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ORDINARY, MS.

Public DEPARTMENT.
G.O., DATED 15-12-95
No. 1005

INDEXED.

When given for copying. 15

[Despatch Abstract.]

Improving the position
of the Kuthanow
gairto Dewarim, who
reference to their
tutor, that Govt.
declines to interfere
in the order
-ed regarding the
disposal of the
sare found to
the conviction of
of their murder.

Appendix I

In the Court of the Tahsildar second Class
Magistrate of Palghat.

Calendar Case N^o 167 of 1892.

Complainant

Defendant.

Regina.

Thuchanath Govinda Mammady

Offence. ~~~~~

Failing to give notice of the
finding of treasure and
to deposit the same in the Govt.
Treasury under section 20
Act VI of 1878.

Finding ~~~~~

Guilty

Sentence. ~~~~~

The Deft is sentenced to pay
a fine of Rs 20 in default,
to 6 weeks rigorous imprisonment

judgment.

The 1st Witness the acting Adhigary of
Kuthanoor states that on the 1st of March he heard
a talk that in digging up the floor of the old
Mattayapura, in Kuthanoor Bhagavati temple
which was dismantled in the course of construction
of a new one, the owners found a treasure. He
had seen to the temple to ascertain if it was a fact
and seen some of the trustees and asked them if it
was a fact that they had found a treasure. They
answered him in the negative and said that
property what was secured by their ancestors alone
was found. He reported the matter to the Tahsildar

who sent the Revenue Inspector for enquiry, before whom they denied having found a treasure. but that property i.e. 1403 fanams which had been secured by their ancestors was found and which they delivered to the Police.

The Defendant states that as the 1403 fanams, found buried in Pattayapura were those secured by his ancestors he did not give notice of it to authorities.

The 2nd witness for the Prosecution states that he was one of the coolies engaged in digging the floor of the Pattayapura. In turning up the earth he saw a stone, removing which there was underneath a large stone with a hollow in which was placed a copper vessel; When the trustees saw the copper vessel they ordered him to leave the place.

The Defendant examines 2 witnesses. They state that they heard from their ancestors that their ancestors had secured some property in the floor of the Pattayapura.

The Defendant does not deny that the gold fanams were in a copper vessel and that the copper vessel was kept in the hollow of a large stone with a stopper stone over it (all of which are produced in court) and found buried under the ground. Still he thinks that it is not a treasure and is not under any obligation to give notice thereof, why, because the fanams were secured under the grounds by his ancestors. Whether or not they were secured

secured by his ancestors he was bound as one of the trustees of the temple and as the person who was in possession of it to give notice of the finding. The Treasure appears to have been found on the 1st March. No attempts were made either to give notice or to produce the Treasure but continued to give evasive answers that no treasure was found and that only their ancestral property was found when the 1st witness on the 1st ultimo and the Revenue Inspector on the 7th idem made enquiries. It is manifestly clear that the Defendant wanted to evade the law and the utmost secrecy with which the Treasure was taken to the Defendant's house without others knowing what its real contents were, is also a matter for consideration that there was no object whatever to give any notice of it. I have also grounds to believe that the major portion of the Treasure was not produced. The vessel in which the fauons admitted to have found will contain 6 times as much the coins produced. When a person who had taken so much care to get a large stone chiselled and cut in it a hollow and place in it the Copper Vessel and over which a stopper stone would have only filled the vessel with one sixth part and that with fauons of infinitesimal value as Rs 400. There are strong grounds to suspect the Deft's Conduct.

I Convinct the Deft and sentence him to pay a fine of Rs 200 in default to 6 weeks rigorous imprisonment and order that the Treasure be forwarded to the Collector for adjudication under the Treasure Trove Act II of 1878.

25th April 1892.

Ed. A. Venkata Paty Naik
Tahsilchar 2nd class Magistrate

(True copy)
1st Oct. 1892 The Panga Mannabian

Appendix II

In the Court of the Head Assistant Magistrate of Malabar

Present - : P. Rajagopalachari Esq.
 judgment.

In Criminal Appeal No III of 1892.

Date of				Hearing	Order
Presentations	Filing	Notice issued by court to appear	On which appellant intended to appear		
23/6.	23/6.	1/7.	2/8.	2-8-92.	2-8-92.
Court of the Subordinate 2 nd class Magistrate of Palghat.				From which court the appeal is preferred.	
C. C. No 167 of 1892.				No of the case on that count.	
11 of 1892.				No. of the appeal.	
J. G. Vinoda Channasari				Name and description of the appellant.	
To pay a fine of Rs 200 under section 20 of Act II of 1878. (Treasure Trove).				Sentence and law under which it was imposed in the lower court.	
Confirmed.				Whether confirmed modified or reversed.	
				If modified the modification.	

Heard Mr. Vakil Krishnan Nayar on behalf of the appellant.

The appellant has been convicted under sect 20 of the Treasure-Trove Act (No VII of 1878) for having failed to give notice of the finding of a treasure as required in section 4 of that Act.

1st Point of the Panga Muzam 1892

2. The facts of the case appear to be that the foundation of a building attached to the Kuthanoor Bhagavat temple in Palghat Taluk, were dug to enable some repairs to be done and a large treasure consisting of gold coins was discovered. The appellant was one of the trustees and was present at the finding and the property was entrusted to him for custody. No notice was given by him or by any of the other trustees to the Collector of the finding. Nor was the treasure deposited in the nearest Government Treasury as required by section 4. The appellant has been tried and convicted.

3. It is first of all contended that the coins found cannot ^{be} said to be a "Treasure" as defined in section 3 of the act. It appears that the treasure was found in the floor of the building when it was being dug up and I am of opinion that the coins must be viewed as "a thing of value hidden in the soil". It is further contended that the property was that of the temple and hence no notice need be given. It appears to me that the question whose property the treasure is should be decided by the Collector under the act and is immaterial in considering the question whether a notice should or should not be given. The defence witnesses are both of the trustees of the temple and interested and the utmost they can say is that they have heard that treasure had been buried. It does not appear that any body was aware that any treasure had been buried in the floor of the

1. "Oeto Itti Panga Maunati" (D)

Appendix III

District Administration.

Treasure Trove.

It is hereby notified under section 5 of the Treasure Trove Act III of 1878. That on the 7th of March last, treasure consisting of 1403 gold faucous and valued at about Rs 350-12-0 was found in a copper vessel secured in a hollow stone with an upper lid, by one Ottunaykari, a cooly, while digging up for the purposes of rebuilding the foundation of an old acit house attached to Kizakattara Dewasari in Kuthanor Amalou Palghat Taluk, Malabar District in the Presidency of Madras.

