[1]

ORDINARY, PRINTED.

Public DEPARTMENT.

G.O., DATED 1 April/87.

No. 476

First copy sent to Press.

Returned for signature.

Despatched in print.

CONFIDENTIAL 78/

[Despatch Abstract.]

Landholding. Relating to the ownership of an Estate on the Nilgiri Hills by a son of the Hon. W. S. Whiteside.

BACK PAPER, No. of 188

READ AGAIN Order of Government, dated
188 , No.

FURTHER PAPER, No. of 188

ENCLOSURES.

CURRENT No.

STATEMENT WITH DITTO.

ORDER, &c. OF GOVERNMENT—A.

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

NUMBER OF COPIES REQUIRED.
Order complete.
Letter only.
Order complete with Letter.

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.

---

returns
Originals of following Rev GOs
returned to Rev Sectt on 16/7/87.

Despt. 14, dd 8.6.82 orgl
GO No 1357 dd 1.12.82 orgl
Des. No 2, dd 30.1.83 copy with statt
GO No 121 dd 27.1.83 orgl
GO No 161 dd 5.2.83 orgl

Confidential
Soon

Print the documents
& two letters each
on a separate paper
& shew proof
BB
30/3

In Council
Addition to be made as
suggested by Hon'ble Mr.
Also that it was considered
unnecessary to retain the
statement in that standard
referred to by Hon'ble Mr.

Despatched with the copy of Minute with letter to India No. 47
[illegible] dt 4.8.7 [illegible]

Note [illegible] Secretary [illegible]

Public

No. 7
dy 1 April/87.

To the Secy. of State for India.
(through the Govt. of India)

My Lord.

We have the honour to submit for consideration ~~by you~~ and for such orders as to your Lordship may deem called for, a minute written by our Hon'ble Colleague Mr. Master, detailing the circumstances of the ownership by his son, of ~~a~~ planting Estate near Kotagiri on the Nilgiri Hills. In doing so, we observe that the case does not disclose infraction of any Existing rule. (See over) ~~We~~

x2 Two minutes
NO the second minute is not intended to go I suppose PB

No 1 will suffice I think.
CCM

May it be added that being a personal matter it is considered best that I shd not be a party to the Despatch?
CCM
26/3

PTO.

We have not considered it necessary to issue any official denial of the statements in the Madras Standard referred to in the minute. The matter being a ^somewhat^ personal one, our ^Colleague^ Mr. Master ~~has~~ is not a party to this despatch.

MS

No. 476. dy 1 April/87.

To the Secy. to the Govt. of India, Home Dept.

Despatched with Home Despatch & copy of Minute under emp. cover 11-4-87

Six spare copies of each also despd. 11-4-87.

Sir

I am directed to forward for transmission to the Secretary of State for India in Council a despatch addressed to his Lordship by this Govt. and with enclosure, relating to the ownership of an estate on the Nilgiri Hills by a son of the Hon. Mr. Master C.S.I. Senior Member of Council. The despatch is sent through the Govt. of India as it relates to a general question which has been the subject of correspondence between the Govt. of India & the Secy. of State.

JLS
22/3.

In Council

addition of the minute suggested by the Hon. Mr. [illegible] was considered [illegible] to return the [illegible] statements in the Madras [illegible] referred by Hon. Mr. [illegible]

(wd. over) ([illegible])

return
Origls of following Regos
submitted to Rev Dept on 18/7/87.

—

Despt No 14, dd 8.6.82 origl
Go No 1357 dd 1.12.82 origl
Dy No 2, dd 30.1.83 copy with Statt
Go No 121 dd 29.1.83 origl
Go No 161 dd 5.2.83 origl

Confidential
Soon
Print the [illegible]
& two letters each
on a separate paper
& shew proof
30/3

In Council
Addition to be made as
suggested by Hon Wm M.
Also that it was considered
unnecessary to notice the
statement in the Standard
referred to by Wm M.

of council had (as they had last year) sons strongly interested in the completion of the Railway, would it not be likely to be suggested, and even honestly believed, that the members had been biassed by a desire to promote their sons' advantage?

It may readily be conceded that attacks may be made rendering it desirable for Govt to make a defence, or authorize explanations to be given or a defence made, but ~~in the present instance~~ I think the present statement in the Standard had better be left unnoticed.

17 March.

3

GOVERNMENT OF MADRAS

a prohibition such as is indicated by those who hold such a doctrine? 5

Obviously our critics even have never contemplated such a contingency. The article which led to this note implied that, if some "fairy godmother" had blessed my son with a fortune the case would have been different. But why? It is, according to the new theory, the fact of his being a son that constitutes the disability not the source of his means. If the money had come to him, say by will, from an uncle or aunt, it would, according to this new doctrine, be still at the risk of my position in the service that he should use it in land simply from the fact that he is my son even though of age and not under my control in the matter of making his own living. The most inveterate opponent of the service in the matter of landholding never

om England

urther hampered by.

dreamt of complaining that I had a son who wanted to compete with him as a planter for Captain Campbell himself more than once placed before me the advantages which would accrue (to himself certainly, to the purchaser possibly) if my son became the owner of an estate which he then wanted to sell!

If 'interest' I have it is limited to that natural interest that a father takes in his son, and which in the present instance has resulted in the expenditure in the country of a sum which, as it happens, might much more profitably have been remitted to England or invested otherwise than in land. As an investment indeed the money has virtually been sunk, the working expenses of the Estate being, as I understand, barely met by the income. The owner would,

I know, sell tomorrow if he could find a purchaser.

C Master

14 March 1887

I have made a few remarks in the margin, and now send on the papers for H. E's consn. It seems ~~perfectly~~ clear not only that my Hon. Colleague has acted with perfect openness & honour throughout, but also that he has not controverted any rule or principle hitherto laid down. At the same time I feel bound to say that in my opinion it is not desirable that the sons of high officials should hold land within the Presidency in which their fathers are employed. Not only does it lead to aspersions being cast on the Govt., but it is difficult to say that there is not a grain of truth in such aspersions. This will be best seen by a simple example. The terms of the concession for a Railway to the Nilgiris have repeatedly come before this Govt. and are sure to come up again. I have no doubt that my Hon. Colleague will ~~solv~~ deal with the question with perfect fairness, & that if he found himself in the least degree inclined to be biassed he wd. decline to have anything to do ~~deal~~ with it; but supposing ~~we give~~ favourable terms were given ~~by~~ & both the Members

from England are to
further hampered by

of Council had (as they had last year) sons ~~strongly~~ interested in the completion of the Railway, would it not be likely to be suggested, and even honestly believed, that the members had been biassed by a desire to promote their sons' advantage?

It may readily be conceded that attacks may be made rendering it desirable for Govt. to make a defence, or authorize explanation to be given or a defence made, but ~~in the present instance~~ I think the present statement in the Standard had better be left unnoticed.

17 March.

the sons and brothers of other Government servants are, and have been for years, engaged in agricultural operations in India but I cannot call to mind that any objection has ever been raised or even hinted at. To admit such a principle would be, virtually, to exclude from India relations of public servants unless they came out in the service of Government for objections of the kind could hardly be limited to land investments. The mind of the public servant concerned might be wrought upon in like manner for the promotion of his son's advantage as a lawyer, a merchant, a doctor, or in any conceivable position in the country. Can it be reasonable to say that a Civilian's sons, already handicapped in the race of life owing to their parents' enforced absence from England are to be further hampered by.

I remember a case in which this Govt. strongly, & I have no doubt rightly, objected to the son of a Collector practising as a lawyer in ~~the~~ his father's District. There is however a clear distinction between the acquisition of land for a son, and the allowing him to be a planter or member of any profession. Hence the reference to a 'fairy godmother' is not altogether without significance. Moreover the Rules only prohibit investments in land, & the personal management of other financial speculations.

the public servant concerned.

I shall be glad if the point here stated may be submitted for the consideration and orders of the Government of India and the Secretary of State. When I took up the subject it was on the ground that the Government had been assailed but it now seems necessary to add a few remarks from my own point of view as a Civil Servant supposed, rightly or wrongly, to have an interest in land, indirectly, through a son.

I can truly say it is the first time to my knowledge that such a doctrine has been broached. I can barely conceive the possibility of such a conclusion logically following the Rules on the subject. It is within the knowledge of the Government of India and the Secretary of State that my son is a planter, and that sons and brothers of other Government servants are, and have been for years, engaged in agricultural operations in India but I cannot call to mind that any objection has ever been raised or even hinted at. To admit such a principle would be, virtually, to exclude from India relations of public servants unless they came out in the service of Government for objections of the kind cd. hardly be limited to land investments. The mind of the public servant concerned might be wrought upon in like manner for the promotion of his son's advantage as a lawyer, a merchant, a doctor, or in any conceivable position in the country. Can it be reasonable to say that a Civilian's sons, already handicapped in the race of life owing to their parents' enforced absence from England are to be further hampered by.

I remember a case in which this Govt. strongly, & I have no doubt rightly, objected to the son of a Collector practising as a lawyer in ~~the~~ his father's District. There is however a clear distinction between the acquisition of land for a son, and the allowing him to be a planter or member of any profession. Hence the reference to a 'fairy godmother' is not altogether without significance. Moreover the Rules only prohibit investments in land, & the personal management of other financial speculations.

---

what course, if any, shd. be adopted to vindicate their Government assailed, as it has been, in the person of one of its members.

I am, I confess, tender for the reputation of the Madras Government after all the dirt which has been thrown at it of late, and so much undeservedly, and for that reason, if no other existed, I am quite willing that my private affairs shd. be published to the world.

Here I had intended to stop my own action in the matter having been always fully before Government and unobjected to, but since this question has been raised I have been told that it may be held that the interest in land intended to be prohibited is not a mere personal or individual interest but extends to the acquisition of land for any relative, more particularly sons, the promotion of whose advantage might operate as an inducement on the mind of

The quotation in this paragraph is, I believe, from something I myself wrote, but being without the context it is somewhat misleading. I did not say that this doctrine cd. be deduced from anything wh. the supreme authorities had said, but that I was not at all sure they wd. not lay down such a principle, if it were brought prominently to their notice that the acquisition of land for a son is nowhere prohibited by any existing rule.

GOVERNMENT OF MADRAS

Naturally the outside public adopted a similar view. The objections to instigating Governmental action in the public prints are no doubt very cogent and really it is a choice of evils whether to endure misrepresentation or to put myself on the defensive. It is probably wise to exercise discretion in the matter. Officials here are responsible to their own Governments and the Secretary of State. They may well be content with the decisions of the highest authority. Sometimes however even the Viceroy has not thought it unbecoming to notice extra-ordinary misstatements which have been published and his denial has been immediately effective. Moreover allegations made in the press do not necessarily come before the appellate authority or if they do they may remain unexplained and in the latter case may have a bad effect even at headquarters. For these reasons I have thought it only reasonable that H.E. and my Honble Colleague should consider

and I have no shadow of legal interest or power of recovering any of the money I have given him for the purchase, nor have I ever had any part in the management of the Estate.

As however the article which I quote implies that in some way or other I have misbehaved I desire to make a plain statement of what has occurred.

The experience of the past indicates to me that the silence which is compulsory on all Government servants in regard to such attacks may be, and has been, misunderstood. I know, as a fact, that statements about Government and their proceedings which have appeared in print any time the last two years, and which were absolutely devoid of foundation, obtained credence with men—who from their official experience might have known better—simply because they remained untraversed though reiterated again and again.

available I not unnaturally turned my thoughts to the planting industry. Before taking any step however I consulted a Member* of the then Government who fully agreed that if I placed the necessary funds at my son's disposal I should in no way be contravening any rule on the subject. I acted on this opinion and between that date & the end of 1884 I expended about Rs 32,850 in enabling my son to purchase and improve the "Woodlees" Estate. I may say that the expenditure was larger than I had anticipated. I was led to believe that the immediate returns would be sufficient wherewith to work the property and give a reasonable profit to the owner. I should not in justice to my other children have given to *one* so large a slice of my possible savings but the expenditure crept on as experience generally shews to be the case. Nevertheless it was, as far as I am concerned, an absolute gift to my son,

* Mr Hudleston, I believe

Note There may have been a small transfer subsequently; at the most a hundred Rupees.

" Ootacamund forming the appurtenance of the house in which I live; the extent is about 50 acres. I have no interest in land elsewhere in the Residency. My son owns a small Coffee Estate, near Kotagiri, under 70 acres, which I have helped him to purchase. I have no concern in it beyond supplying funds for which I expect no return"

This statement remains as true today as when it was penned five years ago. The original entries have been referred to in subsequent annual returns as conveying an accurate statement of my interest in land. I have never had the smallest reason for supposing that any objection could be taken to my action as regards my son.

When my son came out in 1880 and I was casting about to see in what way I could help him to get a living in default of other employment which was not easily

Minute
~~Memorandum~~

I think it my duty to lay before H. E. the Governor and my Hon'ble Colleague the following observations with reference to the publication in a local paper of remarks implying that in respect to a coffee estate held by my son I have infringed the Rules relating to the holding of land in India by Officers of the Civil Service.

Madras Standard
4th March 1887.
Leading article

Though the matter referred to has long been known to Government ~~and has (I believe) been reported to the Secretary of State~~ it is possible that silence might be misconstrued, and as I am precluded from directly replying to such an attack it is right that I should lay before Government the actual facts of the case.

x omit
GM

x Note. Since this was written I find that the particulars about my son's property were not included in the Register which accompanied Revenue Despatch d/ 30 January 1883 No 2.

These are succinctly stated in my reply dated 8th May 1882 to Circular Memorandum asking for information as to my interest in land anywhere in this Presidency. I said

d/ 20 April 1882 No 181
Rev Dept.

"I am the owner of a
"plot of ground in

CONFIDENTIAL.

MINUTE by the Hon'ble C. G. MASTER, C.S.I., dated 14th March 1887.

I think it my duty to lay before His Excellency the Governor and my Honorable Colleague the following observations with reference to the publication in a local paper of remarks implying that in respect to a coffee estate held by my son, I have infringed the rules relating to the holding of land in India by officers of the Civil Service.

Madras Standard, 4th March 1887, leading Article.

2. Though the matter referred to has long been known to Government, it is possible that silence might be misconstrued; and as I am precluded from directly replying to such an attack, it is right that I should lay before Government the actual facts of the case.

3. These are succinctly stated in my reply, dated 8th May 1882, to Circular Memorandum asking for information as to my interest in land anywhere in this Presidency, I said:

Dated 20th April 1882, No. 181, Revenue Department.

> "I am the owner of a plot of ground in Ootacamund forming the appurtenance of the huose in which I live; the extent is about 50 acres. I have no interest in land elsewhere in the Presidency. My son owns a small coffee estate, near Kotagiri, under 70 acres, which I have helped him to purchase. I have no concern in it beyond supplying funds for which I expect no return."

4. This statement remains as true to-day as when it was penned five years ago. The original entries have been referred to in subsequent annual returns as conveying an accurate statement of my 'interest' in land. I have never had the smallest reason for supposing that any objection could be taken to my action as regards my son.

5. When my son came out in 1880, and I was casting about to see in what way I could help him to get a living in default of other employment which was not easily available, I not unnaturally turned my thoughts to the planting industry. Before taking any step, however, I consulted a Member of the then Government, who fully agreed that if I placed the necessary funds at my son's disposal, I should in no way be contravening any rule on the subject. I acted on this opinion and between that date and the end of 1884 I expended about Rs. 32,850 in enabling my son to purchase and improve the 'Woodlees' Estate. I may say that the expenditure was larger than I had anticipated. I was led to believe that the immediate returns would be sufficient wherewith to work the property and give a reasonable profit to the owner. I should not, in justice to my other children, have given to *one* so large a slice of my possible savings; but the expenditure crept on as experience generally shows to be the case. Nevertheless it was, as far as I am concerned, an absolute gift to my son, and I have no shadow of legal interest or power of recovering any of the money I have given him for the purchase, nor have I ever had any part in the management of the estate.

NOTE—There may have been a small transfer subsequently; at the most a thousand rupees.

6. As, however, the article which I quote implies that in some way or other I have misbehaved, I desire to make a plain statement of what has occurred.

7. The experience of the past indicates to me that the silence which is compulsory on all Government servants in regard to such attacks may be, and has been, misunderstood. I know, as a fact, that statements about Government and their proceedings which have appeared in print any time the last two years, and which were absolutely devoid of foundation, obtained credence with men, who, from their official experience, might have known better, simply because they remained untraversed, though reiterated again and again. Naturally the outside public adopted

a similar view. The objections to justifying Governmental action in the public prints are no doubt very cogent, and really it is a choice of evils whether to endure misrepresentation or to put oneself on the defensive. It is probably wise to exercise discretion in the matter. Officials here are responsible to their own Governments and the Secretary of State. They may well be content with the decisions of the highest authority. Sometimes, however, even the Viceroy has not thought it unbecoming to notice extraordinary mis-statements which have been published, and his denial has been immediately effective. Moreover, allegations made in the Press do not necessarily come before the appellate authority, or if they do, they may remain unexplained, and in the latter case may have a bad effect even at head-quarters. For these reasons, I have thought it only reasonable that His Excellency and my Honorable Colleague should consider what course, if any, should be adopted to vindicate their Government, assailed, as it has been, in the person of one of its members.

8. I am, I confess, tender for the reputation of the Madras Government after all the dirt which has been thrown at it of late, and so much undeservedly, and for that reason, if no other existed, I am quite willing that my private affairs should be published to the world.

9. Here I had intended to stop, my own action in the matter having been always fully before Government and unobjected to; but since this question has been raised I have been told that it may be held that "the interest in land intended to be prohibited is not a mere personal or individual interest, but extends to the acquisition of land for any relative, more particularly sons, the promotion of whose advantage might operate as an inducement on the mind of the public servant" concerned.

10. I shall be glad if the point here stated may be submitted for the consideration and orders of the Government of India and the Secretary of State. When I took up the subject it was on the ground that the Government had been assailed; but it now seems necessary to add a few remarks from my own point of view as a civil servant, supposed, rightly or wrongly, to have an interest in land, indirectly, through a son.

11. I can truly say it is the first time to my knowledge that such a doctrine has been broached. I can barely conceive the possibility of such a conclusion logically following the rules on the subject. It is within the knowledge of the Government of India and the Secretary of State that my son is a planter, and that the sons and brothers of other Government servants are, and have been, for years engaged in agricultural operations in India; but I cannot call to mind that any objection has ever been raised or even hinted at. To admit such a principle would be virtually to exclude from India relations of public servants, unless they came out in the service of Government, for objections of the kind could hardly be limited to *land* investments. The mind of the public servant concerned might be wrought upon in like manner for the promotion of his son's advantage as a lawyer, a merchant, a doctor, or in any conceivable position in the country. Can it be reasonable to say that a civilian's sons, already handicapped in the race of life owing to their parent's enforced absence from England, are to be further hampered by a prohibition such as is indicated by those who hold such a doctrine?

12. Obviously our *critics* even have never contemplated such a contingency. The article which led to this note implied that, if some 'fairy godmother' had blessed my son with a fortune, the case would have been different. But why? It is, according to the new theory, the fact of his being a *son* that constitutes the disability, not the source of his means. If the money had come to him, say by will, from an uncle or aunt, it would, according to this new doctrine, be still at the risk of my position in the service that he should use it in land simply from the fact that he is my son, even though of age, and not under my control in the matter of making his own living. The most inveterate opponent of the service in the matter of land-holding never dreamt of complaining that I had a son who wanted to compete with him as a planter, for Captain Campbell himself more than once placed before me the advantage, which would accrue (to himself certainly, to the purchaser possibly) if my son became the owner of an estate which he then wanted to sell!

13. If 'interest' I have, it is limited to that natural interest that a father takes in his son, and which, in the present instance, has resulted in the expenditure *in the country* of a sum which, as it happens, might much more profitably have been remitted to England or invested otherwise than in land. As an *investment* indeed the money has virtually been sunk, the working expenses of the estate being, as I understand, barely met by the income. The owner would, I know, sell to-morrow if he could find a purchaser.

(Signed) C. G. MASTER.

FORT SAINT GEORGE.

PUBLIC (1887) *DEPARTMENT.*

LETTER to the Right Honorable
the Secretary of State for
India.

Dated th April,

No. of 1887.

Submitting, for consideration and orders, Minute by the Honorable Mr. Master, Senior Member of Council, detailing circumstances of ownership by his son of a planting estate near Kotagiri on the Nilgiri Hills.

th April 1887, No. , Public.

PUBLIC DEPARTMENT.

Letter—to

The Right Honorable the SECRETARY of STATE for INDIA.

My Lord,

We have the honor to submit, for consideration and for such orders as your Lordship may deem called for, a Minute written by our Honorable Colleague Mr. Master, detailing the circumstances of the ownership by his son of a planting estate near Kotagiri on the Nílgiri Hills. In doing so, we observe that the case does not disclose infraction of any existing rule. We have not considered it necessary to issue any official denial of the statements in the *Madras Standard* referred to in the Minute. The matter being a personal one, our Honorable Colleague, Mr. Master, is not a party to this despatch.

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

Fort St. George,
th April 1887.

Regr. No.

HOME 1887 DEPT.

