1886

CURRENT NO.

Public (1886) Department

From,

H. S. Thomas, Esquire
F. L. S. F. Z. S
Senior Member, Rev: B.

To,

The Chief Secretary
to Government

Mis

N^o. A.

Order 22^d November 1886, N^o. 2432 Mis.

Dated 12^t November 1886

Recorded.

HAS
17/x^1

Map sent separately

Forwarding a letter & maps
received from the Supdt. of Su
in connection with the encroa
ment on the water spread of
certain tanks by the Exptl.
Park and Farm, Ma

Confidential

No. A.

Madras
Revenue Board Office
12th November 1886.

CHIEF SECRETARY'S OFFICE
13 NOV 86
GOVERNMENT OF MADRAS

From,

H. S. Thomas, Esquire, F.L.S. F.Z.S.
Senior Member, Revenue Board.

To,

The Honorable H. E. Stokes
Ag. Chief Secretary to Government.

Sir,

I have the honor to forward a letter No. $\frac{1325}{m}$ dated 11th November 1886 and map today received from the Superintendent of Survey in reply to a letter written when I was on the enquiry ~~into~~ Mr. Crole's administration of Madura. They show that the waterspread area of one private and two Government ~~and one private~~ tanks had been encroached on by the Peoples Park and Farm and that survey boundary stones are missing. These are points mentioned in my report.

I have the honor to be
Sir
your most obedient servant
H. S. Thomas
Senior Member, Rev

I
25/10

(224)

[I] Confl. $\frac{(198)}{1886}$

PRESS.

Public DEPARTMENT.
G.O. DATED 25th October/86.
No. 2257

First copy sent to Press.

Returned for signature. 27/10

Despatched in print. 29/10/86

[Despatch Abstract.]

Junior Civil Servants

Passing orders on the indifferent results shown by Messrs. Swaminatha Aiyar & T. Varada Rao at the ½ yearly Exn of Assts. held in July last.

[*Despatch.*]

READ AGAIN Order of Government, dated
188 , No. Miscellaneous.

ENCLOSURES.

CURRENT No.

4280 – a

STATEMENT WITH DITTO.

ORDER, &C. OF GOVERNMENT—A.

PAPERS KEPT OUT OF FILE FOR DESPATCH IN ORIGINAL.
(not paged.)

Order 40
Letter
Collection

N.B.—
A = Print in full.
B = Not to be printed.
P = Print abstract only.
Q = Print heading only.
R = Print, but not for monthly volume.

BACK PAPER, NO. OF 188 .

FURTHER PAPER, NO. OF 188 .

---

(224)

13/10/86 No 2171 Pres Pub-

H.M.

For orders

HCl

E.C. 21/10

G.O. 25 October 1886, No. 2257.

Id. dated. The Govt. have read with regret the foregoing report.

The failure of Mr. S. Aiyar in so many subjects is not creditable to him after very nearly three years experience of District work & the report shows that he is inclined to be careless & idle.

It is difficult to find an excuse for Mr V. Rao's want of proficiency in the Tamil language

The Govt. trust that the result of the next half-yearly examination will be more creditable to these young officers J.W. 23/10

E.C. 23/10

The President 6
Bd. of Exam.
Revs Depts: B3

Despd. 29/10/86

M. 22-10.
R. 25-10

CURRENT NO. 4280

PUBLIC DEPARTMENT.

From
THE PRESIDENT,
BOARD OF EXAMINERS,
Madras,

To
THE Hon. the CHIEF SECY. TO GOVERNMENT,
Fort St. George.

No. 1295

CHIEF SECRETARIAT
19 OCT 86
GOVERNMENT OF MADRAS

Dated 15th
Despd. 18th
Recd. 19
October 1886

No.

ENCLOSURES.

Subject.

Reporting for the information of Government the observations made by the examiners in connexion w the examination of Messrs. T. M. Swaminatha Aiyar and T. Varada Rao, at the half-yearly examination of Assistants held in July la

FORT SAINT GEORGE.

PUBLIC (1886) *DEPARTMENT.*

(Copy.)

Letter to the Right Honorable
the Secretary of State for
India.
Dated 17th November,

No. 24 of 1886.

Strike 20 copies
of Each. soon please
20/11

all right

Forwarding, for the orders of the Secretary of State, two copies of a letter from Mr. Eardley Norton, Barrister-at-Law, acting on behalf of Kotaisami Tevar, Subdivision Zemindar of Ramnad.

6. It is by no means clear to what Mr. Norton refers in paragraph 3 (*c*). No opinion was received from Mr. Handley other than that forwarded to your Lordship with our despatch, 16th February 1886, No. ~~16~~. 3/ There is nothing in it about an affidavit by Kotaisami Tevar. The opinion was not published by this Government. An extract from it was given in the order (4th February 1886, No. 240) suspending Mr. Crole, which has since been extensively published, but not by this Government.

7. With regard to paragraph 3 (*d*), it is enough to say that when His Excellency the Governor was writing the Minute referred to, he had no thought of Kotaisami Tevar in his mind. The following would appear to be the paragraph alluded to:

> "No doubt a vast amount of spiteful nonsense has been talked and written about the sins, in the matter of land, of that very honorable body of men,—the Madras Civil Service; but I am sure all its members will see that to transgress, ever so little, the rules about land-holding, is a sad mistake, and one which enables its enemies to heap upon it all manner of false accusations."

2 leads [illegible]

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

(Signed) M. E. GRANT DUFF,
(,,) C. G. MASTER,
(,,) E. FORSTER WEBSTER.

Fort St. George,
17*th November* 1886.

Exd. F. R. Bantleman.

There is nothing in it about an affidavit by Kotaisami Tevar. The opinion was not published by this Govt. An extract from it ~~[illegible]~~ was given in the order (4 Feb. 1886 No 240) suspending Mr Cole, which has since been extensively published, but not by this Govt.

7. With regard to para 3 (d). it is enough to say that when H.E. the Governor was writing the minute referred to, he had no thought of Kotaisami Tevar in his mind.

The following wd appear to be the para alluded to H.E. from minute
(Para 218 of Review Minute)

~~Ootacamund~~ Fort St George }
07 Nov 1886 }

to him by the minor who was under their joint guardianship, called for any notice or opinion and at the hands of Government.

they being both members of the Court of Wards & ~~the only members of it here present including~~

5. With reference to the conduct of the ~~late~~ Collector & President of the Local Fund Board Madura, which is said to have compelled Kotaisami Tevar to resign the office of Vice President, we have to say that we fully approved Mr Turner's action. The whole matter was reported ~~to your Lordship in our Despatch No~~ in letter to the Under Secretary of ~~Despatch~~ State dated 24 July 1886 No 849 L.F. Mis

6. It is by no means clear to what Mr Norton refers in para 3(c) No opinion was received from Mr Handley other than that forwarded to your Lordship with our Despatch 16 Feb. 1886 No 16

There is nothing in it about an affidavit by Kotaisami Tevar. The opinion was not published by this Govt. An extract from it ~~was of~~ was given in the order (4 Feb. 1886 No 240) suspending Mr Cole, which has since been extensively published, but not by this Govt.

7. With regard to para 3 (d). it is enough to say that when H.E. the Governor was writing the minute referred to, he had no thought of Kotaisami ~~Tevar in~~ his mind.

The fallacy wd appear to be the para alluded to H.E. from Minute (Para 218 of Review Minute)

~~Ootacamund~~ Fort St George
07 Nov 1886

to him by the minor who was under their joint guardianship, called for any notice or reprimand at the hands of Government.

they being both members of the Court of Wards & ~~the only members of the [illegible] present included~~

5. With reference to the conduct of the ~~late~~ Collector & President of the Local Fund Board Madura, which is said to have compelled Kotaisami Tevar to resign the office of Vice President, we have to say that we fully approved Mr Turner's action. The whole matter was reported ~~to your Lordship in an despatch No~~ in letter to the Under Secretary of ~~Despatch~~ State dated 24 July 1886 No 549 L.F. Mis

6. It is by no means clear to what Mr ~~Norton~~ refers in para 3(c) No opinion was received from Mr Handley other than that forwarded to your Lordship with our despatch 16 Feb. 1886 No 16

4 The

Despd in MS with 2 copies of letter refd to & copy of publ lr 2485 with enclo. 17.11.86.

2 spare copies with enclos sent 24/11/86

6 sp copies with Mr. Norton's letter sent to the GS on 24/11/86

Public Department

No. 24 of 1886.

My Lord.

We have the honour to forward ~~to your Lordship~~ for your Lordship's orders, ~~copy of~~ two copies of a letter from Mr. Eardley Norton, Barrister at Law, acting on behalf of Kotaisami Tevar, Sub division Zamindar of Ramnad. Mr. Norton furnishes copies authenticated by Kotaisamy Tevar, of certain letters alleged to have been written to the latter by Mr. J. F. Sullivan in connection with the sale of the Pichings estate.

2. We do not propose to make any remarks on these letters, but shall merely

16/11

16/11

Perhaps your Lordship has already seen several make some observations on the statement of alleged facts in paragraph 3 of Mr. Norton's letter. With Kotaisami Tevan's motives we have of course no concern.

3. First, as to the alleged forcing of Kotaisami Tevan's name into the Garstin dacoity case, by Mr. French, who conducted the prosecution in the preliminary Enquiry before the District Magistrate of Madura. The Govt. had nothing to do, & did not in any way take any part, in the appointment of Mr. French or in the instructions given to him by the Police Officers who in ordinary course prepared this case for trial. From first to last, the Govt. had no connection with the prosecution. We enclose for your Lordships perusal, copy of a memorandum sent to the Govt. of India with our letter of the 17th Sep. 1886 No. 2485; in which similar allegations made by Mr. Cole have been fully dealt with.

4. It is true that a copy of the statement made by the Minor Zamindar of Guntamanayakanur was sent to Govt. by the order of the Board of Revenue as Court of Wards. The paper was forwarded without remark to the District Magistrate of Madura, & copy sent to Mr. Thomas, who was appointed to Enquire into Mr. Cole's administration. It did not appear to Govt. that the conduct of Mr. Garstin ~~of Mr. Whiteside~~ in the presence of his colleague Mr. Whiteside in recording such a statement made

handed over to Eduljee in part payment of house rent, I shall pay him the remainder. I hope you are well.

28 *Write soon.* Do you require an unusual fine pegu pony price 300 cash, pony rides and drives, would do for you if you mean to reside here. Plenty Salams.

I will forward Eduljee, stamped receipt for 62-8-0.

When you receive valuations and details of estate, consult our old friend Sreenevassa Moorty.

Telegraph as well as write details about land.

Yours very sincerely,
J. F. SULLIVAN.

I hope you can read my writing.

VI.

RICHINGS LODGE, LOVEDALE,
OOTACAMUND, 19th *January* 1884.

MY DEAR KOTEISAWMY,

29 I subjoin a true copy of my father's letter, dated 18th January 1884, "I think you did right in selecting Mr. Henry Ryan to value the estate. You had better show him that Memo I drew up and sent you showing the profits of Cinchona cultivation with bark as low as one rupee a pound."

N. B.—I offered to show Mr. Ryan this Memo my father alludes to, but he expressed a wish to work independently of it.

My father goes on to say. "The present depressed price of bark is only temporary and is due to the fact of the manufacture of Quinine being in the hands of a very small member of firms the principal of which are:—Messrs. Howard and Son, and Messrs. Whiffen and Company.

In order to keep the price of bark *down,* and that of Quinine *up* they have entered into a combination not to manufacture more than a certain quantity of Quinine and only to purchase sufficient bark for that quantity and the consequence is that there is a large amount of bark in the market for which there is no purchaser while at the same time the price of 30 Quinine is higher than it was a few years ago. It is a clever trick of the manufacturers, but of course it cannot last. The manufacture of Quinine is now no secret and already there are signs of steps being taken to smash up this conspiracy.

The Government are getting out a Quinologist from home and I hope before long that a Quinine Manufacturing Company who have been feeling their way for some time will be in full swing of operations in some central spot on the Nilgiris. This will create a steady local demand for the raw material, or if planters prefer it they can have their bark worked up into quinine on the spot and ship the manufactured article to England at far less cost and risk than they now do the bark.

There is a very good prospect for Cinchona and if I were valuing an estate I would not take last year's prices as a basis but the average say of five years."

You are at liberty to show this to any experienced gentleman planter. Please inform me if you have seen this letter quoting the date. I would register it only to-morrow, being Sunday the Office is closed and if I waited till Monday I would waste a day's post.

In haste yours very sincerely,
JOHN F. SULLIVAN.

31 I sent you a copy of this Memo.—J. F. S.

VII.

RICHINGS, 23rd *January* 1884.

MY DEAR KOTEISAWMY,

I am sending you two pretty pictures. Subject—"Hunting in England" and "English Scenery."

The valuation of this property is progressing and I hope to write to you in a few days on the subject after having obtained my father's approval.

Do you think you could come up here and talk matters over in case you don't understand the whole business, or would you like me to run down to Ramnad? I could travel cheaper than you can, so should you wish to see me about anything before making up your mind either way I would not mind the trouble of visiting Ramnad provided you pay my journey to and fro. I have been expecting to hear from you for some days, why have you been so silent. Eh? Write quick please and tell me, or I shall imagine you are ill. Would you like a "Pointer" dog.

In haste to save the post.

Yours very sincerely,
JOHN SULLIVAN.

I will have all figures and report about estate made out very clearly for you as you don't understand planting business. 32

I have written you several letters about horses, etc.

VIII.

30th *January* 1884.

MY DEAR KOTEISAWMY,

There is a particular request I have to make of you and that is, whether you purchase this property or not, I don't wish my *father's* name to be connected with it in any way as "*The estate is mine.*"

I have to thank you for two very kind letters, dated 17th and 24th respectively.

Never mind about the valuation fee until we come to terms, if you purchase I don't mind paying the fee.

Thank you very much for so kindly sending me a photo of your house. I appreciate it highly and consider it is a good picture, who did it?

No time for more to-day. With plenty Salams.

Mr. Thackeray joins me in best wishes. More soon.

Yours very sincerely,
J. F. SULLIVAN.

I solemnly affirm that the above letters are true copies of the originals in my possession

I don't say but that all would do the work conscientiously both for your sake and mine, but this, I fear, others, than the gentlemen I have chosen would have run up my property to an enormous figure. Now I consider, the "Valuer" who gave me the information gained nothing. On the contrary he might have lost the duty with which I have entrusted him, had I been keen on having my property valued at an enormous figure. I have ordered a moderate valuation made, so should you become the happy possessor of this estate you will find you will be able to realise greater profit than the property is valued at now. 20

The "Valuer" I believe to be a thoroughly conscientious man, he goes on to say I would value your property at a very high figure, and so enable you to sell at an enormous profit. But Mr. Sullivan I have a character to maintain, of course I wish to do you justice and should you succeed in selling your property I should like to feel I had done the purchaser justice also. Now Pereasawmy I think you can but concur with me that the Valuer I've chosen is an honest man, he knows me slightly having made my acquaintance within the last few months, otherwise he is a stranger to me, and to you he is a stranger and yet he is endeavouring to do us both a good turn, in fact doing his duty honestly, and that is just what I wish him to do. He does not know your name or if you are a native gentleman of India or a European. It is well to add I am writing this before knowing the figure the valuation will realise, and this you can prove by comparing the date of this letter with the estimate that will follow when completed, bear in mind this letter should have been dated 11th instead of 13th January. 21

I accidentally heard of the Valuer as an honest man and for your sake, and mine I was guided by the recommendation. Naturally I wish to procure as much for my property as I reasonably can, and I should be a fool if I didn't, but at the same time I should regret if I ever heard the property had been overrated.

If you purchase my property I will gladly introduce to the Valuer and you will find him a kind and reliable friend, having lived on these hills all his life, is thoroughly acquainted with business and dealing with coolies. I simply write all this as I consider all praise is due to the Valuer, for the information he gave me was clearly against his own interest. I partly selected him as being a thoroughly disinterested party as far as my property is concerned, and at the present moment, as far as I know, he may value the estate far below what I do, in that case so much the better for you. I have settled my figure I shall have to place on my estate after being advised by learned gentlemen. I am curious to see how my figure will correspond with the valuation, being at the present moment as ignorant as you are. Bear in mind I have kept my own figure to myself thinking it advisable to permit the valuer to work independently of the price I shall demand. More soon. 22

Yours very sincerely,

JOHN SULLIVAN.

P. S.—Thanks for Rs. 130 which I think I have acknowledged in a previous letter.

IV.

RICHINGS, 14*th January* 1884.

MY DEAR KOTEISAWMY, 23

I hope the valuation will be completed by the end of this or early next week. To avoid a mistake the valuer has to go very carefully to work, hence it takes time.

Supposing you decide to buy my property would you like to have about another 40 acres of land adjoining this estate, it is *beautiful land* suited either for planting or for growing crops.

Talking about land reminds me I heard from this District Collector to-day, and possibly you may like to know what he say about land. There is some possibility of sale of "land within settlement limits (*i. e.* within easy reach of Ootacamund, Coonoor, etc.,) being "restricted even more than at present, if not altogether prohibited." So you see the information I gave you, namely that soon land surrounding Ooty won't be procured by love or by money, was not incorrect, so if you are desirous of any good land I can lay hands on, *let me*

know sharp please. Another thing I wish to say supposing you buy this estate, I will give you all English grass seeds I have on hand, and if you would like to make a small fortune in a very short time *I strongly advise* you to go in for growing Oat fodder for horses, it will pay you handsomely and no one to compete against, *if you don't care to go in for this experiment, I shall,* provided you rent me all your arable land, whether you go in for it or whether I go in for it or whether we join in partnership, I will get good seed from England and will show you how the cultivation should be executed, the outlay will be next to nothing, but a sure and handsome quick return is certain. Listen to what Mr. Brandt, the District Collector says on the subject : 24

"Many thanks for your Oat fodder. It is very fine, nice and fresh I hope you will "be able to grow lots of it."

Please don't breathe a word to any one on the subject or else some one will come up and take the business out of our hands. I see my way clear to making a fortune but I don't want to cut you out should you feel inclined to supply the market after buying my estate. In this case I will gladly give you all the assistance in my power and will procure good Oat seed for you from England, it must be out by April, therefore, should be ordered at once ; but wait till you have decided as to whether you or will not buy this estate. I will forward the valuation as soon as it reaches me. Things strike me from day to day. My object in getting a disinterested person to value my estate is because you confess you know nothing about planting Cinchona, blue gums, etc., the valuer will show you how to make money if you consult him. 25

If you would like the land I have named, "Telegraph," to Ootacamund *not* to Lovedale.

I can't say what the land will realise at auction but I should say 50 would be the outside figure. I may get it for 20 or 30. More soon.

Hoping you are well.

Yours sincerely,

J. F. SULLIVAN.

V.

RICHINGS, 16*th January* 1884. 26

MY DEAR KOTEISAWMY,

As regards what I call "Naboth's Vineyard" that nice flat piece of ploughed land surrounded by my property ; but belonging to a Buddagher, this is a matter for consideration, my idea was to give him land stocked with trees *treble* the value of his land, but should you become the happy owner of this estate you may prefer keeping every inch of land now belonging to the estate, in that case shall I offer Naboth money ? Roughly the land measures 9 or 10 acres, say nine and take into consideration it has been cultivated, so if you give 50 rupees an acre and get it for Rs. 450 or 500 Rs., it will not be expensive and bearing in mind it is situated in the centre of Richings Estate ready for sowing next May if operations are commenced as soon as possible, if you will tell me your desires on the subject, and give me sanction to act as I think fit, trust me to do my best for you.

The time is rapidly approaching when people won't be able to procure land in the vicinity of large towns such as Ooty and Coonoor, I will try and get you, 50 acres adjoining my estate as cheap as I can, if you wish it, the main portion is suitable for crops, the remainder for planting blue gums for firewood, prices differ from 3 to 6 a bandy load of 1,000 lbs. *green wood.* 27

I am sorry to say Eduljee refuses to reduce the house rent, so I must pay up, but I have told him I shall not engage his house again, since he objects to listen to reasonable terms.

I have paid Eduljee the balance of your money, namely, Rs. 62-8-0. The account stands thus :

By cash from you	Rs. 80-0-0
Hire of Pony	„ 17-8-0
Balance ..	„ 62-8-0

14. Shortly : to sum up. The correspondence now forwarded proves,

(a) That the Hon. Mr. Sullivan was treated by his son in January 1884 as the virtual owner of the Richings Estate :—

(b) That the father was in close and constant communication with the son about the progress of the sale :—

(c) That so late as the 19th January 1884 the father was advising the son as to the selection of the valuator, and the future prospect of Cinchona planting on the hills :—

(d) That so late as the 23rd January 1884 the father's approval was awaited by the son before the latter could settle anything definite :—

(e) That so late as the 30th January 1884 a sudden caution was considered necessary to disassociate the father from the ownership of the property.

15. Mr. Koteisawmy Devar refrains from any comment to-day upon the question of the valuation, the manner in which it was obtained, and the effect it was intended, in his opinion, to produce. These are points which may arise for discussion at some future date. Mr. Koteisawmy Devar reserves his right to press this matter on the proper occasion.

16. Mr. Koteisawmy Devar is informed—and he has no reason to doubt the credibility of his information—that important oral testimony is procurable at Ootacamund to establish the connection of the Hon. Mr. Sullivan with the Riching's Estate and that public documents would possibly be forthcoming to further establish that fact. A properly appointed Commission would have power to produce both sorts of the above enumerated evidence and Mr. Koteisawmy Devar prays that such a commission should issue.

17. Mr. Koteisawmy Devar is anxious that there should be no delay in transmitting a copy of this letter, with its enclosures, home, for he is aware that the Hon. Mr. Sullivan has gone to England, and he desires that the Secretary of State should be in possession of the further evidence he now produces, in view of any explanation which the Hon. Mr. Sullivan may tender while in England to that official. Mr. Koteisawmy Devar has, therefore, to-day advised the Secretary of State by telegram of the existence of this further correspondence, and of the fact of having sent copies to the Madras Government, and has asked for a full enquiry into the Hon. Mr. Sullivan's conduct with reference to his connection with the proposed sale of the Riching's Estate.

18. Mr. Koteisawmy Devar reserves to himself the right to make what use he may be advised of this letter and its enclosures.

I have the honor to be,
Sir,
Your Obedient Servant,

Eardley Norton

12 November 1886.

Counsel for P. Koteisawmy Devar.

High Court, Madras.

ENCLOSURES.

I.

Richings Lodge, Lovedale,
Ootacamund, *January 9th*, 1884.

My Dear Koteisawmy,

I trust ere this you have reached home safely. Would you like me to purchase a beautiful "Hunter" for you, young and cheap at Rs. 600 ?

The hunting season will commence about the middle of April or early in May. If the one I have in view won't suit, I can be on the look out for you only. Kindly tell me about the figure you would care to give. I think the limit should be 600 Rupees, 500 or 550 should purchase you a very good nag.

I miss you very much also Mr. Thackeray.

I suppose I shall hear to-morrow or next day, at any rate soon, what my father demands for the estate, and shall let you know at once as I know you are anxious to purchase land elsewhere if our price is beyond your means.

Yours very sincerely,
J. F. SULLIVAN.

II.

Richings Lodge, Lovedale,
Ootacamund, 11*th January* 1884.

My Dear Koteisawmy,

Just time for a line. Herewith a receipted bill for the hire of the grey pony you had. I had great trouble to get the owner to reduce the price from Twenty-five rupees. Your account stands thus :—

Received from you	...	...Rs. 80-0-0
Hire of pony	...	... „ 17-8-0
	Balance ...	62-8-0

I have written to Eduljee about house rent and as soon as I hear from him shall inform you.

I hope you are well. I miss you very much. I have received a final letter about the estate and as soon as I have sought the advice of gentlemen learned in the business and wholly disinterested in my property, I will write to you.

To-day a gentleman, comparatively speaking, a stranger to me is coming to value the estate and demands Rs. 50, for his trouble. This gentleman is thoroughly acquainted with the valuation of estates and a disinterested party as far as my interests are concerned. I simply mention this to show I am acting conscientiously and for your benefit in your absence and taking into consideration that you are ignorant of the valuation of the property and you shall have the valuer's figures in his own hand writing in a few days.

Thank you for currency notes amounting to Rs. 130. How good you are in paying debts, I trust you any day ; for I know I should always be repaid. I speak from experience having had so many money dealings with you. More soon.

Yours sincerely,
JOHN SULLIVAN.

III.

Richings, 13*th January* 1884.

My Dear Koteisawmy,

I began a letter to you on the 11th instant but was unable to finish it as I was busy helping to count the trees growing on the estate. I have only counted large ones 30, 40, and 70 feet high, minor ones being thrown in gratis.

As I am sitting over the fire I write down what has come to my ears to-day. Since writing this morning 11th January 1884, I have heard of gentlemen who are desirous of valuing my estate, charging various fees from Rs. 50 upwards for a few days' work.

8. Mr. J. F. Sullivan *in terms* stated that the Riching's Estate was the property of his father "from whom," says Mr. J. F. Sullivan, "I shall hear to-morrow or next day, at any "rate soon, what my father demands for his Estate." 9

[*Vide letter 9th January* 1884.]*

9. The whole tenor of the correspondence taken in conjunction with the explicit statement above referred to, conveys the irresistible inference that the Estate was in fact in January 1884 the property of the father, and that the son so recognized and treated it.

The following quotation may be instanced in support of this position :—

> "I hope to write to you in a few days on the subject, after having obtained my father's "approval."

[*Vide letter 23rd January* 1884.]

10. In this connection the particular attention of the Secretary of State, of H. E. the Viceroy and of H. E. the Governor, is called. 10

(1) to the letter dated 30th January 1884. There Mr. J. F. Sullivan for the first time, and very tardily—the negotiations with respect to the proposed purchase of the Riching's Estate having commenced some time in December 1883—expressly declares the Estate to be his property and his alone ;

(2) to the extreme caution, enjoined upon Mr. Koteisawmy Devar as to the connection of the Hon. Mr. Sullivan with the Riching's Estate. Both circumstances are, it is submitted, extremely suspicious.

11. The enclosed letters, and the quotations excerpted from them, contradict the statement of the Hon. Mr. Sullivan referred to in paragraph 6 *supra*.

12. With reference to the closing sentence of the Hon. Mr. Sullivan's assertion, *viz* : "I never gave the matter another thought, and of the negotiations which may have passed "subsequently between the parties I know absolutely nothing," the attention of the Secretary of State for India, of H. E. the Viceroy, and of H. E. the Governor, is invited to the letter of the 9th January 1884 alluding to an expected communication from the Hon. Mr. Sullivan ; to the letter of the 11th January 1884 alluding to the receipt of that expected communication ; and to the letter of the 19th January 1884 which sets out an extract from a letter from the Hon. Mr. Sullivan to his son, discussing at some length, and with some detail, the question of the valuation of the Riching's Estate. Attention is also invited to the letter of the 23rd January 1884 which says that the son awaits the receipt of his father's approval, and to the letter of the 30th January 1884, the caution in which, as to the disconnection of the father's name from the ownership of the Estate could scarcely have been administered without the previous knowledge of the father himself. The probabilities all point to the belief that the caution emanated from the Hon. Mr. Sullivan in person, and not from his son. 11

13. Had the caution come at the outset of the correspondence, it might have lent weight to the suggestion that Mr. J. F. Sullivan was bargaining on his own account, and was soliciting from his father that advice which a son might fairly ask in his own, and a father fairly give in his son's, interests. But the lateness and the peculiar phraseology of the caution—the italicizing of the words "*the Estate is mine*" is Mr. J. F. Sullivan's, as too are the inverted commas, italics and commas which would induce the belief that Mr. J. F. Sullivan had inserted the statement at the request of some third party—militate fatally against any theory that the Hon. Mr. Sullivan in advising Mr. J. F. Sullivan was merely tendering advice which a father might legitimately tender to a son with respect to that son's *bona fide* dealings with his own property. It is clear that the request to obliterate the Hon. Mr. Sullivan's name from all the negotiations was an afterthought, inserted for the protection of the Hon. Mr. Sullivan himself. And the caution would have been unnecessary if the purchaser had not been led up to that time to believe that the property was the property of the father. 12

---

* On the 11th January Mr. J. F. Sullivan writes "I have received a final letter about the Estate." This is presumably the reply from his father, alluded to in the letter of the 9th January.

