the value of public time and exercised no control over the vakils practising before him. His own notes condemned him and justified the further inference that he could not distinguish relevant from irrelevant evidence.

5. In their letter forwarding to Government these two proceedings, the Hon'ble the Judges further observed that they "have for some time been far from satisfied with Mr. Holmes' judicial work, and think it advisable to bring these instances of his inefficiency to the notice of Government. The Judges have no reason to doubt that Mr. Holmes is a conscientious officer and that he does not spare himself in the performance of his duties, but they are of opinion that he is not suited to judicial work and would suggest that it may be advisable to employ him in some other department."

6. These papers were in G.O., No. 2231, Judicial, dated 4th November 1895, referred to Mr. Holmes for such explanations or remarks as he might desire to offer, and his reply is contained in his letters of the 15th and 21st November read above. It will be seen that Mr. Holmes declines to admit that his conduct of the cases in question was defective, and quotes a number of statistics to prove that disposal of work in his court has been prompt and but little interfered with on appeal. He states that he takes the deepest interest in judicial work, and in paragraph 7 of his first letter he requests that if his explanation is considered to be unsatisfactory, he may be permitted to resign the Indian Civil Service on a pension proportionate to the length of his service, as such a course would be preferable to a return to duty after his superiors had lost confidence in him.

7. In G.O., No. 373, Judicial, dated 24th February 1896, these two letters were referred to the Hon'ble the Judges of the High Court for their remarks. In the Registrar's letter of the 16th March it is stated that the Judges consider ~~that~~ Mr. Holmes' reference to figures and statistics ~~is~~ irrelevant to the real issue, and that whatever the causes of the defects in that officer's conduct of his cases may be, "the result is the same, namely, a lamentable waste of public time and a risk of a miscarriage of justice." They further are of opinion that "the circumstance of Mr. Holmes defending his conduct and not admitting his shortcomings renders it hopeless to expect any material improvement."

8. The third of the cases now under consideration—session case No. 15 of 1895—is dealt with in G.O., No. 2437, Judicial, dated 26th November 1895. The conduct of the District Magistrate and the Superintendent of Police and his Inspector have been disposed of in separate proceedings. The Sessions Judge's method of dealing with the case is described in the High Court's proceedings, No. 2296, Judicial, dated 4th November 1895. Mr. Holmes was requested in

G.O., No. 2437, Judicial, dated 26th November 1895, to submit his explanation in regard to these strictures, and his reply is contained in his letters of the 27th November and 3rd December 1895 printed above. Mr. Holmes shows that part of paragraph 2 of the High Court's proceedings was based upon a misapprehension and again declines to admit that his procedure was in any way defective.

9. His Excellency the Governor in Council has considered Mr. Holmes conduct of these three cases and his explanations with care, and has arrived at the conclusion that the opinion of the Hon'ble the Chief Justice and the Judges of the High Court that Mr. Holmes is not suited to judicial work is warranted by the papers dealt with above and must be accepted. These papers and his previous record show that Mr. Holmes, though he apparently takes an interest in his work and cannot be charged with neglecting it, yet suffers from an absence of that sense of proportion and open mindedness which is essential to the conduct of the affairs of any office of importance under Government, coupled with an inability to perceive his errors when they are pointed out to him, which, as the High Court justly remarks, renders it vain to hope that he will learn by experience. His Excellency in Council is clearly of opinion that it is undesirable in the public interests that, with such defects against him, Mr. Holmes should be employed in the executive branch of the service and entrusted with the care of a district with a population of perhaps two million persons, and he accordingly resolves to request the Right Hon'ble the Secretary of State to grant Mr. Holmes the permission solicited by him in paragraph 7 of his letter of the 15th November 1895 read above, namely, that he should be allowed to resign the Indian Civil Service on a pension proportionate to the service which he has to his credit at the present date.

(True Extract.)

(Signed) A. T. ARUNDELL,
Acting Chief Secretary.

To the Hon'ble the Chief Justice with C.L.

Exd. S. J. Pereira.

[G / 74]
4,000—13-8-95.

NOTE FOR THE CHIEF SECRETARY.