2. All persons claiming the said treasure or any part thereof, are hereby, required to appear personally or by agent before the Collector of Malabar at his office at Calicut on Saturday the 3rd December 1892 in order to the matter being enquired into and determined in accordance with the provisions of the Act.

Malabar Collectors office } W. Damerque
Calicut 24th June 1892 } Sdg. Collector

(True copy)

1st Editioner Itti Nangalammadi. D

Appendix IV.

To.

The Collector of Malabar.

The Petition submitted by 1 Kaliassam Vettil
Itti Panga Mannati 2 Atachirattil Chami
Mannati 3 Perumpara Govinda Mannati 4 Ch
thattu Krishna Mannati 5. Strappam Vettil
Gopalan. 6. Eacharath Varayana Mannati
7. Korath Eressa Mannati 8 Thuchanath Mann
van. 9. Chingarassam Vettil Varayana Mann
10. Mannatham Vettil Kurukan. 11. Atachir
Kuppan. 12. Putham Vettil Chami. 13. Makki
ssam Vettil Pangan. 14. Kandath Chami. 15. Ka
lappath Varayanam. 16. Kalath Ponnambalan.
17. Valia Kalath Anchakula Mannati 18. Kade
thil Govindan. 19. Kalathoti Chippam. 20. Ka
lathile Vettil Kannan. 21. Kalathile Vettil
Kuppan. 22. Kalampathakambissan. 23. Thage
Putham Vettil Gopalan. 24. Cheerath Chami.
The trustees of Kuthanor Bhagavati Dewasom
residing in Kuthanor Amshom, Desom of
Palghat Talug.

Respectfully Sheweth :-

That the Petitioners commenced
on 5th Kumbham 1067 last to repair and
rebuild the Pattayapura - a tiled building
attached to the above Kuthanor Bhagavati
Dewasom belonging to the Petitioners and the
while the coolies were working on the 18th

1st Petr Itti Panga Mannati

a sum of 1403 new Fanoms (small gold coins) which were the collection of offerings to the temple and were secured by the Petitioners' ancestors were taken out from the ~~cellar~~ room of the aforesaid Pattayapura. And that these new Fanoms are now kept in deposit in the Palghat Taluk Treasury.

2. That the aforesaid 1403 new Fanoms are the collection of the offerings usually made to the above mentioned temple according to the ordinary custom prevailing in the temples of this Presidency and that these Fanoms were safely secured by ancestors of the Petrs who were the retailers according to the usual mode.
3. That the above Fanoms belong to the Dewasom and it is entitled to get them back.
4. That the Adhikari of the etimohom has reported that these Fanoms should be treated as a treasure under Act II of 1878. But the Petitioners can clearly show that the Adigary's report is due to the inimical feelings towards the Petitioners.
5. That the Petrs are the owners & trustees of the Dewasom.
6. That the above Fanoms having been secured as stated in para 2 in order that they may be utilized for special purposes of the Dewasom the Petitioners humbly pray that the fanoms may be declared not to be a "treasure" under the Act and that they may be returned to the Petitioners who are the proprietors of the Dewasom.

Dated the 17th December 1892 } Ld. Petitioners.

True Translation

, et Petitioners Itti Q ang a ehamaki 601

Appendix V.

Proceedings of the Collector of Malabar.

Dated 18th December 1892.

No. 1423-P
30.

Read the principal papers comprised in the record of Calendar Case No. 167 of 1892. on the file of the 2nd class Magistrate of Palghat Taluk and Criminal Appeal No. 111 of 1892. on the file of the Head Assistant Magistrate.

Hears Vakils K. R. Ramaswamy Iyer and C. Krishna Iyer on behalf of the Trustees of the Kuthanoor Bhagavati Temple.

On the 1st March 1892. in the course of some alterations at the temple, one of the workmen in digging came across a copper vessel concealed in a hole in a stone, and covered by another stone. One Govinda Maunadiar immediately removed it without opening it and no notice was given under section 4 of the Treasure-Trove Act VI of 1878. The Adhigari happened to hear of it and inquiries were instituted, which resulted in the production of 1403 small gold coins known locally as new fanams. The value of the property produced is about Rs 350-12-0. The Uraymaship of the temple rests in 32 different families, and Govinda Maunadiar who is one of the trustees was presented

1st Pet. Sri Panga Maunadi DV

prosecuted under section 20 of the Treasure-Trove Act. and convicted, the sentence being upheld in appeal.

2. The usual notices under the Treasure-Trove Act have been issued and the wallers claim the treasure under section 8 as having been hidden within 100 years by their predecessors. However that may be, as they failed to give notice and as there is strong reason to suppose that part of the treasure has been misappropriated because the copper vessel would contain far more than the 1403 fanams produced, the treasure vests in the crown under section 20 of the Act.

(Signed) Herbert Bradley
et. Collector.

(True copy)

1st Witness Sri Ranga Mammadi

Appendix VII.

Court of the District Magistrate of Malabar

Deposition of.

Name.	Channe Mannati.
Father's name.	Itti Damann Mannati.
Caste.	Velalar.
Age.	60.
Occupation.	Trader.
Residence.	Kuthanor near Palghat.

The treasure was found in the Pattayapuram of the Kizhathara Dewasom, in a sealed room. When the foundation was dug up the treasure was found. It is an upstairs building. It consisted of newfangled. It was found by a cooly called Chathan. My ancestor the Karaman put it there. I heard it from Kalampatha Kanara Mannati. There is nothing in writing about it. It is not a treasure. It is an offering to the temple. The Pattayapura is not more than 60 years old. The temple property is kept there. There are 32 houses Vallers of the temple. The Vallers own the building.

Ed. Herbert Bradley

As Collector.

17th December 1892.

True copy. -

In the Court of the District Magistrate of Malabar

Deposition of

Name.	Kondi.
Father's name.	Bhadram.
Caste.	Waddar.
Age.	About 40.

1st Petitioner Itti Panga Mannati.

Occupation. Digging.

Residence.....

I was digging when the copper vessel before the court was found. I found it. I claim it if the court orders it. I do not know how old the building was. It would be about 100 years old. I do not know who hid the Copper vessel. I do not know whether the Uvallers hid it.