[ ]

From the Government of
Fort St. George.

Issued

Recd, *Encl.*

Letter, dated 1st April 1887,
No. 476.

APRIL.

Land-holding.

Forwarding, for transmission to the Secretary of State for India, a despatch, with enclosure, addressed to His Lordship by this Government, relating to the ownership of an estate on the Nílgiri Hills by a son of the Hon'ble Mr. Master, Senior Member of Council.

1st April 1887, No. 476, 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 forward, for transmission to the Secretary of State for India in Council, a despatch, with enclosure, addressed to His Lordship by this Government, and relating to the ownership of an estate on the Nílgiri Hills by a son of the Hon'ble Mr. Master, C.S.I., Senior Member of Council. The despatch is sent through the Government of India, as it relates to a general question, which has been the subject of correspondence between the Government of India and the Secretary of State.

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

FORT ST. GEORGE,
1st *April* 1887.

Exd. F. R. Bantleman.

Public DEPARTMENT.

No. of 188

To
The Right Honorable
The Secretary of State for India.

28 Feb

1/3

MY LORD,

We have the honor to ~~in~~ ~~cite~~ report ~~the following facts~~ for yr. lordship's consideration and orders.

the following facts in connection with Mr. F. E. Gibson of the Madras Civil Service, and lately Acting District Judge, Kurnool

2. In September 1886, one of the Judges of the High Court having formally called our attention to Mr. Gibson's incapacity, we referred to ~~sought the opinion of~~ the Court as a body and in reply we received the letter from the Registrar which will be found amongst the papers annexed to this despatch stating that the Chief Justice & Judges had been compelled to form the opinion that Mr. Gibson

~~2. In October 1886 the Hon. the Judges of the High Ct. informed us that they had been compelled to form the opinion that Mr. F. E. Gibson, of the Covenanted Civil Service, who was at that time acting as Dt. and Sessions Judge of Kurnool, was not fit to discharge the duties of~~ ~~a Dt~~ ~~the office he was holding~~ ~~and Sessions Judge~~. In illustration of Mr. Gibson's capacity the learned

forwarded various o

and appellate judgments of that officer together with the orders and remarks of the High Ct. thereon. We transmit copies of these papers for yr. lordship's information.

2. With the deliberate opinion of the High Ct. before us, ~~supp~~ fully supported as it was by the ~~indisputable~~ evidence afforded by the abovementioned judgments, we felt that it was impossible to retain Mr Gibson in the position of a Dt. and Sessions Judge, and we accordingly directed that he shd. be relieved of his appointment.

3. Some demi-official correspondence, ~~betn~~ of which we enclose copies, then took place betn Mr Gibson and the Chief Secretary. We wd. invite yr. lordship's attention

b

to Mr Gibson's letters, and in particular to one which we forward in original, as both its matter and style will afford some indication to yr. lordship of the ~~weak~~ mental condition into which Mr Gibson has fallen.

inclined to

4. We were at first ~~in some doubt as to whether~~ we could ~~not~~ employ Mr Gibson in some lower appointment ~~re-~~ ~~served~~ in the revenue branch of his service, but we soon came to the conclusion, both from his letters and from his own admission, that he was totally unfit to perform the duties of a district revenue officer. ~~We~~ ~~at~~ ~~suggested that he should apply for an invalid pension, but as he declined to do so, we were compelled to place him out of employ.~~

as well as from his appearance when he presented himself in Madras

And we were therefore compelled to put him out of employ. We anticipated that he would either apply for sick leave or for an invalid pension; but in the circumstances of the case, we were unwilling to put pressure upon him by ~~directing~~ his examination by a medical Board. He has now been granted extraordinary leave to proceed to England without pay

5. ~~He has now~~ ~~submitted~~ ~~forwarded~~ ~~address~~

5. ~~6.~~ On the 2 Feb 1887 he addressed to us ~~the accompanying~~ a letter[x] in which he traverses the evidence adduced by the Hon. the Judges of the High Ct. in support of their opinion that ~~Mr Gibson's~~ he was not fit to discharge the duties of his office. His explanations are ~~wholly~~ in our opinion inadequate, and we may add that it is within the knowledge of the Hon. Mr Hutchins, who, as a Judge of the High Ct., had ~~some~~ experience of Mr Gibson's work in other & earlier cases, that the instances of his incapacity could have been largely increased.

With reference to paras 17-19 of Mr Gibson's letter we should state, for yr. lordship's information, that he has now been furnished with a copy of the paper referred to therein.

~~6. We now request the orders of yr. lordship as to whether Mr Gibson shd. be directed to at once appear before a Medical Board on pain of forfeiting the subsistence allowance which, under the rules, he now draws, or whether he shd. be permitted to continue to remain in the service, but without employment~~

x copy enclosed

FORT ST. GEORGE,

(188) DEPARTMENT.

Letter to the Right Honorable
the Secretary of State for India,
Dated
No. of 188 .

DEPARTMENT.

No. of 188

~~To~~
~~The Right Honorable~~
~~The Secretary of State for India.~~

~~MY LORD,~~

6. While fully admitting that there is nothing against Mr Gibson's moral character we should not be stating the whole case against him if we omitted to call your

6. We would, ~~in this connection~~ further invite yr. lordship's attention to the fact that ~~Mr Gibson's~~ his official conduct has not been thoroughly satisfactory. In Feby. 1880 ~~whilst he was~~ he incurred the unfavorable notice of the Board of Revenue and of the Madras Govt. for insubordination and neglect of important public duties

while he was officiating as Sub-Collector of the Dt. of Tinnevelly. He was accordingly transferred ~~removed~~ from that appointment to the lower one of Hd. Asst. Collr. in S. Arcot. Before he had been a month in his new appointment, he again gave cause for censure ~~Mr Gibson was again guilty of misconduct~~, and the tone of a letter addressed by him to his Collector was characterised by the Board of Revenue as objectionable and unbecoming. Two months later he was again reported by the Collector for conduct which the Board of Revenue described as gravely insubordination. The Board added that Mr. Gibson had "shown a determination "to follow his own "plan in opposition to the "plain directions of his "Collector, whilst his demi-"official correspondence "breathed a spirit of dis-"content and impatience of "control"

It shd be added that Mr. Gibson has throughout his service suffered from ~~enjoyed very indiffer-~~ bad health ~~ent health~~, and that, in our opinion, his failure to perform his duties satisfactorily must be largely ascribed to this fact. It will be seen from the official record of his service that he has had more than six years leave out of a little more than nineteen years service, having been compelled to take sick leave on four occasions

7. According to information furnished by the Acct. Genl. Mr. Gibson's service commenced on the 24th Sept. 1867, and he would, therefore, now be entitled to an invalid pension of £430 per annum, if it is found that he is, by reason of ill-health, incapacitated for further service. If he is permitted to continue in the service without an apptmt until the 23rd Sept. next he will be entitled to an invalid pension of £450 a year, which is the maximum invalid pension, ~~he could receive~~

however long his service may be. Mr. Gibson states that his covenant is dated the 1st Aug. 1867, and if this be correct, he would be entitled to the maximum pension on the 1st Aug. next. ~~Mr. Gibson is now in receipt of a subsistence allowance of Rs 400 per mensem.~~

~~8 It will be seen that it~~ It is thus ~~is a question~~ of some importance to Mr. Gibson whether he be ~~permitted~~ compelled to retire at once or whether he be allowed to remain until he can claim the maximum pension.

8. With these remarks, we leave the disposal of Mr. Gibson's case in your Lordship's hands, merely stating that in our opinion he cannot ~~with advantage~~ consistently with the public interest be employed again in this Country

H. S.

FORT ST. GEORGE,

(188) DEPARTMENT.

Letter to the Right Honorable
the Secretary of State for India,
Dated
No. of 188 .

[illegible] in the service for a few months longer, and we have no objection to this being permitted

---

despd 9-3-87 with 3 appendices and an original letter of Mr. Gibson's (11-11-86) printed in Appendix 2.

Proof

8 th March 1887, No. 6, Public.

~~CONFIDENTIAL.~~ 8

E

Give clean copy at once please for signature at Council today
8/3

PUBLIC DEPARTMENT.

LETTER—to

THE RIGHT HONORABLE THE SECRETARY OF STATE FOR INDIA.

MY LORD,

We have the honor to report, for your Lordship's consideration and orders, the following facts in connection with Mr. F. E. Gibson, of the Madras Civil Service, and lately Acting District Judge, Kurnool.

2. In September 1886, one of the Judges of the High Court having formally called our attention to Mr. Gibson's incapacity, we referred to the Court as a body, and, in reply, we received the letter from the Registrar which will be found amongst the papers annexed to this despatch, stating that the Chief Justice and Judges had been compelled to form the opinion, that Mr. Gibson was not fit to discharge the duties of the office he was holding. In illustration of Mr. Gibson's incapacity, the learned Judges forwarded various original and appellate judgments of that officer together with the orders and remarks of the High Court thereon. We transmit copies of these papers for your Lordship's information.

3. With the deliberate opinion of the High Court before us, fully supported as it was by the evidence afforded by the abovementioned judgments, we felt that it was impossible to retain Mr. Gibson in the position of a District and Sessions Judge, and we accordingly directed that he should be relieved of his appointment.

4. Some demi-official correspondence, of which we enclose copies, then took place between Mr. Gibson and the Chief Secretary. We would invite your Lordship's attention to Mr. Gibson's letters, and in particular to one which we forward in original, as both its matter and style will afford some indication to your Lordship of the mental condition into which Mr. Gibson has fallen.

5. We were at first inclined to employ Mr. Gibson in some lower appointment in the Revenue branch of his service, but we soon came to the conclusion, both from his letters and from his own admission as well as from his appearance when he presented himself in Madras, that he was totally unfit to perform the duties of a District Revenue officer, and we were therefore compelled to put him out of employ. We anticipated that he would either apply for sick leave or for an invalid

pension; but, in the circumstances of the case, we were unwilling to put pressure upon him by directing his examination by a Medical Board. He has now been granted extraordinary leave to proceed to England without pay.

6. On the 2nd February 1887, he addressed to us a letter* in which he traverses the evidence adduced by the Hon'ble the Judges of the High Court in support of their opinion that he was not fit to discharge the duties of his office. His explanations are, in our opinion, inadequate, and we may add that it is within the knowledge of the Hon'ble Mr. Hutchins, who, as a Judge of the High Court, had experience of Mr. Gibson's work in other and earlier cases, that the instances of his incapacity could have been largely increased.

With reference to paras. 17—19 of Mr. Gibson's letter, we should state, for your Lordship's information, that he has now been furnished with a copy of the paper referred to therein.

7. While fully admitting that there is nothing against Mr. Gibson's moral character, we should not be stating the whole case against him if we omitted to call your Lordship's attention to the fact that his official conduct has not always been satisfactory. In February 1880, he incurred the unfavorable notice of the Board of Revenue and of the Madras Government for insubordination and neglect of important public duties while he was officiating as Sub-Collector of the district of Tinnevelly. He was accordingly transferred from that appointment to the lower one of Head Assistant Collector in South Arcot. Before he had been a month in his new appointment, he again gave cause for censure, and the tone of a letter addressed by him to his Collector was characterised by the Board of Revenue as objectionable and unbecoming. Two months later he was again reported by the Collector for conduct which the Board of Revenue described as grave insubordination. The Board added that Mr. Gibson had "shown a determination to follow his own plan in opposition to the plain directions of his Collector, whilst his demi-official correspondence breathed a spirit of discontent and impatience of control."

It should be added that Mr. Gibson has throughout his service suffered from bad health, and that, in our opinion, his failure to perform his duties satisfactorily must be largely ascribed to this fact. It will be seen from the official record of his service that he has had more than six years' leave out of a little more than nineteen years' service, having been compelled to take sick leave on four occasions.

8. According to information furnished by the Accountant-General, Mr. Gibson's service commenced on the 24th September 1867, and he would, therefore, now be entitled to an invalid pension of £430 per annum if it is found that he is, by reason of ill-health, incapacitated for further service. If he is permitted to continue in the service without an appointment until the 23rd September next he will be entitled to an invalid pension of £450 a year, which is the maximum invalid pension. He states that his covenant is dated the 1st August 1867, and if this be correct, he would be entitled to this maximum pension on the 1st August next. It is thus of some importance to Mr. Gibson that he should be allowed to remain in the service for a few months longer, and we have no objection to this being permitted.

* Copy enclosed.

9. With these remarks, we leave the disposal of Mr. Gibson's case in your Lordship's hands, merely stating that, in our opinion, he cannot, consistently with the public interests, be employed again in this country.

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

Fort St. George,
8th March 1887.

FORT SAINT GEORGE.

PUBLIC (1887) DEPARTMENT.

(Copy.)

LETTER to the Right Honorable the Secretary of State for India.

Dated 8 March,

No. 6 **of** 1887.

Copy Desp: with 3 appendices
sent to Govt of India -
10-3-87.

8TH MARCH 1887, No. 6, PUBLIC.

PUBLIC DEPARTMENT.

LETTER—to

THE RIGHT HONORABLE THE SECRETARY OF STATE FOR INDIA.

MY LORD,

We have the honor to report, for your Lordship's consideration and orders, the following facts in connection with Mr. F. E. Gibson, of the Madras Civil Service, and lately Acting District Judge, Kurnool.

2. In September 1886, one of the Judges of the High Court having formally called our attention to Mr. Gibson's incapacity, we referred to the Court as a body, and, in reply, we received the letter from the Registrar which will be found amongst the papers annexed to this despatch, stating that the Chief Justice and Judges had been compelled to form the opinion, that Mr. Gibson was not fit to discharge the duties of the office he was holding. In illustration of Mr. Gibson's incapacity, the learned Judges forwarded various original and appellate judgments of that officer together with the orders and remarks of the High Court thereon. We transmit copies of these papers for your Lordship's information.

3. With the deliberate opinion of the High Court before us, fully supported as it was by the evidence afforded by the abovementioned judgments, we felt that it was impossible to retain Mr. Gibson in the position of a District and Sessions Judge, and we accordingly directed that he should be relieved of his appointment.

4. Some demi-official correspondence, of which we enclose copies, then took place between Mr. Gibson and the Chief Secretary. We would invite your Lordship's attention to Mr. Gibson's letters, and in particular to one which we forward in original, as both its matter and style will afford some indication to your Lordship of the mental condition into which Mr. Gibson has fallen.

5. We were at first inclined to employ Mr. Gibson in some lower appointment in the Revenue branch of his service, but we soon came to the conclusion, both from his letters and from his own admission as well as from his appearance when he presented himself in Madras, that he was totally unfit to perform the duties of a District Revenue officer, and we were therefore compelled to put him out of employ. We anticipated that he would either apply for sick leave or for an invalid

pension; but, in the circumstances of the case, we were unwilling to put pressure upon him by directing his examination by a Medical Board. He has now been granted extraordinary leave to proceed to England without pay.

6. On the 2nd February 1887, he addressed to us a letter* in which he traverses the evidence adduced by the Hon'ble the Judges of the High Court in support of their opinion that he was not fit to discharge the duties of his office. His explanations are, in our opinion, inadequate, and we may add that it is within the knowledge of the Hon'ble Mr. Hutchins, who, as a Judge of the High Court, had experience of Mr. Gibson's work in other and earlier cases, that the instances of his incapacity could have been largely increased.

* Copy enclosed.

With reference to paras. 17—19 of Mr. Gibson's letter, we should state, for your Lordship's information, that he has now been furnished with a copy of the paper referred to therein.

7. While fully admitting that there is nothing against Mr. Gibson's moral character, we should not be stating the whole case against him if we omitted to call your Lordship's attention to the fact that his official conduct has not always been satisfactory. In February 1880, he incurred the unfavorable notice of the Board of Revenue and of the Madras Government for insubordination and neglect of important public duties while he was officiating as Sub-Collector of the district of Tinnevelly. He was accordingly transferred from that appointment to the lower one of Head Assistant Collector in South Arcot. Before he had been a month in his new appointment, he again gave cause for censure, and the tone of a letter addressed by him to his Collector was characterised by the Board of Revenue as objectionable and unbecoming. Two months later he was again reported by the Collector for conduct which the Board of Revenue described as grave insubordination. The Board added that Mr. Gibson had "shown a determination to follow his own plan in opposition to the plain directions of his Collector, whilst his demi-official correspondence breathed a spirit of discontent and impatience of control."

It should be added that Mr. Gibson has throughout his service suffered from bad health, and that, in our opinion, his failure to perform his duties satisfactorily must be largely ascribed to this fact. It will be seen from the official record of his service that he has had more than six years' leave out of a little more than nineteen years' service, having been compelled to take sick leave on four occasions.

8. According to information furnished by the Accountant-General, Mr. Gibson's service commenced on the 24th September 1867, and he would, therefore, now be entitled to an invalid pension of £430 per annum if it is found that he is, by reason of ill-health, incapacitated for further service. If he is permitted to continue in the service without an appointment until the 23rd September next he will be entitled to an invalid pension of £450 a year, which is the maximum invalid pension. He states that his covenant is dated the 1st August 1867, and if this be correct, he would be entitled to this maximum pension on the 1st August next. It is thus of some importance to Mr. Gibson that he should be allowed to remain in the service for a few months longer, and we have no objection to this being permitted.

9. With these remarks, we leave the disposal of Mr. Gibson's case in your Lordship's hands, merely stating that, in our opinion, he cannot, consistently with the public interests, be employed again in this country.

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

Fort St. George,
8th March 1887.

FORT SAINT GEORGE.

PUBLIC (1887) DEPARTMENT.

Letter to the Right Honorable
the Secretary of State for
India.
Dated 8th March,
No. 6 of 1887.

Reporting the unfitness of Mr. F. E. Gibson, C.S., for the office of District and Sessions Judge and of which it has become necessary to relieve him, as also for that of a District Revenue officer and expressing the opinion that, in the public interests, he could not again be employed in this country.

---

omit lines at head throughout b Proof

~~TH MARCH 1887, No. , PUBLIC.~~

~~CONFIDENTIAL.~~

Appendix No. 1 to Des to the Secy of State of 8 March 1887 –

GOVERNMENT OF MADRAS.

PUBLIC DEPARTMENT.

READ—the following papers :—

Demi-official letter from the Hon'ble F. BRANDT, Puisne Judge of the High Court of Judicature at Madras, to the Chief Secretary to Government, Fort St. George, dated 4th September 1886.

I see in to-day's Gazette that F. E. Gibson of Kurnool is out of his appointment as District Judge of that place.* I think it proper to tell you that there is now in circulation in the Court a memorandum 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 District and Sessions 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. I believe they all are now; but, however that may be, I should, in any case, have insisted on my minute going forward. quite/

2. I write this as it may obviate the necessity of having to write officially on an unpleasant subject, but I think the fact should be recorded.

Demi-official letter from the Hon'ble E. F. WEBSTER, Chief Secretary to Government, to the Hon'ble the Chief Justice of the High Court of Judicature at Madras, dated Ootacamund, 8th September 1886.

I am desired by His Excellency the Governor in Council to request you to have the kindness to inform the Government what opinion the Hon'ble 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.

Demi-official letter from H. T. ROSS, Esq., Registrar of the High Court of Judicature at Madras, Appellate Side, to the Chief Secretary to Government, Fort St. George, dated 1st October 1886.

In reply to your demi-official of 8th September, 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.

2. In illustration of Mr. Gibson's incapacity, I am to enclose copies of—

(1) his Judgment in Sessions Case No. 36 of 1885, together with the Notes thereon of a Divisional Bench of the High Court 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.

(4) his Judgments in Civil Second Appeals Nos. 174 and 930 of 1885, together with the Judgments of the High Court in the same.

foot note in small type

---

* The notification in the Gazette did not, as Mr. Justice Brandt thought, involve the removal of Mr. ~~Gazette~~ Gibson.

3. 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.

ENCLOSURES.

SESSIONS CASE No. 36 OF 1885.

Prisoners.—(1) Reddi 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 Lakshmi Reddi), (11) Aruvella Seshi Reddi, (12) Krishna Reddi (brother of the 1st prisoner, Reddi Seshi Reddi), (13) Kase Nagada, (14) Pedda Seshi Reddi (*alias* Pedda Seshanna) of Kottapalli, and (15) Chinna Seshi Reddi or Seshanna of Kottapalli.

Offence.—Murder, culpable homicide not amounting to murder, voluntarily causing grievous hurt by means of deadly weapons, voluntarily causing hurt, and rioting (armed with deadly weapons) and rioting; offences punishable under sections 302, 304, 326, 324, 323, and 147 and 148 of the Indian Penal Code.

Opinion of the Assessors.—(Both) 1st accused "not guilty" (of any offence?); 2nd accused guilty of rioting armed with deadly weapons (to wit, a thick stick); 3rd accused guilty of same offence and also of voluntarily causing grievous hurt by means of deadly weapon (to wit, a thick stick); 4th accused guilty of the same offences as the 3rd accused as above specified; 5th accused guilty of rioting as above specified; 6th, 7th, 8th and 9th accused not guilty; 10th and 11th accused guilty of rioting, being armed with deadly weapon; 12th, 13th, 14th and 15th accused not guilty (of any offence).