Please see notes at top of draft dispatch's proof. The dispatch could go, but the G.O. may. An alteration has been made in the D.O. saying that copy of the G.O. is enclosed. C.S.'s approval to this is solicited.

C.S. having drawn attention to the fact that Mr. H.'s promotion had been stopped the papers were looked up & two additions made to the draft despatch. These are submitted for perusal. The case made

No. , JUDICIAL, 1896.

No. 983 30 Nov 1896.

JUDICIAL DEPARTMENT.

LETTER—TO

THE RIGHT HON'BLE THE SECRETARY OF STATE FOR INDIA.

MY LORD,

We have the honour to transmit herewith, for your Lordship's perusal, a copy of our proceedings of ~~this date~~ 14th inst., No. 1808, Judicial, and, with reference thereto, to solicit the grant to Mr. W. C. Holmes, I.C.S., of permission to resign his position in the Indian Civil Service on a pension proportionate to the length of time which he has served up to date.

2. Mr. Holmes joined the Indian Civil Service in this presidency at the end of 1877. For parts of the years 1881 and 1882 he was employed in the Financial department of the Government of India; but as he was not successful in the work there allotted to him, he was recalled at the request of the Government of India and placed again in the ordinary line in this presidency.

3. In 1885, when he was Head Assistant Magistrate of Cuddapah, a case came under the notice of Government in which he had sentenced a man to two years' rigorous imprisonment upon charges of criminal intimidation and interrupting a public servant in the discharge of his duty, because he had employed threats to a medical subordinate who was endeavouring to vaccinate his child, vaccination not being compulsory by law at the place where the occurrence happened. Not only was the conviction technically illegal, but it was also evident from Mr. Holmes' judgment that the extreme severity of the penalty inflicted by him was due to his suspicion that the accused was a disorderly character who had been concerned in some recent riots in the town. It is unnecessary to point out that whether this was so or not, Mr. Holmes was entirely wrong in allowing his suspicions on the point to affect the sentence inflicted for a totally different offence. In palliation of his grave want of judgment in this case it was urged by the Collector of the district that he was of a sensitive disposition and was labouring under great excitement caused by these riots, and that he was also in indifferent health. It appeared, however, on inquiry that he had also been guilty of grave disrespect to the Sessions Judge of the same district and of insubordination to the High Court in refusing to retry a case remanded to him for that purpose and endeavouring to discuss with the Hon'ble the Judges the propriety of their order. Mr. Holmes shortly afterwards went on furlough on medical certificate for a year, and on his return he was formally censured for his conduct and informed that the Government had entertained doubts whether he was fit to continue as a first-class magistrate. He was eventually given ~~a further~~ trial and was warned that any further shortcomings on his part would result in his case being reported to the Secretary of State.

4. In 1890, the Hon'ble the Judges of the High Court reported to Government that Mr. Holmes' work as District and Sessions Judge in Bellary was unsatisfactory, and that his judgments "indicated a tendency to approach the consideration of evidence with a prepossession against its trustworthiness and to judge of its value by a purely arbitrary standard of credibility." They also observed that he exhibited "a deficiency in the power of discriminating evidence." The Government thereupon decided that Mr. Holmes, who was shortly to revert to a Sub-Collectorate, should not again be made a Judge, ~~but in~~ June 1891, on the Hon'ble the Judges stating that they had no objection to his being employed in a light court he was posted to the appointment which he now holds, namely, that of District and Sessions Judge, South Canara.

5. Towards the end of 1895, the Government received from the High Court the judgments, proceedings and letters which are printed in our proceedings enclosed herewith, commenting in terms which could scarcely be stronger upon the inefficiency displayed by Mr. Holmes in his conduct of the work in his court. It is extremely seldom that the Hon'ble the Judges adopt the course of reporting to Government judicial officers serving under their orders, and this fact gives additional force to their representations. Their conclusion that Mr. Holmes is not fit to be a District Judge is in our opinion clearly borne out by the record of the three cases dealt with in our proceedings already referred to. We would especially invite your Lordship's attention to the original judgment in session case No. 33 of 1894, which appears to us to be a most extraordinary document. Mr. Holmes' various explanations amount to little more than a mere denial that his procedure was in any way defective or blameworthy, and we are unable to consider them satisfactory. South Canara is one of the lightest courts in the presidency, and it is thus impossible to suppose that the quality of Mr. Holmes' work is due to any overburdening excess in the quantity of it which is demanded of him. We have accordingly, after careful deliberation upon the matter, arrived at the conclusion that it is impossible in the public interests to reappoint Mr. Holmes on his return from the furlough which he is now taking as a judge in any district in the ...idency.