Cross-Examined for the Uvallers.
The treasure was not found in the sealed room. It was about 4 or 5 Rols from the sealed room. The place where it was found was outside the building. I told the J. D. Gani. I told him as soon as I got it. There were other coolies digging with me. I do not feel sure whether Chathan was there. About ten or thirty Uvallers were there. The roof of the building was down, and the walls were down at that time.

Sd/- Herbert Bradley

M. Collector & Magistrate

17th December '892.

(True Copy)

Sd/- V. Raja Sopalachari

Treasurer, Deputy Collector

(True copy)

1st Petitioner Sri Panjellaumari.

Appendix VII.

Proceedings of the Collector of Malabar dated
3rd July 1893

Read again proceedings dated
December 18- 1892 at N^o 1423 P and the
records connected therewith, GL.

Read also G. Co. N^o 59 dated
January 30- 1893. and N^o 145 dated February
21- 1893 and the Talghat Tahsil dhar's report
dated April 11, 1893. Ref on C N^o 2687 of 1893.
mis

There is little evidence to show
by whom the treasure found at the Kuthanor
Bhagavate temple in March 1892 was
hidden. The Vallers allege that it was
hidden by previous Vallers and that the
building under which it was found is not
more than 60 years old. The finder estimates
the age of the building at 100 years. The
Thasildhar reports that enquiries made in
the place show that the building is as old
as the temple which is supposed to be 1500 years
old. It is probably well over 100 years old.

2. I do not see any reason to suppose
that the treasure was hidden within 100 years
by the predecessors of the present Vallers and
I therefore declare it ownerless under section
9 of the Treasure-Trove Act.

3. The finder failed to give the
notice required under section 4 of the Act.

1st Detikour Etti Panga & Maunadi. 6/1

His share therefore rests on the crown.

4. The Vivalers who are owners of the place where it was found, are 32 in number. One of them has been convicted under the penal clauses of the Act. Three others were present at the finding of the treasure and there is reason to believe that the Vivalers generally were aware of it and joined in appropriating it.

5. Still in the G. O. last read above the Government has held that the share of the man who was convicted alone is liable to confiscation, but at that time the fact that 3 of the other Vivalers were present when the treasure was found was not before Government. Four thirty seconds of the shares of the Vivaler seems therefore to be liable to confiscation under the G. O. just quoted.

6. I therefore direct under section 12 of the Treasure-Trove-Act that $\frac{3}{4} + \frac{1}{8} \times \frac{1}{4}$ or $\frac{25}{32}$ of the amount be credited to Government and the remainder made over to the 28 Vivalers who have not been proved to have been present at the finding of the treasure.

sd/ Herbert Bradley
Ag. Collector

Calicut }
3-7-93 }

Ref on C N^o $\frac{3157}{093}$

True copy forwarded to the Vivalers of the Kuthanoor Bhagavathi temple through the Tahsildhar of Palghat

Malabar Collectors office }
Calicut 9th August 1893. }

sd/ V. Rajapopalan
For Ag. Collector

$\frac{2461}{22}$ Forwarded to the Adhikari of Kuthanoor to have this order delivered to the trustees of the Kuthanoor temple
22nd August 1893. (True copy) sd/ V. Venkataswamy
1st sd/ Sri. Sri. Rangachari. Tahsildhar

Proceedings of the Collector of Malabar
dated 3rd July 1893 -

Read again proceedings dated December
18th 1892 N^o $\frac{1423P}{96}$ and the records connected
therewith -

Read also G. O. N^o 59 dated January 30
1893 and N^o 145 dated February 21, 1893 and the
Palghat Tahsildar's report dated April 14, 1893
before C. N^o $\frac{2684}{1110}$ of 1893

L.H.
14.7.93

There is little evidence to show
by whom the treasure found at the Kuthan
Bhagavathi temple in March 1892, was hidden.
The Wralers allege that it was hidden by previous
Wralers and that the building under which it
was found is not more than 60 years old.
The finder estimates the age of the building
at 100 years. The Tahsildar reports that
enquiries made in the place show that the
building is as old as the temple which is
supposed to be 1500 years old. It is probably
well over 100 years old.

2. I do not see any reason to
suppose that the treasure was hidden within
100 years by the predecessors of the present
Wralers and I therefore declare it ownerless
under section 9 of the Treasure Trove Act.

3. The finder failed to give the
notice required under section 4 of the Act.
His share therefore vests in the Crown -

4 The Vralers, who are owners of the places where it was found, are 32 in number - one of them has been convicted under the penal clauses of the Act. Three others were present at the finding of the treasure and there is reason to believe that the Vralers generally were aware of it and joined in appropriating it.

5 Still in the G. O last read above, the Government has held that the share of the man who was convicted alone is liable to confiscation, but at that time the fact that 3 of the other Vralers were present when the treasure was found was not before Government. Four thirty seconds of the share of the Vralers seems therefore to be liable to confiscation under the G. O just quoted -

6. I therefore direct under Section 12 of the Treasure Trove Act, that $\frac{3}{4} + \frac{1}{8} \times \frac{1}{4}$ or $\frac{25}{32}$ of the amount be credited to Government and the remainder made over to the 28 Vralers, who have not been proved to have been present at the finding of the treasure.

(20)

Herbert Bradley
Ag Collector

Calicut }
3-7-93 }

True copy forwarded to the Vralers of the Kuthanur Bhagavathi temple, through the Tahsildar of Palghat.

Malabar Collectors office }
Calicut, 9th August 1893 }

For Ag Collector

PCG

ms
2

2461

From
The Collector of Malabar
Calicut

2461
c. 8
എന്ന അക്കമുള്ള അക്കൗണ്ടുകൾ
ഒത്തുതീർത്തു കൊടുക്കേണ്ടതാകുന്നു
ഒരു പക്ഷെ അക്കൗണ്ടുകൾ
യുദ്ധം അവിടെ നടന്നു
അക്കൗണ്ടുകൾ 22-8-93

To
The Treasurers of the Kuthanur
Bhagavathi Temple
Thru
The Tahsildar of Palghat

Wm. T.
Tahsildar

Dated
Desp.