Opinion of the Judge.—Concurs (partly) and differs (partly) with both assessors (for reasons and sentences see judgment in the following pages); that is, 1st accused guilty, under section 304 of the Indian Penal Code, of culpable homicide not amounting to murder; 2nd accused guilty of rioting armed with deadly weapon, under section 148, and rioting, under section 147, Indian Penal Code.

3rd, 4th, 10th and 11th accused guilty of rioting armed with deadly weapon and voluntarily causing grievous hurt by means of a deadly weapon and culpable homicide not amounting to murder, under sections 148, 326 and 304, Indian Penal Code.

5th accused guilty of rioting, under section 147, Indian Penal Code; and 6th, 7th, 8th, 9th, 12th, 13th, 14th and 15th accused not guilty of any offence.

Sentence.—1st accused is sentenced, under section 304, Indian Penal Code, to transportation for life; 2nd accused is sentenced, under sections 147 and 148, Indian Penal Code, to three (3) years' rigorous imprisonment and to pay a fine of Rs. (100) one hundred, or, in default, to suffer further rigorous imprisonment for six (6) months; 3rd and 4th accused are sentenced, under sections 148, 326 and 304, Indian Penal Code, to transportation for ten (10) years each.

10th and 11th accused are sentenced, under sections 148, 326 and 304, Indian Penal Code, to transportation for seven (7) years each.

5th accused is sentenced, under section 147, Indian Penal Code, 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,
Acting Sessions Judge.

Judgment.

The "assessors" have both given intelligent and very patient and unflagging attention to the lengthy and tedious details of the evidence of all the forty witnesses examined on the trial 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 judge) has occupied this Court for almost the 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 the "opinion" of the "assessors" as it stands in its entirety.

2. I will first notice the case of the 1st accused, whom the assessors have altogether "acquitted," because I cannot concur in their opinion that the evidence against him is insufficient for conviction.

3. I think that the "assessors" have, in this matter, failed to properly grasp and give due weight to the very strong "circumstantial" evidence in corroboration of the story told by all the "prosecution witnesses" anent the "stabbing" of the deceased "Kondalayya" (*alias* Pedda Konda Reddi) by the 1st accused "Reddi Seshi Reddi."

4. This observation has more especial and particular reference and peculiar force with regard to the evidence of the "medical expert" (Assistant Surgeon Mahomed Oosman) as to the nature of the "punctured wound," and 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 the sole part of it, in which this "village magistrate" is directly and individually concerned or incriminated at all.

5. It will, I trust, suffice here to state summarily that that evidence, which was (as I endeavoured to point out to the assessors) of the more value from the more than usually guarded and obviously careful and cautious manner in which this "expert" gave his testimony before this Court (in the presence of the assessors) and under cross-examination by the ablest pleader of this Court,—that evidence in its total result leaves in my mind no reasonable or substantial doubt of two "points" which in this matter are of the very first moment and most serious import and importance which I set out below separately and distinctly.

6. The first is that the "stab," which the "medical witness" did see and also carefully inspect and examine superficially at least in life and again after death (in the *post mortem* done by himself), must have been inflicted by a "two-edged weapon" and one having both "edges" almost equally "sharp," very similar at least to the "dagger" (Telugu *baku*), which is stated distinctly by several witnesses to have been used by the "Village Reddi" (1st accused, Seshi Reddi) wherewith to stab his victim (the above-named Kondalayya or Pedda Konda Reddi).

7. The second "point" is of almost equal importance in this question as to who inflicted the wound "in the chest," which, after he had been six days under treatment in the hospital at Kurnool, resulted in the death of this man (from inflammation of the plura).

8. This matter about the "stab," which I consider deliberately, after repeated consideration, to be sufficiently established by the evidence of the above-named "Mahomed Oosman," is that it is almost incredible that the stab in question should have been caused by any "sickle" (or "reaping hook," Telugu *kodavali*) even though both "edges" (*i.e.*, back as well as front) were quite sharpened up, which, by the bye, I may say that I must believe to be very unusal (to say the very least) and this is peculiarly important with reference to the "confessional statement" given by the Reddi's brother, Venkata Reddi (before the deputy magistrate), very shortly after this fight, wherein he not only freely admitted, as he does also in this 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 and subsequently beat him (the said Mahanandi Reddi) so savagely with heavy sticks that he expired upon the spot or on a "pial" very close to the scene of the "fight" (near the "Madigaghiri" or houses inhabited by the "Madigas").

9. I say not only did this brother of the Village Reddi admit all this against himself, he but further proceeded to tell the magistrate that it was he (Venkata Reddi) also that stabbed "Kondalayya" (who died in hospital) and that he inflicted the wound (the edges of which are nearly smooth and equal) with a "kodavali."

10. I entirely agree with the magistrate in rejecting this portion of the story told by the 3rd accused, and this I do after due consideration notwithstanding the fact that it is supported in this detail also by one of the "prosecution witnesses," viz., one "Vajjrala Kondalayya," who is also a "connection" of the said "Reddi" (Reddi Seshi Reddi, 1st accused) and of the 3rd.

11. I think very decidedly, on a full consideration of all the circumstances and more especially of the "medical evidence," that it is next to impossible that the wounds as so carefully and exactly described by "Assistant Surgeon Mahomed Oosman" could have been caused by any "sickle" (kodavali) and most certainly they could not have been inflicted by the only such "reaping hook" which has been actually produced in this "case," viz., the one found in the house of the said 3rd accused when search was made by the police by express direct order of the "deputy magistrate" given on the spot after recording the abovementioned "confession" of the 3rd accused, Venkata Reddi, brother of the 1st accused, the Village Reddi.

12. I think that the reason which is assigned by the "deputy magistrate" for disbelieving that portion only of the said "confession" is a good reason and well founded though they are, to my mind, other far stronger reasons for arriving at the same conclusion, the principal one being the nature and character of the "medical evidence" as before explained with sufficient fullness of detail, I think.

13. I will, however, add that I told the "assessors" I could by no manner of conceiving the matter assent to the doctrine boldly and ingeniously propounded by the "prisoner's pleader" to the effect that, in this question, the evidence of a trained "medical observer" was not of more value than that of any ordinary untrained "layman."

14. I may also add here that I have consulted "Taylor's Medical Jurisprudence" on this matter, and, in my opinion, that (the greatest authority on the subject, even now, I suppose) entirely bears out the evidence of the "Assistant Surgeon."

15. Upon the whole case, as it stands on both sides, I finally conclude, without any hesitation, that the 1st accused, "Reddi Seshi Reddi," did stab "Kondalayya" with an instrument or "weapon" of the nature of a "dagger," which the people in this part of the country, and, I

might say, more particularly and especially the "Reddis," of this taluk of Koilkuntla, know very well, perhaps too well, under its Telugu name of "baku," and in the use thereof some of them have experience, as I know very well from other cases that have come before this Court recently, or, at least, since I myself took charge of the Court in November 1884.

16. In arriving at this conclusion, I bear in mind the fact that, in the present instance, no such "dagger" was found when the "police" did search the 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 established as anything in the case, that the actual quarrel was first started and began by the deceased "Mahanandi Reddi" striking the Reddi (1st accused) on the head with a stick, though it is admitted by the said "Reddi" himself that the force of that blow was very materially lessened by the "head cloth" which he (Reddi struck) was wearing on his head at that time. But it is also to be taken into full account that, according to all the evidence on both sides, the "Reddi" all along had no stick as all the others or nearly all the others had, and, therefore, I presume, made use of that weapon which alone was ready to his hand, viz., the "baku."

18. I think also that he did really strive, as long as he could restrain and control his passionate feelings, to refrain from violence.

19. At last, the blow aimed at his head by "Mahanandi Reddi" awoke the smouldering and half-smothered wrath of the offended and insulted village magistrate, and, I think, that, as near as I can make out from all the evidence in the case, and as, on the whole view, most favorable to this "accused," that what followed was most probably, for we cannot be positively or definitely certain as to some of the details of what actually did happen in such a *mêlée* and confused struggle,—what, therefore, is, I say, upon a view of the story as a whole, the most likely "conjecture" upon the evidence of the ascertained facts is that, whilst "Mahanandi Reddi" was lying on the ground surrounded and hemmed in completely by a close pressing "mob," "assailants" (like a struggle to get the "ball" in some foot-ball match), the man "Kondalayya," who, be it noted, was certainly one of the same faction kakshi) as Mahanandi Reddi, the assailant of the Reddi, had made his way into the crowd to look at the prostrate and, by this time, half lifeless form of his relative or "connection" and friend (said Mahanandi Reddi), and when this man, Kondalayya, intervened or at the least accidentally interposed his body to the Reddi (1st accused) as he (Reddi) was endeavouring to get at the man who had first and very shortly, not more than a few minutes, before assaulted himself (the Reddi)—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 by intentionally causing the death of one "Kondalayya" (*alias* Pedda Konda Reddi), and I should, in my opinion, fail in my duty if I gave any less sentence than *transportation for life*, and I do accordingly so convict and sentence him, the said Reddi Seshi Reddi.

21. As regards all the others, I trust that it will suffice to give a brief "résumé" of my charge to the "assessors," supplemented by some reasons for the decision which, after due consideration, I have arrived at finally as to the sentence to be passed on each of those convicted for the offences of which, concurring with the "assessors," I find each to be guilty.

22. As to those acquitted, I shall say no more than that I accept the verdict on the facts of the "assessors" on those acquitted by them as completely and as entirely without "reservation" as I accept the opinion of the "assessors" in the case of each and every one of those whom on the evidence they deem to be "guilty" of the various "offences" with which these are charged and upon which the "opinion" of each assessor was taken separately and in detail at the conclusion of this protracted "trial"!

23. As regards the 1st accused, I omit all the commencement of the "charge," and merely insert the only very material point not already noticed (*vide suprà*).

24. It is this, that in the hospital here, very shortly before his death, which resulted six days after the "stab," the deceased "Kondalayya" made a "dying declaration" duly and carefully recorded and certified by the 3rd-class magistrate, who was examined as a witness to prove that "statement" in this Court.

25. That statement *pro tanto* tallies and agrees with the "medical" and other evidence as to almost all essential matters and particularly as to the fact spoken to by several of the "prosecution witnesses," that Reddi Seshi Reddi stabbed the deponent, and although the deponent did state that Kottapalli Chinna Seshi Reddi (15th accused) did first stab him (deponent Kondalayya) in the back, and that, on his turning round, Reddi Seshi Reddi (1st accused) stabbed him in front, still, as this appears to be quite irreconcilable 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 the story told by the said deceased "Kondalayya" as not unlikely mistake or error of observation not unlikely to occur under the circumstances, and I acquit the 15th as well as the 14th accused, who

NOTES OF A DIVISIONAL BENCH IN CRIMINAL APPEAL 123 OF 1886.

S. C. 36 *of* 1885, *Kurnool.*

Fifteen persons, namely (1) Reddi 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 Lakshmi Reddi), (11) Aruvalla Seshi Reddi, (12) Krishna Reddi (brother of the 1st prisoner, Reddi Seshi Reddi), (13) Kasi Nagadu, (14) Pedda Seshi Reddi (*alias* Pedda Seshanna) of Kottapalli and (15) Chinna Seshi Reddi or Seshanna of Kottapalli, were charged in this case, firstly, with being concerned in causing the death of one Mahanandi Reddi, at Yerragudi, on the 10th October 1885; and, secondly, with being concerned in causing grievous hurt and hurt to the said man

The 2nd, 3rd, 4th, 6th, 7th, 8th, 9th, 10th, 11th and 13th accused were charged (1) with having murdered the said man; (2) with having caused his death in such manner and with such intention or knowledge that they are guilty of culpable homicide not amounting to murder; (3) with having intentionally caused to him grievous hurt; (4) with having abetted the murder; (5) with, aving abetted culpable homicide in respect of him; (6) with having abetted the intention of causing grievous hurt to him.

Then the 1st, 5th, 12th, 14th and 15th, that is, the remaining accused persons, were charged (1) with having abetted the murder of, (2) the culpable homicide of, (3) the causing of grievous hurt to, the said person. All fifteen are also charged that they, being members of an unlawful assembly, at the same place and time, used violence towards the said Mahanandi Reddi and another (Konda Reddi), and thereby committed rioting, and they are further charged with rioting, being armed with sticks, which, used as weapons of offence, are deadly weapons.

The 1st prisoner (1st appellant) is further charged (1) with having, at the said time and place, caused the death of one Pedda Kondayya, *alias* Pedda Konda Reddi (hereafter styled Pedda Kondayya) in such manner as to be guilty (*a*) of his murder; of culpable homicide in respect of him; (2) with having voluntarily caused grievous hurt to the said Pedda Kondayya; and the other (14) accused persons with having abetted (*a*) the murder, (*b*) the culpable homicide, (*c*) the voluntary causing of grievous hurt to the said Pedda Kondayya.

The Sessions Judge, differing from the assessors in respect of the 1st prisoner (1st appellant), who was found by them not guilty of any offence, convicted the said 1st prisoner of culpable homicide not amounting to murder in respect of Pedda Kondayya and sentenced him to transportation for life. Concurring with the assessors, the Judge convicted the 2nd prisoner, Chinna Nagi Reddi, of rioting and rioting armed with a deadly weapon, to wit, a stick or club, and sentenced him to three years' rigorous imprisonment and to a fine of 100 rupees, and, in default, to six months' further rigorous imprisonment.

Concurring in part with, and differing in part from, the assessors, the Judge convicted the 3rd, 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 said Mahanandi Reddi, and committing rioting armed with deadly weapons (to wit, sticks) and sentenced the 3rd and 4th to transportation for ten years and the 10th and 11th to transportation for seven years, each, and convicted the 5th prisoner of simple rioting only, and sentenced him to two years' rigorous imprisonment.

The 6th, 7th, 8th, 9th and 13th accused, he, 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 and 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 he was or was not guilty (1) of rioting; of the abetment of the murder, or of the culpable homicide of, or of causing grievous hurt to Mahanandi Reddi. But this accused person was entitled to acquittal on those charges if found not guilty, and should have been convicted if found guilty, in any case there should have been a distinct finding, one way or the other.

In the case of the 2nd prisoner, there is no finding whatever on any of the 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 3rd, 4th, 10th and 11th prisoners, the acquittal in respect of the charge of the murder of Mahanandi Reddi rendered unnecessary any except a formal order of acquittal in respect of the minor charges relating to that man's death but there is no finding as to whether they were concerned in Kondayya'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 those charges.

In the case of the 9th prisoner, he is no doubt acquitted on all charges, and 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

the question whether there was an assembly or two assemblies collected for an unlawful object or objects, the greatest clearness and very considerable detail were required.

We are compelled to say that 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 conclusion 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 acquitted. There is no statement of the circumstances which led to the two bodies of opposing parties coming to the place where they came in conflict; no statement of the several points for determination, and in this case they are very numerous, nor, except in one or two points, of the reasons for the conclusions arrived at. And if the finding as to the 1st prisoner having intentionally caused the death of Pedda Kondayya with a sharp dagger, by stabbing him once in the chest and once in the back be correct, it should have been most clearly stated on what grounds the offence was held to be not murder but culpable homicide not amounting to murder. It is clearly found, first, that the deceased Mahanandi Reddi started the quarrel by striking the 1st prisoner on the head with a stick, on which the latter used his dagger; and, secondly, that the wounds, from the results of which Mahanandi Reddi eventually died, were inflicted by a dagger, and not by a sickle or reaping-knife; and that they were inflicted by the 1st prisoner. There is also a finding that the 3rd prisoner did not tell the truth when he confessed and stated that it was he and not the 1st prisoner who stabbed Pedda Kondayya. I cannot say that anything else is clearly and distinctly found; if there are any other distinct findings, there are not clearly stated grounds in support of such findings.

Having done our best to understand that part of the Judge's judgment in which he states his conclusions as to what immediately led to Pedda Kondayya being stabbed, and as to the cause which led the 1st prisoner to stab him, and the motive of, and the excuse (if any) for the 1st prisoner's act, it comes to this: that Mahanandi Reddi being on the ground being beaten, and kicked in the midst of a general *mélée*, 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 get 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 on the head), the 1st prisoner stabbed Pedda Kondayya twice.

If the finding is really that Pedda Kondayya accidentally, 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 witness intentionally interposed between 1st prisoner and Mahanandi, intending to prevent the former either from helping to kill the latter by kicking, beating, or otherwise doing violence to him or to prevent him from using his dagger on Mahanandi, then also the 1st prisoner was assuredly guilty of murder, whether by reason of such intervention he intentionally stabbed Pedda Kondayya; so as to kill him, or whether aiming blows at Mahanandi with his dagger he stabbed and killed Pedda Kondayya instead, and 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 and (*b*) of Pedda Kondayya, can be supported: this is necessary, because (as before said) the judgment contains no summary of the evidence, no balancing of the evidence for the prosecution and 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 Sessions 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 claimed their crop. On the 10th October 1885 Govindu went to the 1st witness, Venkata Reddi, and told him that the other party who asserted a right to cut the crop had gone to the field and asked whether he and should go to cut the crop; Venkata advised them not to go as there would be a fight; Govindu again asked him to go, taking others, respectable people, to prevent the crop being wrongfully taken, and, if possible, to settle matters amicably, They went for this purpose—viz., 2nd witness, 6th witness, 3rd witness, the 4th and 5th witnesses for the prosecution, Vajjrala Kondayya and Chinna Kondayya, who eventually mediated, and others.

It may be as well to say here that the 1st prisoner, Reddi Seshi Reddi, and his five brothers were the principal persons who claimed the indigo crop, as against Govindu Reddi and his party. The 2nd, 3rd, 8th, 11th and 12th accused are the 1st prisoner's brothers.

There was very nearly being a fight at the field, not an agreement was come 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 for the prosecution, a cry was raised that the prisoner's party, who, it seems, were going in advance, had killed Govindu Reddi, who, it is said, was walking near them, the mediators coming next, and the party of Govindu following: other witnesses say positively that high words began again between A. Sesha Reddi, the 11th prisoner, one of 1st prisoner's brothers, and Govindu, on which the former struck the latter with his stick; and that on that Mahanandi Reddi, one of the deceased, rushed at the 1st prisoner and struck him on the head with the stick *he* had in his hand: then a general fight began and Mahanandi was borne down, illused, kicked, and, as some witnesses say, struck repeatedly with an axe, and eventually died.

Now, it is quite clear that neither of these two parties or factions were, at the time when this fight commenced, collected for an unlawful purpose. No doubt an assembly not unlawful in its inception may become an unlawful assembly, but the question is whether the prisoner's party can be said to have had, at the time when A. Sesha Reddi, the 11th prisoner, first struck Govindu (if he did strike him), the common object of using force or violence to the opposite 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 Mahanandi. It 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 contrary, while he says the 11th prisoner first struck Mahanandi, states that the latter had no stick in his hand at all.

The 4th and 5th witnesses seem to say that Govindu, either by taunts or satire, lashed Mahanandi Reddi into fury, so that the latter struck 1st prisoner with a stick.

The 6th witness, Govindu, says he, 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 and 12th witnesses.

The 8th to the 12th witnesses are not of the Reddi caste, but the 8th is of the washerman caste, and the other four are Madigas (Pariahs). They speak of a "fight" only; but according to their account the fight consisted in the prisoners' 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 object, being armed with deadly weapons, that common object being to cause hurt or grievous hurt to Mahanandi Reddi.

What was the object common to the 1st prisoner and the other prisoners convicted? For he is convicted of rioting. Was it to use force and violence to Mahanandi? But the 1st prisoner is acquitted of the murder, and indeed of having anything to do with the death of or with hurting Mahanandi.

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

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

It is difficult to see how the conviction of the 2nd and 5th prisoners (the 2nd and 3rd appellants) for rioting can be supported, if they cannot properly be convicted on some of the more serious charges. It remains to consider whether the convictions should not be upheld in revision on the ground that the prisoners should have been and should now be convicted of another offence or other offences in this case.

We continue to consider the case arising out of Mahanandi's death, in connection with the conviction of the 10th and 11th prisoners, the 4th and 5th appellants.

There is not one single word in the judgment to show on what evidence the judge convicted these men of having killed Mahanandi Reddi.

There is evidence that the deceased was cut again and again on the head with an axe: two witnesses (the 3rd and 8th) say the 2nd prisoner took the axe out of the hands of the 13th prisoner and clave the deceased's head while the 7th witness swears that it was the 13th prisoner who felled Mahanandi with his axe. We may observe again here that the 13th prisoner was aquitted on all charges, and the 2nd prisoner on all charges except rioting.

The witnesses of the Pariah hamlet above referred to, who speak to having seen Mahanandi to death by beating, not only say not a word about an axe being used, but two, the 9th and the 16th, distinctly say they did not see any axe at all.

The 15th, 16th, 17th, 18th, 20th and 21st witnesses, who also profess to have seen more or less of the beating of this deceased man, say nothing about an axe.

Now is this evidence about the deceased being felled again and again with an axe true, or is not?