---

5 (*c*) Because of the baseless and insulting comment passed upon Mr. Koteisawmy Devar by Mr. Handley whom the Madras Government deemed it proper to consult *ex-parte* upon the value to be placed upon Mr. Koteisawmy Devar's affidavit, after the then Acting Advocate-General, Mr. Shephard, had given an opinion adverse to the contention of the Hon. Mr. Sullivan, an opinion since upheld in a despatch from the Secretary of State for India. Mr. Handley's opinion the Madras Government was pleased to make public without giving any opportunity to Mr. Koteisawmy Devar of reply, of explanation, or of self-defence.

6 (*d*) Because of the observation of H. E. the Governor in paragraph 218 of his latest Minute wherein, under the heading of "Land Holding of Madras Civilians," H. E. remarks that "a vast amount of spiteful nonsense has been "talked and written about it." Mr. Koteisawmy Devar is, of course, not in a position to state whether or no it was H. E's intention to include him in the category of those who in H. E's opinion were guilty of "spiteful" talk or "spiteful" writing. But, seeing the attitude which Mr. Koteisawmy Devar has found himself forced to assume as well in writing as by word of mouth towards the Hon. Mr. Sullivan's land-transactions, and seeing the wide-spread publicity which must necessarily attach to the issue of H. E's Minute, Mr. Koteisawmy Devar feels that the majority of those who read it will, perforce, be unable to exclude his name from the sweeping and, so far as Mr. Koteisawmy Devar is concerned, wholly unfounded criticism of its author.

7 Under these circumstances Mr. Koteisawmy Devar is unable, in self defence, to refrain any longer from pressing upon the attention of the Madras Government the necessity, in his view, of taking immediate steps to vindicate his action in the eyes of the world, and of proving how mistaken and undeserved is the attitude which the Government has adopted towards himself.

4. Mr. Koteisawmy Devar is influenced by two, and only two motives. *First*, by the desire to do what he can, on behalf of the public, to clear up and to terminate a grave public scandal. *Secondly*, by the desire to clear his own personal character from the reflections (1) directly cast upon it by individuals representing or consulted by the Government (2) and indirectly by H. E. the Governor himself. Mr. Koteisawmy Devar wishes it to be distinctly understood that his charge against the Hon. Mr. Sullivan is neither "spiteful" nor "nonsense." The allegations are true. No spark of "malice" prompts, or has prompted, Mr. Koteisawmy Devar's action. Mr. Koteisawmy Devar would remind the Government that in supplying information required by the representative of the Government, the then Collector of Madura, Mr. Crole, he was not acting as a volunteer, but in the solemn discharge of a public duty, from the fulfilment of which he could not have escaped even had he wished to evade it.

8 5. The points Mr. Koteisawmy Devar would respectfully desire to bring to the notice of the Secretary of State for India, of H. E. the Viceroy, and of H. E. the Governor, are the following.

6. In paragraph 7 of its order of the 4th February 1886, No. 240, Public, the Government quotes the Hon. Mr. Sullivan as follows :—

> "My knowledge of the matter is confined to my son having, whilst I was in Madras, intimated "to me by letter that a native gentleman, whose acquaintance he had made at Madura, had "been to see him and wished to purchase the estate. I think he said he expected to get a "lakh of rupees for it. I forget what I replied to him, but I think it was to the effect "that I wished he might get it. My son is of a sanguine nature, and had an exaggerated "idea of the value of his property. I never gave the matter another thought, and of the "negotiations which may have passed subsequently between the parties, I know absolutely "nothing."

7. The letters from Mr. J. F. Sullivan now forwarded are material for the following purpose.

1

To

THE ACTING CHIEF SECRETARY TO THE
GOVERNMENT OF MADRAS. /

Sir,

On behalf of Mr. Koteisawmy Devar, Sub-Division Zemindar of Ramnad, I have the honour to request that you will be good enough to place this letter, with its enclosures, before H. E. the Governor in Council.

2. Mr. Koteisawmy Devar respectfully requests that a copy of this letter and of its enclosures be forwarded by the next mail to the Secretary of State for India, and without delay to H. E. the Viceroy. The originals of the enclosures are with Mr. Koteisawmy Devar. The copies forwarded are authentic. The letters are in the handwriting of Mr. J. F. Sullivan, and relate to the once contemplated sale of the Riching's Estate.

3. Mr. Koteisawmy Devar finds himself compelled to address the Madras Government :—

(a) Because of the wanton and indecent foisting of his name into the Garstin-Dacoity Case, if not, as generally supposed, by the Government itself, at any rate by Mr. French, the Officer specially appointed by the Government to conduct the prosecution in the Court of the District Magistrate, Madura, and re-appointed by the same Government to assist in the conduct of the trial when it was removed to the High Court at Madras. 2

It has now been established, by legal evidence on oath, in a Court of Law, that a paper containing a libel upon Mr. Koteisawmy Dever, attested by Messrs. Garstin and Whiteside, two members of the Board of Revenue, and taken by them without comment or enquiry from the lips of the Minor Zemindar of Guntamanayakanoor, was forwarded, in March 1886, to the Government by Mr. Garstin. Not only did the Madras Government fail to remember that the position of Mr Garstin—himself a landholder in Travancore, and as such a violator of the covenants of his service and of the repeated orders of the Supreme Government and of the Secretary of State—characterised the communication from him as one which issued from a gentleman who was deeply interested in securing a conviction: not only did the Government fail to administer any rebuke to Mr. Garstin or his colleague for the substance of their communication, or for the manner in which it was secured from a boy under their legal guardianship; but the Government permitted its own specially selected agent, Mr. French, to take action upon a statement as objectionable in its substance as in the method of its extraction. 3

(b) Because not only has the Government nowhere expressed regret for the gross and unfounded imputations cast upon Mr. Koteisawmy Devar by its specially selected and accredited agent, Mr. French, but because Mr. Edward Turner, the now Collector, District Magistrate, and President of the District Board at Madura—and as such the local representative of the Government—has publicly placed an unpardonable insult upon Mr. Koteisawmy Devar, a public servant repeatedly belauded in official documents by the Madras Government for his public and gratuitous services, which has compelled Mr. Koteisawmy Devar to resign his appointment of Vice-President of the District Board of Madura, under circumstances which affix to that resignation a grave and unmerited reproach. Although a copy of his letter of resignation, with his reasons for it, was forwarded on the 6th June 1886 to the Madras Government, yet the Government has not hitherto thought fit to express any disapproval of Mr. Turner's action. 4

PUBLIC DEPARTMENT.

From the Government of
Fort St. George.

Issued

Recd. *Encl.*

Letter, 17th Nov. 1886, No. 2409.

NOVEMBER.

Kotaisami Tevar.

Enclosing copy of letter from Mr. E. Norton, acting on behalf of Kotaisami Tevar, Subdivision Zemindar of Ramnad.

17th November 1886, No. 2409, Public.

CONFIDENTIAL.

PUBLIC DEPARTMENT.

Letter—from
The CHIEF SECRETARY to the GOVERNMENT of
Fort St. George,

To
The SECRETARY to the GOVERNMENT of INDIA,
Home Department.

Sir,

I am directed to enclose copy of a letter received from Mr. E. Norton, with which he sends copies of letters alleged to have been written to Kotaisami Tevar, Subdivision Zemindar of Ramnad, by Mr. J. F. Sullivan in connection with the sale of the Richings Estate.

2. I am also to enclose copy of a covering despatch forwarding these papers to the Secretary of State for India.

I have the honor to be,
Sir,
Your most obedient servant,
H. E. STOKES,
Acting Chief Secretary.

Fort St. George,
17*th November* 1886.

Exd. F. R. Bantleman.

Print & shew proof
please
17/11

Public Dept

No 2409

Despd with enclosure 20/11/86
5 Spare copies sent 24/11/86

The Secretary to the Govt. of India
Home Dept.

Sir

I am directed to enclose copy of a letter received from Mr. E. Norton, with which he sends copies of letters alleged to have been written to Kotaisami Tevar, Sub Dewan Jamindar of Ramnad by Mr. J. F. Sullivan in connexion with the sale of the Richings Estate.

2. I am also to enclose copy of a covering despatch forwarding these papers to the Secy. of State for India.

I h s

Wc 16/11

FW 16/11

Fort St. George
17 Nov 1886

Print & shew proof please

GG 17/11

Case of Mr J.E. Gibson

Further GO 2326 dated 5/11/86

DISPOSED OF
No. 2244
DATE 23/10/86
BY GOVT ORDER

From order

Dy AGO

22/10

Print & shew proof please

17/11

Public Department.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following

From the Registrar - High Court. 1st October 1886.

Order. 23 October/86 No. 2244 Judl.

The opinion of the Honorable the Judges of the High Court makes it impossible to retain Mr. F.E. Gibson in the position of a District and Sessions Judge, and Mr. Gibson will accordingly upon ~~receipt of these Orders at~~ relief, for which arrangements will be made without delay ~~once~~ make over charge of his Court and will proceed to Madras, where he will report himself to Govt. He will be furnished with a copy of the letter of the Registrar of the High Ct. and he will have an opportunity of making any representation he may think fit to Government in Madras.

F. E. Gibson Esq., Dt. Judge, Kurnool. Lr. 10

Upon the Judges of the High Court with C. L. O

Despd. 23/10

Acct. General. O

22/10

Case of Mr F.E. Gibson (1)

Further G.O. 2326 Rev. dt 5/11/86

DISPOSED OF
No. 2244
DATE 23/10/86
BY GOVT. ORDER

From orders

Dp A.G.O

22/10

---

his physical fitness for ~~some~~ work, has been sent before a medical board – decision can be come to as to his future employment. There is no provision or precedent under which a special pension could be granted to him. In intimating to him the decision of Govt. to remove him from his Judgeship, a copy of the D.O. letter from the High Court might be furnished to him, and he might be told that he would have an opportunity of making any representation he might think fit to Govt. in Madras.

J.N.S.

15/10.

The opinion of the High Court makes it impossible to retain Mr Gibson on the bench & I think a Medical Board should now report on his case. Meanwhile I would not appt. him to a Sub-Collectorate as this might complicate matters. The object is, as I understand, to get rid of a thoroughly inefficient officer, whose history shows how hopeless it is to expect good work from him either in the Revenue or Judicial ~~offices~~ line. F.W.

16/10

Seen 20/10

I agree 21st Oct/86

15/10

Case of Mr F.E. Gibson (1)

FOR ORDERS.

Circulate.

~~Public~~ Public DEPARTMENT.

D.O. No. 486.

~~From~~

From the Registrar - High Ct. 1st Oct. 86.
re - the case of F. E. Gibson C.S.

FOR ORDERS.

In accordance with the instructions of the Hon'ble Member in his note dated 4th October, papers regarding Mr. F. E. Gibson have been looked up & are submitted for orders.

Mr. F. E. Gibson landed in November 1867 - & has therefore a total service of nearly 19 years. In this period, he has already had 6 years leave, & his active service is something under 13 years. Two years after he landed (Oct 1869) he had to take 6 months sick leave, and within a year of his return fr. this leave he had to take another year & a half's leave on medical certificate. The difficulties arising from his own ill-health have been increased by the illnesses of his wife. An account of his career is given in much detail in a printed Petition of his own to Govt. - (put up with orig. D.O. 26 Jan 81) - dated 15th May 80.

Owing to his repeated absences. his service in the lower grades was a good deal broken up. He recd. his first acting appointmt. as Head Asst. in 187[illegible] - and was confirmed as Head Asst. in 1879. From the 25th March 1878 to 2nd April 1880 - he was a.g. Sub Collector of Tinnevelly. While acting in this appointment, he incurred the unfavourable notice of the Board of Revenue and of Government for insubordination and neglect of duty in omitting to inspect the Vilátikulam Divn. of his subdivn., which he had report to be suffering distress, tho' ordered to do

Revenue G.O. 27th Febr. 1880 No 246 }

vide also certain D.O. letters put up. }

by the Board. He was, accordingly, removed fr. the acting appointmt. of Sub Collr of Tinnevelly in April 1880 - and reduced to that of Head asst. in South Arcot.

Before Mr. Gibson had been a month in charge of the office of Head asst. in South Arcot, he came to such disagreement with his Collector, Mr. Cruickshank, that the latter laid the matter before the Board of Revenue. In Procgs. of the 3d June 1880 - no. 760 - the Board severely criticized Mr. Gibson's conduct, considered the tone of his letters most objectionable & highly unbecoming. Shortly afterwards - in July 80. Mr. Cruickshank again reported him to the Board for disobedience to orders in proceeding to Porto Novo - outside his division - after permission to go there had been refused by the Collector. The Board considered he had displayed inefficiency & disobedience & requested his removal from the post of acting Sub Collector of S. Arcot - to which he had in June 80. been promoted by Govt. The Govt. took a lenient view of the case, & in consideration of the special circumstances of Mr. Gibson's position refrained from again removing him fr. the appt. of acting Sub Collr, trusting he would see the necessity of obedience to orders.

Procgs. 30 July 80. no. 8328.

G.O. 7 Aug. 80 - no. 2670. Rev.

Mr. Gibson accordingly continued to act as Sub Collr. of S. Arcot till August 80 - when he reverted - in ordinary course - to the appointmt. of acting Head asst. in that District, in which he remained till June 1881. During this interval, he made several representations to Govt. both by D.O. letters & by the Memorial above referred to - which are put up. Finally in May 1881 he was appointed to act as ub Collector of Tanjore - & D.O. no. 46 dated May 1881 was then sent him. He mained at Tanjore till July 1882 - had 2 ort acting appointments as District Judge d Jan. 83 - then went home on medical certificate for a year & 10 months, became confirmed Sub Collector while absent: and, since his return in November 1884 - has been ag. Judge of Kurnool.

This completes the record of his services, as far as the office has been able to collect it. As he has had already over 6 years' leave and he has only done 2 years' service since his last leave, he would only get leave without allowances now, if leave were now granted him. His 19 years' service would, under medical certificate, entitle him to an invalid pension of £430 p.a. The maximum invalid annuity, w. he could eventually obtain, would only be £450. w. he would get after another year's service. His immediate retirement would, therefore, not injure him, as he could get no allowances, if granted leave. If, however, he should be reduced to a Sub Collector - unless it is merely as a temporary measure pending retirement - the step would certainly have the appearance of indicating that - tho' the High Ct. consider him unfit to be a Dt. Judge, the Govt. did not consider him unfit to do the work of a Sub. Collector.

Civil Leave Code
sec. 47.

Civil Pension Code
sec. 29

AJP
15/10.

I submit that the best course is to relieve Mr. Gibson of his judicial duties, for which the opinion recorded by the High Court is ample justification, ~~without of any~~ and that no explanation, or showing cause against this measure is required. After he arrives in Madras & has been seen by Go or if there is any doubt as to his physical fitness for revenue work, has been sent before a medical board — decision can be come to as to his future employment. There is no provision or precedent under which a special pension could be granted to him. In intimating to him the decision of Govt. to remove him from his Judgeship, a copy of the D. O. letter from the High Court might be furnished to him, and he might be told that he would have an opportunity of making any representation he might think fit to Govt. in Madras.

J.H.S.

15/10

The opinion of the High Court makes it impossible to retain Mr Gibson on the bench & I think a medical Board should now report on his case. Meanwhile I would not appt. him to a Sub-Collectorate as this might implicate matters. The object is, as I understand, to get of a thoroughly inefficient officer, whose history shows how hopeless it is to expect good work from him either in the Revenue or judicial ~~affairs~~ line. J.W. 16/10/86

15/10

Case of Mr F. E. G[illegible]

FOR ORDERS.

Circulate.

I agree 21st Octr 86

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Tues day, the thirteenth — day of July,
One thousand eight hundred and eighty-six.

PRESENT :—

The Honourable Mr. Justice Muttusami Aiyar, C.I.E.

The Honourable Mr. Justice Brandt.

Second APPEAL No. 930 — OF 1885.

Katneni Viramma — Appellant.
(Plaintiff.)

1. Nalagati Chinnamma and
2. Kannamaneni Venkatramudu } — Respondents
(Defendants)

Second Appeal against the decree — of the District — Court of Kurnool in Appeal Suit No. 5 of 1885, reversing the decree of the Court of the District Munsif of Cumbum in Original Suit No. 212 of 1884.

This Second Appeal coming on for hearing, the Court delivered the following

Judgment :— Although the Judge sta in general terms that he differs — from the conclusions of the District Munsif on all the issues, we are unab

to

to say that his judgment sufficiently fulfils the requirements of Section 574 of the Code of Civil Procedure. The several grounds relied on by the District Munsif in support of his judgment should be considered and the reasons for coming to a different conclusion should be clearly stated. It should also be shown in what respect the evidence accepted by the District Munsif is inconsistent with the probabilities of the case.

We shall set aside the decree of the District Judge and direct that the appeal be reheard. Costs of this appeal will be provided for in the revised judgment which the Judge is required to record.

(A true Copy)

Registrar,
Appellate Side

Regd.

(4)

HIGH COURT.

SECOND APPEAL
No. 930 *of* 1885.

KURNOOL
District Court.

Appeal Suit No. 5 of 1885.
K. Veeramma.
(Plaintiff) Appellant.
By Messrs. Gurumurti Iyer & Co.
versus
N. Chinnamma and another.
(Defendants) Respondents.

NATURE OF CLAIM.	*Suit to recover ½ share of lands, huts &c.*
IN THE COURT OF FIRST INSTANCE.	*Plaint filed* 22—9—84. *Decree passed* 22—12—84.
IN THE LOWER APPELLATE COURT.	*Appeal filed* 16—2—85. *Decree passed* 31—7—85.
IN THE HIGH COURT.	*S. A. presented* 2—11—85. *S A. admitted* 10—11—85.

Four Enclosures and Vakalut.
S. Appeal valued at Rs. 149—6—0.
Stamp duty paid, Rupees 11—4—0.

To be heard on 21-4-86
13-7-86

not made out a completely satisfactory case, or even a case resting on so much evidence and of such quality and "plausibility" as would justify me, to my own satisfaction in upholding on appeal the findings of the Court of First Instance.

4. In particular, I am decidedly of opinion that there is no satisfactory evidence of the alleged "ratification" of the "alienation" of a half share of the "family" lands by the first defendant in favour of the plaintiff who is his own sister.

5. Failing such evidence of "consent" and "ratification" by the first defendant as son and "legal-heir" of the deceased "Lakshmipathi", I think that the plaintiff's suit must fail unless, indeed, she can show to the satisfaction of this Court that the said lands did actually and *ab-initio* form part of her own "Stridhanom," but I am clearly and decidedly of opinion that this also has not at all been made out by the evidence in this suit, and on the whole I do not consider on the most thorough examination and review with careful consideration of the case, on both sides, and as a whole, that the decision of the Lower Court is justified either by the evidence and intrinic probabilities of the case, for the plaintiff as a whole or by the well settled Law to be applied to the facts of the plaintiff's case.

6. I therefore reverse the judgment and decree of the Lower Court with all costs in both Courts to be borne by the plaintiff, respondent, entirely.

(Signed) F. E. GIBSON,
Ag. District Judge.

MEMORANDUM OF SECOND APPEAL.

Before the District Munsif's Court of Cumbum,
Original Suit No. 212 of 1884.

Before the District Court of Kurnool,
Appeal Suit No. 5 of 1885.

Before the High Court of Judicature at Madras,
Second Appeal No. 930 of 1885.

	In the Court of 1st Instance.	*In the Lower Appellate Court.*	*In the High Court.*
Katneni Veerammah ...	*Plaintiff.*	*Respt.*	*Appt.*
versus			
1. N. Chinnamma 2. K. Venkataramudu.	*Defendants.*	*Appts.*	*Respts.*

Katneni Veerammah Second Appellant (plaintiff) abovenamed begs to prefer this appeal to this Honorable Court against the decree of the District Court of Kurnool in Appeal Suit No. 5 of 1885 and bearing date the 31st day of July 1885, for the following reasons, namely :—

1. In the present case there is no question of Streedhanam nor is there any need to consider the father-in-law's alienation nor the faction nor the sufficiency of ratification by the son nor the validity of such ratification.

2. The case is simply a case of contract by the plaintiff's father with the plaintiff's husband of services performed by the latter when unmarried.

3. Considering the nature of services performed and the smallness of the property the contract is by no means unreasonable or such as as could be disputed by the son at least without giving a compensation in return.

4. That there is such contract and that the services were performed are facts found by the Munsif and the District Judge's judgment is silent on the point.

5. The said District Judge's judgment simply finds that there is no evidence of ratification by the son and that there is no gift in

he marriage and neither of these findings is enough for the dismissal of a case.

6. The District Judge gives no reasons whatsoever for his findings.

(Signed) GURUMURTI AIYAR,
and
SADASIVIER,
Vakils for Appellant.

MADRAS,
2nd November 1885.

Exd. by C. Rajaruthnam.

PRINTED AT THE SCOTTISH PRESS

the lands sued for in consideration of the sum of one hundred (100) rupees.

(2). Registered sale-deed of same date by the same to the same for an equal sum of money, conveying to the 2nd defendant another piece of the "suit lands" and a share in the "suit" well.

(3). Registered sale-deed, dated the 16th day of July 1884, executed by the first defendant in favour of the 2nd defendant in consideration of a like sum of one hundred rupees conveying the "suit" houses to the said second defendant, Kannamaneni Venkatramudu.

The plaintiff and the first defendant were themselves examined and the plaintiff examined six (6) witnesses and the 1st defendant examined five (5) witnesses.

The Munsif found all the issues entirely for the plaintiff, excepting only that as regards the claim for "loss of produce." The Munsif found and decreed that the plaintiff was entitled to recover only half of the sum of sixty seven and a half rupees claimed, *i. e.* a sum of thirty three rupees and twelve annas, the other half being deducted as cultivator's share.''

2. On the other side for the plaintiff, respondent it was contended by her Pleader Mr. A. Venkoba Row,that all these argument as to the law restricting a Hindu father's powers of "alienation" are entirely beside the question and irrelivant in the present suit because Viranna, first defendant, himself either "ratified" the partition made by his deceased father, the said "Lakshmipathi" or at the very least, evidenced his full intention of carrying out voluntarily the known "last wishes" of his parents in the matter of dividing the "family" lands with the plaintiff or her deceased husband "Bojjayya" through whom the plaintiff claims and clearly distinctly evidenced that intention by assigning to the plaintiff a portion of the family moveables which he, Viranna, had inherited from his father said "Lakshmipathi."

3. But, upon full consideration of all the circumstances of the family history and of the whole story of the occupation and cultivation of the "disputed" lands in recent years, and also after having given the most careful attention at the hearing of the appeal to the arguments of the pleaders, on both sides, of which, I have kept notes, I say, after all this consideration, upon a careful review of the whole matter, I finally come to the conclusion that the plaintiff has

IV. There being no "documentary" evidence on behalf of the plaintiff, the Lower Court was not justified in relying on the "very weak parol ("oral") evidence in support of that case and in giving thereon judgment and decree for the plaintiff.

V. As the case was decided without allowing the defendants sufficient opportunity and sufficient time to have summoned on their behalf some (additional) important and material witnesses of "respectable" character and more particularly the "Reddy" and "Karnam" of the village in which the "disputed" lands ars situated, therefore, and on that account there was, in fact, and on the merits, a distinct and substantial failure of justice.

VI. It will plainly and distinctly appear from the public "certified" copy (filed with the defendants' "written statement", of a certain petition of the plaintiff to the "Deputy Magistrate" of the Cumbum "Sub-Division" that the plaintiff's plea of "Stridhanam" is altogether and entirely an "after thought" and now for the first time "set up;" and

VII. The plaintiff's suit is barred by Limitation.

The arguments were heard on Monday last the twenty-seventh day of July and judgment was then reserved, and has stood over for consideration till this day the thirty-first day of July (Friday) in the year eighteen hundred and eighty-five.

For the defendant's (appellant's) Pleader Mr. A. Subba Row invited my particular attention to several passages in Mayne's Hindu Law and Usage as to the restrictions imposed by the Mitakshara (Hindu) Law on the powers of alienation of a "Hindu" father as the head of an "undivided" ("Hindu") family subject to the "Mitakshara" Law and also especially to a decided case reported in Indian Law Reports, Allahabad Series, Volume II, page 635, "Ganga Bisesher" (defendant) *versus* "Perthipal" (plaintiff) in which it was "held" that a "gift" made by a "Hindu father" without the consent of his son and (natural) heir was wholly and altogether invalid as being "contrary to the Hindu Law" (to which the parties, in that case were subject, *vide* "Mayne's Hindu Law and Usage" Section 347 &c., (3rd Edition, 1883) and numerous cases decided in the High Courts of Madras and Bombay and in the Judicial Committee of the Privy Council "on appeal from those High Courts".

Mr. A. Subba Row also referred to a recent decision of this Court (in Original Suit No. 6 of 1883).

Suit for the recovery of half of two pieces of land and four "huts" in the "hamlet" of Virabudrapuram, village of Venkatadripolem," Taluq Markapur, District of Kurnool, and for one-fourth right to use of a well and in three trees and "motu" materials appertaining to the said well and also for the sum of sixty-seven rupees, and eight annas for three years "loss of produce from the said lands."

The following issues were framed in the Lower Court viz:—

I. Whether the deceased, husband of the plaintiff, the late "Bojjayya" was taken by the plaintiff's father, the late "Lakshmipati" into his house "to look after his children" on condition of said "Lakshmipati" giving his daughter [plaintiff] in marriage to the said "Bojjayya" with half of his Lakshmipati's estate to plaintiff as her "Stridhanam" on her marriage with the said deceased "Bojjayya" and if so, whether that arrangement was valid?

II. Whether at the time of the marriage of plaintiff "Viramma" with the said "Bojjayya" the plaintiff's mother did give to the plaintiff the half of the estate of the said "Lakshmipati" father of the plaintiff and of the first defendant (Virayya) as promised by the said deceased Lakshmipati as her "Stridhanam?"

III. Whether the plaintiff got from her brother "Virayya" husband of the first defendant "half of the family (her father, said Lakshmipati's) moveable property? (as her Stridhanam) and if so when?

IV. Whether the plaintiff and Virayya late husband of the first defendant and after his death, first defendant, herself, were jointly enjoying the lands of the said deceased father of plaintiff and first defendant's husband (lands of said Lakshmipati) and if so, up to what time?

V. Whether the plaintiff's suit is "barred by Limitation."

VI. Whether the plaintiff is entitled to recover the property and "loss of produce" sued for or any portion of the same? and if so, from which of the defendants?

The plaintiff and the 1st defendant did not file any documents. Second defendant filed the following Exhibits, viz:—

(1). Registered sale-deed executed on the fourth day of June 1884, by the 1st defendant, conveying to the second defendant one of

IN THE DISTRICT COURT OF KURNOOL.

Friday, the thirty-first day of July,
One thousand eight hundred and eighty-five.

PRESENT :—F. E. GIBSON, ESQUIRE, *Ag. District Judge.*

Appeal Suit No. 5 *of* 1885.