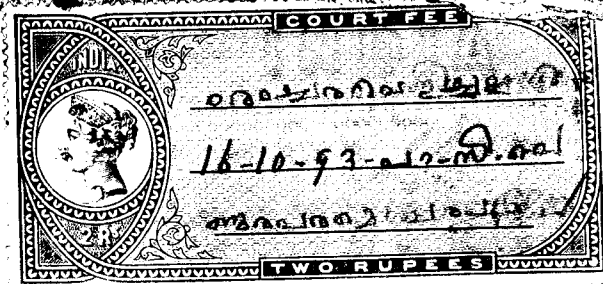
Enc. nil

cf. 10

Subject

Forwarding a copy of the
Proceedings of the Collector of
Malabar dated 3rd August 93
regarding the Treasure Trove
found in the Kuthanur
Bhagavathi Temple.

CURRENT NO. 2079



To

His Excellency The Right Honourable
The Governor in Council.

Fort St. George Madras.

The humble petition of the undersigned
32 Trustees of the Kuthanoor Kizhaketa
Bhagavati Dewasom, residing in Kuthanoor
Amshom, Palghat Talug, Malabar District.

Most Respectfully Sheweth:—

That, the Petitioners are the
Wallers or Trustees of the Kuthanoor Kizhaketa
Bhagavati Dewasom, situated in Kuthanoor
Amshom, Palghat Talug, Malabar District,
and comprising a main building generally
designated as "Prikol" supplemented by an adjunct
known as "Pattayapura".

2. That, on the 1st March 1892, when the aforesaid Patta-
yapura was, under the orders and superintendence
of the Petitioners, being dismantled and demolished
for purposes of reconstruction by certain coolies, a
certain sum of money consisting of 1403 small old
coins locally known as Pithia (new) Tanams valued
at Rs 350-12-0 was discovered in a copper vessel
secured in the cut hollow of a polished granite
stone, with an upper lid, also of granite stone,
specially made for the purpose, which constituted
one

1st Pet^r Kaliacha Vettal IttiDanga Mammali



Appendices I to VII.

100
Kaliacha Vettal

one of the stoves forming the basement of an important room, Therein, styled as the Maachela (signifying the treasury or store-room) in which anything of any value is secured. On its discovery which was in the presence of the coolies and most of the Petitioners, it was taken out and entrusted, after counting, by the Petitioners for the safe custody to the 32nd Petitioner from whom a formal receipt was taken.

3. That, almost instantaneously, the acting Adhikari of the tahsil (also the village Magistrate and Munsif) who had heard of the aforesaid discovery and whose relations with the Petitioners were unfriendly and hostile and who had determined to avail himself of this opportunity to wreak his vengeance upon them, by characterizing it as a treasure of the nature contemplated in Act No V of 1878 - "The Indian Treasure Trove Act", visited the place and asked the Petitioners if any Nidhi (treasure) was discovered, to which they replied that the gold coins safely secured by their ancestors alone were found and that the same could not constitute any Nidhi (treasure). Thereupon the Adhikari reported the matter to the Tahsildar and second class Magistrate of Palghat, who immediately caused certain irregular and illegal enquiries to be made departmentally by a Revenue Inspector to whom also the Petitioners admitted

admitted the finding of the Coins in question, with the result that the money was, without the slightest hesitations and resistance on their part, handed over to the Police under the orders of the Thasildar - Magistrate for safe custody in the Palghat Taluk Treasury, and that the 32nd Petitioner was prosecuted under section 20 of the aforesaid Act for failing to give the notice required under section 4 thereof, the Petitioner's reports and admission to the Tahsildar and Revenue Inspector notwithstanding.

4. That, the prosecution of the 32nd Petitioner before the aforesaid Thasildar Magistrate of Palghat, who had in this matter, as shown above, originally initiated, in the most illegal and irregular manner, as the procedure in itself would testify, the Proceedings under Act. VII of 1878. and subsequently sanctioned the 32nd Petitioner's prosecution and who had therefore figured in the affair both in the role of a Prosecutor and judge, resulted, as was naturally anticipated, in his Conviction, he having been "sentenced to pay a fine of Rs 200/ in default to 6 weeks' rigorous imprisonment, adding

adding that "the treasure be forwarded to the Collector for adjudication under the Treasure Trove Act VI of 1878". The Thasildar's judgment forms Appendix I to this petition. The Petitioners however beg to draw the attention of His Excellency The Governor in Council to the important testimony of the only two witnesses for Prosecution on which alone the 32nd Petitioner was convicted and in which they have unhesitatingly testified to the fact that the Petitioners' actions were bona-fide and savoured of no intention to keep the matter away from the knowledge of the Govt. officers.

5. That against this Conviction and sentence the 32nd Petitioner appealed to the local Divisional First Class Magistrate, who is also the Head Assistant Collector in charge of the District, with the result as usual, that the conviction was upheld in his judgment (Appendix II) remarking most emphatically that the Coins found must be viewed as "a thing of value hidden in the soil" and that they should therefore be regarded as a treasure of the nature Contemplated in the Act and that consequently the accused was bound to have given the notice in writing required

(3)
required under section 4 thereof to the Collector, in spite of the admissions of the Petitioners to the Adhikari and the Revenue Inspector, which, the Head Assistant Magistrate does not consider, was sufficient to absolve them from the responsibility of giving the technical notice according to the letter and not the spirit of the Act.

6. That, subsequently and in accordance with the findings of the Magistrates both in the first instance and in appeal, formal Proceedings under the Treasure Trove Act were initiated by the Collector of Malabar and a Notice (Appendix II) under section 5 thereof was published in the Malabar District Gazette dated 1st October 1892 "requiring all persons claiming the said treasure or any part thereof to appear personally or by agent before the Collector of Malabar in order to the matter being enquired into and determined in accordance with the provisions of the Act."

7. That in response to the aforesaid notice, 24 of the Petitioners preferred a claim before the Collector of Malabar (a translation of which forms Appendix IV) to the effect that the money in question was the property of the Dewasom of which they are the trustees and

and that the same was safely secured in the basement of the elachehu in the Pattayapura above alluded to, and prayed that the same may be returned to them in their Capacity of the Trustees, pointing out at the same time, that the interference of the State and the Proceedings initiated in respect of it under Act V of 1878 were unjust and illegal, as it was not a treasure, of the nature contemplated in the law on the subject.