... however, difficult to discover any other post to which Mr. Holmes ...nted in which his defects would not occasion great mischief. The ... referred to show that though he undoubtedly takes an interest in ... endeavours to perform it satisfactorily, he is nevertheless without ...portion and lacks an evenly-balanced mind, and that his inability to ...is faults when they are pointed out to him leaves but a slender hope that ~~eventually~~ materially improve. With such defects against him it appears ...o be undesirable in the extreme that he should be appointed Collector of a ...rict and entrusted with the welfare of perhaps two millions of persons, the more ... as he has preference for the judicial side of the service which is so strong as almost to amount to a dislike of executive work. As has already been observed, he has been tried outside the ordinary line in the Financial department and failed. To permanently reduce him to the grade of a Sub-Collector and Joint Magistrate would be a most severe punishment and would moreover occasion further opportunities for injury to the public interests through his inefficiency.

7. In paragraph 7 of his letter of the 15th November printed in our proceedings enclosed Mr. Holmes has asked that if his present explanations are deemed to be unsatisfactory, he may be permitted to resign the Indian Civil Service on a pension proportionate to his service. He states that he would prefer this course to a return to duty after he had lost the confidence of his superiors. In all the circumstances of the case, we are of opinion that the adoption of this proposal would effect the most satisfactory solution of the difficulty. Mr. Holmes is believed to be possessed of private means, so that the reduction in his pension would not operate as a heavy punishment to him, and his resignation, while it would result in a pecuniary saving to the State, would relieve this presidency of an officer for whom it is most difficult to find suitable employment.

8. We accordingly have the honour to recommend the adoption of this course to your Lordship's most favourable consideration. Mr. Holmes' total service from the date of his arrival was, on the 1st October 1895, eighteen years and eight months, and as he is required by the rules to have undergone 25 years' total service before he is entitled to the usual pension of £1,000 *per annum*, a pension proportionate to the length of his service would amount to some £746 *per annum*.

We have the honour to be,

My Lord,

Your Lordship's most obedient, humble servants,

FORT ST. GEORGE,
1896.

GOVERNMENT.

WITH DITTO

MEANT FOR DESPATCH

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5. Towards the end of 1895, the Government received from the High Court the judgments, proceedings and letters which are printed in our proceedings enclosed herewith, commenting in terms which could scarcely be stronger upon the inefficiency displayed by Mr. Holmes in his conduct of the work in his court. It is extremely seldom that the Hon'ble the Judges adopt the course of reporting to Government judicial officers serving under their orders, and this fact gives additional force to their representations. Their conclusion that Mr. Holmes is not fit to be a District Judge is in our opinion clearly borne out by the record of the three cases dealt with in our proceedings already referred to. We would especially invite your Lordship's attention to the original judgment in session case No. 33 of 1894, which appears to us to be a most extraordinary document. M— explanations amount to little more than a [illegible] way defective or blameworthy [illegible] in South Canara and ha resolved against to the adoption of course proposed by you in this eventuality, viz. that Secy. of State should be requested to permit you to on a proportionate [illegible] Inclose a copy d. 8c go. the despatch goes by the next mail.

NA 4.11.96.

Wright

NA 6.11.96

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C. No.

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Order complete with Letter.

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Send 30 copies of Go and 25 Copies of despatch 18

Draft written W.C. Holmes Esq., I.C.S.
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Cfo Messrs P. Macfadyen
Winchester Hou
Old Broad

Govt. Genl. case called, & his reply is attached. He can only quote his own rules, & these don't apply. NF. 5.11.96 NA

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