It must be assumed the Judge disbelieved it: if so, the evidence of those (the 3rd, 7th and 8th) witnesses who speak to it is clearly entitled to little, if any, credit in the case of the other persons whom they speak against, or 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 the 8th witness swears that after he fell all the other accused beat him with sticks, but the Judge acquits the 9th prisoner on all counts, and the 6th and 7th everything but rioting with 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 those appellants. Is it sufficient? If it is, it is beyond comprehension why they were not sentenced to transportation 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 is not suggested that those who killed him—the 1st prisoner is not convicted of having taken part in killing him—had any sued provocation as would ever reduce the offence from a crime of the first to a crime of the seconh degree in death-causing, and we cannot but express surprise that there was no application on behalf of Government in this case to this Court to exercise its discretion in revision, and that on regular appeal was preferred against the acquittals in the case of some of the accused at least. To return to the evidence against the 10th and 11th prisoners. The 1st witness, Venkata Reddi, says "all the people there, except the 1st prisoner, the 5th 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 means direct. As to his saying "the first three prisoners standing in a row behind the prisoners' 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 12th prisoners set to work to beat *Pedda Kondayya*, when Mahanandi fell down; that, when the latter fell down, so many people pressed around that *it was impossible then to identify any one*. It is clear this witness' evidence is worth little or nothing in detail, or as against these two appellants.

The 2nd witness, T. R. Seshi Reddi, says "all the men (prisoners?) before the Court beat Mahanandi." Then he particularises the 11th prisoner and two other 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 against this prisoner by name in connection with the beating of Mahanandi.

This witness says nothing about the axe, but he speaks about Mahanandi standing looking in a particular direction when he was stabbed.

He is the only witness who speaks of Mahanandi's having been stabbed.

The 3rd witness, Ramsing, says "after Mahanandi was beaten down" they beat Govindu; the 3rd and 12th prisoners beat Govindu; "the 10th prisoner pursued him;" Govindu ran home: the 11th prisoner beat Mahanandi, but did not beat Govindu. He says Venkata Reddi, the 10th prisoner, 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 the 11th prisoner was present. He does not say whether 10th prisoner was or was not there. He says he can't say whether he said before the magistrate that prisoner was present. He states that the deceased Pedda Kondayya struck the 11th prisoner. He says nothing else to implicate these appellants. The 6th witness deposes that the 10th and 11th prisoners struck him, the former with a stick: that the 11th prisoner went back to 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.

The 7th witness, Bhimi Reddi, says Govinda Reddi and the 11th prisoner *went away* (from the crowd?) disputing.

He does not say one word against the 10th prisoner. Nor does his evidence implicate the 11th prisoner directly, or seriously in any way.

The 8th witness, P. Mada Reddi, only speaks generally as to "all the Kottapalli people being present when the quarrel took place." He gives no direct evidence against these two appellants. The Pariah witnesses, 9th, 10th, 11th and 12th witnesses, speak, most of them, only in the most general 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 15th accused, but not the 10th or 11th prisoners. The 12th witness names the 13th, 14th and 15th accused but not the 4th and 5th appellants.

The 15th witness, P. Kristadu, a cooly, does name these appellants as having beaten Mahanandi with sticks.

The 16th witness, C. Kristadu, a cooly, says first that all the prisoners except the 1st beat Mahanandi. Then, he says, "I have not seen the Kottapalli 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, Chinnigadu, 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!

The 18th witness, Nagadu, a shepherd, says twice and positively he saw the 11th prisoner and 3 others named beating Mahanandi.

The 20th witness speaks generally as to 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 deceased 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 the evidence against these appellants. We pass on to the death of Pedda Kondayya.

The 3rd accused, Venkata Reddi, has from the first given a clear and consistent account of what happened: he says he and others were beating Mahanandi Reddi when the deceased Pedda Kondayya came to strike him with a stick; that he warded off the blow with the stick he (the 3rd accused) had in his hand and with his other hand used the sickle or reaping-knife he had taken for the indigo-cutting and stabbed Pedda Kondayya.

His admissions and confession implicate him in the matter of Mahanandi's death, and make him solely responsible for the death of Kondayya. There is sworn evidence in support of this story not only on the side of the defence but on the side of the prosecution.

The 4th and 5th witnesses, the two Kondayyas, mediators and not men of either of the two factions, speak to it. No attempt was made in cross-examination to shake them. There may be some slight want of precision as to how and when the respective stabs in the front and rear of the chest were inflicted, but it appears to me this evidence is certainly as clear and consistent as that given by the witnesses who speak to the stabbing by 1st prisoner with a dagger, if not indeed more so.

The 8th witness, Madi Reddi, at first said that the 1st prisoner "stabbed" him in the belly, then it came down to a slight scratch; and this tallies exactly 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 he was trying to run away into the village the 1st prisoner came in front of him, having a dagger in his hand: he does not say how or by whom he was stabbed in the chest; and he says that the stab in his back was inflicted not by the 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 15th 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 prosecution, of those who profess to speak to this incident, the 1st witness says positively that 1st prisoner inflicted the two stabs, the first in the back as the deceased was going away, and the second in front, when he turned round.

The 2nd witness says he saw 1st prisoner stab Kondayya in the belly, and saw that the latter had a stab in his back but does not know who inflicted it.

The account given by the 3rd witness is almost the same as that given by 1st witness.

The 6th witness does not say who stabbed Kondayya. The 7th witness says the same.

The 8th witness says generally that 1st prisoner *having stabbed* Kondayya wounded him (witness). I have before stated reasons for distrusting this man's evidence, and he does not say he saw 1st prisoner stab the deceased.

The 9th witness in examination-in-chief simply speaks of the stabbing of deceased by 1st prisoner; in cross-examination he says he saw the stab in the chest inflicted, but not the stab in the back: the 10th witness says the same: he adds that *as soon as ever the deceased was stabbed* (he only saw him stabbed in the back), the deceased ran away.

The 11th witness saw only the stab in front inflicted, and he speaks of an incident mentioned by no other witness, namely, that the Kondayya had a dagger which 1st prisoner took away from him!

The 12th, 15th and 16th witnesses speak to only 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 20th witness speaks to stabbing in general terms. He does admit that before the magistrate he said 1st prisoner used a dagger.

The 21st witness introduces a totally new element; he says 1st prisoner used *a sword.* He adds that 1st prisoner had a dagger, but 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 rejects in favor of the conflicting, in many ways inconsistent, and in some respects defective evidence for the prosecution, and of the statements made by the deceased which differs from that evidence on the ground apparently that the medical evidence renders it absolutely impossible to believe the former account.

We must suppose the Sessions Judge finds, then, that the 3rd accused falsely implicated himself as responsible, with others, for the death of Mahanandi, and as responsible solely for Kondayya's death. Of course, this is not absolutely impossible, but it is extremely improbable that fraternal affection 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 "rather jagged at the edges." The hinder wound, no doubt, the Assistant Surgeon describes as "clean cut, with straight edges and equal ends." He "concludes," that is, infers, that "at least" the posterior wound was caused by a two-edged weapon, the two edges of which were equally sharp. He "does not think it could have been caused by the sickle produced," but he does not say it *could* not have been.

As to the front wound, he says: "I should have expected to have found the flesh more lacerated" if the sickle had been used; but he does not say that it could not possibly have 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 that others or he should have had daggers on their persons; not putting this aside altogether, and taking the evidence that one or more of those present had daggers with them, then, although the 3rd accused's confession be not accepted as true, and we incline to think it is true, the 1st prisoner cannot be convicted, unless the evidence is taken to be so clear, so trustworthy, as to leave it not open to reasonable doubt that in the *méleé* some one other than the 1st prisoner stabbed the deceased. 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 appear why, if one or more could see quite plainly, that the 1st prisoner stabbed deceased both in the chest and back, none of the Pariah witnesses saw the hinder wound inflicted, or that they could not have seen it if it was inflicted.

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

The case has not been dealt with as it should have been, 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.

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

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

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

PRESENT:

THE HON'BLE MR. JUSTICE KERNAN.
THE HON'BLE 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. Aruvella 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, 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 ordered that notice be given to all the prisoners, those acquitted as well as those convicted, to show cause within six weeks from the date why the Court should not, as a Court of Revision, direct a new trial, setting aside the findings and acquittals and convictions already had, and that, in the meantime, 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.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

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

PRESENT:

THE HON'BLE MR. JUSTICE MUTTUSAMI AIYAR, C.I.E.
THE HON'BLE MR. JUSTICE BRANDT.

REFERRED TRIAL No. 2 OF 1886.

Pilsari 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 taluk 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 having been mudered 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 Tallari 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 thef orm in which the judgment of the Sessions Court in sessions 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 sessions case No. 40 of 1885, without in any way prejudicing the appellant unfairly by reference to those facts.

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 "Turakas" or Mussamen, 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 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-feeilng 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 taluk, 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 Gonagondla 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, before he lost power of speech, told him that it was Madar Saib—Pisari 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 is 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 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 some time 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 doubts 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.

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.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

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

PRESENT:

THE HON'BLE MR. JUSTICE **MUTTUSAMI AIYAR**, C.I.E.
THE HON'BLE 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 Inam 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 sessions case No. 40 of 1885 of the murder of one China 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.

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 summonses for other witnesses.

The Sessions Judge bases the conviction upon the statements made by the appellant before the 2nd-class magistrate, Bellary taluk, 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.

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 Gonagondla 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 Gonagondla 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 recognise 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 ef 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.

THE COURT OF SESSION OF THE KURNOOL DIVISION.

Session Case No. 20 of 1886.

Accused	Karnam Kristappa.
Offence	Marder, 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 "Karnam 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, "Kamakka," 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 "Karnam Mirasee Inam lands" of that village, of which this accused is at present the "registered karnam" (performing the duties by deputy).

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

6. Moreover, Kamakka 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 Kamakka, in her disputes on business matters with the accused "Karnam Kristappa."

7. In the month of April last, the accused, on the plea of a certain "komati," of the village having promised to "*stand treat*," invited Kamakka 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 Kamakka (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 "*paramannum*" which is described as a compound of boiled rice, cocoanut and cocoanut-milk and jaggery.

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 Kamakka 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 *malaise* and *nausea* and, on being forthwith taken home, *i.e.*, to the house of Kamakka, 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 Reddi 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, Kamakka 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 grievious 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 Karnam 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.	Occurence.	Complaint.	Apprehension	Commencement of trial.	Close of trial.	
1	2						3					4
20 of 1886.	Karnam Kristappa.	Obalakondappa.	Brahmin.	Karnam 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.

Original Suit No. 40 of 1884.

IN THE DISTRICT MUNSIF'S COURT AT NANDYAL.

PRESENT:—P. V. RANGACHARLU 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. Do. Chinna Seshamma.

Suit to recover Rs. 459-9-6, the balance remaining unpaid in respect of the principal of the land, dated 26th September 1877, executed and given in favor of plaintiff, on account of the sum of Rs. 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, 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 future interests 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.

IN THE COURT OF THE DISTRICT MUNSIF OF NANDYAL.

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

PRESENT:—P. V. RANGACHARIAR AVARGAL, *District Munsif.*

Original Suit No. 40 *of* 1884.

Plaintiff.	versus	*Defendants.*
Budda Chinnamma.		Puli Pedda Venkata Reddi 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 Rs. 500 promising to re-pay the amount by six 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 Rs. 40-6-6 by two instalments; that as the remainder was not paid she now sues to recover the balance Rs. 459-9-6 from the hypothecated property.

2. Defendants plead that Lakshmi Reddi was not the managing member of their family; that the plaint-debt was not contracted for family purposes; that the defendants are unaware of the plaint-debt; that the deceased Lakshmi Reddi 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 Lakshmi Reddi lived extravagantly and immorally; and that the plaint bond was executed by Lakshmi Reddi 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 Lakshmi Reddi or whether it belonged to Puli 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 Lakshmi Reddi?

4. Plaintiff produced the following documents:—

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

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

5. Fourth 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. Ramachendradu.
6. Chinna Reddi.
7. B. Vengal Reddi.

7. Defendants examined the following witnesses:—

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

Judgment.

8. *1st issue.*—The execution of the document A is proved by plaintiff's 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 is for plaintiff.

9. *3rd issue.*—Exhibit B is the previous bond by Lakshmi Reddi to plaintiff's husband. The amount of this bond found due after settlement of accounts was the consideration for exhibit A. Bond B was written by plaintiff's 1st witness. He and the 3rd 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 Lakshmi Reddi's father-in-law. This fact is admitted by both parties. But the question is whether they were Lakshmi Reddi's own property at the time of the document A or whether they were the property of the 4th defendant, come to her by inheritance from her father. Puli Ramannah died leaving three daughters and a widow. 4th defendant is the second daughter. His first daughter had been admittedly married at his death. It is contended on plaintiff's side the 4th defendant too married in her father's lifetime and her husband Lakshmi Reddi was the illatom son-in-law of Ramannah. The 4th witness for plaintiff deposes that Lakshmi Reddi was Ramannah's illatom son-in-law. Exhibit A describes Lakhsmi Reddi as such. The puttah for the lands originally stood in Ramannah'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 Lakshmi Reddi'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 defendants' side and some of plaintiff's witnesses too have deposed that Lakshmi Reddi was not Ramannah'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. Defendants' own witnesses and some of plaintiff's witnesses, who have characterised Lakshmi Reddi as a drunkard and a gambler, have I think been obliged to speak so under inspiration. In spite of their calling Lakshmi Reddi a drunkard it is not denied that he lived together with his wife and chidren till his death. As regards this issue I am disposed to believe plaintiff's witnessess that Lakshmi Reddi was Ramannah's illatom son-in-law. The probabilities of the case confirm that he was the illatom son-in-law. They are as follows. Lakshmi Reddi's father-in-law was Puli Ramannah. Lakshmi Reddi also was called Puli and defendants too are called after the family name Puli. The family name of Puli of the defendants strengthens plaintiff's contention as regards the illatom of their father. If Lakshmi Reddi 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 Lakshmi Reddi. Nor is it likely that they would have allowed Lakshmi Reddi 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 Lakshmi Reddi paid the cist for the lands. For these reasons I hold that Lakshmi Reddi 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 Lakshmi Reddi acquired the lands as Ramannah's illatom son-in-law and as the lands were not Lakshmi Reddi's father's so that 1st, 2nd and 3rd defendants may claim their shares in them under the Hindu law by virtue of their being Lakshmi Reddi's father's grandsons, this issue becomes unnecessary for the purposes of this case. If the appellate court should come to a different conclusion on the 3rd issue, then too a finding on this issue is unnecessary as by such finding on the 3rd 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 to others, and as I do not believe that Lakshmi Reddi 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 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 Venkata Reddi. 2. Chinna Venkata Reddi. 3. Subbayya. 4. Puli Chinna Seshamma.		Budda Chinnamma.

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.

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

III. It has not been proved in the least in this suit that the deceased Latchmana had been adopted as "illatom" son-in-law by Puli Ramana.

IV. There is ample evidence, oral and documentary, to show that he was not an "illatom" 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 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 459 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 1st, 2nd and 3rd defendants and the "managing member" and also the husband of the 4th defendant, executed the "plaint bond" for Rs. 500 promising to repay 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 40 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 "Lakshmi Reddi" 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 "Lakshmi Reddi" 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 1st, 2nd, and 3rd defendants) "have no right to the plaint lands," and also that the deceased "Lakshmi Reddi" 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 corrupt motive" as the plaintiff was the sister of the said Lakshmi Reddi's brother's wife.

The issues settled were as follows, namely,—

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

II. "Whether the property mentioned in it 'belonged' to the deceased 'Lakshmi Reddi' 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.

Erhibit 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 fasli 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 "illatom," 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 Reddi" was actually "adopted" as "illatom son-in-law by Puli Ramanna."

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

V. The "opinions" 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 kuown as "illatom," 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 over-ride the so-called "Dharma Sastras" in places where and between parties between whom such "custom" is shown by the evidence to have been practically and in fact recognised 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 "illatom adoption" pleaded by the plaintiff was, as a fact, completed by "Lakshmi Reddi" in his "lifetime," which was a question of "fact" to be decided on the "evidence" as a whole and according to the proper and reasonable presumptions "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 Lakshmi Reddi did not take place in the life-time of "Puli Ramanna" and that therefore 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 "illatom adoption" by the said Puli Ramanna in his own life-time, and further that after his death his widow could not adopt Lakshmi Reddi 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—which pre-requisite is not even alleged by the plaintiff, who, on the contrary, rests her "case" entirely on the alleged "illatom 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 Lakshmi Reddi 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 Lakshmi Reddi 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 "Lakshmi Reddi" was in fact the "illatom 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 authorised 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 "illatom" is to make the property acquired by the "illatom son-in-law" his own self-acquired property.

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 Papi Reddi 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 "illatom" 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* Rami Reddi," 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 'illatom' 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 'illatom 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 Papi Reddi" *versus* Challa Koti Reddi already referred to in this judgment.

12, That "case" is said to have ruled that, if an "illatom 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."

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 Lakshmi Reddi" 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,
Acting 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 Venkata Reddi. 2. Chinna Venkata Reddi 3. Subbayya. 4. Puli Chinna Seshamma.	*Defts.*	*Appts.*	*Appts.*
versus			
Budda Chinnamma.	*Plff.*	*Respt.*	*Respt.*

The 1st, 2nd, 3rd and 4th defendants abovenamed beg to appeal to the High Court of Judicature at Madras, against the decree of the District 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 illatom 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.

27th January 1886.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

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

PRESENT:

THE HON'BLE MR. JUSTICE **MUTTUSAMI AIYAR**, C.I.E.
THE HON'BLE MR. JUSTICE **BRANDT**.

SECOND APPEAL No. 174 OF 1886.

1. Puli Pedda Venkata Reddi,
2. Chinna Venkata Reddi,
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 munsif of Nandyal in original suit No. 40 of 1884.

This second appeal coming on for hearing, the Court declared the following:—

Judgment.—It is distinctly stated by the Judge that he agreed with the district munsif in his finding on the second issue though he preferred to rest his dicision on the implied contract on the part of Ramannah to give Lakshmi Reddi a share. Though the Judge observed that it was not conclusively shown that Lakshmi Reddi married the fourth defendant during Ramannah'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 munsif 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, 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 avrasa 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 munsif, in which the Judge concurs, we consider that this second appeal cannot be sustained and dismiss it with costs.

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

Saturday, 20th December 1884.

PRESENT:—P. SAMBAYYA, *Acting 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, Rs. 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 Rs. 4-5-0, and Kottabhavitola, measuring acres 4·91, and assessed at Rs. 2-7-0, two sheds, two Chavichelu inclusive of the enclosure, half in the well situated in the said land No. 411, mota materials, and two 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 defendant's vakil Ramakrishnayya, and examining witnesses, doth order and decree that defendants do deliver to plaintiff the property sued for, Rs. 33-12-0 for mesne profits, and Rs. 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.

IN THE COURT OF THE DISTRICT MUNSIF OF CUMBUM.

Saturday, the twelfth day of December, One thousand eight hundred and eighty-four.

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

Original Suit No. 212 *of* 1884.

Plaintiff versus *Defendants.*

Katneni Veerama, wife of Bojjia.

1. Nalagati Chennamma, widow of Veeriah.
2. Kunnamanani Venkatramudu.

This suit coming on for hearing, the Court delivered the following:—

Judgment.

This is a suit for half of two lands and four huts in Veerabadrapuram, hamlet of Venkatapalum of Markapur taluk, and for one-fourth right to a well attached to land No. 411 and in three trees and mota materials belonging to the well. Plaintiff also claimed from defendants Rs. 67-8-0 as loss of produce for three 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 movable and immovable 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 movable and immovable 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 movable property; that land 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 this suit as laid above and for produce for three 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 movable and immovable 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 at the time of plaintiff's marriage, plaintiff's mother did not give her half of the father's property as stridhanam and that even if plaintiff's mother had 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 movable property and that then plaintiff's father's movable 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—

I. 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 movable property) as her stridhanam and, if so, when?

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 hy plaintiff and 1st defendant.

The following documents were filed for 2nd defendant.

Exhibit I.—A registered sale-deed for 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) Aubaliah.
(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 Achammah and that at the time of marriage Achammah 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 witness 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 Shaib, 2nd witness G. Pichivadu and 3rd witness Vemula Phichivadu, 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 Achammah gave to plaintiff half of her husband's property on 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 movable property. Plaintiff's 2nd witness Ankadu added that 1st defendant's husband Veeriah stated when movables 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 stridhanam 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 favor 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 Mulliah 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 numbers of the land sued for and the other half forms the lands sued for 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 Sahib, 2nd witness G. Pichivadu and 3rd witness V. Pichivadu spoke of the 4th issue. Kassim Sahib 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. Defendant's 2nd witness G. Pichivadu stated that from the next year after Veeriah's death 11 years ago he was cultivating Pedda Bhavi Thotta, one of the lands sued for for six 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 Thotta for five or six years before defendants' 2nd witness G. Pichivadu and after 2nd defendant's 1st witness Kassim Sahib, 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 favor. 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 three years ago and find the 4th issue for plaintiff aud 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 favor.

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 Rs. 67-8-0 asked by plaintiff. Defendants did not adduce any evidence regarding the loss of produce. Rs. 67-8-0 claimed by plaintiff includes cultivator's share, which is Rs. 33-12-0. So I hold that plaintiff is entitled to recover a loss of produce worth Rs. 33-12-0.