8. That, this claim advanced by the Petitioner was apparently rejected by the Collector who in his Proceedings dated 18th December 1892 N^o 1423-E (Appendix V) directed that ^{Ch.} "as they failed to give notice and as there is strong reason" (existing only in the fertile imagination of the Thasildhar), "to suppose that part of the treasure has been misappropriated" (not a scintilla of evidence being available or having been recorded to this effect) "because the Copper vessel would contain far more than 1403 fanams produced the treasure vests in the crown under section 20 of the Act." The depositions taken by the Collector at this enquiry conducted by him in person form Appendix VI.
9. That, subsequently and after the lapse of nearly 8 months - the Collector of Malabar

* Received by the
Petitioners on the
27th of August 1893.

has passed another Proceedings on the subject. under date the 3rd July 1893. (Appendix VII) based on Lys. N^o 59. dated January 30-1893. and N^o 145 dated February 21-1893. and revised by the light of the directions issued therein- in which he has confiscated $\frac{25}{32}$ of the money in question, making over the remainder to the 28 Wallers "who have not been proved to have been present at the finding of the treasure."

10. That, against this amended order of the Collector of Malabar the Petitioners respectfully beg to appeal to the Government under section 9 of Act VI of 1878. and pray that the sum of money in question may be declared to be the property of the Petitioners Kuthanar Bhagarati Dewasom and returned to them who are the trustees thereof.
11. That, Comment on the above procedure, adopted by the local Revenue authorities including the Collector of Malabar throughout this enquiry, is unnecessary, as it is on the very face of it is preposterous and ultra vires and the Petitioners venture to presume that this fact has been partially admitted by the Govt itself in its orders quoted in para 9 supra, by the light of which the Collector was forced to amend his original, but illegal order in the case. The prosecution was started against the 32nd Petitioner and he was convicted.

on the foregone conclusion that the money was a treasure under Act VI of 1878, before the Collector of the District, who alone was competent to do so under the Act, formally declared that it was such after making the necessary enquiry, and, before the matter was even reported to him; whilst the formal proceedings under the Act was initiated by the Collector, subsequent to the prosecution, conviction and based on the decisions of the Magistrates. The Petitioners regret very much that they failed to prosecute the matter further and carry it on to the High Court with a view to have the Conviction quashed which failure is due to no other cause than their helpless and ignorant condition and they confidently ^{hope} that this failure will, in no way, deter the merciful and benign Government from considering the case on its merits.

12(a). That, in primis, the Petitioners respectfully beg to point out, as they have persistently contended all along, that the sum of money in question is not "ownerless" and cannot fall within the scope of The Treasure Trove Act and that no proceedings under that Act can be instituted in respect of it, as it was not "hidden in the soil or in anything affixed thereto." but was as stated at para 2 kept carefully and safely secured in the basement of the most important room of the Pattachary

1st Oct. 1881. L. G. Gangai Chaudhary

It might also be pointed out that this sum of money had to be so deposited and carefully secured, as it was the common property of the Dewasom which had 32 wallers and not the personal property of any one of them. Moreover the Petitioners were aware that their ancestors had so deposited and carefully secured some money and it was with a view to take it out that they proposed to dismantle the old Pattayapura. That arrangements were made to have the old building demolished under their personal supervision, is suggestive of the fact that they had previous information of such deposit, as such a course was adopted with a view to guard against its mis-carriage by coolies employed on the work. It may be added that no evidence whatever is forthcoming nor has even a scintilla of such evidence been recorded beyond the unprofessional opinion of the Thasildhar of Palghat himself a foreigner to the District and whose connexion with this case has already been commented upon at para 4 supra. That the money was not secured there within 100 years, and unless this is established, this point cannot be urged against the Petitioners. Moreover no evidence was taken and no finding was recorded by the Collector on this point when the amount was first confiscated and appended was passed. A specific finding on this point was passed behind the back of the Petitioners in appendix VII, probably when the defect was pointed out.

pointed out to him by the Government and the Petitioners leave it to Government to decide what value should be attached to that order passed Ex parte.

- 12(b). That, the Petitioners can only express their surprise at the dictum, laid down by the local Revenue and Magisterial authorities concerned in the matter - be it noted that they are all foreigners to the District which doubtless shows their ignorance of the usages, customs and manners of the Malabar public; and if this is accepted any savings large or small laid by, in various ways by the Karanams of petty Malayali Tarwads and the trustees of Dewasams in solvent circumstances in the District, would, in course of time, be brought within the scope of Treasure-Trove Act, even before the expiry of a century, when any building is dismantled and re-constructed. The use of iron safes and the investment of money in public banks etc are things still rarely known to the majority of the Malabar public and particularly to the ignorant and illiterate section thereof like the Petitioners.
13. That, apart from the question raised above whether the gold coins in question constituted any treasure as defined in Act IV of 1878 and thus became liable for adjudication under the provisions thereof, the Petitioners beg to submit that the Collector's decision is contrary to the facts of the case and the law on the subject.
- 13(a). That, the Petitioners beg to submit that the circumstances of the case and the evidence on record

1st Pet. Etti Panga Namuadi Dd

on record do not warrant the 32nd Petitioner alone being regarded as the finder under the Act. No other motive could be attributed to this conduct on the part of the local officials than a desire to confiscate a major portion of the money in question, as under the Act $\frac{3}{4}$ of the whole amount could be claimed as the finder's share. As a matter of fact, even the Prosecution witnesses and the witnesses examined by the Collector (appendix VII) admitted that several wallers and coolies including the convicted Petitioner were present when the coins were discovered and that they were carried by all the wallers jointly and that several of them were present when the matter was reported to the Adhikari and Revenue Inspector and that, as observed by the Head Assistant Magistrate, the 32nd Petitioner was merely in safe-custody of the property, as it was entrusted to him by others who obtained a receipt from him. This last incident in which he was only an authorized representative of the other wallers for the custody of coins, does not in itself constitute him the finder under the Act. The Head Assistant Magistrate has, in his judgment, rightly observed that "all the trustees were equally concerned and interested in the matter but that the fact that the other trustees, besides the Appellant 32nd Petitioner, were not proceeded against, is, of course, no valid ground of defence for the Appellant." These facts therefore conclusively prove, apart from the conviction of the 32nd Petitioner in the Criminal charge, —

purposely bolstered up against him, That it was illegal unreasonable and contrary to the evidence on record to have set him up alone as the finder under the Act and to have confiscated $\frac{3}{4}$ of the whole property as his share and that the 32 Wrallers, as a body, were the finders and this is strongly corroborated by the Collector in para 4 of his last Proceedings (Appendix VIII). Thus the finder's share cannot be exclusively allotted to the 32nd Petitioner who is only one of the 32 trustees and who is hence entitled ^{only} to a 32nd share of the property.