Appellants (Defendants.) versus	*Respondent (Plaintiff.)*
1. Nalagati Chennamma. 2. Kannamaneni Venkataramudu.	Katneni Viramma.

Appeal against the decree of the District Munsif of Cumbum in Original Suit No. 212 of 1884.

This appeal coming on for hearing, the Court delivered the following

JUDGMENT.

The defendants named above appeal against the judgment and decree of the abovenamed Court, dated the twentieth (20th) day of December 1884, on the following grounds, viz :—

I. It was not proved that the "suit" property was in fact and in truth the "Stridanam" of the plaintiff.

II. It was not proved that the plaintiff's husband's father, the deceased "Lukshmipati" did in fact create and confer on the plaintiff any right to the "suit" property whatsoever.

III. Although an ("oral") Will was actually or may have been made, in favour of the plaintiff's (deceased) husband the said "Bojjayya" and of the plaintiff herself by the said deceased, nevertheless the (alleged) "Will", if such there were, in fact is not valid in law as being against the right of the first defendant's husband "Viranna" "or "Virayya", who is, as the only surviving undivided son of the said "Lakshmipati" (born in "lawful wedlock,") the sole "legal heir" according to the "Hindu (Mitakshara) Law" to which Law the parties in this case are subject in matters of "inheritance" and cognate matters.

III. When there was no documentary evidence on behalf of the plaintiff, the Lower Court was not right in having believed the untrustworthy and weak evidence produced by the plaintiff and in having decreed for the plaintiff.

IV. As the suit was decided without allowing the defendants an opportunity to produce on their behalf respectable witnesses to examine the Reddi and Karnam of the village whom they wanted [to examine] justice was not done to the defendants.

V. It is plain from the public copy herewith presented that the contention of the plaintiff regarding the suit property "that it is Sridhanam" is a set up one.

VI. The plaintiff's suit is barred by limitation.

DECREE.

This appeal coming on for hearing; upon perusing the grounds of appeal, the decree and judgment of the Lower Court and the material papers in the suit, and upon hearing the arguments of Mr. A, Subba Row, Pleader for appellant and of Mr. A. Venkoba Row, Pleader for respondent; this Court doth order and decree that the decree of the Lower Court be, and this same hereby is, reversed and the plaintiff's suit dismissed; and this Court doth further order and decree that the respondent [plaintiff] do pay to appellants [defendants] rupees [42-14-4] forty two, annas fourteen and pies four for their costs both in the original suit and in this appeal.

[Here enter Memorandum of costs].

[Signed] F. E. GIBSON,
Ag. District Judge.

numbers of the land sued for and the other half forms the lands sued for. Plaintiff's 4th witness Annaliah has lands near to the disputed lands. Plaintiff's 3rd witness also added that the assessment of the lands was being deducted from the total produce of the lands.

5. Defendant's 1st witness Kassim Saib, 2nd witness G. Pichivadu and 3rd witness V. Pichivadu spoke of the 4th issue. Kassim Saib stated that he was cultivating 1st defendant's husband Veeriah's lands (sued for) as a partner, that Veeriah died 11 or 12 years ago, that he left his cultivation business 3 years before Veeriah's death, and that when Veeriah and plaintiff's husband Bojjiah were living together. Bojjiah was also cultivating the lands jointly with Veeriah. Defendants' 2nd witness G. Pichivadu stated that from the next year after Veeriah's death 11 years ago he was cultivating Pedda Bhavi Thota one of the lands sued for for 6 years and that plaintiff's husband Bojjiah was also cultivating Veeriah's lands and that he did not know why he was doing so. Defendants' 3rd witness Vemula Pichivadu stated that he and one Rajanah were cultivating Pedda Bhavi Thota for 5 or 6 years before defendants' 2nd witness G. Pichivadu and after 2nd defendant's 1st witness Kassim Saib, and that when the latter was cultivating the lands, plaintiff's husband Bojjiah was also cultivating them. All these statements do not tally with each other, and they seem to me to go rather in plaintiff's favour. The evidence of defendants' 4th and 5th witnesses is of no use. They do not seem to know much and the latter is a close relation of 2nd defendant. For these reasons I hold that plaintiff and 1st defendant's husband and after 1st defendant's husband plaintiff and 1st defendant were enjoying plaintiff's father's lands (sued for) up to 3 years ago and find the 4th issue for plaintiff and against defendants.

(6). From my finding on the 4th issue I should hold that plaintiff's suit is not barred. So I find the 5th issue in plaintiff's favour.

(7). Plaintiff's 3rd witness Malliah, 4th witness Annaliah and 5th witness R. Veeriah proved the loss of produce to plaintiff to be more than rupees 67-8-0 asked by plaintiff. Defendants did not adduce any evidence regarding the loss of produce. Rupees 67-8-0 claimed by plaintiff includes cultivator's share which is rupees 33-12-0. So I hold that plaintiff is entitled to recover a loss of produce worth rupees 33-12-0.

(8). 1st defendant Chinnammah admitted in her written statement that she executed to 2nd defendant the sale-deeds produced by

him. 1st and 2nd defendants are close relations and 1st defendant orally admits of having sold almost all her property to 2nd defendant. From my findings on the issues in the case the sale deeds would be valid only to the extent of half of the property conveyed. The other half of the property which is the property sued for is to go to plaintiff. The 1st defendant is a female and it seems to me that 2nd defendant was the cause for 1st defendant's refusing to give to plaintiff her share in the property sued for. For all these reasons and the reasons already stated I hold that plaintiff is entitled to get the property sued for and rupees 33-12-0 as loss of produce from both of the defendants with proportionate costs. Thus the 6th issue is decided mostly for plaintiff.

(9). I therefore give judgment to plaintiff against defendants for the property sued for and rupees 33-12-0 as loss of produc with proportionate costs. Defendants to bear their costs themselves.

[Signed] P. SAMBAYYA,
Ag. District Munsif.

IN THE DISTRICT COURT OF KURNOOL.

Friday, the thirty-first day of July,
One thousand eight hundred and eighty five.

PRESENT:—F. E. GIBSON, ESQUIRE, *Ag. District Judge.*

Appeal Suit No. 5 *of* 1885.

Appellants (Defendants).	*versus*	*Respondent (Plaintiff).*
1. Nalagati Chennamma and another.		Katneni Viramma.

Appeal against the decree of the District Munsif of Cumbum in Original Suit No. 212 of 1884.

Grounds of Appeal.

I. It has not been proved that the suit property is the Sridhanam of the plaintiff.

II. It has not been proved that the plaintiff's father created any right to the plaintiff in the said property and gave it to her, and although a will was made against the right of her son Virayya, yet it is not valid.

IV. Whether plaintiff and 1st defendant's husband and after him 1st defendant were enjoying plaintiff's father's lands jointly and, if so, up to what time?

V. Whether plaintiff's suit is barred by Limitation Act?

VI. Whether plaintiff is entitled to recover the property and loss of produce sued for or any portion of them and, if so, from which of the defendants?

No documents were produced by plaintiff and 1st defendant.

The following documents were filed for 2nd defendant.

Exhibit I.—A registered sale deed of rupees 100 executed by 1st defendant on the 4th June 1884 conveying to 2nd defendant one of the lands sued for.

Exhibit II.—A registered sale deed for rupees 100 executed to 2nd defendant by 1st defendant conveying another land and share in a well on 4th June 1884.

Exhibit III.—A registered sale deed for rupees 100 executed by 1st defendant to 2nd defendant on the 16th July 1884, conveying the houses sued for.

The following witnesses were examined for plaintiff :—

(1). Nallavadu.
(2). G. Ankadu.
(3). Malliah.
(4). Auvaliah.
(5). Rani Polu Veeriah, and
(6). Kotigadu.

The following witnesses were examined for defendant :—

(1). Doodekula Kassim Saib.
(2). Gajjala Pichivadu.
(3). Vemula Pichivadu.
(4). K. Kistnama Charlu, and
(5). K. Venkiah.

Plaintiff and 1st defendant were also examined.

JUDGMENT.

(1). Plaintiff's 1st witness Nallavadu is aged 80 years, and plaintiff's 2nd witness Ankadu is aged 70 years. Both of these stated that plaintiff's father Lutchmipathy took plaintiff's husband Bojjiah into his house promising him to give plaintiff in marriage with half of his property, and that plaintiff's marriage was done by plaintiff's mother Achamah and that at the time of marriage Achamah said that half of her husband's property would be given to plaintiff as promised by plaintiff's father. It was also stated by the above witnesses that plaintiff's husband Bojjiah was taken by plaintiff's father into his house as the children of the latter were young.

(2). From the evidence of defendants' 1st witness Kassim Saib, 2nd witness G. Pichivadu and 3rd witness Vemula Pichivadu it appears that plaintiff and her husband Bojjiah were in plaintiff's father's house for about 13 years, and that then 1st defendant's husband Veeriah and plaintiff's husband were cultivating the family lands jointly. The above witnesses of the defendants stated that they did not know why plaintiff and her husband Bojjiah were in plaintiff's father's house. Plaintiff's husband Bojjiah was plaintiff's father Lutchmipathy's sister's son. From these facts and from the evidence recorded in the 1st para it seems to me that plaintiff's father Lutchmipathy took plaintiff's husband into his house on condition of his giving him plaintiff in marriage with half of his property as plaintiff's Stridhanam, and that afterwards plaintiff's mother Achamah gave to plaintiff half of her husband's property in plaintiff's marriage.

(3). Plaintiff's 1st and 2nd witnesses also stated that 1st defendant's husband Veeriah and plaintiff and her husband separated about 7 or 8 years ago, and that then 1st defendant's husband gave plaintiff a bullock and some other moveable property. Plaintiff's 2nd witness Ankadu added that 1st defendant's husband Veeriah stated when moveables were divided that lands would be divided slowly. From this it is evident that plaintiff's brother Veeriah agreed to the disposition by his father and mother, of his father's property to plaintiff as Stridhanam. This kind of disposition of property by a father in favor of a daughter as Sridhanam and acted upon by son was not held invalid any where under Hindu Law. For all these reasons I have to find the 1st, 2nd and 3rd issues in plaintiff's favour and against defendants. The evidence adduced by defendants for these issues is not consistent and seems to me to be far from truth.

(4) Plaintiff's 3rd witness Malliah, 4th witness Annaliah, 5th witness Veeriah and the 6th witness Kotigadu stated that plaintiff and her husband Bojjiah were enjoying the lands sued for jointly with 1st defendant's husband Veeriah and afterwards with 1st defendant up to 3 years ago, and that they were dividing the produce. Plaintiff's 3rd witness Malliah is the owner of the other half of the lands mentioned in the suit *i. e.* he is the owner of half of the lands bearing

IN THE COURT OF THE DISTRICT MUNSIF OF CUMBUM.

Saturday, the twentieth day of December.

One thousand eight hundred and eighty-four.

PRESENT:—P. SAMBAYYA, *Ag. District Munsif.*

Original Suit No. 212 of 1884.

Plaintiff.	*versus*	*Defendants.*
Katneni Veerama wife of Bojjiah.		1. Nalagati Chennamma, widow of Veeriah. 2. Kunnamsnani Venkatramdu.

This suit coming on for final hearing, the Court delivered the following

JUDGMENT.

This is a suit for half of two lands and four huts in Veerabadrapuram, hamlet of Venkatadripalum of Markapur Taluq, and for ¼th right to a well attached to land No. 411 and in 3 trees and mota materials belonging to the well. Plaintiff also claimed from defendants rupees 67-8-0 as loss of produce for 3 years. Plaintiff alleged that her father Lutchmipathi shortly before his death, at an advanced age of more than 60 years, took into his house plaintiff's husband Bojjiah (then not married) for his looking after Lutchmipathy's young children consisting of his daughters including plaintiff and a son Veeriah, 1st defendant's husband on condition of giving plaintiff in marriage to Bojjiah and of giving to plaintiff at the time of marriage half of his moveable and immoveable property as Stridhanam to her; that for 8 years after Lutchmipathy's death, his widow Achammah performed plaintiff's marriage giving her half of her (plaintiff's) father's moveable and immoveable property as Stridhanam; that after the marriage plaintiff and her husband were in plaintiff's father's house looking after plaintiff's sisters and brother (1st defendant's husband) and also plaintiff's mother; that they had been so in plaintiff's father's house up to 10 years ago, and that as plaintiff had been living in her father's house, there was no separation of her Stridhanam property; that when plaintiff attempted to live separate 10 years ago, her brother Veeriah (1st defendant's husband) gave her half of the family moveable property; that lands had been jointly

cultivated by plaintiff and 1st defendant's husband and subsequently by plaintiff and 1st defendant and dividing the produce; and that from 2 years 1st defendant is not giving plaintiff share in produce and that she sold to her sister's husband 2nd defendant Venkatramudu the lands sued for in June 1884.

Hence the suit as laid above and for produce for 3 years including the current one.

The 1st defendant Chennamma put in a written statement saying that plaintiff's father did not send for plaintiff's husband Bojjiah and agree with him to give plaintiff to him in marriage and to give plaintiff half of his moveable and immoveable property as Stridhanam and that even if plaintiff's father had so agreed that agreement was not valid; that Bojjiah was not kept in plaintiff's father's house on the conditions above stated and that the time of plaintiff's marriage. Plaintiff's mother did not give her half of he father's property as Stridhanam and that even if plaintiff's mother hand given half of the property to plaintiff as Stridhanam that giving was not valid; that plaintiff separated or was living separate from 15 years before 1st defendant's husband's death and not from 10 years; that 1st defendant's husband did not give to plaintiff 10 years ago half of plaintiff's father's moveable property and that then plaintiff's father's moveable property was not separate; that plaintiff was not cultivating plaintiff's father's lands jointly with 1st defendant's husband or 1st defendant, as alleged in the plaint, that plaintiff has no cause of action; and if there is a cause of action, the suit is barred by Limitation Act; and that the lands sued for were sold to 2nd defendant and have been enjoyed by him. 2nd defendant put in a written statement saying that the lands sued for were sold to him by 1st defendant for rupees 300—a debt properly contracted by 1st defendant for necessity and that 1st defendant had a right to sell him the lands.

The issues are.—

1. Whether plaintiff's husband Bojjiah was taken by plaintiff's father Lutchmipathy into his house to look after his children on condition of the latter (plaintiff's father) giving to Bojjiah his daughter (plaintiff) in marriage with half of his estate Stridhanam to her at the time of marriage and, if, so whether that management was valid?

II. Whether at the time of plaintiff's marriage with Bojjiah plaintiff's mother gave to plaintiff half of plaintiff's father's estate as Stridhanam?

III. Whether plaintiff got from her brother [1st defendant's husband] half of the family [her father's] moveable property as her Stridhanam and, if so, when?

IN THE DISTRICT MUNSIF'S COURT AT CUMBUM IN KURNOOL DISTRICT.

Saturday, 20th December 1884.

PRESENT:—P. SAMBAYYA, *Ag. District Munsif.*

Original Suit No. 212 *of* 1884.

Plaintiff.	*versus*	*Defendants.*
Veramman widow of Katneni Bojjiah.		1. Chennamma, widow of Nalagati Veerayya. 2. Kannamaneni Venkatramudu.

DECREE.

This suit was instituted on 29th September 1884 to recover, with mesne profits rupees 67-8-0, and half of the following property given lands, houses, half share of a well, trees and other to plaintiff by her father as Stridhanam.

Chervu chenu, land No. 313, measuring acres 4·30 and assessed at rupees 4-5-0, and Kottabhavitola, measuring acres 4·91, and assessed at rupees 2-7-0, two sheds, two Chavichelu inclusive of the enclosure, half in the well situated in thesaid land No. 411, mota materials, and 2 banyan trees and one ravi tree.

This suit coming on for hearing, the Court after hearing the arguments of plaintiff's Vakil Krishnaswami Iyer, and defendants Vakil Ramakrishnayya, and examining witnesses, doth order and decree that defendants do deliver to plaintiff the property sued for, rupees 33-12-0 for mesne profits, and rupees 28-10-0 proportionate costs, and that defendants do bear their own costs.

(Here enter specification of the property).

(Here enter costs).

Given under my hand and the seal of the Court on 22nd December 1884.

(Signed) P. SAMBAYYA,
Ag, District Munsif.

---

to no

contention, whilst the decision reported in VII Madras, High Court Reports, 25,— is a clear authority for the position that the Illatom son-in-law stands in the place of an aurasa son for purposes of succession.

We do not consider however that the Judge was entitled to rest his decision on an implied contract, for no such contract was alleged, nor was any issue recorded in regard to it.

But upon the finding of the District Munsiff in which the Judge concurs, we consider that this Second Appeal cannot be sustained and dismiss it with costs.

(True Copy)

Registrar,
Appellate Side

---

on the implied contract on the part of Ramanna to give Lukamireddi a share. Though the Judge observed that it was not conclusively shown that Lakamireddi married the 4th defendant during Ramanna's lifetime, he did so in view to explain why he preferred to rest his decision on an implied contract, but not to express his dissent from the District Munsiff as to the weight of the evidence. Another contention is that an Illatom son-in-law is entitled only to a share in the property of his father-in-law. We are referred to no authority in support of this

contention,

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Friday, the twenty-third day of July,
One thousand eight hundred and eighty-six.

PRESENT :—
The Honourable Mr. Justice Muttusami Aiyar, C.I.E.
The Honourable Mr. Justice Brandt.

Second APPEAL No. 174 OF 1886.

1. Puli Pedda Venkatareddi, 2. Chinna Venkatareddi, 3. Subbayya, and 4. Puli Chinna Seshamma — Appellants. (Defendants.)

Budda Chinnamma — Respondent. (Plaintiff.)

Second Appeal against the Decree of the District — Court of Kurnool in Appeal Suit No. 32 of 1885, confirming the Decree of the Court of the District Munsiff of Nandyal in Original Suit No. 40 of 1884.

This Second Appeal coming on for hearing, the Court delivered the following

Judgment:— It is distinctly stated by the Judge that he agreed with the Dist. f.
Munsiff in his finding on the 2nd cide to no
though he preferred to rest his d

HIGH COURT.

SECOND APPEAL
No. 174 of 1886.

KURNOOL
District Court.

Appeal Suit No. 32 of 1885.
Puli Pedda Venkatareddi and 3 others,
(Defendants) Appellants.
By Mr. Ramachendra Row Sahib.
Mr. C. Ramachendra Row,
versus
Budda Chinnamma,
(Plaintiff) Respondent.

NATURE OF CLAIM.	*Suit to recover balance of principal due under a mortgage bond.*
IN THE COURT OF FIRST INSTANCE.	*Plaint filed* *Decree passed* 16—3—85.
IN THE LOWER APPELLATE COURT.	*Appeal filed* *Decree passed* 23—10—85.
IN THE HIGH COURT.	*S, A. presented* 27—1—86. *Do. admitted* 1—2—86. *Do. filed* 2—2—86.

Two Enclosures and Vakalut.
S Appeal valued at Rupees 459—9—6.
Stamp duty paid, rupees 34—8—0.

To be heard on

trict Court of Kurnool, dated 23rd October 1885, for the following, among other, reasons:—

1. The facts of the case do not show that any valid Illatom took place.

2. The law of Illatom and the right of the Illatom son-in-law even if 1st to 3rd defendants' father was one, have been misappreciated and misapplied.

3 On the facts found there is no legal right of Ilatom created, the father-in-law having died previous to the son-in law's marriage.

4. There is no evidence as to what share was promised to 1st to 3rd defendants' father as an Illatom son-in-law and an Illatom son-in-law, can only be entitled to that share and nothing more.

5. Even if 1st to 3rd defendants' father was an Illatom son-in-law, his acts cannot affect more than his share.

6. The Courts below are wrong in holding that an Illatom son-in-law was a coparcener and that he succeeded to the whole of the property of his father-in-law on the death of the latter.

7. The facts of the case do not evidence any implied contract that the 1st to 3rd defendants' father should obtain a share in the family property.

8. The Courts below ought to have recorded a finding whether the debt was for the benefit of the family or not.

9. 1st to 3rd defendants' father had no power to contract debts so as to bind the family.

(Signed) C. RAMACHANDRA ROW,
for
RAMACHANDRA ROW SAHEB
and
RAMACHANDRA ROW,
Vakils for Appellants

27—1—86

Exd. by B. Ramasamy Naidu.

PRINTED AT THE SCOTTISH PRESS.

14. Upon this point however the learned Judges "desired" to be understood as "expressing no opinion."

15. That must therefore be supposed to be still an "open question."

16. I do not deem it to be necessary to decide it for the purposes of this suit and the evidence as to the time of marriage is unsatisfactory and incomplete, and at the best the marriage is not shown conclusively to have taken place in the lifetime of the "father-in-law."

17. But I think that the decision of the Lower Court may be and should be upheld on the ground of an implied contract between "Puli Ramanna" and "Puli Lakshmireddi" whereby the latter was entitled to a "share" in the family estate for his trouble in the management.

18. He thus became in reality the "managing member" of the family of his adopted father, Puli Ramanna, and the defendants 1 2 and 3 bear the family name of "Puli" which, as the "Munsif" has remarked, supports this "view of the case."

19. I agree with the "Munsif" in his "findings" on issues 1, 2 and 3 and on the whole case, I see no reason to interfere even although, as I have explained above, I uphold the decree on rather different "grounds" from those stated in the "judgment".

20. For the reasons stated, I dismiss this appeal and confirm the judgment and decree of the Lower Court with all costs in both Courts to be borne by defendants.

(Signed) F. E. GIBSON,
Ag. District Judge.

MEMORANDUM OF SECOND APPEAL.

Before the District Munsif's Court of Nandyal,
Original Suit No. 40 of 1884.
Before the District Court of Kurnool,
Appeal Suit No. 32 of 1885.
Before the High Court of Judicature at Madras,
Second Appeal No. 174 of 1886.

	In the Court of First Instance.	*In the District Court.*	*In the High Court.*
1. Puli Pedda Venkatareddi. 2. Chinna Venkata Reddi. 3. Subbayya. 4. Puli Chinna Seshamma.	*Defts.*	*Appts.*	*Appts.*
versus			
Budda Chinnamma ...	*Plff.*	*Respt.*	*Respt.*

The 1, 2, 3, 4th, defendants abovenamed beg to appeal to the High Court of Judicature at Madras, against the decree of the Dis-

---

8. In support of this "position" reference was made to a case reported in Volume VII, "Madras High Court Reports", page 25 ("Special Appeal No. 455 of 1871": Chella Papireddi and another—"special appellants *versus* Chella Koti Reddi") in which special appeal, though no final decision of the matters at issue was given, very decided opinions were expressed nearly to the effect of the statement of the result of "Illatam" as stated by the respondent's pleader in the present appeal suit.

9. As these "opinions" are the opinions of Mr. Justice Holloway and of Justice Innes they are obviously entitled to greater than ordinary consideration and weight.

10. However this may be, it seems to my thinking that it would be safer and sufficient for the decision of the matters at issue between the parties in this "suit" to rely on the case of "Hanumanthamma *versus* Ramireddi," decided on appeal so recently as the latter part of the year 1881 by the Madras High Court (Turner, C. J. and Innes. J) which is reported at page 272 and *seq* of Indian Law Reports, Madras Series, Volume IV, and to which also my special attention was drawn by Mr. A. Venkoba Row as that case expressly states and distinctly decided.

I. "The custom of "Illatam" obtains amongst the "Motati Kapus" or "Reddi caste" in the Districts of Bellary and Kurnool"; and

II. "He who has at the time no son, although he may have "more than one daughter" may exercise the right of taking an Illatom son-in-law, and further it was distinctly and expressly held in the same "case" that

III. "That the Illatam son-in-law "stands in the place of a son."

11. Reference was also made in the last quoted appeal to the "case" of Challa Papireddi "*versus* Challa Kotireddy already referred to in this Judgment."

12. That "case" is said to have ruled that, if an "Illatam son-in-law" were taken into the family of his father-in-law on an understanding that he should undertake the management and be "remunerated" by "participation" in the "estate" (amongst the Reddi caste at least) "effect" would be given to such a "contract."

13. In the case last quoted also the High Court Judges named above expressed a doubt as to whether the "affiliation" is completed by the "introduction into the family" or whether it "requires" "for completion" marriage with the daughter."

Exhibit B.—Bond executed by said "Lakshmi Reddi" on the 21st June 1875 to the (deceased) husband of the plaintiff.

Fourth defendant filed the "Exhibits" named below *viz.*—(I and II) "puttahs" granted for Faslys 1250 and 1251 to "Puli Ramanna."

The first defendant (by his pleader Mr. A. Subba Row) appeals on the following "grounds," namely :—

I. The decision of the Lower Court "is contrary to the weight of evidence" and based on "mere presumptions."

II. The "custom" of "Illatum" which is pleaded by the plaintiff is contrary to the "Hindu Dharma Sastras" and is not shown to prevail in this "part of the country."

III. It is not proved as a fact that the deceased "Lakshmi Reddy was actually "adopted" as "Illatam son-in-law by "Puli Ramanna".

IV. There was "ample evidence" both "oral and documentary" to prove the "contrary."

V. The "opinion formed by the Lower Court on the fourth "issue" are not correct.

The "arguments" were "heard" in this "appeal" in this "Appellate Court" on Saturday, the twenty-sixth ultimo. (26th September 1885) and "judgment" was then reserved and "has stood over for consideration" till this day, Friday the twenty-third day of October in the year one thousand eight hundred and eighty-five (23rd October 1885.)

I will take first the second "ground" of "appeal" as to the question of the "legality" in this District of the disputed custom commonly known as "Illatam" that is to say—the "adoption" by a person, who has no sons—issue of his own body and heirs, of a man who has married his daughter to stand in the place of a son borne to the "adopter" by his own "lawful wife."

2. The right decision as to this question is the cardinal point on which hinges the whole case.

3. I take it that the "Munsif" is perfectly correct and in strict accord with a pretty long course of decisions of the High Court of Madras in holding that, if well established by evidence, a "settled (local) custom" of a particular class at least of "Sudras" or other "non-brahmins" may override the so called "DharmaSastras" in places where and between parties between whom such "custom" is shown by the evidence to have been practically and in fact recognized and to have acquired "the force of law" by sufficient length of established usage.

4. The really difficult matter to decide in this particular case is rather as to the sufficiency or insufficiency of the "evidence" that the Illatam adoption" pleaded by the plaintiff was, as a fact, completed by "Lakshmireddi" in his "fifetime" which was a question of "fact" to be decided on the "evidence" as a whole and according to the proper and reasonable pesumptions "of fact" which might be "legitimately" drawn from the facts to which the witnesses were able to testify of their own personal knowledge of the past history of the family".

5. At the hearing of this appeal Mr. A. Subba Row urged for the 1st defendant (appellant) that, as far as appears from the evidence, the marriage of Puli Lakshmireddi did not take place in the lifetime of "Puli Ramanna" and that therfore on the death of the said "Puli Ramanna" the "puttah" for the suit lands was registered in the name of his (Puli Ramanna's) widow as appears from defendant's Exhibit II, and that therefore it is to be presumed that there was no "Illatam adoption" by the said Puli Ramanna in his own lifetime, and further that after his death his widow could not adopt Lakshmireddy as there does not appear to have been any evidence that the widow had obtained her husband's consent to such adoption or his authority—hich pre-requisite is not even alleged by the plaintiff who on the contrary rests her "case" entirely on the alleged "Illatam sonship" of which fact there is no sufficient evidence. For the testimony of the 4th witness for plaintiff is plainly not to be relied upon as he made at least one statement as to a matter of fact which is shown to be quite unfounded, and it is only reasonable to hold that Lakshmireddy acted in the capacity of deputy or quasi steward to his father-in-law "Puli Ramanna" and accordingly after the death of the widow of the latter the "puttah" was naturally made out in the name of Lakshmireddy as the sole surviving male member of the household so as to save trouble to the daughters of the deceased Puli Ramanna only one of whom was married.