8. 1st defendant Chinnamah 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 finding on the issue int he case the sale-deeds would be valid only to the extent of the half of the property conveyed. The other half of 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 Rs. 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 Rs. 33-12-0 as loss of produce with proportionate costs. Defendants to bear their costs themselves.

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

IN THE DISTRICT COURT, 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 others.		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 stridhanam 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.

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 stridhanam" 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 Rs. (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.

IN THE DISTRICT 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 "stridhanam" of the plaintiff.

II. It was not proved that the plaintiff's husband's father, the deceased "Lakshmipati," 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 favor 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.

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 "Reddi" and "Karnam" of the village in which the "disputed" lands are 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 defendants' (appellants) 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 Biseshar" (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 247, &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, taluk 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's, 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 1st defendant, "half of the family (her father, said Lakshmipati's) movable property (as her stridhanam) and if so when?

IV. Whether the plaintiff and Virayya, late husband of the 1st defendant, and after his death, 1st defendant, herself, were jointly enjoying the lands of the said deceased father of plaintiff and 1st 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. 2nd 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 2nd defendant one of the lands sued for in consideration of the sum of 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 June 1884, executed by the 1st defendant in favor of the 2nd defendant in consideration of a like sum of 100 rupees conveying the "suit" houses to the said 2nd defendant, Kannamaneni Venkatramudu.

The plaintiff and the 1st 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 67½ rupees claimed, *i.e.*, a sum of 33 rupees and 12 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 arguments as to the law restricting a Hindu father's powers of "alienation" are entirely beside the question and irrelevant in the present suit because Viranna, 1st defendant himself either "ratified" the partition made by his deceased father, the said "Lakshmipati," 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 movables which he, Viranna, had inherited from his father said "Lakshmipati."

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 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 1st defendant in favor of the plaintiff, who is his own sister.

5. Failing such evidence of "consent" and "ratification," by the 1st defendant as son and "legal heir" of the deceased "Lakshmipati," 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 "stridhanam," 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 intrinsic 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,
Acting 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 first 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, 2nd 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 stridhanam 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 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 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 Apellant.

MADRAS,
2nd November 1885.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

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

PRESENT :—

THE HON'BLE MR. JUSTICE MUTTUSAMI AIYAR, C.I.E.
THE HON'BLE MR. JUSTICE BRANDT.

SECOND APPEAL No. 930 OF 1885.

Katneni Viramma	*Appellant (plaintiff).*
1. Nalagati Chennamma .. .. .. 2. Kannamaneni Venkataramudu	*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 states in general terms that he differs from the conclusions of the district munsif on all the issues, we are unable 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.

ORDER—dated 23rd October 1886, Mis. No. 2244, Public.

The opinion of the Hon'ble 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 relief, for which arrangements will be made without delay, make over charge of his court and will proceed to Madras, where he will report himself to Government. He will be furnished with copy of the letter of the Registrar of the High Court and he will have an opportunity of making any representation he may think fit to Government in Madras.

(True Extract.)

(Signed) H. E. STOKES,
Ag. Chief Secretary.

To F. E. Gibson, Esq., District Judge, Kurnool. order with copy of Registrar's letter of 1 Oct/86
n / To the Hon'ble the Judges of the High Court, with ~~six enclosures~~ [C. L.] order only
/ „ Accountant-General.

After adopting the alterations ~~[illegible]~~ made on ~~these~~ copies strike 15 of each

8/3

Omit lines at head

~~TH MARCH 1887, No. , PUBLIC.~~

~~CONFIDENTIAL.~~

Appendix No. 2. to Des. to the Secy of State of 8 March 1887 No.

~~GOVERNMENT OF MADRAS.~~

~~PUBLIC DEPARTMENT.~~

~~READ again—~~

~~G.O., dated 23rd October 1886, Mis. No. 2244.~~

~~READ—the following papers:—~~

Demi-official letter from F. E. GIBSON, Esq., Acting Sessions Judge, Kurnool, to the Chief Secretary to Government, dated 30th October 1886.

In re the G.O. on myself and this District and Sessions Court it has occurred to me that if the Government had been aware that I had contemplated applying for an invalid pension early in the next year, 1887, they might not have found it to be absolutely necessary, or perhaps I should say incumbent on them in the public interest to send me the order in question and I am bold to hope that they might even now be not indisposed to reconsider that order in the new aspect now given to it by this plain statement of my own mind as to my future intentions and prospects. I suppose that I need hardly tell you that the said G.O., as it now stands, involves far more serious consequences to myself and to my wife than the mere deprivation of a specific appointment.

Demi-official letter from H. E. STOKES, Esq., Acting Chief Secretary to Government, to F. E. GIBSON, Esq., dated 3rd November 1886.

In reply to your letter of the 30th ultimo, I am directed to say that Government regret that they are unable to accede to your request that you shall be left undisturbed in your judgeship till next year when you propose to take an invalid pension, and accordingly the arrangements which have been made for relieving you must stand. I am to suggest, however, that it will be better, since you contemplate retiring, that you should do so now. This course will obviate the necessity which will otherwise arise of keeping you out of employ: and it will be easy to arrange, with subsidiary leave, &c., that you shall, before your retirement, have completed the period of 19 years in the service which will entitle you to a pension of £430 a year. It apears from the Civil List that, on 1st November 1886, you wanted only 28 days to complete this period.

Demi-official letter from F. E. GIBSON, Esq., to the Acting Chief Secretary to Government, dated 6th November 1886.

I have to acknowledge with due thanks your—"demi-official" is it to be called?—which seems to myself to be an inspired communication? eh? I desire at present to limit myself to the following observations on the last part only of that note which I will with your permission quote here verbatim for facility of reference in case you have no copy of it in your office. It runs as given. "It will be easy to arrange that you shall before your retirement have completed the period of nineteen years in the service which will entitle you to a pension of £430 a year. It appears from the Civil List that on the 1st of November 1886 you wanted only 28 days to complete this period." Now, I submit that in the last edition of the Pension Code, chapter V, it is written that for such purposes service shall be reckoned from the "date of covenant" or from the date of Secretary of State's despatch, whichever is the earlier.

Now, my "covenant" is before myself as I write and bears date August the 1st, 1867. In this view of matters in which I fail to detect any error or mistake I am entitled to £430 at once and to the maximum invalid pension on a duly signed certificate of, &c., *i.e.*, £450 per annum on the 1st of August 1887 should I live so long. I am not aware on what sufficient grounds the "Government" could compel me to retire before the latter date?

I will not now answer the remaining part of your communication, but what I have written above you can show to any one.

Demi-official letter from H. E. STOKES, Esq., Acting Chief Secretary to Government, to F. E. GIBSON, Esq., dated Fort St. George, 12th November 1886.

I have received your letter of the 6th November. My last letter to you was written, as is this, under instructions from Government, for whose orders your letters have been submitted. It appears that you are right in saying that you are now entitled so far as service goes to an invalid pension of £430 a year. I am to say that, if the Accountant-General should report that you can hang on on leave in England or in this country till such time next year as will enable you to claim the maximum invalid pension, Government will make no objection; but that if you remain in this country it will be out of employ and in the receipt of subsistence allowance only. In that event, you will lose your permanent as well as your acting appointment.

Demi-official letter from F. E. GIBSON, Esq., to the Acting Chief Secretary to Government, dated Madras Club, 22nd November 1886.

In accordance with the G.O. of 23rd uttimo, I have the honor to report myself to Government as having arrived here in the fore-noon of this day.

May I request further and more definite instructions, as to the meaning of the expression "have an opportunity of making representations to Government."

Demi-official letter from H. E. STOKES, Esq., Acting Chief Secretary to Government, to F. E. GIBSON, Esq., dated 22nd November 1886.

With reference to your letter of this date I am to suggest that if you have anything which you wish to place before Government you should put it in writing.

Demi-official letter from F. E. GIBSON, Esq., to the Acting Chief Secretary to Government, dated Madras Club, 26th November 1886.

Yours of the 12th instant, in reply to my note of the 26th idem. In the matter of "hanging on" on leave in "England" "or in this country" for the maximum "invalid pension" and as regards "subsistence allowance" and "permanent appointment" and "out of employ," &c., it has never I think been my "form" to undertake the duties of any post which I myself did not see reason to suppose that I could fill with satisfaction to myself as well as to the "Government." Therefore I do not desire as matters stand to proceed to take up my "permanent post" especially as that would involve disturbing a man (Henry Moberly) who is far more fit for such post than I am because I cannot honestly say that at the present time my health is good enough for any "district officer's" work and therefore it is a matter of indifference to myself except perhaps as accentuating an apparent disgrace which I cannot but feel to be undeserved whether I am "out of employ" or not.

2. Indeed this result would equally follow under the leave rules if I obtained leave on "medical certificate." As to this last course I see many difficulties both as regards the "doctors" and my own "private affairs," such matters can only be explained in person. May I see you at your office or elsewhere for that purpose? If yes, I will come to the fort at any hour you may name as most convenient. Pardon haste and any errors due to haste; this letter may be considered "demi-official."

3. Your letter of the 22nd instant, No. 492-D, I must defer replying to.

ORDER—dated 30th November 1886, Mis. No. 2494, Public.

In the order read above it was declared that Mr. Gibson's retention in the position of a District and Sessions Judge was impossible; and the Government are satisfied that he is equally unfit for district revenue work. This, it appears, Mr. Gibson himself feels. The Government therefore have no option but to put him out of employ, as he is disinclined to apply for leave on medical certificate, and his permanent post, that of Sub-Collector of Nellore, will therefore be filled up by the appointment of another officer.

(True Extract.)

F. E. Gibson Esq
Acct General. } orders only

H. E. STOKES,
Ag. Chief Secretary.

Demi-official letter from F. E. GIBSON, Esq., Madras Civil Service, to the Acting Chief Secretary to Government, Fort St. George, dated Kurnool, 8th December 1886.

In reference to our conversation at the personal interview which you kindly accorded the other day *in re* taking sick leave, I have consulted professionally Dr. W. G. King, the District Surgeon here, and he, upon what I told him, at once stethoscoped my chest for heart and lungs.

2. In the result he told me that, owing to a special functional weakness of the heart and also to the state of one lung, he should certainly, if asked, say that I am not fit for any such appointment as would necessarily involve or necessitate any work of the nature alluded to in the G.O., Mis. No. 2494, dated 30th November 1886, under the designation of district revenue work.

3. At the same time Dr. King says that, as I am not sick in the usual conventional sense of that word as used in this country, and have not had occasion to seek his professional advice, he feels himself to be not at present in a position to make out any case for leave on medical certificate unless and until he receives appropriate instructions in the matter from superior authority in Madras, *e.g.*, the Surgeon-General?

4. Previously to this opinion I had determined that it will be necessary for me to remain here till Sunday, the 19th instant.

5. Therefore my humble request is that Government may be pleased to issue such instructions in this matter as to them in the exercise of their discretion and consideration for one who has tried to do his duty in all the nineteen years of his service may seem fitting and appropriate to the somewhat peculiar circumstances.

Proof

Demi-official letter from H. E. STOKES, Esq., Acting Chief Secretary to Government, to F. E. GIBSON, Esq., dated 14th December 1886, No. 522-D.

In reply to your letter of the 8th instant, I am directed to say that Government cannot issue any instructions to the medical men in regard to your case. The certificates granted by those gentlemen are the result of the free exercise of their professional judgment. If the medical certificates necessary for the grant to you of sick leave or invalid pension are not procurable, you must simply remain out of employ, since your restoration to judicial office is impossible and you are not fit for district revenue work.

Omit these running head

CONFIDENTIAL.

Appendix No. 3 to No. to the Secy of State
9 Dec. 1887 No

GOVERNMENT OF MADRAS.

PUBLIC DEPARTMENT.

Read—the following paper:—

From F. E. GIBSON, Esq., Madras Civil Service, to the Chief Secretary to Government, dated Madras, 2nd February 1887.

Referring to your demi-official note of the 22nd November 1886, No. 492-D, and to the two G.Os., Mis. No. 2244, Public, dated 23rd October 1886, and Mis. No. 2494, Public, dated 30th November 1886, I have now the honor to submit the representations which I was directed in your demi-official note of the 22nd November 1886, above referred to, to make in writing.

2. I have at the outset to explain that, as I find considerable difficulty in fully setting forth what I wish to lay before the Government in writing, I trust that I may, hereafter, be permitted to further elucidate what I have to lay before the Council, in personal interviews with His Excellency the Right Hon'ble Mr. Bourke and the Members of Council, for which I need hardly say I intend, in due course, to apply to the Governor and Messrs. Master and Hutchins myself.

3. In the next place, I would beg the attention of the Government to the last paragraph of the letter of the Registrar of the High Court, dated the 1st of October 1886, which is incorporated in the G.O. of the 23rd idem, the paragraph beginning "I am to add," &c.

4. I venture to allude pointedly to that portion of the Registrar's letter, because I am constrained to surmise that the Government, in passing their resolution of the 23rd of October 1886, directing my *summary* removal from the Kurnool Court, amounting in effect to an almost *public* degradation from a high judicial office, ignored, or, at least, failed to attribute to the said paragraph that special significance, which I have excellent reasons to suppose that the Hon'ble the Judges intended should be attached to that particular qualifying observation in the letter.

5. I next proceed to notice the substance of this letter, *i.e.*, what the Hon'ble Judges allude to as the illustrations of his (my) incapacity, demonstrating my unfitness for a District and Sessions Judgeship, or rather to be District and Sessions Judge of Kurnool, *i.e.*, of a light court, as the Government are aware that it is at present at all events.

6. The Hon'ble Judges cite four (4) criminal cases (sessions trials) all of which came before the High Court, either on reference by myself, two for confirmation of the sentence of death passed by me, as presiding judge, on one accused, "Madar Sahib," in both of which my conviction and sentence were confirmed.

7. Of the two other criminal trials, one was the case of a certain "Karnam Krishnappa," who was charged before myself with murder, *i.e.*, poisoning his enemy with arsenic intending to cause death.

8. It appears from my own judgment in this case, and still more clearly from my charge to the assessors, that I myself did not fail to note that point as to the probable largeness of the dose which was remarked on by the Hon'ble Mr. Justice

Brandt, who, sitting alone, in revision of this case, and the prisoner not being represented, finally decided to do *nothing*, *vide* his judgment (not before Government at the time of their order of the 23rd October 1886).

9. There remains only one more criminal trial, viz., the one referred to in the beginning of the letter of the Registrar.

10. I cannot be surprised that the two Judges, who sat on that case, found very considerable difficulty in arriving at the final decision, but I would submit, for the consideration of those learned Judges, and of the Government, that the difficulties arose, in the first place and primarily, from the nature of the case itself rather than from the imperfections (chiefly technical deficiencies) of my written judgment, on which the Judges comment in their judgment.

11. In the result, however, the learned Judges, Kernan and Brandt, J.J., contented themselves with leaving the convictions and acquittals undisturbed, whether on the appeal, or in the exercise of their powers as a court of revision.

Having thus noticed each and every one of the four criminal trials cited as illustrations of my unfitness to be a Sessions Judge, I now proceed, with the kind permission of the Government, briefly to refer to the only two (2) civil cases quoted against me in the letter of the Registrar under consideration, as showing my incapacity for exercising the important and responsible duties of a District, *i.e.*, Civil Judge, hearing appeals from munsifs, &c., (besides original work).

12. Both the cases are appeals, and, in the High Court, second or special appeals, *i.e.*, appeals to the High Court on law points.

13. In one of these, I confirmed the judgment and decree of the native judge of the court of first instance, a junior munsif, and the Judges of the High Court, Muttusami Aiyar and Brandt, J.J., upheld my decision confirming that of the munsif, though remarking that they did not consider that I was entitled to rest my decision on a matter not pleaded, and as to which no issue had been framed in either court, an objection which the appellant's pleader failed to take in my court (though the judgment was pronounced in open court as required by law, and in accordance with my invariable practice both on the civil and criminal sides of the court).

14. In the only remaining civil case cited, I reversed the decision of a native munsif of but little judicial experience, who had, moreover, as it appeared to me, failed to hear the whole of the evidence, which the defendants, who were cast in the suit, wished to adduce, had not the munsif refused the necessary adjournment which the defendants asked for, to summon the village officers to give material evidence.

15. Under these circumstances, contrary to my usual rule in such cases, *not* to reverse the decree of the native judge of the court of first instance, on grounds of evidence, and of the intrinsic probabilities of the case on both sides for the reason set out in my judgment, I did venture, in this instance, to set aside his decision.

16. The High Court, however (again Mutusami Aiyar and Brandt, J.J., being the Judges of the court of last appeal), decided that my judgment did not sufficiently fulfil the requirements of section 574 of the Code of Civil Procedure, 1882, and therefore remanded the case to the District Court, with a direction that the appeal should be reheard and a revised judgment submitted, which has, I understand, now been done by my successor, to whom I purposely handed over the disposal of the rehearing which had been posted for the very same day on which I received the G.O. of October 23rd, directing that I should be relieved of the charge of the court at an early date.

17. There remains one other paper, referred to in the Registrar's letter, which was sent to the Government, as part and parcel of the evidence on which the High Court based, avowedly, their opinion of my proved incapacity as District and Sessions Judge of Kurnool.

18. I applied to the Judges for a copy of the notes of a divisional bench in the case of Queen *versus* Reddi Seshi Reddi and others, expressly basing my application on the ground that these also had been sent up to Government with the High Court letter of the 1st October 1886, but I was told that I could not have them.

19. Under these circumstances, I have no other course open to me than to ask the Government, whether they too will refuse to permit me to see the only portion of the evidence on which I have been condemned, which I have not been fortunate enough to procure.

20. What, however, I would especially beg of His Excellency in Council is, that all the circumstances which have led to my being placed on the unemployed list may, without delay, be reported to the Secretary of State for India in Council, if this has not already been done, and also that at least some proceedings of the Government may be passed, in some shape, that I can make use of, to the effect that, during the nineteen (19) years (completed) of my service, I have not been found an unworthy, or inefficient servant of the Government, or of Her Majesty, taking my whole career together, and making indulgent allowance for ill-health, which, I think I may say, should justly be attributed, almost entirely, to the conditions of service in India, as more fully set forth in my memorial to His Grace the Duke of Buckingham and Chandos, Governor in Council, presented in the early part of the year 1880.

21. As I, unfortunately, have not preserved a copy of the said memorial, I have to request the Government kindly to make reference to the original, which is doubtless to be found in the Chief Secretary's office.

22. I would beg to be permitted to repeat what is stated in that memorial upon another matter.

23. If my memory serves me, I asseverated in that petition that I was at that time poorer by about £2,000 sterling than I was when I went up for the open competition of the Civil Service of India, and as I returned from leave on medical certificate only about two years ago, and have even yet scarcely completed my repayment of the debt incurred on that occasion to the Civil Fund (Charity Branch), and was constrained to further expend monies out of my private fund owing to the insufficiency of furlough allowances under peculiar circumstances; the result is, that I find myself now in a position but little, if at all, better than that in which I stood before proceeding on leave in the beginning of 1883.

24. The Government will not, I trust, omit to remember that since the end of November I have drawn only the subsistence allowance of my rank, which, in my case, means that I receive (nett) between Rs. 10 and 11 only a day.

25. My immediate object in setting out these details of my private finances is to urge on the attention of Government that, so far from having saved money during my nineteen years' service, I am actually a poorer man than when I entered the service.

26. As, moreover, my private resources in England will, even in the future, be extremely small, it will, I trust, be sufficiently apparent to the Members of the Government, that my pension of £450 a year will afford me but very straitened means. I am, therefore, especially desirous that the Government should be graciously pleased, as I said before, to place on record in their Proceedings something to partially wipe out the apparent disgrace that usually attaches to being placed on the unemployed list.

27. This request I make for a two-fold purpose; firstly, in the possible event of my return to India I may not be precluded from receiving from Government some employment suitable to my length of service.

28. Secondly, an alternative object is, that I may be able, in the event of my seeking any employment, public or private, in England, to show that I did not resign the service under any slur. Requesting early orders.

Proof

TH MARCH 1887, No. , PUBLIC.

ORDER—dated 8 March 1887, No. 343 Public.

The Hon'ble the Judges of the High Court having intimated that they have no objection to Mr. Gibson being furnished with a copy of the paper referred to in para. 17 of his letter read above, a copy will be forwarded to him.

2. His Excellency the Governor in Council regrets that he is unable to place on record any such statement regarding Mr. Gibson's efficiency as that officer desires. There is, however, nothing against Mr. Gibson's moral character which need be an obstacle to his obtaining other employment for which he may be fit.

3. Mr. Gibson's case will now be reported to the Secretary of State.

(True Extract.)

H. E. STOKES,
Ag. Chief Secretary.

despd 14/3

F. E. Gibson Esq.
with copy of papers refd to

~~[illegible] please~~

NOTES OF A DIVISIONAL BENCH IN CRIMINAL APPEAL 123 OF 1886.