- 13 (6). That in the last para. of the last Proceedings of the Collector (Appendix VIII.) the Collector has directed that $\frac{3}{4}$ of the amount be confiscated as the share of the finder. That is the 32nd Petitioner and that $\frac{1}{4}$ or $\frac{1}{8}$ the remaining $\frac{1}{4}$ be also confiscated to Government as the share of the 4 Wrallers including the convicted individual and 3 others who were present at the finding of the treasure. This direction is, the Petitioner respectfully submit, contrary to the provisions of the Act. and the express instructions issued by Govt. to the effect that the share of the man who was convicted alone is liable to confiscation. The fact that three others or 31 others, were present does not justify the confiscation of their shares inasmuch as they have not been proved in a regular enquiry to be the only finders of the property discovered and to have wilfully omitted to give notice. The Petitioner again beg to invite His Excellency's kind attention to the important fact that the

proceedings in the Criminal case and the conviction of the 32nd Petitioner being ultra vires as shown in para 11 supra, even the one thirty second share to which the convicted Petitioner is justly entitled is not liable to be confiscated.

14. That, the Petitioners beg to point out further that it is admitted on all hands that the so-called treasure was discovered at about 10 A.M. on the 1st March 1892. and that the matter was reported in person to the acting adhkari almost instantaneously and that it was handed over to the Police when, for the first time, they were directed to do so by the Shasildhar for the safe custody in the nearest Government Treasury under circumstances detailed at para 3 supra. These facts, the Petitioners, respectfully beg to submit, amount to a strict compliance with or obedience to the spirit, if not the very letter of the provisions contained in section 4 of Act V of 1878. and are sufficient to absolve them jointly or any one of them individually from the charge of having wilfully and fraudulently disregarded and violated those legal provisions, however, informal and defective they may have been, which certainly is pardonable in a section or community of people of the status and education of the Petitioners. The Petitioners regret that the local Taluk and Amshom officials who are fully conversant with the rules on the subject did not require the Petitioners who gave intimation to them to conform to the very letter of the provisions.

provisions of the Act, if compliance with its spirit was deemed insufficient and incriminating; and the only possible explanation which they can conceive for this deliberate conduct on the part of the officials concerned, is their ardent desire to deprive them of the so-called Treasure and to confiscate the same. No attempt whatever was made to conceal the finding of the coins, as has already been abundantly proved and admitted, and this conduct on the part of the Petitioners conclusively establishes their bona-fides and disproves the theory set up by the Head Assistant Magistrate, that they were "anxious that it should run no chance of being taken up by Government and hence that they gave no notice."

15. That, under these circumstances clearly set forth in the preceding paragraph, and considering that they have not even been given an opportunity to establish their rights in Court of law by the institution of a civil suit and that one of them has already been unnecessarily and heavily fined Rs 200 (two hundred) ^{total}

total amount being Rs 350-12 - only) the
 Petitioners respectfully crave that His Excellency
 The Governor-in-Council will be gracious
 enough to cancel the Proceedings of the Collector
 under appeal and to set aside his decision
 relating to the confiscation of certain shares,
 and to direct that the whole amount
 be restored to them as they are the owners
 thereof in their capacity of the trustees of
 the Kuthanor Bhagavati Dewasom to which
 the property belongs, and to be pleased to mark
 in the matter of the Criminal Prosecution
 and Conviction of the 32nd Petitioner and
 re-consider and interfere with it on its
 merits - which course will also be perfectly
 justifiable, considering the injustice meted
 and hardship felt by that Petitioner.

For which act of Kindness
 the Petitioners shall, as in duty bound,
 16th October 1893 } ever pray.
 Palghat }

1. Kalicheam Vettil Itti Panga Mannati. കൊച്ചിമംഗലം
2. Attachirattil Chami Mannati. ചാമി മംഗലം
3. Perumpara Govinda Mannati. ഗൊവിന്ദമംഗലം
4. Chengattu Krishna Mannati. ചെങ്കുട്ടി കൃഷ്ണ മംഗലം
5. Arappam Vettil Gopalan. അറപ്പം വെട്ടിൽ ഗോപാൽ
6. Eacharath Varayana Mannati. ഓച്ചരത്ത് വാരയാണ മംഗലം
7. Korath Eressa Mannati. കോരത്ത് ഇരട്ട മംഗലം
8. Thuchanath Madharau. തുച്ചനാത്ത് മാധവൻ

9. Chingaraicham Vettil Narayana Mannadi. നാരായണമന്നാദി.
10. Mannatham Vettil Chathar. മന്നത്താമറ്റം ചത്തര. ൮
11. Kelankolath Channu. കേലങ്കോളത്ത ചാട്ട. ൮
12. Etanchath Kuppan. ഇടഞ്ചത്ത കുപ്പൻ. ൮
13. Puthan Vettil Chami. പൂത്ത വേട്ടിൽ ചാമി. ൮
14. Makiasam Vettil Pungan. മാകിയാസം വേട്ടിൽ പൂണ. ൮
15. Kandath Chami. കണ്ടത്ത ചാമി. ൮
16. Kalampath Chami. കാലമ്പത്ത ചാമി. ൮
17. Kalampath Ponnambalaw. കാലമ്പത്ത പൊമ്പലാവ. ൮
18. Valia Kalampath Muchakola Mannadi. വാലിയാ കാലമ്പത്ത മുച്ചകൊളാ മന്നാദി.
19. Masathil Govindan. മാടതിൽ ഗോവിന്ദൻ. ൮
20. Kalathodi Chippan. കാലത്തുദി ചിപ്പൻ. ൮
21. Kalathile Vettil Kanna. കാലതിലേ വേട്ടിൽ കണ്ണൻ. ൮
22. Kalathile Vettil Kuppan. കാലതിലേ വേട്ടിൽ കുപ്പൻ. ൮
23. Thaze Puthan Vettil Popalau. താഴെ പൂത്ത വേട്ടിൽ പൊലാവ. ൮
24. Cherath Chami. ചേരത്ത ചാമി. ൮
25. Kandath Katingi. കണ്ടത്ത കിണ്ടി. ൮
26. Kalampath Kappiasan. കാലമ്പത്ത കാപ്പിയാസൻ. ൮
27. Palat Kutti Pannu. പാലാട്ട കുട്ടി പാണു. ൮
28. Krishnath Madhavi. കൃഷ്ണത്ത മാധവി. ൮
29. Kambiarath Meenakshi. കാമ്പിയാരത്ത മീനക്ഷി. ൮
30. Kandath Lekhmi. കണ്ടത്ത ലക്ഷ്മി. ൮
31. Masathile Pyichi. മാടതിൽ പിച്ചി. ൮
32. Thuchanath Govinda Mannady. തൂച്ചന്താത് ഗോവിന്ദാ മന്നാദി.