6. It was further argued for the defendant (appellant) that, even if it were held to be established that the said "Lakshmireddi" was in fact the "Illatum son-in-law," nevertheless it would not be correct to hold that as such and in virtue of such species of adoption, he was thereby authorized to bind the property of the defendants by such a "bond" as that now "sued on".

7. On the other side for the plaintiff it was argued by Mr. A Venkoba Row that the proper effect of "Illatam" is to make the property acquired by the "Illatam son-in-law" his own self acquired property.

II. "Illatam" is not followed in this part of the country. "Illatam" is not recognized by Hindu Dharma Sastra.

III. It has not been proved in the least in this suit that the deceased Latchmanna had been adopted as "Illatam" son-in-law by Puli Ramanna.

IV. There is ample evidence, oral and documentary to show that he was not an "Illatam" son-in-law.

V. The opinions formed by the Lower Court on the 4th issue are not correct.

DECREE.

This appeal coming on for hearing: upon perusing the grounds of appeal, the decree and judgment of the Lower Court and the material papers in the suit; and upon hearing the arguments of Mr. A. Subba Row, pleader for appellant, and of Mr. A. Venkoba Row, pleader for respondent; this Court doth order and decree that the decree of the Lower Court be, and the same hereby is, confirmed, and this appeal dismissed; and this Court doth further order and decree that the Appellant (1st defendant) do pay to respondent (plaintiff) rupees (23-7-2) twenty-three, annas seven, and pies two only for his costs in opposing this appeal.

(Here enter Memorandum of costs.)

(Signed) F. E. GIBSON,
Ag. District Judge.

IN THE DISTRICT COURT OF KURNOOL.

Friday, the twenty-third day of October,
One thousand eight hundred and eighty-five.

PRESENT:—F. E. GIBSON, ESQUIRE, *Ag. District Judge.*

Appeal Suit No. 32 *of* 1885.

Appellants (Defendants.)	*versus*	*Respondent (Plaintiff.)*
Pulli Reddi Venkata Reddi and 3 others.		Budda Chinnamma.

Appeal against the decree of the District Munsif of Nandyal in Original Suit No. 40 of 1884, dated the 16th March 1885.

This appeal coming on for hearing, the Court delivered the following

JUDGMENT.

Suit to recover by sale of certain land mortgaged as "security" for a "loan" by "conditional sale-deed" the sum of four hundred and fifty-nine rupees and odd, balance of "principal" due under the terms of the said "mortgage bond" (conditional sale-deed).

The plaint "set out" that one "Lakshmi Reddi" or "Lakshmanna," father of the first, second and 3rd defendants and the "managing member" and also the husband of the fourth defendant, executed the "plaint bond" for rupees 500 promising to re-pay the "amount lent" in six instalments and that the said "bond" stipulates that if "default" be made in "one instalment" the "hypothecated property" should be "sold to her" for the "balance due" and that the "defendants" paid only forty rupees (and odd) for two "instalments" and that as the remainder "was not paid" therefore she sues to recover the "balance" abovementioned together with "future interest thereon" from the "sale" of the "property."

Defendants "pleaded" that the said "Lakshmireddi" was not "managing member" of their family and that the "debt" was not contracted for "family purposes" and that they (defendants) are not aware of the said "debt," and further that the deceased "Lakshmireddi" had no right to the said "lands" which originally belonged to the "maternal grandfather" of 1st, 2nd and 3rd defendants and were inherited by their "mother" (4th defendant) from her deceased father, and further that they (the first, second, and third defendants) "have no right to the plaint lands" and also that the deceased "Lakshmireddi" lived "extravagantly" and immorally and further that the "plaint bond" was executed by the said "Lakshmi Reddi" without proper consideration to the plaintiff and "with a currupt motive" as the plaintiff was the sister of the said Lakshmireddy's brother's wife."

The issues settled were as follows, *viz* :—

I. "Whether the (plaint) "document" A is "true"? (sic).

II. "Whether the property mentioned in it "belonged" to the deceased "Lakshmi Reddy" as whether it belonged to "Puli Ramanna" and after him to the 4th defendant"?

III. Whether there was "any consideration" for "the suit bond"?

IV. "Whether the "debt" was "a family debt"? Plaintiff filed the "exhibits" named below, *viz.*—

Exhibit A.—Suit "conditional sale-deed" said to have been executed by the late "Lakshmi Reddi" to plaintiff on 26th September 1877.

fact is admitted by both parties. But the question is whether they were Lakshmireddy's own property at the time of the document A or whether they were the property of the 4th defendant came to her by inheritance from her father. Puli Ramannah died leaving three daughters and a widow. 4th defendant is his 2nd daughter. His first daughter had been admittedly married at his death. It is contended on plaintiffs' side that 4th defendant too married in her father's lifetime and her husband Lakshmireddy was the Illatom son in-law of Ramanna. The 4th witness for plaintiff deposes that Lakshmireddy was Ramannah's Illatom son-in-law. Exhibit A describes Lakshmireddy as such. The puttah for the lands originally stood in Ramanna's name. On his death it was transferred to his widow. It seems that Exhibit II is the only puttah in her name. She died apparently very soon after her husband. It is admitted by defendants that the puttah stood in Lakshmireddy's name from the death of Atchammah for nearly forty years. The puttah was never issued to the 4th defendant or any of her sisters. Almost all the witnesses on defendant's side and some of plaintiff's witnesses too have deposed that Lakshmireddy was not Ramanna's Illatom son-in-law. Plaintiff's last witness, who has been cited by defendants too, is related to the parties and he is an influential man in the village. Plaintiff is his brother's widow. Some of plaintiff's witnesses to the documents could not but admit the execution and consideration. About other matters they have deposed most strongly against plaintiff. The last witness for plaintiff has his own leaving to the defendants. Defendant's own witnesses and some of plaintiff's witnesses who have characterized Lakshmireddy as a drunkard and a gambler, have I think been obliged to speak so under inspiration. In spite of their calling Lakshmireddy a drunkard it is not denied that he lived together with his wife and children till his death. As regards this issue I am disposed to believe plaintiff's witnesses that Lakshmireddy was Ramanna's Illatom son-in-law. The probabilities of the case confirm that he was the Illatom son in-law. They are as follows. Lakshmireddy's father-in law was Puli Ramanna. Lakshmireddy also was called Puli and defendants too are called after the family name of Puli. The family name of Puli of the defendants strengthens plaintiff's contention as regards the Illatom of their father. If Lakshmireddy was not the Illatom son-in-law it is most unlikely that the two other daughters of Ramannah would have allowed puttah for their father's lands to be issued to Lakshmireddy. Nor is it likely that they would have allowed Lakshmireddy to enjoy those lands to their exclusion but for his being their father's Illatom son-in-law. One of the two Exhibits filed by the 4th defendant shows that Lakshmireddy paid

the cist for the lands. For these reasons I hold that Lakshmireddy as Ramanna's Illatom son-in-law became entitled to plaint-lands and that 4th defendant had no title to the same at any time.

11. *4th issue.*—As Lakshmireddy acquired the lands as Ramannah's Illatom son-in-law and as the lands were not Lakshmireddy's father's, so that first, second and 3rd defendants may claim their shares in them under the Hindu law by virtue of their being Lakshmireddy's father's grandsons, this issue becomes unnecessary for the purposes of this case. If the Apppellate Court should come to a different conclusion on the third issue, then too a finding on this issue is unnecessary as by such finding on the third issue, 4th defendant becomes the absolute owner of the properties. However, inasmuch as there is evidence to show that the 1st, 2nd and 3rd defendants paid their father's debts due to others and as I do not believe that Lakshmireddy was such an immoral man as he is represented to be, the debt is one that is binding on the family.

12. It is therefore adjudged that plaintiff do recover the amount claimed and costs with future interest at 6 per cent. per annum from the hypothecated properties which will be sold after six months from this date to satisfy the debt, if in the meantime the judgment-debt be not paid. Defendants are not personally liable. They are directed to bear their own costs.

(Signed) P. V. RUNGACHARY,
District Munsif.

IN THE DISTRICT COURT OF KURNOOL,

Friday, the twenty-third day of October,
One thousand eight hundred and eighty-five.

PRESENT:—F. E. GIBSON, ESQUIRE, *Ag. District Judge.*

Appeal Suit No. 32 *of* 1885.

Appellants (Defendants.)	*versus*	*Respondent (Plaintiff).*
1. Puli Pedda Venkatareddi.		Budda Chinnamma.
2. Chinna Venkatareddi.		
3. Subbayya.		
4. Puli Chinna Seshamma.		

Appeal against the decree of the District Munsif of Nandyal in Original Suit No. 40 of 1884.

Grounds of Appeal.

I. The decision of the Lower Court is contrary to the weight of evidence produced and it is based on mere presumptions. These presumptions are not proper ones.

4. Plaintiff produced the following documents :—

Exhibit A. Hypothecation bond executed by late Lakshmireddy on the 26th September 1877 to plaintiff.

Exhibit B. Bond executed by Lakshmireddy on the 21st June 1875 to plaintiff's husband.

5. 4th defendant produced the following documents :—

Exhibit I. Puttah granted to Puli Ramanna for Fasli 1250.

Exhibit II. Puttah granted to Puli Ramanna for Fasli 1251.

6. Plaintiff examined the following witnesses:—

1. C. Subbaiah.
2. G. Ramiah.
3. Venkatasawmy.
4. Venkata Narayana.
5. P. Ramachendradu.
6. Chinnareddy.
7. B. Vengalreddy.

7. Defendants examined the following witnesses :—

1. Ramachendriah.
2. Karnam Sashiah.
3. Chinnareddy.
4. B. Chinnabby.
5. Chinnappa.
6. C. Fakurudin.

JUDGMENT.

8. *1st issue.*—The execution of the document A is proved by plaintiffs' 1st, 2nd and 3rd witnesses. The 1st witness is the writer and the others are attesting witnesses. The document A is a registered one. This issue is for plaintiff.

9. *3rd issue.*—Exhibit B is the previous bond by Lakshmireddy to plaintiffs' husband. The amount of this bond found due after settlement of accounts was the consideration for Exhibit A. Bond B was written by plaintiffs' first witness. He and the third witness prove that Exhibit B formed the consideration for bond A. This issue is found in the affirmative.

10. *2nd issue.*—Originally the hypothecated properties belonged to Puli Ramannah who was Lakshmireddy's father-in-law. This

---

IN THE COURT OF THE DISTRICT MUNSIF OF NANDIAL.

Monday, the sixteenth day of March,
One thousand eight hundred and eighty-five.

PRESENT :—P. V. RANGACHARIAR AVERGAL,
District Munsif.

Original Suit No. 40 of 1884.

Plaintiff.	*versus*	*Defendants.*
Budda Chinnamma.		Pulipedda Venkatareddi and 3 others.

Plaintiff alleges that one deceased Lakshmanna, father and managing member of the 1st, 2nd and 3rd defendants and husband of 4th defendant, executed the plaint bond for rupees 500 promising to re-pay the amount by 6 instalments; that the bond stipulates that if default be made in paying any one of the instalments the hypothecated property should be sold to her for the balance due on the bond; that the defendants paid rupees 40-6-6 by two instalments; that as the remainder was not paid she now sues to recover the balance rupees 459-9-6 from the hypothecated property.

2. Defendants plead that Lakshmireddy was not the managing member of their family that the plaint-debt was not contracted for family purpose; that the defendants are unaware of the plaint-debt that the deceased Lakshmireddy had no right to the plaint lands which belonged to 1st, 2nd and 3rd defendants' maternal grandfather and which were inherited by their mother (4th defendant); that the 1st, 2nd and 3rd defendants have no right to the plaint lands, that the deceased Lakshmireddy lived extravagantly and immorally; and that that the plaint bond was executed by Lakshmireddy to plaintiff without consideration and with a corrupt motive, she being the sister of his brother's wife.

3. The issues framed by Mr. Aiyavaiyer are :—

I. Whether the document A is true?

II. Whether the property mentioned in it belonged to Lakshmireddy or whether it belonged to Puly Ramanna and from him to fourth defendant Seshammah as her separate property?

III. Whether there was any consideration in support of the bond A?

IV. Whether the debt was a family debt of the 1st, 2nd and 3rd defendants and their father Lakshmireddy?

49

Original Suit No. 40 of 1884.

IN THE DISTRICT MUNSIF'S COURT AT NANDIAL.

PRESENT:—P. V. RANGACHARYULA VARU, *District Munsif.*

Monday, 16th March 1885.

DECREE.

Plaintiff.	*versus*	*Defendants.*
Budda Chinnamma.		1. Puli Pedda Venkata Reddi. 2. Do. Chinna Venkata Reddi. 3. Do. Subbayya. 4. Puli Chinna Seshamma.

Suit to recover rupees 459-9-6 the balance remaining unpaid in respect of the principal of the land, dated 26th September 1877, executed and given in favour of plaintiff, on account of the sum of rupees 500 borrowed for family purposes by Lakshmi Reddi, father of 1st, 2nd and 3rd defendants and manager of the family of the defendants, promising to re-pay the same in six instalments, and in default of payment of any instalment, to sell the hypothecated property for the total amount.

2. This case coming on for final hearing, after perusing the records and hearing the arguments of plaintiff's Vakil A. Siva Subrahmanya Sastrulu, and defendant's Vakil B. Konery Row, the Court made the following

DECREE.

3. The plaintiff should recover by means of the hypothecated property, the amount sued for, with costs, and furure interest at 6 per cent. per annum till payment. If the amount of the decree is not paid within six months from this date, the hypothecated property will be sold to make good the amount of the decree. The defendants shall not be personally liable. The defendants should bear their own costs.

(Here enter costs.)

(Here enter specification of the property.)

Given under my hand and the seal of the Court.

(Signed) P. V. RANGACHARLU,
District Munsif.

S. A. 174—1

23

---

(3)

From

THE SESSIONS JUDGE,
KURNOOL.

To

THE

Dated 23rd June
Despatched
Received } 1886.

JUDGMENT.

Copy of __________ *in Session Case*
No. 20 of 1886.

The Court of Session of the Kurnool Division.

SESSION CASE No. 20 OF 1886.

Accused ... ... Kurnam Kristappa.

Offence ... ... Murder, punishable under Section 302 of the Indian Penal Code.

Opinion of the Assessors ... 1st *Assessor*—"Guilty of voluntarily causing grievous hurt (by administering a noxious *drug* to wit *white arsenic*), offence punishable under Section 326, Indian Penal Code."

2nd *Assessor*—"Not guilty (of any offence) *i. e.*, evidence inconclusive—not proved."

Opinion of the Judge ... ... Guilty of the offence of "*voluntarily causing grievous hurt*" (by means of an unwholesome drug to wit *arsenic*) punishable under Section 326, Indian Penal Code.

Sentence ... ... Transportation for life.

JUDGMENT.

In this case the evidence is entirely and exclusively 'circumstantial' and although I cannot say that the total result of all the circumstances, taken in their entirety and as a whole, is such as to exclude any 'hypothesis,' on the whole of the facts established, consistent with 'innocence' (of this prisoner), still I consider that there remains no other *reasonable and probable* inference than that this 'Kurnam Kristappa' did administer the arsenic which did, beyond all doubt, cause the sudden death of the deceased 'Sitayya,' another brahmin of a neighbouring village called 'Jolapuram.'

2. The first witness 'Kámakka' is a comparatively young 'brahmin widow' of that village (in the 'Pattikonda Taluk.'

3. The man, whose death forms the subject of this trial, was also a brahmin of a neighbouring village. In the village of Yadavali are only two brahmin houses, in one of which resided the 1st witness and her mother Obalamma-2nd witness, and in the other the accused and his brother who is also one of the witnesses for the prosecution.

4. Kamakka is a childless widow and she has claims to the "Kurnam Mirásee Inam lands" of that village, of which this accused is at present the 'Registered Kurnam' (performing the duties by deputy).

5. There have been in times not long past differences and disputes and even legal proceedings (compromised after institution) between this 'Kamakka and her brother-in-law, the prisoner Kurnam Kristappa.'

6. Moreover, Kámakka has been for some years past living on 'very intimate terms' with that very brahmin 'Sitayya,' whose death has given occasion to these proceedings and investigations and the said Sitayya has besides acted and put himself forward in this little village as the champion, friend and patron of his paramour, the widow Kámakka, in her disputes on business matters with the accused 'Kurnam Kristappa.'

7. In the month of April last, the accused, on the plea of a certain 'kómati' of the village having promised to '*stand treat*,' invited Kámakka and her mother Obalamma to a sort of *dejeuner a la fourchette* (at about midday) in his own house (accused's).

8. I rely on the ample evidence for the prosecution for this part of the story not only that of the 1st and 2nd witnesses but also some corroborative testimony; and I do not believe the evidence to the contrary *now* adduced by the accused on his trial in this Court.

9. According to the testimony of the abovementioned Kámakka (1st witness) and that of her mother the abovenamed 'Obalamma' (2nd witness), all the guests first partook of an ordinary meal of curry and rice, chutney, &c., and afterwards, by way of 'dessert' as it were, the accused Kristappa, who had all along both cooked and served every article of the feast himself alone and unaided, brought forward an article locally known as '*paramánnum*'? which is described as a compound of boiled rice, cocoanut and cocoanut-milk and jaggory.

10. This mixture as a final '*bonne bouche*' was first served by the accused to the deceased Sitayya alone and separately by himself so that he only partook of the first service of this stuff and then the accused, after taking the dish to the back, out of sight of all his guests, brought it back to the front after a brief interval and lastly served the other four persons namely himself and his brother Raghappa and Kámakka and Obalamma—daughter and mother (1st and 2nd witnesses).

11. It is of the utmost importance to note this part of the story as it is told by this woman Kamakka and her mother Obalamma with reference to the narrative of the immediately following events as told by the same two witnesses (1st and 2nd) and corroborated by some other of the prosecution witnesses, only one of whom was examined in this Court upon the trial.

12. According to that story, all the (other) four persons, who partook of what might, in this connection, be designated for convenience of expression as the regular meal, did not suffer any sort of inconvenience or discomfort at any subsequent time but on the other hand the deceased Sitayya alone, immediately after eating the '*paramánnum*' as mentioned above, began to complain of *mal-aise* and *nausea* and, on being forthwith taken home, *i. e.*, to the house of Kámakka, where he usually resided, began immediately to vomit, and purge violently; complaining at the same time of a burning in the stomach and of cramps in the legs; *i. e.* of symptoms characteristic of 'mineral poisoning' ('preferably arsenic')—vide Taylor's Manual of Medical Jurisprudence (Edition of 1866).

13. Unfortunately, owing to circumstances for which the village Reddy has been held responsible; and for which on the assumption of some neglect of duty, on his part, he has been punished with suspension from Office by the Magistracy. No post mortem or inquest was held; and, subsequently, during the course of the sudden illness of Sitayya, Kámakka and her mother did not preserve either the vomited or the purged matters, which were simply thrown on the 'dung' heap, whence nothing was recovered by the Sheristadar (third class) Magistrate on his beginning his local investigation on the very next day.

14. That Officer, however, was fortunate enough to observe in a corner of the room, in which the illness and death had taken place, a 'cumbly' and a 'waist cloth,' which he duly and properly secured and which were taken proper care of; and

forwarded under proper precautions to the Chemical Examiner, at Madras, who certified in due course that each of these articles contained a fraction of a grain of soluble arsenic, though not, I think, sufficient to destroy life in itself.

15. Besides these, however, some partially burnt bones, which are, I think, sufficiently identified, and proved beyond reasonable doubt, to be, in fact and truth, the bones of the murdered man 'Sitayya,' were also forwarded to the Chemical Examiner; and have been duly certified to contain a not inconsiderable quantity of the same poisonous drug, viz. 'arsenic.'

16. Now the man died in about six to seven hours after the (supposed) fatal last meal and a reference to the standard work before quoted will show that, under these circumstances, the 'dose' of arsenic must have been a large quantity.

17. Under these circumstances, it has been a matter of anxious consideration whether the prisoner ought not to be convicted of '*wilful murder*.'

18. However accepting, not without some final hesitation, the more merciful view, I convict him of wilfully administering 'a deleterious substance' viz. 'white arsenic,' with intent to cause grievous hurt, 'to the said Sitayya' and thereby committing an offence punishable under Section 326 of the Indian Penal Code; and under that Section I sentence the accused Kurnam Kristappa to be transported for the term of his natural life.

Serial Number.	DESCRIPTION OF ACCUSED.						DATE OF					Explanation of delay.
	Name.	Father's Name.	Caste or Race.	Occupation.	Residence.	Age.	Occurrence.	Complaint.	Apprehension.	Commencement of trial.	Close of trial.	
1	2						3					4
20 of 1886.	Kurnam Kristappa.	Obalakondappa.	Brahmin.	Kurnam and cultivation.	Yadavali, Pattikonda Taluk.	36 Years.	19th April 1886.	20th April 1886.	9th May 1886.	19th June 1886.	23rd June 1886.	

SESSIONS COURT OF KURNOOL,
23rd June 1886.

Acting Sessions Judge.

(3)

From

THE SESSIONS JUDGE,
KURNOOL.

To

THE

Dated 23rd June
Despatched } 1886.
Received

JUDGMENT.

Copy of ________ *in Session Case*
No. 20 *of* 1886.

---

(2)

HIGH COURT OF JUDICATURE
AT
MADRAS.

JUDGMENT

IN

REFERRED TRIAL 12 *of* 1886
AND
CRIMINAL APPEAL 212 OF 1886.
(*Session Case* 39 *of* 1885, *Kurnool.*)

Dated 5th *May* 1886.
Sent 12 June

45b

When the witnesses got to the temple at the foot of the hills, they ceased to pursue and returned to the Reddi who could not speak and shortly afterwards expired, having been stabbed in the chest with a sharp cutting instrument which appears to have penetrated the liver.

The Appellant's case was that he was not in the village on the night on which the alleged murder took place, but in Hyderabad.

He was asked if he had said this before the committing Magistrate and if he asked then that witnesses from Hyderabad might be called.

He said he had done so: but the record did not show that he did; and the Sessions Judge refused to adjourn the case and to issue sommonses for other witnesses.

The Sessions Judge bases the conviction upon the statements made by the Appellant before the 2nd Class Magistrate, Bellary Taluq, and before another Magistrate, confirmed as they appear to him to be by the oral evidence given in the Sessions Court: the witnesses are those who would naturally be sleeping near the deceased; they further speak to there having been sufficient light from a rising moon for them to distinguish and identify the Appellant, while the evidence for the defence did not establish an alibi, but at most showed that the Appellant had been absent from the village for several months and was not known by the witnesses called to have been in the village on the night of the 4th June.

In his Appeal petition the Appellant says that not only was the deceased no enemy of his, but was his brother-in-law: that the witnesses for the prosecution are connected with the Police and related to the deceased; and that the witnesses referred to by him before the Sessions Court would, if called, have proved that on the night of the 4th June he was in Hyderabad.

At the hearing of the Appeal the learned Counsel for the Appellant dwelt upon certain alleged inconsistencies and improbabilities in the evidence of the principal witnesses for the prosecution, and the fact that certain persons referred to by witnesses had not been called as witnesses.

The confessional statements filed in this case as F and G are excluded for the reasons stated by us in Referred Trial No. 2 of 1886 in which case they were marked D and E. Exhibit E is inadmissible; it is in no way proved; and if it purports to be a statement recorded by a Magistrate under the provisions of Section 164, Criminal Procedure Code, it is inadmissible by reason of not being recorded and certified in the manner required in the case of statements taken under that provision of law.

If, however, the principal witnesses for the prosecution are to be believed, there can be no reasonable doubt that the Appellant was rightly convicted.

There is, moreover, what is to some extent corroborative evidence that the Appellant's name was mentioned almost immediately after the deceased was stabbed. The 6th witness, the Karnam Kristappa, deposes to having been called and to seeing the deceased lying dead with a wound in his chest on the night in question and that on questioning the Reddi's son (1st witness) and the 2nd and 3rd witnesses, they named the Appellant as having committed the murder, and that after this he sent a report, and a "*Mahazar*" also, and that the report and *Mahazar* shown to him are what were then written. Although not referred to as Exhibits B and C filed in this case, there can be no reasonable doubt that these Exhibits were then shown to and identified by the witness.

45c

There is further the fact elicited in cross-examination of the Appellant's wife as 6th witness for the defence, (who in examination-in-chief deposed that the Appellant was not in Gonegondla at any time about the 4th June) that before the committing Magistrate she deposed that her husband had taken his food at home on the night on which the Reddi was killed, and had also attacked and cut or attempted to cut her and another woman Gudemma.

The witness at the trial would account for these statements by alleging that the Police induced her to make them, they being untrue; but it was for the Judge and Assessors to decide whether that explanation was true or not, and it does not appear that they did believe it; while

evidence is given by the woman Gudemma that on the night in question the Appellant was in Gonegondla and did stab her also, and at the same time made reference to his having stabbed the deceased Reddi.

A statement made by the 2nd witness Timmigadu was referred to as showing that the witness did not really recognize the Appellant as the man who stabbed the deceased, but we think that is not so: what the witness appears to have meant was that, although at the moment when the man was stabbing the Reddi he did not know who that man was, he did see immediately afterwards that it was the Appellant; and that it was the Appellant who then ran away.

Nor is there anything in the evidence of the 3rd witness Yellugadu which appears to us to show that he was not substantially speaking the truth.

The 4th witness Sivayya does not pretend to have identified the Appellant as the man whom he and the others pursued, but his evidence establishes that there was a pursuit in which he joined, after a cry had been heard from the deceased, and as he appears to have desisted from following, through fear, before the others did, the fact that the others did not then mention to him the name of the Appellant does not show the evidence of the others to be false.

The statement of the 6th witness the Karnam, elicited in cross-examination, that when he examined the three principal witnesses in the presence of the Police no one of them then mentioned that they had seen the Appellant stab the deceased is certainly open to comment, but it is not absolutely inconsistent with the truth of his allegation as to these witnesses having, before the Police came, and before the report and *Mahazar* were sent off, stated that they knew as a fact that the Appellant did kill the deceased.

We are then of opinion that the evidence required the conviction of the Appellant, and this being so we confirm the finding and sentence and dismiss the Appeal.

As regards the Appellant's allegation that he desired the committing Magistrate to procure the attendance of witnesses from Hyderabad, there is not only nothing but the Appellant's assertion of this in March 1886, but it appears from the record that he was asked in November 1885 by the committing Magistrate to name such witnesses as he required, if any, and that he did so, and that those whom he desired to call were examined; and we consider that the Sessions Judge was not wrong in refusing in March to stay the trial with a view to procuring the attendance of witnesses not till then referred to by the Appellant as necessary for his defence.

In this case the Sessions Judge appears to have entertained no doubt whatever as to the mental sanity of the Appellant either at the time of the murder or at the time of trial. It was not suggested either by the Appellant himself or by his pleader that he was ever insane or not accountable for his actions, and we see nothing in the answers given by him to questions put, calculated to raise any doubt on this point. Nor can we draw any legal inference from the terrible nature of the Appellant's acts on the night of the 4th June 1885 that he was not aware of the nature of those acts and of the natural consequences thereof.

(A true copy).

Dy. Registrar,
Appellate Side.

Exd. G. Varadarajulu.

7

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday, the fifth day of May,
One thousand eight hundred and eighty-six.

PRESENT :—

THE HONOURABLE MR. JUSTICE MUTTUSAMI AIYAR, C. I. E.
THE HONOURABLE MR. JUSTICE BRANDT.

REFERRED TRIAL No. 12 OF 1886.