S. C. 36 *of* 1885, *Kurnool.*

Fifteen persons, namely (1) Reddi 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 Lakshmi Reddi), (11) Aruvalla Seshi Reddi, (12) Krishna Reddi (brother of the 1st prisoner, Reddi Seshi Reddi), (13) Kasi Nagadu, (14) Pedda Seshi Reddi (*alias* Pedda Seshanna) of Kottapalli and (15) Chinna Seshi Reddi or Seshanna of Kottapalli, were charged in this case, firstly, with being concerned in causing the death of one Mahanandi Reddi, at Yerragudi, on the 10th October 1885; and, secondly, with being concerned in causing grievous hurt and hurt to the said man.

The 2nd, 3rd, 4th, 6th, 7th, 8th, 9th, 10th, 11th and 13th accused were charged (1) with having murdered the said man; (2) with having caused his death in such manner and with such intention or knowledge that they are guilty of culpable homicide not amounting to murder; (3) with having intentionally caused to him grievous hurt; (4) with having abetted the murder; (5) with, aving abetted culpable homicide in respect of him; (6) with having abetted the intention of causing grievous hurt to him.

Then the 1st, 5th, 12th, 14th and 15th, that is, the remaining accused persons, were charged (1) with having abetted the murder of, (2) the culpable homicide of, (3) the causing of grievous hurt to, the said person. All fifteen are also charged that they, being members of an unlawful assembly, at the same place and time, used violence towards the said Mahanandi Reddi and another (Konda Reddi), and thereby committed rioting, and they are further charged with rioting, being armed with sticks, which, used as weapons of offence, are deadly weapons.

The 1st prisoner (1st appellant) is further charged (1) with having, at the said time and place, caused the death of one Pedda Kondayya, *alias* Pedda Konda Reddi (hereafter styled Pedda Kondayya) in such manner as to be guilty (*a*) of his murder; of culpable homicide in respect of him; (2) with having voluntarily caused grievous hurt to the said Pedda Kondayya; and the other (14) accused persons with having abetted (*a*) the murder, (*b*) the culpable homicide, (*c*) the voluntary causing of grievous hurt to the said Pedda Kondayya.

The Sessions Judge, differing from the assessors in respect of the 1st prisoner (1st appellant), who was found by them not guilty of any offence, convicted the said 1st prisoner of culpable homicide not amounting to murder in respect of Pedda Kondayya and sentenced him to transportation for life. Concurring with the assessors, the Judge convicted the 2nd prisoner, Chinna Nagi Reddi, of rioting and rioting armed with a deadly weapon, to wit, a stick or club, and sentenced him to three years' rigorous imprisonment and to a fine of 100 rupees, and, in default, to six months' further rigorous imprisonment.

Concurring in part with, and differing in part from, the assessors, the Judge convicted the 3rd, 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 said Mahanandi Reddi, and committing rioting armed with deadly weapons (to wit, sticks) and sentenced the 3rd and 4th to transportation for ten years and the 10th and 11th to transportation for seven years, each, and convicted the 5th prisoner of simple rioting only, and sentenced him to two years' rigorous imprisonment.

The 6th, 7th, 8th, 9th and 13th accused, he, 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 and 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 he was or was not guilty (1) of rioting; of the abetment of the murder, or of the culpable homicide of, or of causing grievous hurt to Mahanandi Reddi. But this accused person was entitled to acquittal on those charges if found not guilty, and should have been convicted if found guilty, in any case there should have been a distinct finding, one way or the other.

In the case of the 2nd prisoner, there is no finding whatever on any of the 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 3rd, 4th, 10th and 11th prisoners, the acquittal in respect of the charge of the murder of Mahanandi Reddi rendered unnecessary any except a formal order of acquittal in respect of the minor charges relating to that man's death but there is no finding as to whether they were concerned in Kondayya'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 those charges.

In the case of the 9th prisoner, he is no doubt acquitted on all charges, and 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

the question whether there was an assembly or two assemblies collected for an unlawful object or objects, the greatest clearness and very considerable detail were required.

We are compelled to say that 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 conclusion 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 acquitted. There is no statement of the circumstances which led to the two bodies of opposing parties coming to the place where they came in conflict; no statement of the several points for determination, and in this case they are very numerous, nor, except in one or two points, of the reasons for the conclusions arrived at. And if the finding as to the 1st prisoner having intentionally caused the death of Pedda Kondayya with a sharp dagger, by stabbing him once in the chest and once in the back be correct, it should have been most clearly stated on what grounds the offence was held to be not murder but culpable homicide not amounting to murder. It is clearly found, first, that the deceased Mahanandi Reddi started the quarrel by striking the 1st prisoner on the head with a stick, on which the latter used his dagger; and, secondly, that the wounds, from the results of which Mahanandi Reddi eventually died, were inflicted by a dagger, and not by a sickle or reaping-knife; and that they were inflicted by the 1st prisoner. There is also a finding that the 3rd prisoner did not tell the truth when he confessed and stated that it was he and not the 1st prisoner who stabbed Pedda Kondayya. I cannot say that anything else is clearly and distinctly found; if there are any other distinct findings, there are not clearly stated grounds in support of such findings.

Having done our best to understand that part of the Judge's judgment in which he states his conclusions as to what immediately led to Pedda Kondayya being stabbed, and as to the cause which led the 1st prisoner to stab him, and the motive of, and the excuse (if any) for the 1st prisoner's act, it comes to this: that Mahanandi Reddi 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 get 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 on the head), the 1st prisoner stabbed Pedda Kondayya twice.

If the finding is really that Pedda Kondayya accidentally, 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 witness intentionally interposed between 1st prisoner and Mahanandi, intending to prevent the former either from helping to kill the latter by kicking, beating, or otherwise doing violence to him or to prevent him from using his dagger on Mahanandi, then also the 1st prisoner was assuredly guilty of murder, whether by reason of such intervention he intentionally stabbed Pedda Kondayya, so as to kill him, or whether aiming blows at Mahanandi with his dagger he stabbed and killed Pedda Kondayya instead, and 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 and (*b*) of Pedda Kondayya, can be supported: this is necessary, because (as before said) the judgment contains no summary of the evidence, no balancing of the evidence for the prosecution and 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 Sessions 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 claimed their crop. On the 10th October 1885 Govindu went to the 1st witness, Venkata Reddi, and told him that the other party who asserted a right to cut the crop had gone to the field and asked whether he and   should go to cut the crop; Venkata advised them not to go as there would be a fight; Govindu again asked him to go, taking others, respectable people, to prevent the crop being wrongfully taken, and, if possible, to settle matters amicably, They went for this purpose—viz., 2nd witness, 6th witness, 3rd witness, the 4th and 5th witnesses for the prosecution, Vajjrala Kondayya and Chinna Kondayya, who eventually mediated, and others.

It may be as well to say here that the 1st prisoner, Reddi Seshi Reddi, and his five brothers were the principal persons who claimed the indigo crop, as against Govindu Reddi and his party. The 2nd, 3rd, 8th, 11th and 12th accused are the 1st prisoner's brothers.

There was very nearly being a fight at the field, not an agreement was come 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 for the prosecution, a cry was raised that the prisoner's party, who, it seems, were going in advance, had killed Govindu Reddi, who, it is said, was walking near them, the mediators coming next, and the party of Govindu following: other witnesses say

positively that high words began again between A. Sesha Reddi, the 11th prisoner, one of 1st prisoner's brothers, and Govindu, on which the former struck the latter with his stick; and that on that Mahanandi Reddi, one of the deceased, rushed at the 1st prisoner and struck him on the head with the stick *he* had in his hand: then a general fight began and Mahanandi was borne down, illused, kicked, and, as some witnesses say, struck repeatedly with an axe, and eventually died.

Now, it is quite clear that neither of these two parties or factions were, at the time when this fight commenced, collected for an unlawful purpose. No doubt an assembly not unlawful in its inception may become an unlawful assembly, but the question is whether the prisoner's party can be said to have had, at the time when A. Sesha Reddi, the 11th prisoner, first struck Govindu (if he did strike him), the common object of using force or violence to the opposite 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 Mahanandi. It 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 contrary, while he says the 11th prisoner first struck Mahanandi, states that the latter had no stick in his hand at all.

The 4th and 5th witnesses seem to say that Govindu, either by taunts or satire, lashed Mahanandi Reddi into fury, so that the latter struck 1st prisoner with a stick.

The 6th witness, Govindu, says he, 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 and 12th witnesses.

The 8th to the 12th witnesses are not of the Reddi caste, but the 8th is of the washerman caste, and the other four are Madigas (Pariahs). They speak of a "fight" only; but according to their account the fight consisted in the prisoners' 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 object, being armed with deadly weapons, that common object being to cause hurt or grievous hurt to Mahanandi Reddi.

What was the object common to the 1st prisoner and the other prisoners convicted? For he is convicted of rioting. Was it to use force and violence to Mahanandi? But the 1st prisoner is acquitted of the murder, and indeed of having anything to do with the death of or with hurting Mahanandi.

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

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

It is difficult to see how the conviction of the 2nd and 5th prisoners (the 2nd and 3rd appellants) for rioting can be supported, if they cannot properly be convicted on some of the more serious charges. It remains to consider whether the convictions should not be upheld in revision on the ground that the prisoners should have been and should now be convicted of another offence or other offences in this case.

We continue to consider the case arising out of Mahanandi's death, in connection with the conviction of the 10th and 11th prisoners, the 4th and 5th appellants.

There is not one single word in the judgment to show on what evidence the judge convicted these men of having killed Mahanandi Reddi.

There is evidence that the deceased was cut again and again on the head with an axe: two witnesses (the 3rd and 8th) say the 2nd prisoner took the axe out of the hands of the 13th prisoner and clave the deceased's head while the 7th witness swears that it was the 13th prisoner who felled Mahanandi with his axe. We may observe again here that the 13th prisoner was aquitted on all charges, and the 2nd prisoner on all charges except rioting.

The witnesses of the Pariah hamlet above referred to, who speak to having seen Mahanandi   to death by beating, not only say not a word about an axe being used, but two, the 9th and the 16th, distinctly say they did not see any axe at all.

The 15th, 16th, 17th, 18th, 20th and 21st witnesses, who also profess to have seen more or less of the beating of this deceased man, say nothing about an axe.

Now is this evidence about the deceased being felled again and again with an axe true, or is not?

It must be assumed the Judge disbelieved it: if so, the evidence of those (the 3rd, 7th and 8th) witnesses who speak to it is clearly entitled to little, if any, credit in the case of the other persons whom they speak against, or 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 the 8th witness swears that after he fell all the other accused beat him with sticks, but the Judge acquits the 9th prisoner on all counts, and the 6th and 7th everything but rioting with 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 those appellants. Is it sufficient? If it is, it is beyond comprehension why they were not sentenced to transportation 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 is not suggested that those who killed him—the 1st prisoner is not convicted of having taken part in killing him—had any sued provocation as would ever reduce the offence from a crime of the first to a crime of the seconh degree in death-causing, and we cannot but express surprise that there was no application on behalf of Government in this case to this Court to exercise its discretion in revision, and that on regular appeal was preferred against the acquittals in the case of some of the accused at least. To return to the evidence against the 10th and 11th prisoners. The 1st witness, Venkata Reddi, says "all the people there, except the 1st prisoner, the 5th 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 means direct. As to his saying "the first three prisoners standing in a row behind the prisoners' 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 12th prisoners set to work to beat *Pedda Kondayya*, when Mahanandi fell down; that, when the latter fell down, so many people pressed around that *it was impossible then to identify any one.* It is clear this witness' evidence is worth little or nothing in detail, or as against these two appellants.

The 2nd witness, T. R. Seshi Reddi, says "all the men (prisoners?) before the Court beat Mahanandi." Then he particularises the 11th prisoner and two other 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 against this prisoner by name in connection with the beating of Mahanandi.

This witness says nothing about the axe, but he speaks about Mahanandi standing looking in a particular direction when he was stabbed.

He is the only witness who speaks of Mahanandi's having been stabbed.

The 3rd witness, Ramsing, says "after Mahanandi was beaten down" they beat Govindu; the 3rd and 12th prisoners beat Govindu; "the 10th prisoner pursued him;" Govindu ran home: the 11th prisoner beat Mahanandi, but did not beat Govindu. He says Venkata Reddi, the 10th prisoner, 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 the 11th prisoner was present. He does not say whether 10th prisoner was or was not there. He says he can't say whether he said before the magistrate that prisoner was present. He states that the deceased Pedda Kondayya struck the 11th prisoner. He says nothing else to implicate these appellants. The 6th witness deposes that the 10th and 11th prisoners struck him, the former with a stick: that the 11th prisoner went back to 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.

The 7th witness, Bhimi Reddi, says Govinda Reddi and the 11th prisoner *went away* (from the crowd?) disputing.

He does not say one word against the 10th prisoner. Nor does his evidence implicate the 11th prisoner directly, or seriously in any way.

The 8th witness, P. Mada Reddi, only speaks generally as to "all the Kottapalli people being present when the quarrel took place." He gives no direct evidence against these two appellants. The Pariah witnesses, 9th, 10th, 11th and 12th witnesses, speak, most of them, only in the most general 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 15th accused, but not the 10th or 11th prisoners. The 12th witness names the 13th, 14th and 15th accused but not the 4th and 5th appellants.

The 15th witness, P. Kristadu, a cooly, does name these appellants as having beaten Mahanandi with sticks.

The 16th witness, C. Kristadu, a cooly, says first that all the prisoners except the 1st beat Mahanandi. Then, he says, "I have not seen the Kottapalli 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, Chinnigadu, 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!

The 18th witness, Nagadu, a shepherd, says twice and positively he saw the 11th prisoner and 3 others named beating Mahanandi.

The 20th witness speaks generally as to 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 deceased 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 the evidence against these appellants. We pass on to the death of Pedda Kondayya.

The 3rd accused, Venkata Reddi, has from the first given a clear and consistent account of what happened: he says he and others were beating Mahanandi Reddi when the deceased Pedda Kondayya came to strike him with a stick; that he warded off the blow with the stick he (the 3rd accused) had in his hand and with his other hand used the sickle or reaping-knife he had taken for the indigo-cutting and stabbed Pedda Kondayya.

His admissions and confession implicate him in the matter of Mahanandi's death, and make him solely responsible for the death of Kondayya. There is sworn evidence in support of this story not only on the side of the defence but on the side of the prosecution.

The 4th and 5th witnesses, the two Kondayyas, mediators and not men of either of the two factions, speak to it. No attempt was made in cross-examination to shake them. There may be some slight want of precision as to how and when the respective stabs in the front and rear of the chest were inflicted, but it appears to me this evidence is certainly as clear and consistent as that given by the witnesses who speak to the stabbing by 1st prisoner with a dagger, if not indeed more so.

The 8th witness, Madi Reddi, at first said that the 1st prisoner "stabbed" him in the belly, then it came down to a slight scratch; and this tallies exactly 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 he was trying to run away into the village the 1st prisoner came in front of him, having a dagger in his hand: he does not say how or by whom he was stabbed in the chest; and he says that the stab in his back was inflicted not by the 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 15th 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 prosecution, of those who profess to speak to this incident, the 1st witness says positively that 1st prisoner inflicted the two stabs, the first in the back as the deceased was going away, and the second in front, when he turned round.

The 2nd witness says he saw 1st prisoner stab Kondayya in the belly, and saw that the latter had a stab in his back but does not know who inflicted it.

The account given by the 3rd witness is almost the same as that given by 1st witness.

The 6th witness does not say who stabbed Kondayya. The 7th witness says the same.

The 8th witness says generally that 1st prisoner *having stabbed* Kondayya wounded him (witness). I have before stated reasons for distrusting this man's evidence, and he does not say he saw 1st prisoner stab the deceased.

The 9th witness in examination-in-chief simply speaks of the stabbing of deceased by 1st prisoner; in cross-examination he says he saw the stab in the chest inflicted, but not the stab in the back: the 10th witness says the same: he adds that *as soon as ever the deceased was stabbed* (he only saw him stabbed in the back), the deceased ran away.

The 11th witness saw only the stab in front inflicted, and he speaks of an incident mentioned by no other witness, namely, that the Kondayya had a dagger which 1st prisoner took away from him!

The 12th, 15th and 16th witnesses speak to only 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 20th witness speaks to stabbing in general terms. He does admit that before the magistrate he said 1st prisoner used a dagger.

The 21st witness introduces a totally new element; he says 1st prisoner used *a sword.* He adds that 1st prisoner had a dagger, but 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 rejects in favor of the conflicting, in many ways inconsistent, and in some respects defective evidence for the prosecution, and of the statements made by the deceased which differs from that evidence on the ground apparently that the medical evidence renders it absolutely impossible to believe the former account.

We must suppose the Sessions Judge finds, then, that the 3rd accused falsely implicated himself as responsible, with others, for the death of Mahanandi, and as responsible solely for Kondayya's death. Of course, this is not absolutely impossible, but it is extremely improbable that fraternal affection 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 "rather jagged at the edges." The hinder wound, no doubt, the Assistant Surgeon describes as "clean cut, with straight edges and equal ends." He "concludes," that is, infers, that "at least" the posterior wound was caused by a two-edged weapon, the two edges of which were equally sharp. He "does not think it could have been caused by the sickle produced," but he does not say it *could* not have been.

As to the front wound, he says: "I should have expected to have found the flesh more lacerated" if the sickle had been used; but he does not say that it could not possibly have 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 that others or he should have had daggers on their persons; not putting this aside altogether, and taking the evidence that one or more of those present had daggers with them, then, although the 3rd accused's confession be not accepted as true, and we incline to think it is true, the 1st prisoner cannot be convicted, unless the evidence is taken to be so clear, so trustworthy, as to leave it not open to reasonable doubt that in the *méleé* some one other than the 1st prisoner stabbed the deceased. 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 appear why, if one or more could see quite plainly, that the 1st prisoner stabbed deceased both in the chest and back, none of the Pariah witnesses saw the hinder wound inflicted, or that they could not have seen it if it was inflicted.

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

The case has not been dealt with as it should have been, 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.

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

NOTES OF A DIVISIONAL BENCH IN CRIMINAL APPEAL 123 OF 1886.

S. C. 36 *of* 1885, *Kurnool.*

Fifteen persons, namely (1) Reddi 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 Lakshmi Reddi), (11) Aruvalla Seshi Reddi, (12) Krishna Reddi (brother of the 1st prisoner, Reddi Seshi Reddi), (13) Kasi Nagadu, (14) Pedda Seshi Reddi (*alias* Pedda Seshanna) of Kottapalli and (15) Chinna Seshi Reddi or Seshanna of Kottapalli, were charged in this case, firstly, with being concerned in causing the death of one Mahanandi Reddi, at Yerragudi, on the 10th October 1885; and, secondly, with being concerned in causing grievous hurt and hurt to the said man.

The 2nd, 3rd, 4th, 6th, 7th, 8th, 9th, 10th, 11th and 13th accused were charged (1) with having murdered the said man; (2) with having caused his death in such manner and with such intention or knowledge that they are guilty of culpable homicide not amounting to murder; (3) with having intentionally caused to him grievous hurt; (4) with having abetted the murder; (5) with, aving abetted culpable homicide in respect of him; (6) with having abetted the intention of causing grievous hurt to him.

Then the 1st, 5th, 12th, 14th and 15th, that is, the remaining accused persons, were charged (1) with having abetted the murder of, (2) the culpable homicide of, (3) the causing of grievous hurt to, the said person. All fifteen are also charged that they, being members of an unlawful assembly, at the same place and time, used violence towards the said Mahanandi Reddi and another (Konda Reddi), and thereby committed rioting, and they are further charged with rioting, being armed with sticks, which, used as weapons of offence, are deadly weapons.

The 1st prisoner (1st appellant) is further charged (1) with having, at the said time and place, caused the death of one Pedda Kondayya, *alias* Pedda Konda Reddi (hereafter styled Pedda Kondayya) in such manner as to be guilty (*a*) of his murder; of culpable homicide in respect of him; (2) with having voluntarily caused grievous hurt to the said Pedda Kondayya; and the other (14) accused persons with having abetted (*a*) the murder, (*b*) the culpable homicide, (*c*) the voluntary causing of grievous hurt to the said Pedda Kondayya.

The Sessions Judge, differing from the assessors in respect of the 1st prisoner (1st appellant), who was found by them not guilty of any offence, convicted the said 1st prisoner of culpable homicide not amounting to murder in respect of Pedda Kondayya and sentenced him to transportation for life. Concurring with the assessors, the Judge convicted the 2nd prisoner, Chinna Nagi Reddi, of rioting and rioting armed with a deadly weapon, to wit, a stick or club, and sentenced him to three years' rigorous imprisonment and to a fine of 100 rupees, and, in default, to six months' further rigorous imprisonment.

Concurring in part with, and differing in part from, the assessors, the Judge convicted the 3rd, 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 said Mahanandi Reddi, and committing rioting armed with deadly weapons (to wit, sticks) and sentenced the 3rd and 4th to transportation for ten years, and the 10th and 11th to transportation for seven years, each, and convicted the 5th prisoner of simple rioting only, and sentenced him to two years' rigorous imprisonment.

The 6th, 7th, 8th, 9th and 13th accused, he, 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 and 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 he was or was not guilty (1) of rioting; of the abetment of the murder, or of the culpable homicide of, or of causing grievous hurt to Mahanandi Reddi. But this accused person was entitled to acquittal on those charges if found not guilty, and should have been convicted if found guilty, in any case there should have been a distinct finding, one way or the other.