Appendices 1407 and the original order of the collector
appealed against are herewith attached —

Public
CURRENT

G.O. 145821-2-93 m;
" 59230-1-93
" 581826-7-93 4626
Sondh No 1904

From.

The trustees of the Kuthanoor
Bhagavathi Dewasom
Kuthanoor Kuthanor Palghat
Taluk Malabar District.

Referred to the
Collector of Malabar
for remarks.

Richard Hill
Chief Secretary

2.5.13
24/10.

Cotacamund
26th October 1893

His Excellency The Right
Honorable the Governor-in-
Council, Fort St. George
Madras.
18 OCT 93
Dated 24th October 1893.
Recd 18

Enclosures (7) /

Subject.

Appealing against the order
of the Collector of Malabar
confiscating under the Treasure-
Trove Act a sum of money
appertaining to the Petitioners'
Dewasom aforesaid and
praying to restore the same to
the Petitioners.

Malabar Collectors Office
Camp Manantoddy 19 November 1893

No 155-2
22

From,

Herbert Bradley Esq.
as Collector of Malabar

To,

The Honble J. F. Price
Chief Secretary to Government
Madras.

Sir,

I have the honor to return with the
following remarks the memorial received with Government
Endorsement no 1904 dated October 26, 1893.

2. Para 2 of the memorial. The earliest inquiry held shows
that the building which was pulled down for the construction
of a new one was called a Pathayapuram and it is so styled in
the petition which forms appendix IV to the Memorial. The
evidence upon the record showed that only 4 of the petitioners
were present at the time of the finding of the treasure, and
the actual finder deposed that it was found some yards outside
the demolished building.

3. Para 3. The statement that the money was handed
over to the Police without hesitation is as accurate as the
rest of the petition. Govinda Mammadi showed the property
to the Police who were armed with a search warrant, and
it was found in a box buried in paddy.

4. Para 4. So far from the action of the treasurers on
the finding of the treasure being honest, the evidence for
the prosecution in the case showed that when the treasure
was found, four of the treasurers were present. They took
possession of it, and ordered the workmen to leave the place
waiting before opening it until they had gone. This is
borne out by the Revenue Inspector's inquiry.

5. Para 5. When questioned by the Adhigari and the Revenue Inspectors the petitioners asserted that they had found only some property buried by their ancestors. They declined to show it, although they admitted that they had no means of knowing that it was buried by their ancestors.

6. Para 12(a). It is ridiculous for the Uralers now to pretend that it was decided to pull down the old Pathaya para in order to find the property concealed in it. If this had been the case it may safely be presumed that all the Uralers would have been present for mutual confidence is nonexistent among the Uralers of ~~the~~ temples. Had such been the case, the fact would have been carefully recorded before-hand, and it would have been pleaded during the original inquiry. It is obvious that, if no evidence is offered, the Collector holding an inquiry under Section 8 of the Act cannot presume that the property was hidden within 100 years by the representatives of the petitioners. The petitioners' remarks regarding the Tahsildar's knowledge of Palghat Taluk are ill-founded, as he was Tahsildar of Palghat 16 years ago, when many of them were school boys. In my inquiry in December 1892, I took such evidence as was offered of the age of the building.

7. Para 12(b). Undoubtedly all treasure found in dismantling and reconstructing a building is Treasure Trove, unless the owners of the building can prove that they or some one under whom they claim, buried it.

8. Para 13(a). My finding which was based on G.O. dated February 21, 1893, No. 145, was that the Cooly was the finder of the property. Hence his $\frac{2}{4}$ share plus that of the four Uralers, one-eighth of the full number, who were entitled ~~and~~ to the remaining one-fourth, was credited to Government under Section 21 of the Act.

The remarks of the petitioners as to the motive of the local ~~authorities~~ are absurd. The statement that the matter was reported to the Adhigari and Revenue Inspector is false.

9. Para 13(b). For the above reasons the remarks of the petitioners are based upon a misconception.

10. Para 14. The petitioners again repeat the falsehood that the finding of the treasure was reported to the Adhigari. The Adhigari in his deposition distinctly stated that he heard of the discovery casually from some people talking at a shop. The fact about its being handed over to the Police is attested in para 8 above, and two of the Uralers who were present at the search refused to sign the search list. Another falsehood is that no attempt was made to forward the finding of the coins.

11. Finally, I have to point out that the copies filed by the petitioners are not certified copies and are not stamped under Schedule I Art 9 of the Court Fees Act.

12. The facts of the case really were that the Cooly digging in the neighbourhood of the new building found a metal box which probably contained treasure. The Uralers, who happened to be present, took possession of it, and opened it secretly in conjunction with the remainder of the Uralers. They carefully concealed the discovery of the treasure, and probably made away with a portion of it, and now claim that they are entitled to the whole of it on the ground that it is not Treasure Trove. It is not likely that a box containing treasure belonging to a temple would be hidden as this was in a receptacle placed in a hole evidently bored for the purpose in a stone specially prepared, without any record of the fact being made, especially when the temple, governed by no less than 32 families. In reality it was probably buried long before the building near which it

Public Dept.

Pub. No. 5812, 26-7-93
" 1458, 21-2-93
" 5920, 30-1-93

3/45

From

The Collector of
Malabar.

To

The Chief Secretary
to Government
Madras.

CHIEF SECRETARY

23 NOV 1893

Dated 19th November 1893

Recd 21 - Do -

Recd 23rd } DO
Recd 28th }

Encls. - 9.2 (C No 2839
of Encl. Ref.)

Subject.

Reporting on the Memorial
of certain Urals of Baghavar
Kann of Kuthanuram
Palghat Taluk regarding
the disposal of a treasure.

[G.]

Public DEPARTMENT.

C. No. 3145.

FOR ORDERS.

So far as I can make out, the
Urals who was convicted was
present at the time the find was
made by a cooly employed by him
& others. I think it is
hardly reasonable to suppose that
there was such a find as the
coolie - Any way, the point that
he was convicted under a
wrong section has not been raised
and he does not appear to have
been prejudiced by the error, if
there was.