Pisari Madar Gadu *alias* Pisari Donga Madar Sahib. } *Prisoner.*

Trial referred by the Court of Session of Kurnool for confirmation of the sentence of death passed upon the said prisoner in Case No. 39 of the Calendar for 1885.

CRIMINAL APPEAL No. 212 OF 1886.

Appeal by the prisoner against the said sentence.

JUDGMENT.

The Appellant Pisari Madar Gadu *alias* Pisari Donga Madar Sahib stands convicted of the murder of one Imam Sahib on the night of the 4th June 1885.

In this case the Judge and the Assessors concurred in finding the prisoner guilty, and sentence of death, subject to confirmation of the sentence by this Court, has been passed.

The Appellant is the same person who, having been convicted in Session Case No. 40 of 1885 of the murder of one Chinna Hanumadu on the same night, was in that case sentenced to death, which sentence has this day been confirmed by us.

It is unnecessary then in this case to go over the same ground and treat the same facts at length.

In the present case the person killed was the Reddi or headman of the village in which the Appellant lived, and there is clear and direct evidence given by the deceased's son, the 1st witness, which supplies suggestion for a motive for the murder. Referring to the faction-fight between the 'Boyas' and the 'Turakas' in the village [which we know took place early in 1885] and in which one Pedda Hanumadu was killed, the 1st witness deposes that after that fight the Appellant left his village, and the deceased Reddi had urged and even supplied the 'Boyas' with money, to enable them to arrest the Appellant.

Another quarrel between the two is also spoken to.

There is next the direct evidence of the said 1st witness Khoja Bhoy, and of the 2nd and 3rd witnesses Timmigadu and Yellugadu, village-servants, who slept at the house of the deceased, and of the 4th witness Sivayya, a neighbour.

From this it appears that the deceased was sleeping on a cot on the outer pial of his house, and his son, and the two Taliaris close by ; and Sivayya, slept outside his house.

Khoja Bhoy deposes that he and the two Taliaris were awakened by hearing the deceased call out "Abba" and make what is called 'a dying yell', and then they saw the Appellant Madar, and he saw them, and turned to go : that they followed him and saw that he had a dagger in his hand ; and that he faced or half faced towards them in the course of the pursuit, and so they could identify him.

6

---

(2)

HIGH COURT OF JUDICATURE
AT
MADRAS.

JUDGMENT
IN
REFERRED TRIAL 2 *of* 1886
AND
CRIMINAL APPEAL 43 OF 1886.
(*Session Case* 40 *of* 1885, *Kurnool.*)

Dated 5*th May* 1886.
Sent 12— —

It is true that the Civil Surgeon deposed on the 13th January that the Appellant had the appearance of a man accustomed to the use of *ganja*, and that this or *bhang* would have a tendency to make a man very angry for slight causes, but there is no evidence that the Appellant was not, and it was not pleaded either by him or for him that he was not, mentally and morally responsible for the consequences of his own acts on the night of the 4th June 1885, and we cannot entertain the suggestion now made, in consequence of the procedure adopted by the Sessions Judge, that because it appeared to the Medical officer examined that the Appellant was addicted to the use of *ganja* or *bhang*, there is doubt as to whether he was responsible for the frightful crime committed by him that night.

(A true copy.)

Deputy Registrar,
Appellate Side.

Exd. G. Varadarajulu.

---

was then written and that Exhibit A is that report, and in this, dated the 5th June 1885, Madargadu is mentioned as the man said to have stabbed the deceased.

The evidence for the defence, we concur with the Sessions Judge in thinking, fails to show that the Appellant was not in Gonagondla on the night of the 4th June. It at most shows that he had not been there for sometime previous and that the witnesses do not know that he was there that night.

In his Memo. of Appeal the Appellant states that he applied to the Sessions Court to send for certain witnesses named by him as able to prove that he was in Hyderabad at that time; but we are unable to find that in this case any such application was made. The witnesses named by him before the committing Magistrate were examined. In no case would the Appellant have been entitled as of right to have witnesses not in attendance summoned and awaited, and though asked certain questions by the Sessions Judge on the 18th December as to where he alleged he had been, it does not appear that the Appellant even expressed a wish to have other witnesses summoned. We can only infer that the statement made in the Appeal Memorandum is not true, and that all the witnesses whom the Appellant then desired to have examined were examined.

The conclusion then at which we arrive is that it is proved by the evidence of the 1st, 2nd, 3rd, 4th and 5th witnesses that it was the Appellant who murdered the deceased Chinna Hanumadu, and we confirm the finding and sentence and dismiss the Appeal.

It is necessary to make a few observations upon the doubts expressed by the Sessions Judge as to the Appellant's sanity and the procedure adopted in staying the trial and keeping the Appellant under Medical observation from the 19th December 1885 to the 9th January 1886.

The Judge states in his judgment that his principal doubt in the case was as to the state of the Appellant's mind on the night of the 4th June 1885, as to whether he was then capable of knowing the nature or quality [?] of his acts, or that he was doing wrong.

But in his order of the 19th December 1885 the doubt expressed was whether the Appellant was then capable of understanding the nature of the charge and of making his defence on the charge. There is nothing on record to show that anything had occurred to lead the Judge to suppose that the Appellant was incapable of making his defence.

And on the 18th December 1885 he was called on to enter on his defence and to answer questions put to him by the Court.

In the answers to those questions we can discover nothing calculated to give rise to any suspicion as to the Appellant's sanity.

The Sessions Judge himself appears to have entertained a suspicion that the Appellant was in the habit of taking *bhang*, but the Appellant denied this, and the Judge had no power to stay proceedings and to direct inquiry as to the state of the Appellant's mind because, as it is said, it appeared 'problematic' whether he was capable of making a defence.

Section 465, Criminal Procedure Code, provides the procedure in such cases, and the question is one to be tried by the Judge and Assessors and to be decided by them, aided, if need be, by medical evidence.

We are further constrained to observe that in any case the question put to the Appellant on the 13th January 1886 "were you ever mad"? was an improper question, especially after the Civil Surgeon had certified and stated on oath that after careful observation no symptoms of insanity appeared and when no suggestion had been made that the Appellant ever had been out of his mind, and it is difficult to conceive a more improper question than that next put in which, assuming that the Appellant had murdered Chinna Hanumadu and others [in respect of whose deaths he was not then on his trial], the Appellant is asked in what state of mind he was when those murders were committed.

before he lost power of speech, told him that it was Madar Saib—Pasari Madar Saib who had stabbed him: in another place says that the deceased could not then speak.

On one occasion it is clear that the witness when saying that the deceased could not speak was referring to the time when the 5th witness the Karnam arrived, and then, as all are agreed, the deceased was speechless. We cannot suppose that after stating in further detail, when pressed in cross-examination, what the deceased did say, that the witness intended it to be inferred that he retracted all this and to say that his brother never spoke to him at all.

The 1st witness Ramudu was called to come to the deceased by the 3rd witness Venkadu, who deposes that after seeing the Appellant and seeing that Chinna Hanumadu had been stabbed, he ran, as desired by the latter, to fetch the deceased's brother Ramudu who at once went.

The first person who, as he deposes, saw the occurrence is the 2nd witness Timadu: he says that, awaking and being within a few yards of where the deceased was lying and hearing the latter cry out "abba" he saw the deceased holding the Appellant by the hand, in which was a dagger; then freeing himself from the deceased, the Appellant made a rush at the witness who evaded him, when the Appellant ran away, and the witness returned at once and asked the deceased what happened to him: the latter said "I am done for, brother, my bowels have come out": just then the 3rd and 4th witnesses came up; the deceased told Venkadu to go for the 1st witness and told both those witnesses that it was Madargadu who had stabbed him.

The 3rd and 4th witnesses Venkadu and Kadupulavadu depose that they were lying on watch together near an onion-heap, when a cry was heard—"abba! I am a dead man!" on which they ran in the direction whence the cry came and met the Appellant with a dagger in his hand whom Venkadu called on to speak; on which the latter said "are you not aware I am Pisari Donga Madar Saib. Will you keep quiet or not? If you don't I shall stab you also." Or as the 4th witness says the Appellant said "don't you know I am Donga Pisari Madar Saib. I have just stabbed Chinna Hanumadu: I shall now stab you also. Will you keep quiet or not?"

Then they went to where the deceased lay and, as they say, on questioning him, the deceased said Donga Pisari Madargadu had stabbed him: they add that when Ramudu came, the deceased repeated this statement.

It is contended that the deceased would not have simply said to the first person whom he saw that he had received a mortal wound without saying who had inflicted it, and then have told two others who came up later that it was the Appellant who had stabbed him: and that it is so extremely improbable the Appellant should have proclaimed himself by name as the murderer that the evidence of Venkadu and Kadupulavadu should be entirely discredited.

The manner in which the deceased first spoke to Timadu may be accounted for by the former being aware that the latter had seen the Appellant and the deceased struggling with him; while to the other two, not known by him to have seen the Appellant, he might well say who his assailant was.

As to the Appellant's addressing the 3rd and 4th witnesses as he said to have done, it is not incredible that elated with a sense of injury revenged, and angered by the possibility of resistance or attempt at capture, he should, both with a view to terrify and deter those who challenged him, and glorying in what he had done, have proclaimed himself as it is said he did.

There are no doubt discrepancies in the evidence as to what precise words the deceased and others used when speaking and as to whether the deceased did or did not speak to the 1st witness Ramudu, but we cannot say that those discrepancies are such as to justify us in discrediting the evidence of the witnesses as a whole.

The evidence of the 5th witness Kristnappa, the Karnam, is material in so far as it goes to show that on information given on the night in question he went and found Chinna Hanumadu, the deceased, speechless and stabbed in the bowels: he further deposes that a *Mahazar* or report

---

As regards motive then, it appears that (in February 1885) there was a fight between the people of the Boya caste to which the deceased Chinna Hanumadu and the principal witnesses for the prosecution belong, on the one side, and the 'Trurakas' or Mussalmen on the other, the Appellant being a Turaka, and after that the Appellant left the village and was not again seen there apparently before the night of the 4th June: it appears further from the evidence that the Boyas suspected the Appellant and another of having in the fight in February killed Boya Pedda Hanumadu.

The latter and the deceased Chinna Hanumadu were brothers, and the 1st witness for the prosecution Ramudu is a brother of theirs.

This witness states that he and his brother the deceased had been making efforts to get the Appellant arrested. Another cause of enmity is deposed to by the 2nd witness M. Timadu and the 3rd witness Venkadu, *viz.* that the Appellant suspected Chinna Hanumadu of having stolen grain from Appellant's house.

It is contended by the learned Counsel for the Appellant that the existence of such cause for enmity is reason for hesitating to believe the evidence of the 1st, 2nd and 3rd witnesses for the prosecution. The question is whether by reason of ill-feeling and revenge these witnesses falsely charge the Appellant with a crime committed by another, or whether that ill-feeling accounts for the attack on the deceased.

The 4th witness Kadupulavadu, who also gives evidence which, if believed, tells most strongly against the accused, is not shown to have had any cause for personal hostility towards the accused.

We agree then with the Sessions Judge that some motive is disclosed.

As to the confessional statements, we shall exclude them from consideration.

The form in which the Appellant was first interrogated by the 2nd Class Magistrate, Bellary Taluq, on the 4th November 1885, Exhibit D, is such that it is impossible to treat the statement which follows as a statement voluntarily made.

The question "It appears that you have committed murder and absconded by escaping from custody; you have now come; what do you say?" is an extremely improper question.

The statement, moreover, does not contain a certificate at the foot thereof in the terms required by the Code of Criminal Procedure. But principally on the ground that the record not only does not go to show that it was ascertained that a statement was about to be voluntarily made, but rather shows that it was the result of an interrogation which no Magistrate should have put, we exclude it. As for the statement (E) it does not clearly appear whether this was made before or after the preliminary inquiry had commenced.

In the former case the same objection applies as in the case of Exhibit D, the first question being "what do you say about the first Gonegondla Murder?" and if taken after the preliminary inquiry had begun, it is inadmissible by reason of the questions put not being questions put for the purpose of explaining facts appearing in evidence against the Appellant. The statement further purports to be signed by "C. Setaram, Deputy Tahsildar:" as such that officer had no jurisdiction to record such a statement.

Before the committing Magistrate the Appellant alleged that these so called confessional statements were not in fact made by him.

The question is whether the evidence of the first four witnesses for the prosecution is true in substance or not: if it is, the Appellant was rightly convicted, if not he should be acquitted.

It is objected to the evidence of the 1st witness Ramudu (1) that he is a brother of the deceased and that both were likely to falsely accuse the Appellant: this argument has been considered above; (2) that while in one part of his deposition the witness says that his brother,

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday, the fifth day of May,
One thousand eight hundred and eighty-six.

PRESENT :—
THE HONOURABLE MR. JUSTICE MUTTUSAMI AIYAR, C. I. E.
THE HONOURABLE MR. JUSTICE BRANDT.

REFERRED TRIAL NO. 2 OF 1886.

Pisari Turaka Madar Saib *alias* Donga Madar Saib. } *Prisoner.*

Trial referred by the Court of Session of Kurnool for confirmation of the sentence of death passed upon the said prisoner in Case No. 40 of the Calendar for 1885.

CRIMINAL APPEAL NO. 43 OF 1886.

Appeal by the prisoner against the said sentence.

JUDGMENT.

The Appellant Pisari Madar Saib has been convicted by the Sessions Judge, Kurnool Division, of murder, and has been sentenced to death, subject to confirmation of the sentence by the High Court.

The Assessors, differing from the Sessions Judge, were of opinion that the Appellant is not guilty.

The Judge was of opinion that one Chinna Hanumadu was beyond doubt killed in the Village of Gonagondla in the Pattikonda Taluq on the night of the 4th June 1885, and that, having regard to certain confessional statements made by the Appellant and to the evidence of the 1st, 2nd, 3rd and 4th witnesses for the prosecution whom he describes as eye-witnesses and to that of the 5th witness, there was no reasonable doubt as to Chinna Hanumadu's having been murdered, and that it was the Appellant who murdered him.

Appeal was preferred by the Appellant on the grounds that the Assessors found him not guilty; that no enmity was proved to have existed between him and the deceased; that the *alibi* set up by him was proved, and that he had moreover other witnesses to prove that he was in Hyderabad on the 4th June which witnesses the Sessions Judge refused to send for and examine; that he did not make the confessional statements recorded as made by him before various Magistrates; that not one witness professed to have seen the murder actually committed.

It appearing when this Appeal and the Referred Trial were before the Court on the 23rd February last that the Appellant had been committed charged with another murder said to have been committed on the same night but shortly prior in time to the alleged murder of Chinna Hanumadu and also with another murder of one Taliari Boya Pedda Hanumadu, alleged to have been committed in February 1885, the Sessions Judge was directed to try and dispose of these cases also—Session Cases 37 and 39 of 1885.

This has now been done.

Owing to the form in which the judgment of the Session Court in Session Case No. 40 of 1885 is put it was difficult, if not impossible, to understand the alleged motive for the murder of Chinna Hanumadu and the circumstances under which the Appellant left, and, as it was alleged by the prosecution, returned to his village. From what appears in those other cases it is now possible to gather what was rather hinted at than explained in the judgment in Session Case No. 40 of 1885, without in any way prejudicing the Appellant unfairly by reference to those facts.

---

why this Court should not as a Court of Revision direct a new trial setting aside te findings, and acquittals and convictions lready had; and that in the mean time the sentences of rigorous imprisonment passed on all the Appellants be suspended, they being kept in simple imprisonment until the final orders of this Court in Revision.

By the Court.

(Signed) H. T. Ross,
Registrar,
Appellate Side.

(True Copy).

Ross
Registrar,
Appellate Side.

41

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Saturday, the twenty-eighth day of August,
One thousand eight hundred and eighty-six.

PRESENT :—

The Honourable Mr. Justice Kernan.
The Honourable Mr. Justice Brandt.

CRIMINAL APPEAL No. 723 OF 1886.

1. Reddi Seshi Reddi,
2. Chinna Nagi Reddi,
3. Pedda Nagi Reddi,
4. Venkata Reddi, and
5. Anvella Seshi Reddi

} Appellants. (1st, 2nd, 5th, 10th and 11th Prisoners)

Appeal against the Sentence of the Court of Session of Kurnool in Case No. 36– of the Calendar for 1885.

Order:– This appeal coming on for hearing; ~~and Counsel not appearing on behalf of the Appellant:~~ Upon perusing the Petition of Appeal and the record of the evidence and proceedings before the Court of Session, and upon hearing the arguments of Mr. P. D. Shaw, Counsel and Mr. M. Venkataramiah Chetty, Vakil, for the Appellants, and of the Acting Government Pleader and Public Prosecutor in support of the conviction; it is ordere that notice be given to all the prisoner those acquitted as well as those convic to shew cause within six weeks fro

500—23-7-86.

10

(1

Notes of Divisional Bench in Crl. Appeal No. 123 of 86.

—

The conclusion at which we arrive is that it is not possible for us to deal effective with the case as it stands, and that, to ensure as far as possible that justice shal not be defeated, there should be a re-trial of the whole case.

The case has not been ~~as~~ dealt with as it should have been, ~~dealt with~~, and dealing with the trial in revision, we shall direct that notice be given to the accused to show cause why the convictions and the acquittals alike, should not be set aside, and the whole case or cases, (for there are virtually two main cases at least,) be retried, and we shall suggest to Government that, in the event of a retrial being directed, the trial be held if possible by another Judge.

J. Ross

Reg.

ccepted as true, and we incline to think t is true; the 1st Prisoner cannot be convicted, nless the evidence is taken to be so clear, trustworthy, as to leave it not open to easonable doubt that in the mêlée some ne other than the 1st Prisoner stabbed the eceased. The deceased says some one else stabbed him with a dagger; why is it not possible that he was mistaken in thinking that the 1st Prisoner also stabbed him?

And the evidence of the witnesses for the prosecution generally seems on the face of it open to some doubt. It does not at all ppear why if one or more could see quite [illegible] that the 1st Prisoner stabbed deceased [illegible] in the chest and back, none of the rial witnesses saw the hinder wound ted, or that they could not have seen as inflicted.

The

by a two-edged weapon, the two
were equally sharp. He "does not arise is
could have been caused by the sickle ffective
but he does not say it *could* not have bee

As to the front wound he says "I shoul
have expected to have found the flesh more
lacerated" if the sickle had been used, but h
does not say that it could not possibly ha
had caused the wound.

He "does not think" the anterior wound
could have been caused by a curved knife.

It may be observed that it does seem
more probable that the 3rd accused should
have had a sickle on the occasion than tha
others or he should have had daggers on the
persons; not putting this aside altogeth
and taking the evidence that one or m
of those present had daggers with them,
although the 3rd accused's confessio

---

ccepted account.

t is true not suppose the Sessions Judge
nless then that the 3d accused falsely in-
trud himself as responsible with others
or the death of Mahanandi, and as
responsible solely for Kondayya's death.
f course this is not absolutely impossible,
but it is extremely improbable that fraternal
ffection should go to such a length.

As to the medical evidence, it appears
to us that it is by no means so certain,
so unhesitating, and so convincing as to
decide the question. The front wound was
ather jagged at the edges". The hinder wound
o doubt the Assistant Surgeon describes as
lan cut, with straight edges and equal
" He "concludes" — that is infers that
the posterior wound was caused
by

The 20th witness speaks to stabbi rive is
terms. He does admit that before ffective
trate he said 1st Prisoner used a dag

The 21st witness introduces a totally new
element; he says 1st Prisoner used a swor
He adds that 1st Prisoner had a dagger, b
how he could have seen it, seeing that
he says the dagger was hidden under his
cloth, does not appear.

The whole of the damning confessions
made by the 3rd accused and the evidence
in support of it, the Sessions Judge reject
in favour of the conflicting, in many way
inconsistent, and in some respects defe
evidence for the prosecution, and of the
statements made by the deceased which
differs from that evidence on the groun
apparently that the medical evide
it absolutely impossible to belie

ccepted as
is true ..!

nless 12th, 15th and 16th witnesses speak
truly one stab, in front, on receiving
which the deceased at once ran
away. The 17th witness only saw
deceased going home holding
his hands to a wound on the
chest. He says nothing about
a wound on the back.

The

or by whom he was stabbed in the chest; and he says that the stab in his back was inflicted not by th 1st Prisoner but by Kottapalli Seshi Reddi, brother-in-law of 1st Prisoner, and, apparently, (though there should be no room whatever for doubt) the 1st Prisoner! In his second statement he repeats this story and adds that he was stabbed in the front by the 1st Prisoner and in the rear by the other Seshi Reddi. So there were, it seems, two daggers used though no one else speaks to this.

As to the witnesses for the prosecu of those who profess to speak to this incident, the 1st witness says positively that 1st Pris inflicted the two stabs, the

said that the 1st Prisoner "stabbed" him in the belly, then it came down to a slight scratch; and this tallies actly with 3rd accused's statement that in stabbing Kondayya he accidentally grazed this witness with his implement.

The 2nd witness for the defence swears the 3rd Prisoner had a sickle in one hand and a stick in the other, but says he did not see him use the sickle. On the other side we have two dying declarations made by the deceased Kondayya.

In the first he says that while was trying to run away into village the 1st Prisoner came front of him, having a dagger hand: he does not say how

or

beating Mahanandi.

The 20th witness speaks generally as t all the Prisoners having beaten Mahanandi with sticks and as to the — crashing of sticks, and then says he can't say who beat him.

The 21st witness while he singles out the 4th Prisoner as striking the deceas with a stick while on the ground, says he could not then identify any but the 1st and 4th Prisoners, and that he saw the 10th and 11th Prisoners and others going into the village with sticks in their hands. This is the whole of th evidence against these appella

cooly, does name these appellants as having beaten Mahanandi with ticks.

he 16th witness, C. Kristadu, a cooly, ays first that all the Prisoners ccept the 1st beat Mahanandi. Then e says "I have not seen the Kottaalli people beat him." "I have seen the 13th Prisoner beat him."

Then in cross examination he first repeats his original statement and then his second.

The 17th witness Chinnagadu, a cooly, says he can't say who beat Mahanandi. Then he says the 11th Prisoner and two others "come to beat", not Mahanandi but Bhima Reddi!

he 18th witness Nagadu, a shepherd, twice and positively he saw isoner and 3 others named beating implicate the 11th Prisoner directly, or seriously in any way.

The 8th witness P. Mada Reddi only spea generally as to "all the Kottapalli people being present when the quar took place". He gives no direct evidence against these two appellants. The pros witnesses 9, 10, 11 and 12 witness speak, most of them, only in the most genera terms as to "the Kottapalli people", or "the prisoners" generally having beaten Mahanandi. The 10th witness singles out the 4th and 5th Prisoners and none else in his examination-in-chief: in cross examination he picks out the 14th and 1 accused, but not the 10th or 11th Pris The 12 witness names the 13th, 14th and accused but not the 4th and appellants.

The 15th witness P. Kristad

hat Prisoner was present. He states hat the deceased Pedda Kondayya st k the 11th Prisoner. He says nothing e to implicate these appellants.

he 6th witness deposes that the 10th and 11th risoners struck him, the former with a ck: that the 11th Prisoner went back o the crowd, but the 10th Prisoner pursued him to his house and he does not pretend to say what this Prisoner did after that: he says further twice, and distinctly that he cannot say who struck Mahanandi.

he 7th witness Bhimi Reddi says Govinda and the 11th Prisoner went away m the crowd?) disputing. does not say one word against Prisoner. Nor does his evidence implicate

The 3rd witness Ramsing says "after Mah
nandi was beaten down" they be
Govindu; the 3rd and 12th Prisoners be
Govindu; "the 10th Prisoner pursued him
Govindu ran home: the 11th Prisoner be
Mahanandi, but did not beat Govin
He says Venkata Reddi the 10th Prison
did give Mahanandi a blow on the
head with a stick.

The 4th witness V. Kondayya does not
mention the 10th Prisoner at all. He
says as to the 11th Prisoner first that
he did not see him there: then
that this Prisoner was there; and
that is all he says against him.

The 5th witness C. Kondayya says t
Prisoner was present. He does no
whether 10th Prisoner was or was n
there. He says he can't say wh
he said before the Magistr

dentify any one. It is clear this ~~their~~ —
witness' evidence is worth little or
thing in detail, or as against these
Appellants.

The 2nd witness T. R. Seshi Reddi
ays "all the men [Prisoners?] before
Court beat Mahanandi". Then he
particularizes the 11th Prisoner and two
ther prisoners, not convicted, as having —
beaten him.

He speaks about the 10th Prisoner —
having attempted to beat the witness Govindu
who ran away home, but he says nothing
gainst this Prisoner by name in connexion
with the beating of Mahanandi.

This witness says nothing about the
; but he speaks about Mahanandi
ing looking in a particular direction
was stabbed.
only witness who speaks
ing been stabbed.

To return to the evidence against the 10 and 11th Prisoners.

The 1st witness Venkata Reddi says "all people there except the 1st Prisoner, the Prisoner, and the 6th Prisoner" beat Mahanandi. He is very positive that these did not; but his evidence against the 10th and 11th Prisoners is by no mean direct. As to his saying "the first three Prisoners standing in a row behind the Prisoner's bar" also beat Mahanandi; this is either misleading and unfair to those indicated, or it is useless for there is nothing to show that the 10th and 11th Prisoners were among those men.

This witness says the 2nd, 10th and Prisoners set to work to beat Pedda Rosa when Mahanandi fell down - that wh the latter fell down so many people around that it was impossible

from a crime of the first to a crime
f the second degree in death-causing

cannot but express surprise
hat ~~[illegible]~~ there was no application on
ehalf of Government in this case
o this Court to exercise its dis-
ation in revision, and that no
egular appeal was preferred against
he acquittals in the case of some
of the accused at least.

To

deadly weapons, while he convicts the 4th Prisoner of being one responsible for the deceased's death — he may have had reasons for so doing: but they certainly are not apparent, and they are not stated.

There is evidence against these appellants. Is it sufficient? If so it is beyond comprehension why they were not sentenced to transportatio for life: it is not suggested that the intention to cause the man's death was disproved, or that any other conclusion could possibly be arrived at other than that the intent to kill was present. It i not suggested that those who kill him — the 1st Prisoner is not con-victed of having taken part in the him — had any such provocatio as would ever reduce the

with an axe true or is not?

It must be assumed the Judge isbelieved it: if so the evidence of ose (the 3rd, 7th & 8th) witnesses who peak to it is clearly entitled to little, f any credit in the case of the other persons whom they speak against, as regards the facts spoken to by them.

The 3rd witness swears positively that he saw the 4th 6th 7th and 9th Prisoners beat Mahanandi on the head with the sticks which the Judge holds to be deadly weapons, and after the deceased was felled with the axe, and e 8th witness swears that after he ll, all the other accused beat him th sticks, but ——————

~~That~~ the Judge acquits the 9th ner on all counts, and the 6th & ything but rioting with deadly

convicted?, for he is convicted of that it
Was it to use force and violence ted Maha
-nandi? But the 1st Prisoner is ac obser
of the murder, and indeed of havin
thing to do with the death of or with
hurting Mahanandi.

And it is impossible to suppose
he was convicted of rioting in connec
with Pedda Kondayya's death for he
alone stands convicted of having caused
that man's death, and none of the other
charged jointly with him are convicte
of anything connected with that man's
death.

The truth is the Judge's conviction
and acquittals are equally unintellig
in nearly every case.

It is difficult to see how the co
-victions of the 2nd and 5th Prisoners
(the 2nd and 3rd Appellants) for riot
can be supported, if they cannot
be convicted on some of the m

of Pargas caste but 8th is of the
Vash caste, and the other four
(pariahs). They speak of
"fight" but according to their ac-
count the fight consisted in the
Prisoner's party beating the man
Mahanandi to death.