In the case of the 2nd prisoner, there is no finding whatever on any of the 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 3rd, 4th, 10th and 11th prisoners, the acquittal in respect of the charge of the murder of Mahanandi Reddi rendered unnecessary any except a formal order of acquittal in respect of the minor charges relating to that man's death but there is no finding as to whether they were concerned in Kondayya'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 those charges.

In the case of the 9th prisoner, he is no doubt acquitted on all charges, and 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

the question whether there was an assembly or two assemblies collected for an unlawful object or objects, the greatest clearness and very considerable detail were required.

We are compelled to say that 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 conclusion 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 acquitted. There is no statement of the circumstances which led to the two bodies of opposing parties coming to the place where they came in conflict; no statement of the several points for determination, and in this case they are very numerous, nor, except in one or two points, of the reasons for the conclusions arrived at. And if the finding as to the 1st prisoner having intentionally caused the death of Pedda Kondayya with a sharp dagger, by stabbing him once in the chest and once in the back be correct, it should have been most clearly stated on what grounds the offence was held to be not murder but culpable homicide not amounting to murder. It is clearly found, first, that the deceased Mahanandi Reddi started the quarrel by striking the 1st prisoner on the head with a stick, on which the latter used his dagger; and, secondly, that the wounds, from the results of which Mahanandi Reddi eventually died, were inflicted by a dagger, and not by a sickle or reaping-knife; and that they were inflicted by the 1st prisoner. There is also a finding that the 3rd prisoner did not tell the truth when he confessed and stated that it was he and not the 1st prisoner who stabbed Pedda Kondayya. I cannot say that anything else is clearly and distinctly found; if there are any other distinct findings, there are not clearly stated grounds in support of such findings.

Having done our best to understand that part of the Judge's judgment in which he states his conclusions as to what immediately led to Pedda Kondayya being stabbed, and as to the cause which led the 1st prisoner to stab him, and the motive of, and the excuse (if any) for the 1st prisoner's act, it comes to this: that Mahanandi Reddi being on the ground being beaten, and kicked in the midst of a general *mélée*, 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 get 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 on the head), the 1st prisoner stabbed Pedda Kondayya twice.

If the finding is really that Pedda Kondayya accidentally, 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 witness intentionally interposed between 1st prisoner and Mahanandi, intending to prevent the former either from helping to kill the latter by kicking, beating, or otherwise doing violence to him or to prevent him from using his dagger on Mahanandi, then also the 1st prisoner was assuredly guilty of murder, whether by reason of such intervention he intentionally stabbed Pedda Kondayya, so as to kill him, or whether aiming blows at Mahanandi with his dagger he stabbed and killed Pedda Kondayya instead, and 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 and (*b*) of Pedda Kondayya, can be supported: this is necessary, because (as before said) the judgment contains no summary of the evidence, no balancing of the evidence for the prosecution and 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 Sessions 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 claimed their crop. On the 10th October 1885 Govindu went to the 1st witness, Venkata Reddi, and told him that the other party who asserted a right to cut the crop had gone to the field and asked whether he and should go to cut the crop; Venkata advised them not to go as there would be a fight; Govindu again asked him to go, taking others, respectable people, to prevent the crop being wrongfully taken, and, if possible, to settle matters amicably, They went for this purpose—viz., 2nd witness, 6th witness, 3rd witness, the 4th and 5th witnesses for the prosecution, Vajjrala Kondayya and Chinna Kondayya, who eventually mediated, and others.

It may be as well to say here that the 1st prisoner, Reddi Seshi Reddi, and his five brothers were the principal persons who claimed the indigo crop, as against Govindu Reddi and his party. The 2nd, 3rd, 8th, 11th and 12th accused are the 1st prisoner's brothers.

There was very nearly being a fight at the field, not an agreement was come 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 for the prosecution, a cry was raised that the prisoner's party, who, it seems, were going in advance, had killed Govindu Reddi, who, it is said, was walking near them, the mediators coming next, and the party of Govindu following: other witnesses say

positively that high words began again between A. Sesha Reddi, the 11th prisoner, one of 1st prisoner's brothers, and Govindu, on which the former struck the latter with his stick; and that on that Mahanandi Reddi, one of the deceased, rushed at the 1st prisoner and struck him on the head with the stick *he* had in his hand: then a general fight began and Mahanandi was borne down, illused, kicked, and, as some witnesses say, struck repeatedly with an axe, and eventually died.

Now, it is quite clear that neither of these two parties or factions were, at the time when this fight commenced, collected for an unlawful purpose. No doubt an assembly not unlawful in its inception may become an unlawful assembly, but the question is whether the prisoner's party can be said to have had, at the time when A. Sesha Reddi, the 11th prisoner, first struck Govindu (if he did strike him), the common object of using force or violence to the opposite 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 Mahanandi. It 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 contrary, while he says the 11th prisoner first struck Mahanandi, states that the latter had no stick in his hand at all.

The 4th and 5th witnesses seem to say that Govindu, either by taunts or satire, lashed Mahanandi Reddi into fury, so that the latter struck 1st prisoner with a stick.

The 6th witness, Govindu, says he, 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 and 12th witnesses.

The 8th to the 12th witnesses are not of the Reddi caste, but the 8th is of the washerman caste, and the other four are Madigas (Pariahs). They speak of a "fight" only; but according to their account the fight consisted in the prisoners' 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 object, being armed with deadly weapons, that common object being to cause hurt or grievous hurt to Mahanandi Reddi.

What was the object common to the 1st prisoner and the other prisoners convicted? For he is convicted of rioting. Was it to use force and violence to Mahanandi? But the 1st prisoner is acquitted of the murder, and indeed of having anything to do with the death of or with hurting Mahanandi.

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

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

It is difficult to see how the conviction of the 2nd and 5th prisoners (the 2nd and 3rd appellants) for rioting can be supported, if they cannot properly be convicted on some of the more serious charges. It remains to consider whether the convictions should not be upheld in revision on the ground that the prisoners should have been and should now be convicted of another offence or other offences in this case.

We continue to consider the case arising out of Mahanandi's death, in connection with the conviction of the 10th and 11th prisoners, the 4th and 5th appellants.

There is not one single word in the judgment to show on what evidence the judge convicted these men of having killed Mahanandi Reddi.

There is evidence that the deceased was cut again and again on the head with an axe: two witnesses (the 3rd and 8th) say the 2nd prisoner took the axe out of the hands of the 13th prisoner and clave the deceased's head while the 7th witness swears that it was the 13th prisoner who felled Mahanandi with his axe. We may observe again here that the 13th prisoner was aquitted on all charges, and the 2nd prisoner on all charges except rioting.

The witnesses of the Pariah hamlet above referred to, who speak to having seen Mahanandi to death by beating, not only say not a word about an axe being used, but two, the 9th and the 16th, distinctly say they did not see any axe at all.

The 15th, 16th, 17th, 18th, 20th and 21st witnesses, who also profess to have seen more or less of the beating of this deceased man, say nothing about an axe.

Now is this evidence about the deceased being felled again and again with an axe true, or is not?

It must be assumed the Judge disbelieved it: if so, the evidence of those (the 3rd, 7th and 8th) witnesses who speak to it is clearly entitled to little, if any, credit in the case of the other persons whom they speak against, or 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 the 8th witness swears that after he fell all the other accused beat him with sticks, but the Judge acquits the 9th prisoner on all counts, and the 6th and 7th everything but rioting with 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 those appellants. Is it sufficient? If it is, it is beyond comprehension why they were not sentenced to transportation 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 is not suggested that those who killed him—the 1st prisoner is not convicted of having taken part in killing him—had any sucd provocation as would ever reduce the offence from a crime of the first to a crime of the seconh degree in death-causing, and we cannot but express surprise that there was no application on behalf of Government in this case to this Court to exercise its discretion in revision, and that on regular appeal was preferred against the acquittals in the case of some of the accused at least. To return to the evidence against the 10th and 11th prisoners. The 1st witness, Venkata Reddi, says "all the people there, except the 1st prisoner, the 5th 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 means direct. As to his saying "the first three prisoners standing in a row behind the prisoners' 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 12th prisoners set to work to beat *Pedda Kondayya*, when Mahanandi fell down; that, when the latter fell down, so many people pressed around that *it was impossible then to identify any one*. It is clear this witness' evidence is worth little or nothing in detail, or as against these two appellants.

The 2nd witness, T. R. Seshi Reddi, says "all the men (prisoners?) before the Court beat Mahanandi." Then he particularises the 11th prisoner and two other 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 against this prisoner by name in connection with the beating of Mahanandi.

This witness says nothing about the axe, but he speaks about Mahanandi standing looking in a particular direction when he was stabbed.

He is the only witness who speaks of Mahanandi's having been stabbed.

The 3rd witness, Ramsing, says "after Mahanandi was beaten down" they beat Govindu; the 3rd and 12th prisoners beat Govindu; "the 10th prisoner pursued him;" Govindu ran home: the 11th prisoner beat Mahanandi, but did not beat Govindu. He says Venkata Reddi, the 10th prisoner, 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 the 11th prisoner was present. He does not say whether 10th prisoner was or was not there. He says he can't say whether he said before the magistrate that prisoner was present. He states that the deceased Pedda Kondayya struck the 11th prisoner. He says nothing else to implicate these appellants. The 6th witness deposes that the 10th and 11th prisoners struck him, the former with a stick: that the 11th prisoner went back to 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.

The 7th witness, Bhimi Reddi, says Govinda Reddi and the 11th prisoner *went away* (from the crowd?) disputing.

He does not say one word against the 10th prisoner. Nor does his evidence implicate the 11th prisoner directly, or seriously in any way.

The 8th witness, P. Mada Reddi, only speaks generally as to "all the Kottapalli people being present when the quarrel took place." He gives no direct evidence against these two appellants. The Pariah witnesses, 9th, 10th, 11th and 12th witnesses, speak, most of them, only in the most general 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 15th accused, but not the 10th or 11th prisoners. The 12th witness names the 13th, 14th and 15th accused but not the 4th and 5th appellants.

The 15th witness, P. Kristadu, a cooly, does name these appellants as having beaten Mahanandi with sticks.

The 16th witness, C. Kristadu, a cooly, says first that all the prisoners except the 1st beat Mahanandi. Then, he says, "I have not seen the Kottapalli 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, Chinnigadu, 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!

The 18th witness, Nagadu, a shepherd, says twice and positively he saw the 11th prisoner and 3 others named beating Mahanandi.

The 20th witness speaks generally as to 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 deceased 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 the evidence against these appellants. We pass on to the death of Pedda Kondayya.

The 3rd accused, Venkata Reddi, has from the first given a clear and consistent account of what happened: he says he and others were beating Mahanandi Reddi when the deceased Pedda Kondayya came to strike him with a stick; that he warded off the blow with the stick he (the 3rd accused) had in his hand and with his other hand used the sickle or reaping-knife he had taken for the indigo-cutting and stabbed Pedda Kondayya.

His admissions and confession implicate him in the matter of Mahanandi's death, and make him solely responsible for the death of Kondayya. There is sworn evidence in support of this story not only on the side of the defence but on the side of the prosecution.

The 4th and 5th witnesses, the two Kondayyas, mediators and not men of either of the two factions, speak to it. No attempt was made in cross-examination to shake them. There may be some slight want of precision as to how and when the respective stabs in the front and rear of the chest were inflicted, but it appears to me this evidence is certainly as clear and consistent as that given by the witnesses who speak to the stabbing by 1st prisoner with a dagger, if not indeed more so.

The 8th witness, Madi Reddi, at first said that the 1st prisoner "stabbed" him in the belly, then it came down to a slight scratch; and this tallies exactly 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 he was trying to run away into the village the 1st prisoner came in front of him, having a dagger in his hand: he does not say how or by whom he was stabbed in the chest; and he says that the stab in his back was inflicted not by the 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 15th 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 prosecution, of those who profess to speak to this incident, the 1st witness says positively that 1st prisoner inflicted the two stabs, the first in the back as the deceased was going away, and the second in front, when he turned round.

The 2nd witness says he saw 1st prisoner stab Kondayya in the belly, and saw that the latter had a stab in his back but does not know who inflicted it.

The account given by the 3rd witness is almost the same as that given by 1st witness.

The 6th witness does not say who stabbed Kondayya. The 7th witness says the same.

The 8th witness says generally that 1st prisoner *having stabbed* Kondayya wounded him (witness). I have before stated reasons for distrusting this man's evidence, and he does not say he saw 1st prisoner stab the deceased.

The 9th witness in examination-in-chief simply speaks of the stabbing of deceased by 1st prisoner; in cross-examination he says he saw the stab in the chest inflicted, but not the stab in the back: the 10th witness says the same: he adds that *as soon as ever the deceased was stabbed* (he only saw him stabbed in the back), the deceased ran away.

The 11th witness saw only the stab in front inflicted, and he speaks of an incident mentioned by no other witness, namely, that the Kondayya had a dagger which 1st prisoner took away from him!

The 12th, 15th and 16th witnesses speak to only 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 20th witness speaks to stabbing in general terms. He does admit that before the magistrate he said 1st prisoner used a dagger.

The 21st witness introduces a totally new element; he says 1st prisoner used *a sword*. He adds that 1st prisoner had a dagger, but 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 rejects in favor of the conflicting, in many ways inconsistent, and in some respects defective evidence for the prosecution, and of the statements made by the deceased which differs from that evidence on the ground apparently that the medical evidence renders it absolutely impossible to believe the former account.

We must suppose the Sessions Judge finds, then, that the 3rd accused falsely implicated himself as responsible, with others, for the death of Mahanandi, and as responsible solely for Kondayya's death. Of course, this is not absolutely impossible, but it is extremely improbable that fraternal affection 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 "rather jagged at the edges." The hinder wound, no doubt, the Assistant Surgeon describes as "clean cut, with straight edges and equal ends." He "concludes," that is, infers, that "at least" the posterior wound was caused by a two-edged weapon, the two edges of which were equally sharp. He "does not think it could have been caused by the sickle produced," but he does not say it *could* not have been.

As to the front wound, he says: "I should have expected to have found the flesh more lacerated" if the sickle had been used; but he does not say that it could not possibly have 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 that others or he should have had daggers on their persons; not putting this aside altogether, and taking the evidence that one or more of those present had daggers with them, then, although the 3rd accused's confession be not accepted as true, and we incline to think it is true, the 1st prisoner cannot be convicted, unless the evidence is taken to be so clear, so trustworthy, as to leave it not open to reasonable doubt that in the *méleé* some one other than the 1st prisoner stabbed the deceased. 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 appear why, if one or more could see quite plainly, that the 1st prisoner stabbed deceased both in the chest and back, none of the Pariah witnesses saw the hinder wound inflicted, or that they could not have seen it if it was inflicted.

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

The case has not been dealt with as it should have been, 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.

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

Notes of a Divisional Bench in Criminal Appeal 123 of 1886.

S. C. 36 *of* 1885, *Kurnool.*

Fifteen persons, namely (1) Reddi 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 Lakshmi Reddi), (11) Aruvalla Seshi Reddi, (12) Krishna Reddi (brother of the 1st prisoner, Reddi Seshi Reddi), (13) Kasi Nagadu, (14) Pedda Seshi Reddi (*alias* Pedda Seshanna) of Kottapalli and (15) Chinna Seshi Reddi or Seshanna of Kottapalli, were charged in this case, firstly, with being concerned in causing the death of one Mahanandi Reddi, at Yerragudi, on the 10th October 1885; and, secondly, with being concerned in causing grievous hurt and hurt to the said man.

The 2nd, 3rd, 4th, 6th, 7th, 8th, 9th, 10th, 11th and 13th accused were charged (1) with having murdered the said man; (2) with having caused his death in such manner and with such intention or knowledge that they are guilty of culpable homicide not amounting to murder; (3) with having intentionally caused to him grievous hurt; (4) with having abetted the murder; (5) with, aving abetted culpable homicide in respect of him; (6) with having abetted the intention of causing grievous hurt to him.

Then the 1st, 5th, 12th, 14th and 15th, that is, the remaining accused persons, were charged (1) with having abetted the murder of, (2) the culpable homicide of, (3) the causing of grievous hurt to, the said person. All fifteen are also charged that they, being members of an unlawful assembly, at the same place and time, used violence towards the said Mahanandi Reddi and another (Konda Reddi), and thereby committed rioting, and they are further charged with rioting, being armed with sticks, which, used as weapons of offence, are deadly weapons.

The 1st prisoner (1st appellant) is further charged (1) with having, at the said time and place, caused the death of one Pedda Kondayya, *alias* Pedda Konda Reddi (hereafter styled Pedda Kondayya) in such manner as to be guilty (*a*) of his murder; of culpable homicide in respect of him; (2) with having voluntarily caused grievous hurt to the said Pedda Kondayya; and the other (14) accused persons with having abetted (*a*) the murder, (*b*) the culpable homicide, (*c*) the voluntary causing of grievous hurt to the said Pedda Kondayya.

The Sessions Judge, differing from the assessors in respect of the 1st prisoner (1st appellant), who was found by them not guilty of any offence, convicted the said 1st prisoner of culpable homicide not amounting to murder in respect of Pedda Kondayya and sentenced him to transportation for life. Concurring with the assessors, the Judge convicted the 2nd prisoner, Chinna Nagi Reddi, of rioting and rioting armed with a deadly weapon, to wit, a stick or club, and sentenced him to three years' rigorous imprisonment and to a fine of 100 rupees, and, in default, to six months' further rigorous imprisonment.

Concurring in part with, and differing in part from, the assessors, the Judge convicted the 3rd, 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 said Mahanandi Reddi, and committing rioting armed with deadly weapons (to wit, sticks) and sentenced the 3rd and 4th to transportation for ten years and the 10th and 11th to transportation for seven years, each, and convicted the 5th prisoner of simple rioting only, and sentenced him to two years' rigorous imprisonment.

The 6th, 7th, 8th, 9th and 13th accused, he, 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 and 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 he was or was not guilty (1) of rioting; of the abetment of the murder, or of the culpable homicide of, or of causing grievous hurt to Mahanandi Reddi. But this accused person was entitled to acquittal on those charges if found not guilty, and should have been convicted if found guilty, in any case there should have been a distinct finding, one way or the other.

In the case of the 2nd prisoner, there is no finding whatever on any of the 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 3rd, 4th, 10th and 11th prisoners, the acquittal in respect of the charge of the murder of Mahanandi Reddi rendered unnecessary any except a formal order of acquittal in respect of the minor charges relating to that man's death but there is no finding as to whether they were concerned in Kondayya'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 those charges.

In the case of the 9th prisoner, he is no doubt acquitted on all charges, and 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

the question whether there was an assembly or two assemblies collected for an unlawful object or objects, the greatest clearness and very considerable detail were required .

We are compelled to say that 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 conclusion 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 acquitted. There is no statement of the circumstances which led to the two bodies of opposing parties coming to the place where they came in conflict; no statement of the several points for determination, and in this case they are very numerous, nor, except in one or two points, of the reasons for the conclusions arrived at. And if the finding as to the 1st prisoner having intentionally caused the death of Pedda Kondayya with a sharp dagger, by stabbing him once in the chest and once in the back be correct, it should have been most clearly stated on what grounds the offence was held to be not murder but culpable homicide not amounting to murder. It is clearly found, first, that the deceased Mahanandi Reddi started the quarrel by striking the 1st prisoner on the head with a stick, on which the latter used his dagger; and, secondly, that the wounds, from the results of which Mahanandi Reddi eventually died, were inflicted by a dagger, and not by a sickle or reaping-knife; and that they were inflicted by the 1st prisoner. There is also a finding that the 3rd prisoner did not tell the truth when he confessed and stated that it was he and not the 1st prisoner who stabbed Pedda Kondayya. I cannot say that anything else is clearly and distinctly found; if there are any other distinct findings, there are not clearly stated grounds in support of such findings.

Having done our best to understand that part of the Judge's judgment in which he states his conclusions as to what immediately led to Pedda Kondayya being stabbed, and as to the cause which led the 1st prisoner to stab him, and the motive of, and the excuse (if any) for the 1st prisoner's act, it comes to this: that Mahanandi Reddi being on the ground being beaten, and kicked in the midst of a general *mélée*, 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 get 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 on the head), the 1st prisoner stabbed Pedda Kondayya twice.

If the finding is really that Pedda Kondayya accidentally, 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 witness intentionally interposed between 1st prisoner and Mahanandi, intending to prevent the former either from helping to kill the latter by kicking, beating, or otherwise doing violence to him or to prevent him from using his dagger on Mahanandi, then also the 1st prisoner was assuredly guilty of murder, whether by reason of such intervention he intentionally stabbed Pedda Kondayya, so as to kill him, or whether aiming blows at Mahanandi with his dagger he stabbed and killed Pedda Kondayya instead, and 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 and (*b*) of Pedda Kondayya, can be supported: this is necessary, because (as before said) the judgment contains no summary of the evidence, no balancing of the evidence for the prosecution and 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 Sessions 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 claimed their crop. On the 10th October 1885 Govindu went to the 1st witness, Venkata Reddi, and told him that the other party who asserted a right to cut the crop had gone to the field and asked whether he and should go to cut the crop; Venkata advised them not to go as there would be a fight; Govindu again asked him to go, taking others, respectable people, to prevent the crop being wrongfully taken, and, if possible, to settle matters amicably, They went for this purpose—viz., 2nd witness, 6th witness, 3rd witness, the 4th and 5th witnesses for the prosecution, Vajjrala Kondayya and Chinna Kondayya, who eventually mediated, and others.