I agree that the petition was
dismissed but the question
occurs to me "Why did not the
petitioner refer to the Act
of 1878 of the Chief Controlling Revenue
Authority, i.e., the S.D. - Any
were the petition not referred
to the S.D.?"

4/12/93

The attention of the Honorable
Member is respectfully in-
vited to G.O. 1350 of 1870 in
printed file - which rule III
that the Chief Controlling
Revenue Authority is the
Governor in Council.

J.O.B. Seen. 14 5/12/93
5.12. Seems true.

This case has been before Govt. 31-
ready - please see G. Os. 59, 145 & 581
of 1893.

A perusal of the current report by
the Collector shows that the petition
is full of inaccuracies. There can be
no doubt that the Urals endeavoured
to conceal the "find" and there is
reason to believe that the whole was
not eventually produced.

The particular point to which
attention is invited is the conviction
of one of the Urals under Section 20
of Act VI of 1878. That Section refers
only to the finder. The Urals was not
the actual finder; ^{who} he was a labourer who
was digging. The conviction should have
been under Section 21. This was pointed

out G.O. 145. 10/30/1893
It is further submitted that the
amount of the fine - Rs. 200 - is ex-
cessive. In this connection please see
notes

B.
19.11.

* That the J.O. referred
to is wrong. The words
"Chief Controlling Revenue
authority" are defined
in s. 3(7) of Act I of 1879
which must have been
on the Legislative Council
when Act VI of 1878 was
passed. There can be little
doubt, therefore, I think, that
the Legislature meant them
to have the same meaning in
both Acts, and I am sure
if that (repealed) Act of
1869 had to refer to, I should
find that the words had
the same meaning there. But
it does not much matter

-H.M.
7/12/93

The proposed order can give
on the petition.

As regards the question raised by
me as to the proper meaning of
the words "Chief Controlling Revenue
authority", I find that though these
words are not defined in Act XVIII
of 1869 as they are in section 3(7)
of Act I of 1879 (which repealed Act
XVIII of 1869), they are used in that
Act (section 39) in precisely the
same sense as in the Act of 1879 (section
46). These sections deal with the
cases of doubtful points made to the
H.C. for adjudication. I have only in
recollection to rely on, of course, but
that is distinct that from 1869 to
1879, it was the Rev. Bd., not the
Govt., which referred such cases to the
H.C. If I am right in this, it follows
that when the measure now Act, VI
of 1878 was passed, the recognized meaning
of the word "the Chief Controlling
Revenue authority" was the Rev. Bd.
- Therefore I think it unreasonable
that any other meaning should have been
attached to them when used in 1878.

I recognize the high authority of
Mr. Carmichael, but I cannot see
with him that ~~change~~ if, as I think,
the intention of the Legislature
plain, it is right for the Executive
to put a different meaning from that
obvious one on words used. The proper
course is for the Executive to take the
usual steps to get the law altered.
Especially should care be taken by Executive
authorities to adhere to the plain meaning
of the words in an Act, when they are
inherent in the doing so is that I should
never do so by them.

I am strongly object to "ditching"
jurisdiction by Govt. This is a small
matter, but for that very reason Govt. should
not seek to interfere in it. It should
be left to be disposed of by the
judicial head. Govt. has not enough
of an independent head. Govt. is not a kind of

Note.

The further acts quoted
by the H.M. are sub?
attention is invited to
the pencil note of the
then Chief Secretary
Mr. D. S. Carmichael)
opposite III of G.O. d/7-9-78,
No. 1350 - the original
which is put up. It
will be seen that that
officer was responsible
for the special interpret-
ation in this case.

The following draft
order is submitted for
the H.M.'s approval:-
Order. 15 Dec 93 A 1005-
The Govt. declines to

interfere in the orders
passed on petitioners' case

DISPATCHED
18 DEC 93
M.S.
15 ✓

Stationers
Mr. Malabar

11/12/93

10.5/12

do the work which by law should
be done by the Rev. H. -
I therefore think that, with re-
ference to the meaning attached
to the words "Chief Cont. Rev. Authority"
since Act XVIII of 1889 was passed, if
not before, in Rule III of the Rules
sanctioned in G.O. Lpt 7, 1898,
No 1350, Public, ~~should be cancelled~~
~~the words "B. of Revenue"~~
~~should be substituted for the words~~
~~Rev. in Council.~~
If there is any doubt in the
matter the Govt of Bengal & the
W.P. might be asked what meaning
they attach to the words "Chief Cont.
Rev. Authority".
H.E. before the Hon. W. further
to see.
B.S.
13/12/93

It appears therefore to me to be a question of
expediency, and I must say, "at least" the
ultimate decision on point is ~~in course of~~
with the Revenue Board should be left with the
Local Govt. Each case has to be dealt with on its
merits, and there might arise questions of great
interest to the whole civil service in this
connection - which
be decided by the
G. in C. W. J. Govt.
The orig. of G.O. No 1350 of 7/9/90
is in the file - so I must refer
to it. But that in the
Treasury Treas Act of 1890 which
has passed into law on 23rd Feb 91
knows no definition of Chief Controlling
Rev. Authority. But that in Act
89/90 ~~the~~ the Customs Act
passed into law on 1st Jan 91

submitted to the Hon.
Bliss with reference
the notes of H.E. the
Governor and the
Hon. Mr. Garstin.
J.B.
for C.S.
4/1/94

Acting there is definition of Chief
Customs authority which differs
and possibly the definition of Chief Controlling
Rev. Authority given in Act
19/1899 (the Stamp Act) passed
into law in Jan 99. In
which the B.S. Rev. is specifically
designated in this regard as such
authority. I am not aware
of any such definition prior to
19/1/99. Therefore I don't
think the rule for the W. Govt.
- which seems to be responsible
under the Treasury Treas Act,
illegal, & it is not become
illegal if it appeared, after
reference to the Revenue, that they
had some authority over the
for Council and such authority
under that Act. However, by
Act 9/99 the Local Govt is
deemed to be in some part of India
to be the Chief Controlling Rev.
authority. I don't know
now in making the reference
supported by any other authority.

Secret
Submitted
H.E. 5/1/94
P.S.
Under Act XVIII of 1889 (the
Stamp Act) it was assumed
in the order to make reference
under the Act to the High C. & the
Act 18 as the Chief Controlling
authority
I don't think there is any illegality in the
defining the Chief Controlling Revenue Authority
to be the G. in C. under the Revenue Board.
Arguments can be made with equal force
support both views now taken under Act 99.

C.B.

1005

15-12-93