Now if the common object of all
the accused on the Prisoners' side was
to beat and strike and kill – or to beat
and strike, and the natural consequence
was to kill – Mahanandi, then all
those concerned were guilty of murdering
him, or of causing his death so as
to be guilty of culpable homicide at
least and it is absurd to say they are
not guilty of this, but had a common
ing armed with deadly weapons, that common object
ject, being to cause hurt or grievous
t to Mahanandi Reddi.

at was the object common to the
ner and the other prisoners

convicted

to say that Govindu either by rioting or satire lashed Mahanandi to Maha[illegible] into fury, so that the latter s[illegible] quite [illegible] 1st Prisoner with a stick.

The 6th witness Govindu says in [illegible] Govindu, did not do this, and that he cannot say who struck his brother Mahanandi to begin with.

The 7th witness Bhima Reddi says the deceased Mahanandi went forward "thinking" the other party were beating or would beat his brother Govindu, when the 13th Prisoner struck Mahanandi with an axe, and the 2nd Prisoner struck him with a stick.

The 8th witness does not profess to have seen the commencement of the fight and so his evidence is useless in respect of the offence of rioting.

The same applies to the evidence of the 9th, 10th, 11th & 12th witnesses.

The 8th to the 12th witnesses the

[illegible] of the Rioting when A. Sesha Reddi [illegible] soner first struck Govindu [illegible] d strike him) the common "fight" using force or violence to the [illegible] the party or to any of them. Taking the prosecution evidence, it was upon the deceased Mahanandi striking the principal man of the Prisoners' party viz, the 1st Prisoner, that a general attack was made on us Mahanandi. It ~~shall~~ should be observed in passing that the evidence as to who began is conflicting. The 2nd witness says the 11th Prisoner first struck Govindu, on which the deceased Mahanandi struck 1st Prisoner with his stick. The 3rd witness on the [illegible] ary, while he says the 11th Prisoner first struck Mahanandi, states the latter had no stick in his [illegible] at all.

[illegible] 4th and 5th witnesses seem to

the mediators coming next, sitting
of Govindu following other witn
say positively that high words a quite
again between A. Sesha Reddi, the 11th P. an
one of 1st Prisoner's brothers and Govindu on whi
the former struck the latter with hi
stick; and that on that Mahanandi
Reddi, one of the deceased rushed at th
1st Prisoner and struck him on the
head with the stick he had in his han
then a ~~general~~ General fight began and Maha
-nandi was borne down illused, kicked
and as some witnesses say struck re-
-peatedly with an axe, and eventually
died.

Now it is quite clear that neither o
these two parties or factions were
the time when this fight commen
collected for an unlawful purpos
doubt an assembly not unlawful in
-ception may become an unlawf
assembly, but the question is
the Prisoner's party can be s

---

ced the indigo-ch against
1st
Reddi and his party. The 2d, 3d, 8th
d 12th accused are the 1st Prisoner's
rothers.

There was very nearly being a fight
the field, but an agreement was
ome to the two Kondalayyas (witnesses)
standing sureties; and all present were,
as it seems, on their way back to the village,
peaceably for the time, if not contentedly.

According to some of the witnesses
the prosecution, a cry was raised that
Prisoner's party, who it seems were
in advance, had killed Govindu
o it is said was walking near them,

the other party ~~to~~ who asserted a ri to Maha
the crop had gone to the field a
asked whether he and his should go
cut the crop; Venkata advised them n
to go as there would be a fight: Govin
again asked him to go, taking others, res-
pectable people, to prevent the crop being
wrongfully taken, and if possible to settle
matters amicably. They went for this pur
pose — viz. 2d witness, 6th witness, 3d witness; the 4
and 5th witnesses for the prosecution Vajiral
Kondayya and Chinna Kondayya wh
eventually mediated; and others.

It may be as well to say here Ve
the 1st Prisoner Reddi Seshi Reddi, 5
five brothers were the principal

r rioting-

By reason of such intention,
intentionally stabbed Pedda Kondayya,
acquit to kill him, or whether aiming
at Mahanandi with his dagger
which he stabbed & killed Pedda Kondayya
instead, & without intending to kill
him, but intending to kill Mahanandi.
It is now necessary to turn to the Evidence
itself and to go through it in detail
to see, if the convictions (1) for rioting,
(2) in respect of the deaths (a) of
Mahanandi & (b) of Pedda Kondayya,
can be supported: this is necessary,
because (as before said) the judgment
contains ~~the~~ no summary of the Evidence, no
balancing of the evidence for the prosecution
& for the defence.] It is most undesirable
and, it should be wholly unnecessary that the time
of this Court should be taken up in doing
the work which the Session Judge should
have done, but which has now to be done.
There was a dispute about cutting the crop
in a certain indigo-field near the village.
The 6th witness Govindu Reddi, a brother of the
deceased Mahanandi Reddi and others
owned their crop. On the 10th October
Govindu went to the 1st
Venkata Reddi & told him
that

writing-

If the finding is really
Pedda Kondayya accidentally quite
or even rudely without sufficient
care, pushed against 1st Prisoner
in anxiety to see or to rescue
the man who was being killed
then assuredly there was nothing
which in law could for a
moment be held to be
provocation such as would reduce
1st Prisoner's crime to culpable
homicide not amounting to
murder. If on the other hand
the 1st ~~Prisoner~~ witness intentionally
interposed between 1st Prisoner
and Mahanandi, intending to prevent
the former either from helping to h
the latter by kicking, beating, or
otherwise doing violence to him or to
prevent him from using his dagger
Mahanandi, then also the 1st P
was assuredly guilty of m

two of, and the excuse
to Mahanandi) for the 1st Prisoner's act,
mes to this; that Mahanandi
being on the ground, being
beaten and kicked, in the midst
of a general mêlée, the deceased
Pedda Kondayya pushed forward
through the crowd simply "to look
at" the man lying on the ground,
one of his party; and either because
he accidentally pushed up against
or came between the 1st Prisoner
and the man lying on the ground,
or because he either intentionally
or accidentally came between the
1st Prisoner and the deceased Mahanandi
while the latter was trying to
at Mahanandi - (in order,
it is presumed, to stab, beat, kick
or otherwise ill-use him in return
for his having struck the 1st
Prisoner ably on the head.) - The 1st
Prisoner stabbed Pedda Kondayya twice.

J.H.

the greatest clearness & very cons
detail were required.

We are compelled to say
there is no clearness, no evidence
of a strong grasp of what it was
necessary to prove; nor is it shown
that the evidence was sifted
arranged and weighed in such
manner as alone would convince
that such conclusions as were
arrived at by the Judge can be
legally supported, whether in respect
of the convictions of those convicted
of some of the offences, or in respect
of the acquittal of the same persons
on other charges, or in respect of
the acquittal of those wholly acqui
There is no statement of
circumstances which led to
two bodies of opposing fagg
coming to the place wh P ldi,
in conflict; no statem

---

d rioting- ig to that man's death,
to make here is no finding as to
aquitt they were concerned in
& a indayya's death or in causing
grievous hurt to him. No doubt
the Judge found in fact that
they were not so concerned, but
if so they should have been formally
acquitted on these charges.

In the case of the 9th Prisoner,
he is, no doubt, acquitted on
all charges, & he alone.

The 12th, 14th and 15th are acquitted
of rioting, but they are not formally
acquitted on any of the other charges.
In trying an intricate case of this
sort, in which no less than seventeen
distinct charges were formulated,
and in which the deaths of two
persons were in issue, as well as
question whether there was an
bly, or two assemblies collected
unlawful object or objects,
the

d rioting -

acquittal on those charg to Maha

found not guilty, and ~~shall~~ should guilt

been convicted if found guilty &

in any case there should ~~have~~

have been a distinct finding

one way or the other.

In the case of the 2d Prison

there is no finding whatever on

any of the ~~murderous~~ numerous charges

against him, except in respect

of rioting. It is presumed the

Judge found him not guilty

on any other of the charges; but

the remarks above made apply

in his case also.

In the case of the 3d, 4th 10th

and 11th Prisoners, the acquittal

in respect of the charge of the

murder of Mahanandi Redd

rendered unnecessary any ex

a formal order of acquitt

respect of the minor c

transportation for 7 years,

and convicted the 5th Prisoner

simple rioting only, and sentenced

him to 2 years' rigorous imprisonment.

The 6th, 7th, 8th, 9th & 13th accused,

e, concurring with the Assessors,

acquitted on the charges of murder,

culpable homicide and voluntarily

causing grievous hurt, (to either

of the deceased) and of rioting,

and discharged them; and also

acquitted the 12th, 14th & 15th Prisoners

of rioting.

The first thing to be observed

is that there is no finding, in the

case of the 1st Prisoner, as to whether

was or was not guilty (1) of

rioting; (2) of the abetment of the

murder, or of the culpable homicide

or of causing grievous hurt to

nandi Reddi. But this

person was entitled to

acquittal

d rioting-
and riotting armed with a [illegible]
weapon to wit, a stick or [illegible] guilt
and sentenced him to 3 y
rigorous imprisonment and to a
fine of 100 Rs and in default
to 6 months further rigorous
imprisonment.

Concurring in part with and
differing in part from, the Assessors
the Judge convicted the 3d, 4th, 10th and
11th Prisoners of causing the death
of Mahanandi Reddi in such
manner and with such intention
or knowledge that they committed
culpable homicide not amounting
to murder, and of voluntarily
causing grievous hurt to the s
Mahanandi Reddi, and commit
rioting armed with deadly wea
(to wit, sticks) and sentenced
3d and 4th to transporta
for 10 years and the

) Pedda Kondayya) in
manner as to be guilty
his murder; (b) of culpable
icide in respect of him; (2) with
aving voluntarily caused grievous
hurt to the said Pedda Kondayya;
nd the other 14 accused persons
ith having abetted (a) the murder,
) the culpable homicide, (c) the
voluntary causing of grievous hurt
o the said Pedda Kondayya.

The Session Judge, differing
from the Assessors in respect of
the 1st Prisoner (1st Appellant), who
was found by them not guilty
f any offence, convicted the said
st Prisoner of culpable homicide
t amounting to murder in
pect of Pedda Kondayya and
ntenced him to transportation
life. Concurring with the Assessors,
dge convicted the 2d Prisoner
Nagi Reddi of rioting

and

Notes of a Divisional Bench quit

Criminal Appeal 123 of 1886. &

S.C. 36 of 1885-Kurnoo

Fifteen persons namely 1 Redd
Seshi Reddi, 2 (his brother) Chinna
Nagi Reddi, 3 (his brother Venkata
Reddi), 4 Krishna Reddi (son of
Lakshmi Reddi), 5 Pedda Nagi
Reddi, 6 Pulla Reddi (son of Krishna
Reddi) 7 Pulla Reddi (son of Lakshmi
Reddi), 8 Obala Reddi, 9 Rami
Reddi (son of Lakshmi Reddi)
10 Venkata Reddi (son of Lakshm
Reddi) 11 Srinivalla Seshi Redd
12 Krishna Reddi (brother of the
1st prisoner Reddi Seshi Redd
13 Kase Nagadu. 14 Pedda
Reddi (*alias* Pedda Seshaw
Kothapalli and 15 Chinna

(1)

Mr Gibson's Judgment
in Sess. Case No. 36
of 1885.

Serial number	Description of accused						Date of				
	Name	Father's name	Caste or Race	Occupation	Residence	Age	Occurrence	Complaint	Apprehension	Commencement of trial	
36 of 1885	1 Reddi Seshi Reddi	Mathi Reddi	Kapu	Village Magistrate of Yerragudi	Yerragudi, Ramallakot Taluq	24	10th October 1885	10th October 1885	1st, 11, 7, 4, 10, 9 on the 10th October 1885 2nd, 3rd, 6, 12, 5, 8, 13, 14 & 15 on the 11th October 1885	7th December 1885	15th December
	2. Chinna Nagi Reddi	Do		Cultivation		30					
	3. Venkata Reddi	Do				22					
	4. Krishna Reddi	Lakshmi Reddi				30					
	5. Pedda Nagi Reddi	Pulla Reddi				40					
	6. Pulla Reddi	Krishna Reddi				22					
	7. Pulla Reddi	Lakshmi Reddi				35					
	8. Obala Reddi	Mathi Reddi				20					
	9. Rami Reddi	Lakshmi Reddi				40					
	10. Venkata Reddi	Do				30					
	11 Aruvelli Seshi Reddi	Mathi Reddi				23					
	12 Krishna Reddi	Do				26					
	13. Kasi Nagadu	Narasanna	Kasi		Kottapalli Ramallakot Taluq	32					
	14. Pedda Seshi Reddi alias Pedda Seshanna	Rami Reddi	Kapu			30					
	15. Chinna Seshi Reddi or Seshanna	Do				28					

Sessions Court of Kurnool} (Sd) F. E. Gibson
Dated 17th December 1885} Ag: Sess: Judge

(True Copy)

---

eapon (to wit thick stick) under
ections 147 and 148 and that "finding"
ks I accept as it stands and under
se Sections, I sentence him to
ree years' rigorous imprisonment
d a fine of one hundred rupees or in
efault be further rigorously im-
isoned for six months.

4. Lastly there is the case of the lame
man (5th accused) who did not perhaps
take a very prominent part but
id. as I am fully persuaded and
as the 'Assessors' have found,
take part in the 'Riot' though with-
t a stick, I find him guilty
'Rioting' only) under Section
of the Indian Penal Code
sentence him under that
tion to two years' rigorous
isonment.

acquit the 15th as well as the [illegible] of
who belong to a neighbouring
and have adduced some evide
tend to show that they at least
not have been present at the fi
of battle near the Madigaghiri in
the limits of the village of Yerragudi

26. I pass on to the case against the
other accused (whom I find guilty of
any offences.)

27. A charge of Rioting and of Rioting
armed with deadly weapons (to wit the
sticks) Sections 147 and 148 in respect
of the death of Mahanandi Reddi)
was added in this Court.

28. As to this I told the Assessors a
follows as nearly as possible giving
now the exact words there used of
which I have the 'rough notes' m
before me. All who stood by w
sticks 'either flourished about
deter or frighten of the oppon-ents
used for 'striking' when Reddi S
Reddi was so savagely vis-

commencement of trial

guilty a
fifth dra to Kattapalli Chinna Seshi Reddi
ulpa
9. Som d) did first stab him (deponent
hav
Gandalayya) in the back and that on
turning round Reddi Seshi Reddi
accused) stabbed him in front still
as this appears to be quite irreconcileable
with all the other evidence in the case
and is moreover, looking to the 'medical
evidence', rendered intrinsically improbable
on the whole I concur with the
committing Magistrate (and with the
Assessors) in rejecting that portion of
story told by the said deceased
'Gundalayya' as not unlikely mistake or
aggravation not unlikely to occur
circumstances and I

acquit

te of

24. It is this that in the R
very shortly before his death wh
sulted six days after the 'stab' th
deceased 'Kondalayya' made 'a dying
declaration duly and carefully recorded
and certified by the 3rd Class Magistrate
who was examined as a witness to pro
that 'statement' in this Court.

25. That statement pro-tanto tallies
and agrees with the 'Medical' and oth
evidence as to almost all essential ma
ters and particularly as the fact spo
to by several of the 'prosecution witnes
that Reddi Seshi Reddi stabbed th
deponent and although the dep

---

more than that I accept
state tho
ict on the facts of the 'assessors'
'accuse
e acquitted by them as completely
"d as entirely without 'reservation' as
I accept the opinion of the 'assessors'
the case of each and every one of those
whom on the evidence they deem to be 'guilty'
f the various 'offences' with which these
re charged and upon which the 'opinion'
of each assessor was taken separately
and in detail at the conclusion of
his protracted 'trial'.

As regards the 1st accused, I omit
ll the commencement of the 'charge' and
ly insert the only very material
at already noticed (vide supra).

he (Reddy) was endeavouring to get at the man who had first and very shortly not more than a few minutes before assaulted himself (the Reddy). I say the 1st accused finding his path to vengeance thus barred off and blocked most probably in a sort of fury struck fiercely at the human obstacle with the weapon that he held in his hand at the moment in all probability a 'baku' or two edged dagger'.

20. I therefore differing from both the "assessors" find that (1st accused) Reddi Seshi Reddi has committed culpable homicide not amounting to murder intentionally causing the death of me 'Kondayya' (alias Pedda Konda and I should, in my opinion,

fail

fail in my duty if I gave any les sentence than transportation for life a I do accordingly so convict and sen him the said Reddi Seshi Reddi.

21. As regards all the others, I tr that it will suffice to give a brief 'resume' of my charge to the 'assesso supplemented by some reasons for th decision which after due consideration I have arrived at finally as to the sentence to be passed on each of th convicted for the offences of whic concurring with the 'Assessors' I f each to be guilty.

22. As to those acquitted,

the present instance no such 'dagger' wa found when the 'Police' did search th houses of the accused a day or two after the fight.

17. In considering of what precise offence the 1st accused may most properly be found 'guilty', the main consideration present to my mind is the fact which I take to be as well establi ed as any thing in this case, that th actual quarrel was first started and begun by the deceased "Mahanandi Redd striking the Reddi (1st accused) on the hea with a stick though it is admitted by said 'Reddi' himself that the force that blow was very materially lessened by the 'head cloth' which he (Reddy was wearing on his head at th But it is also to be taken int

uris-Prudence' on this matter and in my pinion that (the greatest authority on the subject, even now, I suppose,) entirely bears ith the evidence of the 'Assistant Surgeon'.

Upon the whole case as it stands on oth sides, I finally conclude without any esitation that the 1st accused "Reddi Seshi ddi" did stab 'Kondalayya' with an — nstrument or 'weapon' of the nature of a agger' which the people in this part of the ountry and, I might say more particularly nd especially the "Reddies" of this Taluq of Koilkuntla know very well — perhaps too well under its telugu name of 'baku' and in the use thereof some of them have experience I know very well from other cases that e come before this Court recently or least since I myself took charge of the Court in November 1884.

In arriving at this conclusion mind the fact that in the

Venkata Reddi (before the Deputy Magistrate,
very shortly after this fight wherein he n
only freely admitted as he does also in thi
trial (before this 'Sessions Court') that he
himself was one of the mob (gumpu) that
gathered round Mahanandi Reddi after he –
Mahanandi Reddi – had first struck the 'Reddi'
(1st accused) with a stick upon the head an
subsequently beat him (the said Mahanand
Reddi) so savagely with heavy sticks that
expired upon the spot or on a 'pial' very
close to the scene of the 'fight' (near the
'Mádiga gheri' or houses inhabited by
the 'Madigas').

9. I say not only did this brother of
Village Reddi admit all this against himse
but he further proceeded to tell the Magi
that it was he (Venkata Reddi) also
stabbed 'Kondalayya' (who died in hospi
and that he inflicted the wound (the
which are nearly smooth and equal
'Kodavali').

The second 'point' is of almost equal
portance in this question as to who inflicted
wound in the chest which after he
d been six days under treatment
the hospital at Kurnool resulted
the death of this man (from in-
flammation of the pleura).

This matter about the 'stab' which I con-
der deliberately after repeated consideration
be sufficiently established by the evidence
the above named 'Mohammed Oosman'
that it is almost incredible that the
ab in question should have been
caused by any 'sickle' (or 'reaping hook'
Telugu Kodavali) even though both
dges (i.e. back as well as front) were
ite sharpened up which by the bye
ay say that I must believe to be
unusual (to say the very least)
this is peculiarly important
reference to the 'confessional
t' given by the Reddi's brother

Venkata

the more than usually guardi gistrate,
obviously careful and cautions
which this 'expert' gave his testi
this Court (in the presence of the Ass
and under cross-examination by the
Pleader of this Court), that evidence in its
total result leaves in my mind no reasona
or substantial doubt of two 'points' whic
in this matter are of the very firs
moment and most serious import
and importance which I set out below
separately and distinctly.

6. The first is that the 'stab,' which th
'medical witness' did see and also car
fully inspect and examine superficiall
at least in life and again after deat
(in the 'Post mortem' done by himself)
must have been inflicted by a 'two-ed
weapon' and one having both 'edges' al
equally 'sharp', very similar at least
'dagger' (telugu 'báku') - which is stated
ly by several witnesses to have been u
by the 'Village Reddi' (1st accused s
wherewith to stab his victim
named Kondalayya or Pedda

The sec n is insufficient for conviction.
portan that the 'assessors' have in
atter failed to properly grasp
d give due weight to, the very strong
stantial' evidence in corroboration
f the story told by all the 'prosecution
witness' anent the 'stabbing' of the deceased
Kondalayya' (alias Pedda Konda Reddi)
the 1st accused 'Reddi Seshi Reddi'.
This observation has more especial and
articular reference and peculiar force with
gard to the evidence of the 'medical expert'
ssistant Surgeon Mahommed Oosman)
s to the nature of the 'punctured wound'
nd the probable kind and sort of weapon
with which it was most likely inflicted;
and this is, it may almost be said, the
hinge' and 'cardinal point' on which rests
that part of the case, which forms almost
sole part of it, in which this 'village
strate' is directly and individually
cerned or incriminated at all.
It will I trust suffice here to state
arily that that evidence which
I endeavoured to point out to the
) of the more value from

the

Judgment:-

The "assessors" have both gi
and very patient and unflaggi
attention to the lengthy and te
details of the evidence of all the
forty witnesses examined on the tri
of this case, which (with the last
day - Tuesday - which was devoted
entirely to the "summing up" of the
pleaders on both sides and of the ju
has occupied this Court for almost t
entire 'working day' for no less than
eight (8) consecutive days, and I am
therefore sincerely sorry that I find
myself unable after taking a full
day for consideration to accept t
'opinion' of the 'assessors' as it stands i
its entirety.

2. I will first notice the case of the
1st accused whom the assessors
altogether 'acquitted', becau
concur in their opinion tha

imprisonment for six (6) months; 3rd and 4th accused are sentenced under sections 148, 326 and 304 I. P. C. to transportation for ten (10) years each;

10th and 11th accused are sentenced under sections 148, 326 & 304 I. P. C. to transportation for seven (7) years each; 5th accused is sentenced under section 147, I. P. C. to rigorous imprisonment for two (2) years. The 6th, 7th, 8th, 9th, 12th, 13th, 14th and 15th accused are acquitted and discharged.

(Signed) F. E. Gibson,

Ag: Session Judge.

Session Case No. 36 of 1885.

Prisoners:- (1) Reddi Seshi Reddi, (2) (His
brother) Chinna Nagi Reddi, (3) (His bro
Venkata Reddi, (4) Krishna Reddi (so
of Lakshmi Reddi), 5. Pedda Nagi Re
(6) Pulla Reddi (son of Krishna Reddi)
(7) Pulla Reddi (son of Lakshmi Red
(8) Obala Reddi, (9) Rami Redi (so
of Lakshmi Reddi), (10) Venkata Redd
(son of Lakshmi Reddi), (11) Aruvella
Seshi Reddi, (12) Krishna Reddi
(brother of the 1st prisoner Redd
Seshi Reddi), (13) Kásé Nágadu
(14) Pedda Seshi Reddi (alias Pedd
Seshanna) of Kottapalli and (1
Chinna Seshi Reddi or Seshann
of Kottapallé.

Offence:- Murder, culpable Hom
not amounting to mur
Voluntarily causing G.H. to th
by means of deadly w
Voluntarily causing h
Rioting (armed with

Confidential

D.O. to the C.J. Madras

dated 8 September 1886

Ootacamund
8 Sept 1886

2

Dear Sir Arthur Collins,

I am desired by H. E. the Governor in Council to request you to have the kindness to inform the Govt. what opinion the Honble the Judges of the High Court have formed as to the fitness of Mr. F. E. Gibson of the Civil service to discharge the duties of a District and Sessions Judge.

Yours ~~sincerely~~ very truly
Foster Webster

From rough draft by C.S.: who will sign the fair

AGP
7/9

The Hon Sir Arthur Collins ~~K.C.~~ Kt. Q.C.
Chief Justice of the High Court of
Judicature at Madras

Despd
8/9/86

No 13

Thrice

Rev. G.O. 27-2-79 No. 492.
" " 2-7-79. No. 1406.
" " 7-11-79. No. 3848.
" " 27-2-80. No. 246.
" " 7-8-80. No. 2670.
D.O. of 1882.

D. O. 486

CHIEF SECRETARY
2 OCT 86
GOVERNMENT OF MADRAS

Mr. F. E. Gibson.
C. S.

Circulated for orders
FW 2/10/86

For

Knew

D. O. No. 13

From Col. T. K. Guthrie

No. 49 C of 11 Jany 186

Forwarded to the Inspector General of Police for perusal ~~and~~ ~~return~~ of the remarks of H.E. and Hon. Mr Sullivan and return.

W. Wilson
11 — 1 — 86
Ag Chief Secy.

Read & returned with thanks - vide my D.O (and that of Mr Arbuthnot) of today.
12.1.86. T. Guthrie
I.G. Police

No.
Dated 7th Jany 1886
Received 7 — " —
Enclosures

SUBJECT.

Some information reg the Tiffin basket and Clothes taken from Mr Garstin's transit

H
12.1.86

For

No 87.

What ground me th

for supposing that

Bodyamnikanan

Jemindar has a

spite against the

family? – H

Hunt up this clue.

Is there no suspicion

against any one else?

I do not believe that

the affair was a simp

robbery

If nothing is found

out it may be necess

to increase the police

force at the expense of

the neighbourhood in

which the affair took

place

M.C.W.

Jan 9/

The High Court on

Bodinarkanoor

Zemindar

Knew

~~that~~ the principle enunciated by the Calcutta High Court, as that to be kept in view in dealing with cases of this sort is sound and in accordance with the intention of the Legislature on the subject and ~~that~~ it was unreasonable on the facts found and admitted in this case to convict the Appellant of an offence under section 176 Indian Penal Code.

I do accordingly reverse the findings of the Lower Courts, and the sentence passed by the Magistrate and confirmed by the Session Judge and acquit the Appellant and direct ~~that~~ the fine imposed, if levied, be refunded.

Ordered accordingly

(Signed) W. Morgan
Deputy Registrar
Appellate side

(True Copy)

Ag. Session Judge

Knew

knew where Vellayan was, was taken before the Divisional Magistrate but the latter held "if the fact of the resort and condition of the person to be reported are established, the onus of disproving the obligation to report rests upon the accused."

For the reasons above stated I must hold that the Appellant ought not to have been convicted. I would, had I thought the conviction could be sustained, have directed further evidence to be taken as to whether or not the proclamation required by section 87, Criminal Procedure Code had been published and published in the manner required by that section 87, and if so, whether it must be presumed, if not actually proved, that the Appellant was aware of such proclamation; but I am satisfied

where Vellayan was.

The Zemindar was moreover tried on two other charges besides that on which he has been convicted, those other charges relating to offences much more serious than the third, viz offences under sections 212 and 216 Criminal Procedure Code: on those charges he was acquitted, and it is evident that the omission to report was made the basis of the third charge not because it related to a different set of circumstances but in order to secure a conviction, if possible, in the event of the more serious charges failing.

The objection taken here viz, that the omission to report the whereabout of Vellayan did not arise from a wish to keep secret the fact of his being in and about the palace, but from the Zemindar's knowing that the Police knew caused this Chetti to be robbed, principally with a view to insulting and disgracing him, and a warrant was out against Vellayan for having been concerned in this attack.

From the evidence of Shanmugam himself it appears that after expiry of the sentence passed on the persons who had been arrested, convicted and imprisoned for the said attack on him, he, Shanmugam, frequently saw Vellayan openly in attendance on the Zemindar and that, as he says, he four times informed the Police of this, and asked them to arrest Vellayan, but they refused or gave excuses for not doing so.

It is clear then that it was not in consequence of the Zemindar's failure to report that Vellayan was in and about his palace precincts, that this man Vellayan was not arrested and the Police were in fact aware of

point out in the Calcutta case above cited, those provisions of law ought to be worked solely or principally for the purpose of vexation, but for the purpose of securing that information be not intentionally withheld by those whose position renders them liable to give it: and that it is not reasonable that every "person" other than him or those from whom such information has been "actually obtained" who may possibly be bound to give such information should be prosecuted for not having done so".

In the present case the Court of First Instance had no doubt apparently that the charges made against the Zemindar were the result of spite and a wish for revenge against him on the part of the real complainant Shanmugam Chetti: the Zemindar had it appears been convicted of having "justification" v. Kamakshi Bayyi v. E. I. Co, Madras, Supreme Court, 4th term 1854 (vide Norton's Law of Evidence para. 685, 5th edition). *

And in the present case it would have been easy to prove, and it was with the prosecution to prove, that proclamation was made (if this was so) in the manner required by section 87; but this by itself would probably not have been sufficient unless it had been shown that the proclamation was published in such place and such manner that the Zemindar had, or that it must have been presumed that he had, notice of it; but as a matter of fact the proper place for proclamation need not at all as necessarily have been the village in which the Zemindar resided. But there is another ground on which in my opinion the Appellant was entitled to acquittal viz, that, as the learned judges must have been not only published but also duly published.

Reference is also made to the case reported at page 623 I. L. R. Cal.

I am of opinion that these objections must prevail.

Most of the cases in which the maxim of law on which the Lower Courts have acted has been adopted will be found to be cases in which the question was as to jurisdiction and the jurisdiction being proved the presumption has been made e.g. in Taylor v. Clemson (11 Clark and Finally) "where it appears on the face of the proceedings that the inferior Court has jurisdiction it will be intended that the proceedings are regular; but ** if this does not so appear or is left in doubt no such intendment will be made". "The maxim in fact applies only to regularity in form, and will not supersede the necessity of furnishing proof that a material act was performed, where that act goes to the basis of a

Judgment

In the High Court of Judicature at Madras

Wednesday, the second day of April

One thousand eight hundred and eighty four

Present

The Honorable Mr. Justice Brandt.

Criminal Revision Case No 39 of 1884

(Criminal Revision Petition No 16 of 1884)

Kamaya Raja Pandia Naik — Petitioner

Petition under Sections 435 and 439 of the Criminal Procedure Code, praying the High Court to revise the Proceedings of the Court of Session of Madura dated 4th January 1884, confirming on appeal the sentence of the Joint Magistrate of Madura in Calendar case No. 38 of 1883.

Mr. J. H. S. Branson Counsel and Mr. S. Ramasami Mudaliar, Vakil appeared for the petitioner.

This petition coming on for hearing on Tuesday the 1st day of April 1884, and having stood over for consideration till this day, the Court delivered the follow-

Copy

Statement made by A. A. Fonceca.

The Bodinaikanur Zemindar spent
a month at Shembayanur with Mr.
Crole in September and October last.
He, the Zemindar, lived in Mani Ayai
bungalow. On his return to Bode-
naikanur, I went to see him. I aske
him what he had gained by being
away a month and what Mr. Crole ha
done for him. He then said that he
had gained 2 lakhs of rupees; that
Mr. Crole had promised to give him a
large forest belonging to Government
by speaking to Mr. Gass and that he
had already been offered 2 lakhs of
rupees for it by the ryots living near
it as there were cardomums growing
in it; that he had asked Mrs. Crole,
(whom he called 'Mamma') to speak t
Mr. Crole to get him back the Tamban
kanal Shola which once belonged to
him and which Government had ta
up as a reserved forest and that Mr
Crole had said that we cant do any
now until we get rid of Garstin fro
the Board.

Between the 24th & 29th December la
while Mr. Garstin was on the Hills, i
the course of conversation Vellaya
Rowton said that the enmity exist
betw

between Mr. Crole and Mr. Garstin was such that if a bundle of straw was placed between them, it would catch fire.- I asked the Zemindar who was present, why this was so.- He replied that Mr. Crole had often & told him that every decision that he had sent to the Board on appeal was reversed by Mr. Garstin.- The Zemindar has frequently told me that if it were not for his friendship for me he would have burnt down the Cl's (sic in original) bungalow at Bodinaikanur as often as it was rebuilt

? 'Co's' = Company's i.e. North Travancore Co

On the 16th January, two days before Tai Pongal, Venmalai Palancandi Ramen went to see his lands which are situated adjoining those which the Zemindar cultivates himself near his palace.- The Zemindar met him there and said to him "Oh! fellow, do you know that I settled Mr. Garstin.- If you dont give up your land, I'll do the same for you".- He came to me t once and told me of this.- I subse-uently informed the Police of this.- I declare to God that I had not the ast idea on the part of the Zemindar (sic in original) have Mr. Garstin attacked. He kept e in the dark because he knew I regarded Mr. Garstin as my friend.

(Sgd) L. G. Arbuthnott (Signed) A. Foncec

Given before me this 9th March 1886
(Signed) J. H. Garstin

Why does Mr Garstin take no notice -

The Police are at it and the preparation of the case is their business -

H
11-3-86

True copy

March 11. 1886

Circulate
after Rev Bd.

evidence is much relied on but has been specially attacked by the public prosecutor and is I think open to one other observation. He last saw 1st prisoner at 11 A.M. and though the 1st prisoner might then have been suffering from colic it hardly seems to follow that he could not have been standing about at 5 P.M. It is not alleged that he did any act himself but merely that he spoke: however weak he might have been he could surely have spoken. Besides I put it to the Dresser whether the prisoner was not much better at 11, as that was the last visit paid to him. He then pretended that he had been sent for again in the evening, but had no time to go though he charged a Rupee a visit. Is this true? It is contradicted by the other witness called on behalf of 1st prisoner.

3. Stress has also been laid on the absence of Arunachella Muppan, one of the original witnesses, but if the Zemindar's servants are concerned it does not much detract from the value of the prosecutor's evidence that he has been afraid to call one of those who at first supported him.

The original charge against prisoners 2 to 4 was dacoity and against prisoner 1 abetment of dacoity. As only five persons were concerned, including 1st prisoner, it was obvious that this could not stand and I included 1st prisoner in the first head of charge. Subsequently it turned out that 1st prisoner was separated from the others by a crowd at the time of the robbery and I amended the charge. Upon the finding of the Jury however, in which I entirely concur, viz. that the cloths were taken dishonestly but with the object of disgracing prosecutor, the offence though technically a robbery is virtually little more than an aggravated assault, and I have dealt with it accordingly.

7th August 1882.

P. P. HUTCHINS,
Session Judge.

SESSION CASE LV OF 1882.

Committed by the 2nd Class Magistrate of Periakulam (R. C. 2 of 1882).

Prisoners:— (1) Servaikaran, (2) Narayanan, (3) Paramasiva Naik, (4) Bangaru.

Offences:—
2nd, 3rd and 4th prisoners:—(1) Robbery; § 392, I. P. C.
1st prisoner:—..............(2) Abetment of Do., §§ 109 and 392.

Verdict of Jury:— Guilty.

Sentence:—
1st prisoner:—.......... Two months' rigorous imprisonment and 100 Rs. fine or four months' further rigorous imprisonment.
2nd, 3rd & 4th prisoners:— Six weeks' rigorous imprisonment and 75 Rs. fine or four months' further rigorous imprisonment.

SUBSTANCE OF CHARGE TO THE JURY:—There is no legal difficulty in this case. 1st witness, Shanmugham Chetty, says that these prisoners are the servants of the Bodinaikanur Zemindar, with whom he is on bad terms; that, as he was approaching the [illegible] one Vellayan were standing together; that on seeing him 1st prisoner said, "There is Shanmugham Chetty, go and take his turban;" that the other prisoners and Vellayan came running and caught hold of him, snatched away his head-cloth and veshti and ran off with them. This story is supported by the 2nd and 3rd witnesses and the Munsif confirms the statement that Shanmugham came at once and complained to him. It is urged for the defence that these cloths were not worth incurring such a risk and that the prisoners would have not been so foolish as to have committed a robbery in open day before all the market people. On the other hand it has been pointed out by the prosecution that the main object was probably to disgrace Shanmugham, who had just given evidence against the Zemindar, that publicity was therefore essential and that the prisoners probably relied on the Zemindar for protection. Even if this was the main object, the offence would still amount to robbery, if the taking was dishonest, but I shall be glad to have your opinion upon the motive with which the prisoners acted, if you find them guilty, because it will be right to take it into consideration in determining the punishment.

2. As to the question of fact, whether Shanmugham's story is true, I do not wish to influence you. You have heard what has been said on either side and the evidence is of a very simple character. It is said that the evidence that the prisoners are the Zemindar's servants is weak (it was here gone into), but on the other hand there seems to be no reason why the charge should have been made against them, unless it is true, or they are the Zemindar's servants, or both the charge and their connection with the Zemindar are true. It is for you to consider whether the evidence for the defence is entitled to credit. The Dresser's

SESSION CASE XXXVII OF 1882.

Committed by the 2nd Class Magistrate of Periakulam (R. C. 1 of 1882).

Prisoners:— (1) Servai Kuppan *alias* Servâi Sakkan, (2) Kondan Palany, (3) Pattan, (4) Nattuvada Sakkan, (5) Vetty Vadan and (6) Kadhiri Vadan.

Offences:— (1) Dacoity, (2) Rioting, (3) House trespass. §§ 395, 147 & 448, I.P.C.

Verdict of Jury as to (1)......:—Guilty.

Opinion of do. as Assessors as to (2 and 3):— Do.

Finding of the Judge as to (2 and 3):— Do.

Sentence:—
Prisoners 1 and 3, 2½ years' rigorous imprisonment and 500 Rs. fine; in default 2½ years' further like imprisonment.
Prisoners 2, 4, 5 and 6, 2 years' rigorous imprisonment and 300 Rs. fine; in default 1½ years' further like imprisonment.

SUBSTANCE OF CHARGE TO THE JURY:— These prisoners are Chucklers of Bodinaikanur and alleged to be Kavalgars of the Zemindar. Kandasamy and Arumugham (witnesses 1 and 2) say that the former was robbed of five bullocks on the 16th April by certain Chucklers; that on 17th the latter discovered one of them, a black bullock, with a Chuckler named Suppan and brought them to the station; that the Constable Masanam Servai came there with one Sella Rautan, a servant of the Zemindar who afterwards gave bail for Suppan; that the bullock was either untied by Masanam or broke loose and ran home, and was pursued by Kandasamy. The offences with which these prisoners now stand charged are said to have been committed as Kandasamy was bringing the bullock back to the station. A riotous crowd of chucklers frightened him into taking refuge with the bullock in the house of Suppan Asary, 5th witness. Headed by 1st prisoner they followed him into the house, drove off the bullock, broke the Asary's pots and endeavoured to break into the kitchen, where Kandasamy and the Asary's son had bolted themselves in. They then went away in a tumultuous manner and were met by Arumugham, who was coming to his brother's assistance with the Constables, Masanam and Narayanasamy.

2. You have nothing now to do with the alleged dacoity of the 16th. For reasons, which may be good or bad, the Sub Magistrate has not seen fit to go into that case and the prisoners are now charged with dacoity, rioting and house-trespass in respect of what occurred in the Asary's house on the 17th. If the bullock was really a stolen animal, the object may have been to make away with evidence of that offence. If it was brought to support a false case, there may still have been a similar object coupled with a good deal of exasperation at a false charge having been preferred. It has been argued that the motive was

wholly insufficient for such an audacious attack as is alleged by the prosecution. On the other hand it is argued that these Chucklers are merely the Zemindar's creatures, that his protection would account for their audacity and that the Zemindar's enmity against these brothers is not denied. You will weigh what either Vakil has urged upon these points and you will consider how these Chucklers would be likely to regard the production of a stolen animal. It is perfectly true that, sitting in this Court, I am not much affected by the mere production of a bit of property, which may or may not have been in the accused person's possession, but the question is how would these Chucklers themselves have regarded it?

3. Now there can be no doubt whatever about certain facts. Subban and the bullock *were* produced. Sella Rautan *did* come there. The bullock *did* get away and Kandasamy did go to fetch it. While he was away, the Head Constable went on with his enquiry, until Arumugham said that he heard or feared the Chucklers were assembling to intercept and beat his brother, and then Masanam and Narayanasamy *were* sent with him. Sella Rautan *was* asked to keep the Chucklers quiet, but returned under the pretence that there was no row, and yet there is no doubt that there was a very considerable row. Arumugham and the Constables unquestionably saw a crowd of Chucklers coming armed with sticks from the direction of the Asary's house, and, as unquestionably, they found Kandasamy taking refuge in that house. The question is, do you believe the other evidence as to what took place at the house, which supplies the missing link in this chain of otherwise admitted events, and do you believe Arumugham or the two Constables who are more than hinted to be biassed in the Zemindar's favour? Arumugham swears that this gang of Chucklers actually had the bullock with them but that the Constables refused to stop them, or even to detain 3rd prisoner, whom he himself apprehended. The Constables deny that the bullock was there, and though they admit the seizure of one man, they declare that they do not know who he was and that Arumugham seized him as they were returning to the station and that he was an innocent passer by.

4. If you believe the evidence as to what took place at the house, then undoubtedly all the offences charged were committed by some Chucklers or other; and if you give more credit to Arumugham than to the Police witnesses, his testimony strongly corroborates the other evidence, while even the Constables do not contradict it. I should also tell you that every one of those who were present aiding and abetting the violent taking of the bullock from Kandasamy's possession and the entry into the house, if such entry was either to remove the bullock or beat Kandasamy or commit any other offence or even simply to annoy, will be guilty as principals, although they did not themselves lay hands on the bullock or even enter the house. There is evidence however that all these prisoners did enter the house.

5. Kandasamy himself only identifies the 1st prisoner, who came running in advance of the others. The wife and son of the Asary only speak to the general facts, having been too much frightened to notice who came into the house. But the Asary swears to all these prisoners and to their having taken the bullock. He was a servant of the Zemindar until lately, when he had to give up his employment in an unhealthy climate, and there does not seem to be any suggestion even that he has joined the faction against him. There is no doubt that he at once repaired to the station and complained of the damage to his house, and the Munsif shortly afterwards saw the broken pots and crumbled walls. He says that he knew three or four before and gave their names to the Munsif and the Munsif's report mentions prisoners 1, 3 and 4. It is however a circumstance in 2nd prisoner's favour that he speaks as if he knew 2nd prisoner's name, and yet it does not occur specifically in that report. Arumugham also swears to all these prisoners and particularly to having seized the 3rd. So does the witness Shanmugham Chetty, but I do not think you will place much reliance on him.

6. Each of the prisoners however gives evidence of an *alibi*. It is curious that the first two prisoners went together and that the next three also rely on one set of witnesses. (This evidence was further examined and is, I think, palpably untrustworthy.) It is also contradicted by other independent witnesses. The Munsif saw 1st prisoner, and Masanam himself the 2nd and the 3rd to 5th. You will have to say as a Jury whether a dacoity was committed and whether any of these prisoners were concerned in it. As to the other two heads of charge you must give your opinion individually as Assessors.

I might perhaps have amended the 3rd head of charge and asked them to find as a Jury whether the house-trespass was in order to commit robbery, but this is a matter of no consequence. I concur in their opinion given as Assessors. Considering that the prisoners' fines will probably be paid for them, I have imposed larger amounts than I should if I regarded their own means only, but the entire periods of imprisonment are not too severe for the offence, which is of a kind which at a place like Bodinaikanur requires stern repression.

I think that the alleged dacoity of the 16th ought now to be investigated and the accused, if necessary, committed. I also remark, for such notice as the Superintendent of Police may think necessary, that the Constable Masanam has been no less than eight years at the Bodinaikanur Station.

3rd Prisoner admits having 12 months (+ 5 months or 70 Rs.) in 1877 for theft.

10th July 1882.

P. P. HUTCHINS,
Session Judge.

(True Copy)

Session Judge

To
The District Magistrate
of Madura
whose attention is called to the remark
herein made.

1882

Read in Council 1-3-86

Col. Guthrie has ~~noted~~ since noted (vide margin of page) that Mr. Justice Brandt was wrong in saying in his judgment in Review Case No. 39 of 1884 that the Zemindar was convicted. His ~~servants were~~ but not himself.

H

~~6~~ 3-86

The above note was shown to Hon. Mr. [illegible]

[illegible] H

6/3/86

1882

Confidential.

Memorandum.

On visiting Madura last week to enquire into affairs there connected with Mr Garstin's dacoity case I ascertained the following facts.

Statements of witnesses.

That the evidence clearly points to the Zemindar of Bodinaikanoor as the instigator of the attack on Mr Garstin.

High Court Revision Case No. 39 of 1884.

This Zemindar has a very bad reputation, "he appears to have been "convicted of having "caused one Shunmogum "Chetti to be robbed "principally with a "view to insulting and "disgracing him". This was in 1883. In the same year a proclaimed offender who was a servant of his was arrested by the Polic

I have ascertained that Brandt. I is in error in saying the Zemindar was convicted, his servants were but not himself

in front of the palace
at Bodinaikanoor and
strict Police records. forcibly rescued in the
Zemindars presence.
Three men suffered
6 months rigorous
Do. imprisonment for this
rescue & assault upon
the Police.

The Zemindar was
fined by the Joint Magte
under Sec 176 I.P.C.,
Do. this Conviction was
upheld by the Sessions
Court but quashed
by the High Court on
revision above quoted
(Brandt. J). dated
2nd April 1884.

On the 29th Idem the
Zemindar was appd.
a member of the Local
Fund Board (Ft. St. George
Gazette page 268. 29th
April /84)

Charges against the Zemindar
Complaint from certain Ryots to Bd. of Revenue. of having ordered cattle
to be flayed alive, of
having ravished women

Personal inquiry at Madura.

of Causing houses to be fired and Crops to be destroyed are now about to be fully investigated, for, altho commonly said to be true, I could not ascertain that any very stringent measures had been taken at the time of their occurrence to bring them home to the accused -

Dacoity case Evidence for prosecution.

Evidence in Mr. Garstins Case goes to show that the Zemindar ordered his men to waylay and beat that Gentleman — one witness was the tamil Equivalent of our word "Smash" — .

Do.

On looking into the motives assigned for the Zemindars hostility I find recorded, among others, that his intimacy with the Head of the district, Mr. Cole, had prompted him for two reasons (1) it would please Mr. Cole

1

his friend whose antagonism to Mr. Garstin he knew, & (2) owing to the same intimacy the attack would not be rigorously investigated, the Supdt. of Police who previously had the temerity to prosecute him having been removed from the District (on Mr. Crole's representations).

Verified personally in Madura.

Of the intimacy between Mr. Crole & the Zemindar there is no doubt whatever.

Lt Col. Kilgour.

Lt Col: Kilgour lately Supdt. of Police Madura states that on his pointing out to Mr. Crole the unsatisfactory state of affairs in the Zemindary Mr. Crole agreed with him and explained that he thought more good would accrue from his taking the Zemindar under his own guidance and management than from direct interference —

Taking into Consideration the Antecedents and Vicious Character of the Zemindar, in my Experience and Opinion this protecting influence may easily Account for the whole matter —

At Madura I found Mr Cole occupying the Collectors house — I also ascertained he was Visited there by the Zemindar (at large on bail) and another friend Mr Ramsubbier Vakeel for the defence in Mr Faustins Case: these meetings may have had nothing to do with the Case but they appear to be singularly indiscreet And illjudged on Mr Coles Part and lend Colour to the impression that his Presence in Madura in the Official Residence of the Collector is calcunconnected with the Dacoity case, while it also gives rise to a general unsettled feeling in the District that he is still taking an active part in its affairs.

His sojourn in Madras I consider hurtful to the administration of the District and detrimental to the procuring of further evidence in the Dacoity case.

Madras
27th Feby 1884.

W. [illegible] Col:
Inspr Genl of Police.

To The Hon'ble W. Wilson
The Chief Secy to Govt.

Since the above was rough drafted Mr. Crole has returned to Madras.

W

Read in Council 1-3-86
Col. Guthrie has ~~stated~~ since noted (vide margin of page 1) that Mr. Justice Brandt was wrong in stating in his judgment in Review Case No. 39 of 1886 that the Zemindar was convicted. His ~~servants were~~ but ~~not himself~~

6-3-86

The above note was shown to Hon. Mr. Mackenzie

6/3/86

---

[9]

DEPARTMENT.

D8 54

From Col: J. K. Guthrie
~~The~~ Inspr. Genl. of Police

No.

Dated 20th } January 1886
Received 21st }
Enclosures

SUBJECT.

Regarding the outrage ~~of~~ on Mr. Garstin.

Seen 22/1/86

Seen. This affair must be fully investigated. I ~~am~~ wish it to be mentioned next Tuesday in Council — as I have something to propose in connexion with it
MEG

For

D.O. to Colonel Guthrie,
dated 19 January 1886

Fort St. George
19th Jany 1886.

My dear Guthrie,

In connection with Mr Arbuthnot's report dated the 5th instant on the outrage upon Mr Garstin, I am directed to draw your attention to the following points - namely

first - what persons connected with the district knew of Mr Garstin's journey

second - whether the Zemindar whose name has been mentioned in connection with the case knew of Mr Garstin's journey.

third - that there was some story about a liquor license having been taken away from a man at Kodaikanal, which might be asked about

fourth - whether the Board of Revenue had made itself obnoxious to anyone in the neighbourhood.

It also seems very curious that Mr Garstin suspects no one.

Yours sincerely

W. Wilson

Col: T. K. Guthrie - Despd 19/1/86

18-1-86

No 4/B

Office of the Supdt of Police
Madura District
Camp Periyakulam
5th January 1886.

9 JAN 86

From

The Acting Superintendent of Police
Madura District

To

The Inspector General of Police
Madras
Copy to
~~thro'~~ the Deputy Inspr General of Police
Southern Range.

Sir,

As directed in your telegram of the 31st ultimo, I have the honor to report the following particulars regarding the dacoity committed on Mr. Garstin –

2. At about 9 o'clock on the night of the 29th ultimo, Mr. Garstin [illegible] left Periyakulam in a transit coach for Ammanaikanore. Seated on the box were the peon Sheik Hossain and the driver a boy named Vengai. About five miles from Periyakulam the coach was stopped by a gang of some twelve or fifteen men armed with sticks who began pelting stones.

"My son. how are you feeling now" And that before they made off, some of them put their hands on Mr. Garstin and said "the Gentleman is dead, let us take the property & go" — Mr. Garstin must have been very severely beaten as from the statements of the witnesses he must have received some thirty or forty blows on the head & body with sticks before the robbers left him — one of these sticks was subsequently picked up at the scene of the outrage and is a very nasty looking weapon — Both the peon & driver also sustained injuries, the former got a few severe blows on the leg & has some bruises on the back — the latter was injured on the leg and arm — From what they say there is no doubt the thieves were lying in wait for the transit near Periyakulam and followed it up to the place where the attack was made —

4 — On the receipt of the Complaint, the Davadanaputty Station house Officer went to the scene of

(2)

offence and within about a 100 yards of it, found the portmanteau and bag torn open and the contents consisting of Clothes &c. lying strewn about. Amongst the articles were some gold studs, these like the rest of the property were untouched. Nothing seems to have been stolen —

5 — The place where the outrage occurred is on the high road 4½ miles from Periyakulam and about two from Davadanaputty. it is quite open & there is no shelter on either side for a long distance —

6 — The Special Dacoity Inspector has been deputed to this Case and is making enquiry into it in conjunction with Inspector Kandaswamy & the local police — As no property was lost and as unfortunately neither Mr. Garstin nor the two natives with him can identify any of their assailants, we are working rather in the dark but from the enquiries that have as yet been made, I am strongly inclined to think that plunder was not the object of

[0]

D.O. No: 28

From Col. J. K. Guthrie

No.

Date 12th Jany/86

Received 12th " "

Enclosures

SUBJECT.

Regarding the assault on Mr. Garstin.

7

For

the Zemindar supplied the bulls &c required for the Collector's use - I went to Madras with Collector on 19.12.85 & returned on 4.1.86 there he lived in the Royal Hotel - Vistaswamy Thevar lived in the same compound - Rama Subbiah came to the hotel daily to see the Collector

Vakil for defence in Dacoity case —

Statement showing intimacy between Mr. Cole and Zemindar of Bodinaikanur

C

C

3.86

3/3/86

Davoo Singh

I am a taluk peon - have 4 years service - I did duty under Mr. Crole the late Collector for 3 years - I was employed under that gentleman up to 5th January last. I went last year to Bodinaikanur with Mr. Crole - I was employed as a dubash & butler under Mr Crole - Mr. Crole left here and went on to Ammanaikanur & left in the night for Bodinaikanur he went in his Sheristadar's bullock coach to Periyakolam, did not stop there & went on direct to Bodinaikanur river - 2 palanquins were there they were not used - the bullock coach was used - on the way to the temple near river a new road was made up to a new bamboo bungalow erected for the Collector & his lady there. the Zemindar built this by Malayalee men. Mr. Crole remained there 7 or 8 days & went shooting with the Zemindar - Mr. Crole used to call the Zemindar Maharajah. No one was there with them for shooting. The road from [illegible] was lit up with [illegible]

lamps & a flagsta[illegible] & flag also were put up - [illegible]
supplies for all th[e] time the Collector was there were
sent by the Zemindar. Turkey, fowls, sheep, ham
English tins &c &c [illegible] store room was in the garden
where the bungalow wa[s] built - A Depot was there
he gave the things the Collector did not take any
liquors as he did n[ot] want it - there were tents
pitched near the Pa[illegible] these came with the Collector's
things, the servants used the tents - the Collector only
took claret here with him - he never used to take food
out with him from here the Zemindar made all the
supplies all the time the Collector was in Bodinaikanur.
After this Mr. Crole went up to Shembaganur
& after 4 days the Zemindar came up - Kotasawmy
Thevar was there two d[ays] before the Zemindar - Mr
Crole lived in the Roman Catholic's house, the Zemindar
in Mary Syers & Kotasawmy Thevar in the local
fund shed - All this time the 3 persons used to go
shooting together - they [we]nt to Perimalmalai 7 miles
away - they used to go frequently there - the Zemindar
used to go into Mr. Crole's drawing room & sit down
[illegible] Mrs Crole this was a frequent

occurrence daily almost. he used to go into
the dining room also. Mr. Crole went to the
Neilgherries left Mrs Crole there - Kotasawmy
Thevan - Zemindar and Rama Subbiah were
there during this time - Mr. Crole returned
in 8 days - these persons remained on
the hills with Mrs Crole all this time -
Mrs Sultan Mo[illegible] came there for one
day - the Zemindar came to Madura
for children last year. the Zemindar came
in a phaeton his [illegible] & children in a bullock
coach driven by [illegible] Rowtan - the Zemindar's
family were taken to the Collector's visiting
room also the Zemindar - the party
remained on the [hi]lls for 45 days the
Zemindar was up down Kotasawmy
remained there - Rama Subbiah was up
& down to Madura the Zemindar came
down with Mr. & Mrs Crole & the Collector
& Mrs Crole went [to] the Zemindar's bungalow
at Periyakolam [illegible] were put up [illegible]
it for the Collector & his wife - no one else
allowed there. the Collector & Mrs Crole
used the Zemindar's palkees to come away
from Bodinaikanur to [illegible] Taince [illegible]

Fort St. George.
2nd February 1886

Dear MacCartie,

In returning the papers asked for in your D.O. of the 29th ultimo, relating to Dr. Chester and Mr. Cole, I am to say that the Board may use their discretion in the matter, the Govt. being quite sure that they will act in the manner most likely to elicit the truth.

Yours sincy
Sd/ W. Wilson

C. F. MacCartie. Esq.
Actg. Secy. Bd. of Revenue.
} Despd with 2 Enclos.
2/2/86

---

fear.

Sd Wilson

26/1/86

D.O. to Mr. MacCartie,
dated 27 Jany 1886 No. 55 D.

R.S.

Confidential

Fort St George
27 Jany 1886.

Despd
27.1.86

Dear MacCartie.

Ycc 27/1

Adverting to your d/o letters of the 22d & 23d Inst., and to the Proceedings of the Board which accompanied the earlier communication, I am to inform you for the information of the Board that the Govt. are of opinion that Dr Chester should be ~~invited~~ called upon to substantiate the ~~Charges~~ Statements which he makes in regard to Mr Crole, ~~and~~ He may be assured of the protection of the Govt. against the personal violence which he seems to

---

his letter to the 2nd member has been placed before the Full Bd. who trust that Mr Chester will lose no time in coming to Madras & placing himself in communication with the Bd. in view to furnishing them with such full and reliable information as he may be in possession of regarding the corrupt practices, which are allegedly to have been so prevalent in the Madura Dist. during Mr Crole's tenure of office.

C. MacCartie
Ag Secy

25 Jany. 86.

Mr Chester's fears may be well founded & his information correct; but his letter is not very intelligent & his courage cannot be great.

The next step must be to ascertain what Mr Turner has to tell us.

MLD
Jan 24/86

Minutes of a Full Board Meeting held at the Revenue Bd. Office Chepauk on Jany 15th 1886.

Present. H. S. Thomas Esq. 1st M.
J. H. Garstin Esq C.S.I. 2nd M.
W. S. Whiteside Esq 3rd M.

2nd Member brings to notice the following facts.

During a recent visit to Dindigul, he was informed by the Rev. Mr Chester of that place that a certain Tahsildar had paid R 2000 to the then Collector of the Dist. Mr Crole, as an illegal gratification for appointment to his office;

On reaching Madras. He, 2d M., wrote to Mr Chester asking him to name the Tahsildar by whom the alleged bribe was paid & in reply Mr Chester addressed to him this letter marked A. dated 9 Jany 1886. which he now places before the Board.

Read letter marked A dated 9 Jany 1886.

Resolved that the Secretary be instructed to communicate with the Revd Mr Chester informing him that

JHG 15/1/86

WSW 15.1.86

HST 15.1.86

---

[9]

DEPARTMENT.

D.O. 91.

From C. F. MacCartie, Esq, Ag. Secy. Bd. of Revenue

No.

Dated &
Received 2d. February 1886
Enclosures

SUBJECT.

Dr. Chester & Mr. Crole

Lodged

For

Sec

Garstin Case.

D.O. from Mr H. T. Knox d/1-1-86	Furnishing particulars regarding the attack on Mr Garstin.
D.O. from Mr C. T. MacCartie No. 91 d/2-2-86. D.O. to — do — d/2-2-86	Mr Crole – Charge of bribery made by Dr Chester – Dr Chester's unwillingness to come to Madras to substantiate the charge.
D.O. from Col. Guthrie d/ 6th and 7th March /86	Connection of Bodinaickanur Zemindar with Garstin case. – Taluk peon's evidence showing intimacy between Mr Crole and the Zemin
D.O. from — do — d/ 7th Jany/86 No. 13	Information regarding tiffin basket and clothes taken from Mr Garstin's transit.
D.O. from – do — d/12-1-86 No. 28	Regarding a motive for the Bodinaickanur Zemindar's spite against Mr Garstin.
D.O. from — do — d/19-1-86, & 20-1-86 No. 52 D.O. to — do — 18th & 19th Jany/86 Mr Arbuthnot's letter to Col. Guthrie d/14-1-86	Police Report regarding the Garstin case. ~~Certain [illegible] replied to~~, and notes thereon.
D.O. from Col Guthrie d/28-2-86. & 1st March/86 forwarding	11 Confidential memos regarding the connection of the Bodinaickanur Zemindar

Reminder [illegible] the Garstin case

(2) Two copies of judgments of the Madura Court

Do. from Mr MacCartie d/ 11-3-86.} Deposition given before Mr Garstin at Madura by Mr A. A. Fonceca.

Mr Thomas' inquiry at Madura

No. 221 D
d/ 10th April/86

To E. Norton Esqre

Zemindar [illegible] the

Pub CURRENT NO. 13

From

Mr. Eardley Norton
Counsel for the
Zemindar of B.

D. 6 }
R. 6 } April

Asking that Mr. Thomas's enquiry at Madura may be suspended till the High Court have dealt with the Bodanaickanur Zemindar's case.

Hon. W. Master
The Right Hon: The Governor
E.F.W.
7/4/86

I cannot find in this letter any good reason why the Government should accede to Mr. Norton's request.— Messrs Thomas & Kilgour are engaged in enquiring into matters quite apart from the only question which affects Mr Norton's client namely is the Zamindar guilty or not guilty of instigating the commission of the outrage on Mr. Garstin? It would not be reasonable to assume that the enquiry being made by ~~presence of~~ Messrs Thomas & Kilgour in Madura must prejudice the case of Mr Norton's client & there is no reason to believe that in point of fact the presence of these gentlemen have already had this effect. E.F.W.
7/4/86

Mr Norton's request that the present enquiries be suspended till after the verdict in the High Court is altogether unreasonable.

I see no objection

CURRENT 13.

6 April 1886.
High Court – Madras.

To the Chief Secretary to Government.

Sir,

In acknowledging your letter, with its enclosure of a G.O., of yesterday's date, I would respectfully bring to the notice of Government that while I do not know the scope or the object of the authority under which Mr. Thomas and Colonel Kilgour are respectively acting, their presence at this time in Madura throws grave obstacles in the way of my client's defence. Rightly or wrongly, the natives of Madura believe that the Government are animated by a desire to reach Mr. Crole through my client: and while this belief prevails – no matter how erroneous or foolish it be – investigations by Mr. Thomas or Col. Kilgour, pending the trial of the case called up by the High Court, prejudice my client's interests by creating a strong disinclination to give evidence in public on his behalf. I would appeal to your own knowledge and experience of native character as to whether the difficulties I allude to are exceptional, exaggerated or incredible. I do not ask for any abandonment of a scheme which I assume the Government have resolved to prosecute only after mature deliberation. I ask only that the present Enquiries be

All this is the merest Bunkum meant to be used rhetorically. We cannot be influenced in any way by it. It is for us to learn all we can about the administration of the District. It is for the Police & the Lawyers to make out the truth as to the Bodynaikanur tumult.
MGD

suspended till after the verdict in the High Court.

In conclusion I would add that nothing but a strong sense of duty to my client, and a strong belief in the existence of the danger to which he is exposed by the presence of the two officials I have alluded to, impel me, with all respect to the Government, to renew, on the Zemindar's behalf, the request which the Government have refused.

I have the honour to be, Sir,
Your most obedient servant,
Eardley Norton.

Counsel for the Zemindar of Bodinayakanur

I think we should not interfere with Mr Thomas. His task is hard enough without our doing so; but I understand that the Bodinaikanur affairs are in the hands of the Police — not of Mr Thomas.
MEW

Council

Col Kilgour's inquiries are I apprehend concluded.
MEW

however & instructing Thomas to avoid takin up any matters relatin to the Bodanayakanu Zemindary — if there are any such — until the Dacoity case is settled.

Colonel Guthrie can be asked if Col Kilgour's enquiries are still progressing and in the circumstances it is desirable to postpone proceedings.

CMC
7/4

No 221 D

D/ 10/4/86
J. E. Norton Esq
Barrister
at Law

Mr Cable

Draft to
Mr Norton

In reply to yr letter I am to say that Mr Hanna's enquiry has nothing whatever to do with the guilt or innocence of your client in the [illegible] or any other case

~~Mr~~ Col. Kilgour's enquiries ~~are~~ have ~~as far as I am aware~~ ~~were~~ which were ~~cause to an~~ ised instituted by the Police in consequence of information wh. came to him unconnected with the question outrage

have it delivered, came
to me [illegible]
In Council 10/6/86

he managed to snatch his stick away. He stood for a while as they hit him, & finding himself quite helpless resolved to fall at the next blow & did so, & pretended to be senseless. He ~~had~~ heard one say then, as they gave two or three more blows, say "Don't kill him". When they first ran off on his attacking them, he picked up his great coat in which were his keys & purse. As he lay shamming he managed to get them out of the pockets, stretched out his hand & covered them in the dust. When they came to feel his pockets they found nothing. They left him there. He found his watch on the ground.

1 Jan 86

(Happy New Year to you & yours)

Dear Wilson

Garstin has got a couple of cuts on the head, & a nasty bruise on the left temple, which is the most painful: He got a couple of severe bruises on the chest from stones, besides many other slighter injuries. He is stiff, but is ready to go about any where.

He left Peracolum at 9 p.m. He had some altercation with the Transit agent there & a crowd was collected witnessing his departure, The altercation was about some cases which had not been properly forwarded, & it gave the crowd of coolies opportunity to see him giving notes & rupees out of a purse.

At 10 oclock, being about 5 miles from Devadanapully (?) the first Police station on the road to Ammayanaikanur, the bullock coach stopped. The boys crept in through the front windows as stones were being pelted. The decoits tried to hit him with sticks through the windows & threw stones in at him. Then they began to thrust with their sticks which was the most dangerous. It was in the coach that he

got the rupees in the chest. He
tried ~~to~~ open the door. The handle
was outside & they hit him on
the hands. He then thought it best
to parley, & said he would come
out & they let him out. They
beat him with their sticks &
he found himself helpless &
imitated the bandits boys who
sat quietly by the roadside.
The dacoits left him & went to the
coach & began pulling things out.
He went for them with his walking
stick & hit one or two.
They took to pelting him with
stones & again closed in &
4 or 5 got round him with
bamboos & began hammering

when he first negotiated, being
inside the coach, he handed them
out a packet of 10 R. notes which
they threw away. He found it on
the ground & put it in the coat
pocket when he drove them away.
When they were [illegible] searching
his pockets they left them, &
also a gold pencil case –
They took his baggage, a handbag
& a fitted case, & blankets. They
got a set of gold studs & sleeve
links in a shirt in the bag, but
except that & the clothes they
did not get a four anna
piece.

He says the blows were not nearly as severe as he thought blows given with a bamboo would be—

Yours sincerely

H. T. Kerr

It seems to me that Mr. Garstin had a very narrow escape that he was within an ace of losing his life W

3/1/86

GOVERNMENT OF MADRAS

Rev Board Office
Feb 2. 1886.

My dear Wilson

In acknowledging receipt of the enclosures to your D.O. of this morning I am instructed to submit that the Board have neither the power nor the materials to take any action in regard to Mr. Chester's letters.

Action can only be taken by means of a local enquiry which the Board

submit they are not competent
to institute

Yours sincerely

C. MacCartie

29. Dec.

Revenue Board Office,
MADRAS,
23rd Jany 1886.

[illegible]

My dear Wilson

In continuation of my D.O. of yesterday. I am instructed to express the hope that Mr. Chester's name may not be divulged as the author of the information & that his letters to Mr. Garstin may be returned when done with.

Yours sincerely

C F MacCartie.

Circ.

The Board's and
Dr. Chester's
wish will be re-
-spected
W
28/1/86.

23/1

Done

Sec. Mention in
Council Mtg

24-1-86

W 29-1-86

Revenue Board Office
Jany. 29. 1886

Confidential

My dear Wilson

With reference to your Confidential D.O. dated 27th inst. I am instructed to inform you, that after giving the subject their fullest consideration in a full meeting. The Board have resolved, before making Mr. Chester acquainted with its contents, to invite the attention of Government, very respectfully to the fact that they are only reiterating a request with which Mr. Chester has already declared himself unable and unwilling to comply, the necessary result of further insistence will be to expose both the Board and Government to Rebuff. As W. Wheeler is a non-Official, whose lips Government have no power to force open, any attempt therefore to exercise compulsion over him can only end in Raking a source from which much valuable information may be forthcoming in an indirect manner.

The letters now before the Government were, I am to observe, privately communicated to a member to the Board who request that they may be returned at the convenience of Government.

Yours truly

C MacCartie

Ag. Sec: Rev. Bd

Chief Office of Inspector General of Police.

Madras 7 Mar 1886.

7/3/86

Dear Wilson.

Yes. Turner has the information, the Inspector took the money straight to Turner, who sent him on to Arbuthnot.

The Pros will be a witness before Turn

Yours sincerely

F. Chett[illegible]ton

Chief Office of Inspector General of Police.

Madras 6 Mar 1886.

Dear Wilson.

I send Prous Statement and Arbuthnot the two Notes as well.

Yours Sincerely

Guthrie

These papers were shown to Hon. Mr Hawkes today & they will be forwarded to Mr Thomas ~~for the papers~~ in connexion with the enquiry he is about to be deputed on

W.
6-3-86

N. B. The Dr. Inglis has this in form that is defunct wholly (Vide Col. Guthrie's Note 1-7-3-86)

W.
7/3/86

Pvt Confidential

Chief Office of Inspector General of Police.
Madras 8 Mar 1886.

12/3-86

Dear Wilson -

The plot thickens. The agent of the Zemindar of Bodinaikanoor has paid Rs 1000 to our Special Inspector to allow some Kullars to be put forward as the real dacoits: As a note for Rs 500 was given, the Inspector

Get the Agent to Endorse it, so we have him.

Kotasawmy Tevar shows signs of fear and a desire to speak - There are certain irregularities in his accounts which may bring him trouble, they are being quietly overhauled -

The Collector writes that "things are "progressing very "slowly but I think "surely"

Arbuthnott who is working well says he "thinks Kotasawmy "prepared to split "about Madura affair "if Kilgour be ordered "to inquire of him"

Arbuthnott does not know Kotasawmy while

till you know him
well. –
I have a statement
made by a Taluq Peon
which shows the terms
of intimacy on which
Crole & the Zemindar
lived but don't know
if you'd care to have
it.
Yours sincerely
T. Dutton

Confidential

Madras:
3/3

5.3.86
We,

My dear Colonel –
(Town Inspector of Police)
(Abdul Subhan) tells
me that Kotasawmy Thevan
informed him this morning
that within the past twelve
months he had drawn
15000 rupees from his
capital and showed him
his cheque book in proof of it

the expenditure was on account of the farm - park and other things from which K T drew no return and had nothing to do with his personal expences for which he got money from his estate = It is said that Kotasawmy Thevan was hopeful of obtaining the Manager-ship of the Ramnad Zemindary -

4/3

6.3.86

My dear Colonel

I enclose a statement taken from a peon, it shows the intimacy & we shall want this man & as a witness before Turner. To obtain this sort of evidence recourse must be had to peons servants & so on, outsiders can only speak very generally.

Hotasawmy there are as I think prepared to split about Madura affairs & if Sulgow

& said they had some Kallars ready to come
forward & confess to the dacoity & what was
the use of running his (Inspectors) head against a wall -
that the Zemindar would be his friend for
life & so on and gave him a 500 Rupee note
& 500 in coin. The Inspector pretended to doubt
the genuineness of the note and got the
and Cassim Saib to endorse his name on the back

were ordered to enquire him I think some startling disclosures would come out. I would do it myself but I dont know the man & he would be more likely to open his mind freely to Kilgour than to me. I strongly recommend this course.

In re Garotin's dacoity. Last night about 11 one Kassim Saib an agent of the Zemindars came to the Spl Inspector

W
22/1/86

Returned 2/2/86

Chepauk
Jany. 22. 1886

My dear Wilson

I am instructed to enclose 2 letters addressed to the Board's second member by the Rev. Mr. Clarke of Dindigul, for the information of Government. Their perusal will explain his reasons for declining to visit Madras & for delaying to reply to the Telegram despatched on 16th inst.

As the Board understand that Mr. Turner will be in Madras on Monday the Government will be able, in consultation with him, to decide what line of action to follow.

Yours sincerely

C. F. MacCarthy

P.S.

I am further directed to enclose the minutes of a Full Board Meeting held on 15th inst. to consider Mr. Chester's first letter which is also forwarded in original. C.F.M.

It is attached to the Pro. Ltr

Circd.

There must be something rotten in the State of Madura when an English (or American) gentleman is afraid to run up to Madras or to reply to a telegram sent him by the Board because he thinks that if he did so he would have his head smashed' – at the instance it is suggested of Mr Corliss' friend the Bodinayakanur Zemindar – perhaps it is meant of Mr C. himself H 22/1/86

It may be Dr Chester feels that he cannot substantiate any of the assertions against 'somebody' & so prefers not to come forward. We shall shortly hear what Turner says. 23/1

144

12.1.86

Madura
10/1-

My dear Colonel-

At Periyakolam I told the Insp. to send in an occurrence report about Gastin's things this will have been done before now. I am going out again there on Tuesday with Turner. At present there is nothing but suspicion of the case but I hope to

W/1
12-1-56

12th Jany

Dear Wilson.

I have got today information from a private source which if true will give a motive for the Zemindar's spite agst. Garstin. I have written to Mr. G to test the truth of my information & will let you know the result in due course.

Yours sincerely T. M.

hold of something definite before long. Of course the theory of the Zemindar being in it may turn out unfounded but at present it seems the more probable one.

Yrs sincerely

E. J. Arbuthnott

utting

Chief Office of Inspector General of Police.

Madras 8th Jany 1886.

Office

Point out [illegible]
[illegible] was
to [illegible]!
what for [illegible]
report after [illegible]
further inquiry
is necessary
W
15-1-86

noxious to any one in the
neighbourhood?
M.E.G.
10 Jan.

Dear Wilson -

I enclose a precis Report of the outrage upon Mr Garstin -

It appears far pretty clear to me that this was no ordinary dacoity, plunder was not the object -

Yours sincerely

[illegible]

D021A

As far as I remember it was the Collector who took away the liquor license from a man who used to sell beer & wine to the residents at Kodaikanal & the Board merely declined to inter-fere - HES

15/1

seen 15/1

(1

(2

C9/1/6 }
V4/15/1 }.

(3)

Circd.

9-1-86

It is very clear that it was not a Dacoity; but it seems very odd that Mr Garstin does not seem to suspect any one

What person connected with the District knew of his journey?

Did the Zemindar

such as accused has been mentioned?

(4) There was some story about a liquor licence? Had the Board of

(5) Revenue made its ob-

Chief Office of Inspector General of Police.

~~Madras~~ 20. 1. 1886.
Chingleput

Cird. to 21/1/86

Dear Wilson.

Your D.O. of yesterday. All the points mentioned are within my knowledge.

first. The Transit people at Periakolum knew of Mr. Gustins journey also those at Bodinaiken The Bodinaikanoor people knew also from the fact ~~that~~ Mr. G had to procure coolies there to carry up his visit to Davikolum on the Hills – his presence on the Hills was thus well known at Bodinaikanoor; his return through the place (where he got into his transit) was of course equally well known –

Second. No European can or does pass through the village without the knowledge of the Zemindar.

Third. A Licence to retail Liquor at Kodaikanal was refused by the Colr. and also by Board of Rev. to one Nummasavoyen Pillay Shopkeeper Periakulam Who is also Transit Propirator -

fourth. As explained above the Board had rendered itself obnoxious to Nummasavoyen Pillay and for this reason Mr. Garstin at first suspected the man of having

got up the attack
upon him, and
told her so. Now
however his suspicion
rests upon Bodinaikanur
proper.

The road to & from
Devikolum (North
Travancore Hills) lies
through the village
of Bodinaikanoor
where the Zemindar
resides.

Yours sincerely
W. [illegible]

Chief Office of Inspector General of Police.

Confdl.

~~Madras~~ Mount 19 Jany 1886.

Dear Wilson.

I have already referred to Mr. Garstin on both points – His suspicion agst. Mamasivoya Pillay arose from the fact that he (Mr. G) had, as a member of the Board of Revenue, refused to grant a license to retail liquor at Kodaikanal on the Pulneys

There is no reason
known by Mr. Garstin
why the Bodinaikanoor
Zemindar should be
hostile to him – I have
questioned Mr. Garstin
closely on this point
because I had recd.
information pointing
to a motive, but
Mr. Garstin repudi-

it –

Yours Sincerely

W. Quttine

Chief Office of Inspector General of Police,

Madras 28th Feby 1886.

Dear Wilson.

I enclose the memorandum asked for — You will doubtless notice the Robbery Case alluded to by the High Court in disposing of the Harbouring case. I have been waiting

for the Endorsement
in that Chatty's
Case, but it has
not come yet
altho I have a
note today to
say it will be
sent - it was
out at Pessakolum
in hands of the
Spanish Inspector.

Yours Sincerely

F. Guthrie.

Chief Office of Inspector General of Police.

Madras 1 Mar 1886.

Dear Wilson.

Herewith High Court Revision 39 of 1884

Crole is living at the Royal Hotel Madras.

Yours sincerely

T. Guthrie

Chief Office of Inspector General of Police.

Madras 1 Mar 1886.

Dear Wilson -

Your note -

The tappal has just brought me two judgments of the Madura Court, the second of which LV of 1882 is Shunmugam Chetty's case alluded to by Brandt - J. in

High Court Revision
39 of 1884.
These cases were
not appealed
against. —

XXXVII of 1882 is
new to me, but
only helps to go
to show what a
blackguard the
Zemindar is. —

16/1

Camp Periyakolam -
14/1 —

My dear Colonel -

Garstin's things will be sent off to night - they would have gone before but Turner was expected & the Sub Mag detained them for him to see -

I have had two Dopns enquiries at Bodynaikanur - at present no one will give information there was a deal of correspondence going on between the Z of B & Kotaswamy Devar Cole's right hand man. I don't believe that Namasavayam Pillai had anything more to do with the case than I had & can't understand why Sastri suspects him

Yrs sincerely

E G Arbuthnot

& they report that a strict watch is kept over them - I think time will disclose the case - Turner has offered 500 Rs reward & pardon to anyone giving information leading to the conviction of the offenders - There is no doubt Bodynaikanur Zemindar is in the case - I hear that just before ~~the~~ Mr. Garstin came here

Very Confidential.

I have asked Arbuthnott if he can't get hold of Kotasamany Tavers letters to the B. Z.

F. M. G.

To the Ch. Secty.

E

Circd.

What reasons has Mr. Garstin given for suspecting the tavern keeper Nama-sivaya Pillay?

Is there any reason known to or suspected by Mr. Garstin for the Bodinayakanur Zemindar being hostile to and likely to injure him?

W
17-1-86

Dear Guthrie
Read my
note and ask him
write
18/1

Gp. [illegible] W. [illegible]
18/1/86

Conf.

GOVERNMENT OF MADRAS · CHIEF SECRETARY

D.O. January 18th 1886.

My dear Guthrie,

~~With reference~~ Referring to Arbuthnot's confidential D.O. dated the 14th, & forwarded by you, on the 16th, I beg to ask whether ~~do~~ you know what reasons Mr Garstin has given for suspecting the tavern-keeper Namasivaya Pillay? Also whether there is any reason known to or suspected by Mr Garstin for the Bodinaickanur zemindar being hostile to and likely to injure him. If you do not know, a reference should be made to Mr Garstin on these points

Yours sincerely

Apd 18/1 orig. signed by C.S.

Chief Office of Inspector General of Police.

Madras 7 Janry 1886

Dear Wilson.

The tiffin basket & clothes taken from Mr Garstin's transit were all found on the road side - The Supdt is on the spot & reports that neither of the two men with Mr G can identify any of the Dacoits and Mr Garstin cannot, so that with no property stolen & no identifica the case will be a difficult one to bring home. The Supt says "it is the general talk" that this has been done

at the instigation
of the Bodinaikanur
Zemindar.

If anything further
be discovered I
shall keep you
informed.

Yours Sincerely
Fr. Quittine

Madras.
4.IX.86

D.O.

My dear Webster.

I see in todays' Gazette that E.F. Gibson of Kurnool is out of his appointment as Dist. Judge of that place. I think it proper to tell you that there is now in circulation in the Court a memo. of mine in which in the very *strongest* terms I have recorded my deliberate opinion that he is physically and mentally, *totally* *unfit* to be a Dist.

and Session Judge –
and that I can no longer
remain passive in
the matter. I brought
the subject up at
a Judges' meeting some
months ago but they
were not then *quite*
prepared to act.

GOVERNMENT OF MADRAS

Mr F. E. Gibson, who came out to India nearly 19 years ago is certified to be not fit to discharge the duties of a District & Sessions Judge.

The High Court come to this conclusion from a consideration of several Civil and Criminal cases dealt with by Mr Gibson.

This conclusion does not come upon me at all as a surprize. If I remember right there have been several other cases in which appeals have been successfully

GOVERNMENT OF MADRAS

pressed against acquittals by the officer.

It seems to be clearly necessary to remove Mr Gibson from his present post. It does not seem necessary to take any explanation from him or to give him an opportunity of shewing cause why he should not be degraded. The opinion which the High Court have formed should be communicated to him as the ground for the action of Government.

As a temporary

I agree –

Yes. The High Court is the proper judge of a judge's fitness for judicial work
MEGD

measure he might be allowed to take up Sub Collector's work. I hardly think however that the matter can rest here. Mr Gibson's unfitness can hardly be limited to the Bench. He has had the reputation of being an eccentric officer for years. There was some trouble when he was Sub Collector of Tuticorin not very long ago. He has suffered from wretched health and been 'practically off his head' more than once. I think his 'record' shd be looked up in order that it may be determined whether the Secretary of State shd be asked

Yes—
Jes Mld

(Enclo. 9.)

High Court.
1st October 1886.

Dear Mr. Webster,

In reply to your demi-official of 8th Septr. to the address of the Chief Justice, I am directed to state that the Hon'ble the Judges regret they have been compelled to form the opinion that Mr. F. E. Gibson of the Civil Service is not fit to discharge the duties of a District and Sessions Judge.

In illustration of Mr. Gibson's incapacity, I am to enclose copies of

(1) his judgment in Sessions Case No. 26 of 1885, together with the Notes thereon of a Divisional Bench of the High Ct. in Criminal Appeal No. 123 of 1886, in which provisional orders

have been issued calling upon the accused to show cause why they should not be retried.

(2) the judgments of the High Court in Referred Trials Nos 2 and 12 of 1886.

(3) Mr Gibson's judgment in Sessions Case No. 20 of 1886 on which the High Court, in revision, have found it necessary to call upon the accused to show cause why he should not be convicted of murder.

and (4) his judgments in Civil Second Appeals Nos 174 and 930 of 1885, together with the judgments of the High Ct in the same.

I am to add that, beyond the observations contained in their judgments, no communication has been addressed by the High Court to Mr Gibson from which their opinion of his unfitness to be a District and Sessions Judge, or the fact of his qualifications being under discussion, could have become known to him.

Yours very truly,

Registrar.

Rev. G.O. 27-2-79 No. 492.
" " 2-7-79. No. 1406.
" " 7-11-79. No. 3848.
" " 27-2-80. No. 246.
" " 7-8-80. No. 2670.
G.O. of 1882.

D. O. 486

CHIEF SECRETARY
2 OCT 86
GOVERNMENT OF MADRAS

Mr. F. E. Gibson.
C. S.

Circulated for orders
FW 2/10/86

Para 215 of the Minute

"No doubt a vast amount of spiteful nonsense has been talked and written about the Civs, in the matter of land, of that very honorable body of men – the Madras Civil Service; but I am sure all its members will see that to transgress, ever so little, the rules about land-holding, is a sad mistake, and one which enables its enemies to heap upon it all manner of false accusations."