It may be as well to say here that the 1st prisoner, Reddi Seshi Reddi, and his five brothers were the principal persons who claimed the indigo crop, as against Govindu Reddi and his party. The 2nd, 3rd, 8th, 11th and 12th accused are the 1st prisoner's brothers.

There was very nearly being a fight at the field, not an agreement was come 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 for the prosecution, a cry was raised that the prisoner's party, who, it seems, were going in advance, had killed Govindu Reddi, who, it is said, was walking near them, the mediators coming next, and the party of Govindu following: other witnesses say

positively that high words began again between A. Sesha Reddi, the 11th prisoner, one of 1st prisoner's brothers, and Govindu, on which the former struck the latter with his stick; and that on that Mahanandi Reddi, one of the deceased, rushed at the 1st prisoner and struck him on the head with the stick *he* had in his hand: then a general fight began and Mahanandi was borne down, illused, kicked, and, as some witnesses say, struck repeatedly with an axe, and eventually died.

Now, it is quite clear that neither of these two parties or factions were, at the time when this fight commenced, collected for an unlawful purpose. No doubt an assembly not unlawful in its inception may become an unlawful assembly, but the question is whether the prisoner's party can be said to have had, at the time when A. Sesha Reddi, the 11th prisoner, first struck Govindu (if he did strike him), the common object of using force or violence to the opposite 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 Mahanandi. It 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 contrary, while he says the 11th prisoner first struck Mahanandi, states that the latter had no stick in his hand at all.

The 4th and 5th witnesses seem to say that Govindu, either by taunts or satire, lashed Mahanandi Reddi into fury, so that the latter struck 1st prisoner with a stick.

The 6th witness, Govindu, says he, 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 and 12th witnesses.

The 8th to the 12th witnesses are not of the Reddi caste, but the 8th is of the washerman caste, and the other four are Madigas (Pariahs). They speak of a "fight" only; but according to their account the fight consisted in the prisoners' 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 object, being armed with deadly weapons, that common object being to cause hurt or grievous hurt to Mahanandi Reddi.

What was the object common to the 1st prisoner and the other prisoners convicted? For he is convicted of rioting. Was it to use force and violence to Mahanandi? But the 1st prisoner is acquitted of the murder, and indeed of having anything to do with the death of or with hurting Mahanandi.

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

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

It is difficult to see how the conviction of the 2nd and 5th prisoners (the 2nd and 3rd appellants) for rioting can be supported, if they cannot properly be convicted on some of the more serious charges. It remains to consider whether the convictions should not be upheld in revision on the ground that the prisoners should have been and should now be convicted of another offence or other offences in this case.

We continue to consider the case arising out of Mahanandi's death, in connection with the conviction of the 10th and 11th prisoners, the 4th and 5th appellants.

There is not one single word in the judgment to show on what evidence the judge convicted these men of having killed Mahanandi Reddi.

There is evidence that the deceased was cut again and again on the head with an axe: two witnesses (the 3rd and 8th) say the 2nd prisoner took the axe out of the hands of the 13th prisoner and clave the deceased's head while the 7th witness swears that it was the 13th prisoner who felled Mahanandi with his axe. We may observe again here that the 13th prisoner was aquitted on all charges, and the 2nd prisoner on all charges except rioting.

The witnesses of the Pariah hamlet above referred to, who speak to having seen Mahanandi to death by beating, not only say not a word about an axe being used, but two, the 9th and the 16th, distinctly say they did not see any axe at all.

The 15th, 16th, 17th, 18th, 20th and 21st witnesses, who also profess to have seen more or less of the beating of this deceased man, say nothing about an axe.

Now is this evidence about the deceased being felled again and again with an axe true, or is not?

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

the question whether there was an assembly or two assemblies collected for an unlawful object or objects, the greatest clearness and very considerable detail were required .

We are compelled to say that 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 conclusion 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 acquitted. There is no statement of the circumstances which led to the two bodies of opposing parties coming to the place where they came in conflict; no statement of the several points for determination, and in this case they are very numerous, nor, except in one or two points, of the reasons for the conclusions arrived at. And if the finding as to the 1st prisoner having intentionally caused the death of Pedda Kondayya with a sharp dagger, by stabbing him once in the chest and once in the back be correct, it should have been most clearly stated on what grounds the offence was held to be not murder but culpable homicide not amounting to murder. It is clearly found, first, that the deceased Mahanandi Reddi started the quarrel by striking the 1st prisoner on the head with a stick, on which the latter used his dagger; and, secondly, that the wounds, from the results of which Mahanandi Reddi eventually died, were inflicted by a dagger, and not by a sickle or reaping-knife; and that they were inflicted by the 1st prisoner. There is also a finding that the 3rd prisoner did not tell the truth when he confessed and stated that it was he and not the 1st prisoner who stabbed Pedda Kondayya. I cannot say that anything else is clearly and distinctly found; if there are any other distinct findings, there are not clearly stated grounds in support of such findings.

Having done our best to understand that part of the Judge's judgment in which he states his conclusions as to what immediately led to Pedda Kondayya being stabbed, and as to the cause which led the 1st prisoner to stab him, and the motive of, and the excuse (if any) for the 1st prisoner's act, it comes to this: that Mahanandi Reddi being on the ground being beaten, and kicked in the midst of a general *mélée*, 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 get 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 on the head), the 1st prisoner stabbed Pedda Kondayya twice.

If the finding is really that Pedda Kondayya accidentally, 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 witness intentionally interposed between 1st prisoner and Mahanandi, intending to prevent the former either from helping to kill the latter by kicking, beating, or otherwise doing violence to him or to prevent him from using his dagger on Mahanandi, then also the 1st prisoner was assuredly guilty of murder, whether by reason of such intervention he intentionally stabbed Pedda Kondayya, so as to kill him, or whether aiming blows at Mahanandi with his dagger he stabbed and killed Pedda Kondayya instead, and 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 and (*b*) of Pedda Kondayya, can be supported: this is necessary, because (as before said) the judgment contains no summary of the evidence, no balancing of the evidence for the prosecution and 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 Sessions 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 claimed their crop. On the 10th October 1885 Govindu went to the 1st witness, Venkata Reddi, and told him that the other party who asserted a right to cut the crop had gone to the field and asked whether he and should go to cut the crop; Venkata advised them not to go as there would be a fight; Govindu again asked him to go, taking others, respectable people, to prevent the crop being wrongfully taken, and, if possible, to settle matters amicably, They went for this purpose—viz., 2nd witness, 6th witness, 3rd witness, the 4th and 5th witnesses for the prosecution, Vajjrala Kondayya and Chinna Kondayya, who eventually mediated, and others.

It may be as well to say here that the 1st prisoner, Reddi Seshi Reddi, and his five brothers were the principal persons who claimed the indigo crop, as against Govindu Reddi and his party. The 2nd, 3rd, 8th, 11th and 12th accused are the 1st prisoner's brothers.

There was very nearly being a fight at the field, not an agreement was come 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 for the prosecution, a cry was raised that the prisoner's party, who, it seems, were going in advance, had killed Govindu Reddi, who, it is said, was walking near them, the mediators coming next, and the party of Govindu following: other witnesses say

positively that high words began again between A. Sesha Reddi, the 11th prisoner, one of 1st prisoner's brothers, and Govindu, on which the former struck the latter with his stick; and that on that Mahanandi Reddi, one of the deceased, rushed at the 1st prisoner and struck him on the head with the stick *he* had in his hand: then a general fight began and Mahanandi was borne down, illused, kicked, and, as some witnesses say, struck repeatedly with an axe, and eventually died.

Now, it is quite clear that neither of these two parties or factions were, at the time when this fight commenced, collected for an unlawful purpose. No doubt an assembly not unlawful in its inception may become an unlawful assembly, but the question is whether the prisoner's party can be said to have had, at the time when A. Sesha Reddi, the 11th prisoner, first struck Govindu (if he did strike him), the common object of using force or violence to the opposite 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 Mahanandi. It 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 contrary, while he says the 11th prisoner first struck Mahanandi, states that the latter had no stick in his hand at all.

The 4th and 5th witnesses seem to say that Govindu, either by taunts or satire, lashed Mahanandi Reddi into fury, so that the latter struck 1st prisoner with a stick.

The 6th witness, Govindu, says he, 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 and 12th witnesses.

The 8th to the 12th witnesses are not of the Reddi caste, but the 8th is of the washerman caste, and the other four are Madigas (Pariahs). They speak of a "fight" only; but according to their account the fight consisted in the prisoners' 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 object, being armed with deadly weapons, that common object being to cause hurt or grievous hurt to Mahanandi Reddi.

What was the object common to the 1st prisoner and the other prisoners convicted? For he is convicted of rioting. Was it to use force and violence to Mahanandi? But the 1st prisoner is acquitted of the murder, and indeed of having anything to do with the death of or with hurting Mahanandi.

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

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

It is difficult to see how the conviction of the 2nd and 5th prisoners (the 2nd and 3rd appellants) for rioting can be supported, if they cannot properly be convicted on some of the more serious charges. It remains to consider whether the convictions should not be upheld in revision on the ground that the prisoners should have been and should now be convicted of another offence or other offences in this case.

We continue to consider the case arising out of Mahanandi's death, in connection with the conviction of the 10th and 11th prisoners, the 4th and 5th appellants.

There is not one single word in the judgment to show on what evidence the judge convicted these men of having killed Mahanandi Reddi.

There is evidence that the deceased was cut again and again on the head with an axe: two witnesses (the 3rd and 8th) say the 2nd prisoner took the axe out of the hands of the 13th prisoner and clave the deceased's head while the 7th witness swears that it was the 13th prisoner who felled Mahanandi with his axe. We may observe again here that the 13th prisoner was aquitted on all charges, and the 2nd prisoner on all charges except rioting.

The witnesses of the Pariah hamlet above referred to, who speak to having seen Mahanandi to death by beating, not only say not a word about an axe being used, but two, the 9th and the 16th, distinctly say they did not see any axe at all.

The 15th, 16th, 17th, 18th, 20th and 21st witnesses, who also profess to have seen more or less of the beating of this deceased man, say nothing about an axe.

Now is this evidence about the deceased being felled again and again with an axe true, or is not?

It must be assumed the Judge disbelieved it: if so, the evidence of those (the 3rd, 7th and 8th) witnesses who speak to it is clearly entitled to little, if any, credit in the case of the other persons whom they speak against, or 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 the 8th witness swears that after he fell all the other accused beat him with sticks, but the Judge acquits the 9th prisoner on all counts, and the 6th and 7th everything but rioting with 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 those appellants. Is it sufficient? If it is, it is beyond comprehension why they were not sentenced to transportation 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 is not suggested that those who killed him—the 1st prisoner is not convicted of having taken part in killing him—had any sued provocation as would ever reduce the offence from a crime of the first to a crime of the seconh degree in death-causing, and we cannot but express surprise that there was no application on behalf of Government in this case to this Court to exercise its discretion in revision, and that on regular appeal was preferred against the acquittals in the case of some of the accused at least. To return to the evidence against the 10th and 11th prisoners. The 1st witness, Venkata Reddi, says "all the people there, except the 1st prisoner, the 5th 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 means direct. As to his saying "the first three prisoners standing in a row behind the prisoners' 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 12th prisoners set to work to beat *Pedda Kondayya*, when Mahanandi fell down; that, when the latter fell down, so many people pressed around that *it was impossible then to identify any one.* It is clear this witness' evidence is worth little or nothing in detail, or as against these two appellants.

The 2nd witness, T. R. Seshi Reddi, says "all the men (prisoners?) before the Court beat Mahanandi." Then he particularises the 11th prisoner and two other 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 against this prisoner by name in connection with the beating of Mahanandi.

This witness says nothing about the axe, but he speaks about Mahanandi standing looking in a particular direction when he was stabbed.

He is the only witness who speaks of Mahanandi's having been stabbed.

The 3rd witness, Ramsing, says "after Mahanandi was beaten down" they beat Govindu; the 3rd and 12th prisoners beat Govindu; "the 10th prisoner pursued him;" Govindu ran home: the 11th prisoner beat Mahanandi, but did not beat Govindu. He says Venkata Reddi, the 10th prisoner, 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 the 11th prisoner was present. He does not say whether 10th prisoner was or was not there. He says he can't say whether he said before the magistrate that prisoner was present. He states that the deceased Pedda Kondayya struck the 11th prisoner. He says nothing else to implicate these appellants. The 6th witness deposes that the 10th and 11th prisoners struck him, the former with a stick: that the 11th prisoner went back to 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.

The 7th witness, Bhimi Reddi, says Govinda Reddi and the 11th prisoner *went away* (from the crowd?) disputing.

He does not say one word against the 10th prisoner. Nor does his evidence implicate the 11th prisoner directly, or seriously in any way.

The 8th witness, P. Mada Reddi, only speaks generally as to "all the Kottapalli people being present when the quarrel took place." He gives no direct evidence against these two appellants. The Pariah witnesses, 9th, 10th, 11th and 12th witnesses, speak, most of them, only in the most general 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 15th accused, but not the 10th or 11th prisoners. The 12th witness names the 13th, 14th and 15th accused but not the 4th and 5th appellants.

The 15th witness, P. Kristadu, a cooly, does name these appellants as having beaten Mahanandi with sticks.

The 16th witness, C. Kristadu, a cooly, says first that all the prisoners except the 1st beat Mahanandi. Then, he says, "I have not seen the Kottapalli 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, Chinnigadu, 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!

The 18th witness, Nagadu, a shepherd, says twice and positively he saw the 11th prisoner and 3 others named beating Mahanandi.

The 20th witness speaks generally as to 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 deceased 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 the evidence against these appellants. We pass on to the death of Pedda Kondayya.

The 3rd accused, Venkata Reddi, has from the first given a clear and consistent account of what happened: he says he and others were beating Mahanandi Reddi when the deceased Pedda Kondayya came to strike him with a stick; that he warded off the blow with the stick he (the 3rd accused) had in his hand and with his other hand used the sickle or reaping-knife he had taken for the indigo-cutting and stabbed Pedda Kondayya.

His admissions and confession implicate him in the matter of Mahanandi's death, and make him solely responsible for the death of Kondayya. There is sworn evidence in support of this story not only on the side of the defence but on the side of the prosecution.

The 4th and 5th witnesses, the two Kondayyas, mediators and not men of either of the two factions, speak to it. No attempt was made in cross-examination to shake them. There may be some slight want of precision as to how and when the respective stabs in the front and rear of the chest were inflicted, but it appears to me this evidence is certainly as clear and consistent as that given by the witnesses who speak to the stabbing by 1st prisoner with a dagger, if not indeed more so.

The 8th witness, Madi Reddi, at first said that the 1st prisoner "stabbed" him in the belly, then it came down to a slight scratch; and this tallies exactly 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 he was trying to run away into the village the 1st prisoner came in front of him, having a dagger in his hand: he does not say how or by whom he was stabbed in the chest; and he says that the stab in his back was inflicted not by the 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 15th 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 prosecution, of those who profess to speak to this incident, the 1st witness says positively that 1st prisoner inflicted the two stabs, the first in the back as the deceased was going away, and the second in front, when he turned round.

The 2nd witness says he saw 1st prisoner stab Kondayya in the belly, and saw that the latter had a stab in his back but does not know who inflicted it.

The account given by the 3rd witness is almost the same as that given by 1st witness.

The 6th witness does not say who stabbed Kondayya. The 7th witness says the same.

The 8th witness says generally that 1st prisoner *having stabbed* Kondayya wounded him (witness). I have before stated reasons for distrusting this man's evidence, and he does not say he saw 1st prisoner stab the deceased.

The 9th witness in examination-in-chief simply speaks of the stabbing of deceased by 1st prisoner; in cross-examination he says he saw the stab in the chest inflicted, but not the stab in the back: the 10th witness says the same: he adds that *as soon as ever the deceased was stabbed* (he only saw him stabbed in the back), the deceased ran away.

The 11th witness saw only the stab in front inflicted, and he speaks of an incident mentioned by no other witness, namely, that the Kondayya had a dagger which 1st prisoner took away from him!

The 12th, 15th and 16th witnesses speak to only 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 20th witness speaks to stabbing in general terms. He does admit that before the magistrate he said 1st prisoner used a dagger.

The 21st witness introduces a totally new element; he says 1st prisoner used *a sword.* He adds that 1st prisoner had a dagger, but 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 rejects in favor of the conflicting, in many ways inconsistent, and in some respects defective evidence for the prosecution, and of the statements made by the deceased which differs from that evidence on the ground apparently that the medical evidence renders it absolutely impossible to believe the former account.

We must suppose the Sessions Judge finds, then, that the 3rd accused falsely implicated himself as responsible, with others, for the death of Mahanandi, and as responsible solely for Kondayya's death. Of course, this is not absolutely impossible, but it is extremely improbable that fraternal affection 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 "rather jagged at the edges." The hinder wound, no doubt, the Assistant Surgeon describes as "clean cut, with straight edges and equal ends." He "concludes," that is, infers, that "at least" the posterior wound was caused by a two-edged weapon, the two edges of which were equally sharp. He "does not think it could have been caused by the sickle produced," but he does not say it *could* not have been.

As to the front wound, he says: "I should have expected to have found the flesh more lacerated" if the sickle had been used; but he does not say that it could not possibly have 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 that others or he should have had daggers on their persons; not putting this aside altogether, and taking the evidence that one or more of those present had daggers with them, then, although the 3rd accused's confession be not accepted as true, and we incline to think it is true, the 1st prisoner cannot be convicted, unless the evidence is taken to be so clear, so trustworthy, as to leave it not open to reasonable doubt that in the *méleé* some one other than the 1st prisoner stabbed the deceased. 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 appear why, if one or more could see quite plainly, that the 1st prisoner stabbed deceased both in the chest and back, none of the Pariah witnesses saw the hinder wound inflicted, or that they could not have seen it if it was inflicted.

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

The case has not been dealt with as it should have been, 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.

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

NOTES OF A DIVISIONAL BENCH IN CRIMINAL APPEAL 123 OF 1886.

S. C. 36 *of* 1885, *Kurnool.*

Fifteen persons, namely (1) Reddi 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 Lakshmi Reddi), (11) Aruvalla Seshi Reddi, (12) Krishna Reddi (brother of the 1st prisoner, Reddi Seshi Reddi), (13) Kasi Nagadu, (14) Pedda Seshi Reddi (*alias* Pedda Seshanna) of Kottapalli and (15) Chinna Seshi Reddi or Seshanna of Kottapalli, were charged in this case, firstly, with being concerned in causing the death of one Mahanandi Reddi, at Yerragudi, on the 10th October 1885; and, secondly, with being concerned in causing grievous hurt and hurt to the said man.

The 2nd, 3rd, 4th, 6th, 7th, 8th, 9th, 10th, 11th and 13th accused were charged (1) with having murdered the said man; (2) with having caused his death in such manner and with such intention or knowledge that they are guilty of culpable homicide not amounting to murder; (3) with having intentionally caused to him grievous hurt; (4) with having abetted the murder; (5) with, aving abetted culpable homicide in respect of him; (6) with having abetted the intention of causing grievous hurt to him.

Then the 1st, 5th, 12th, 14th and 15th, that is, the remaining accused persons, were charged (1) with having abetted the murder of, (2) the culpable homicide of, (3) the causing of grievous hurt to, the said person. All fifteen are also charged that they, being members of an unlawful assembly, at the same place and time, used violence towards the said Mahanandi Reddi and another (Konda Reddi); and thereby committed rioting, and they are further charged with rioting, being armed with sticks, which, used as weapons of offence, are deadly weapons.

The 1st prisoner (1st appellant) is further charged (1) with having, at the said time and place, caused the death of one Pedda Kondayya, *alias* Pedda Konda Reddi (hereafter styled Pedda Kondayya) in such manner as to be guilty (*a*) of his murder; of culpable homicide in respect of him; (2) with having voluntarily caused grievous hurt to the said Pedda Kondayya; and the other (14) accused persons with having abetted (*a*) the murder, (*b*) the culpable homicide, (*c*) the voluntary causing of grievous hurt to the said Pedda Kondayya.

The Sessions Judge, differing from the assessors in respect of the 1st prisoner (1st appellant), who was found by them not guilty of any offence, convicted the said 1st prisoner of culpable homicide not amounting to murder in respect of Pedda Kondayya and sentenced him to transportation for life. Concurring with the assessors, the Judge convicted the 2nd prisoner, Chinna Nagi Reddi, of rioting and rioting armed with a deadly weapon, to wit, a stick or club, and sentenced him to three years' rigorous imprisonment and to a fine of 100 rupees, and, in default, to six months' further rigorous imprisonment.

Concurring in part with, and differing in part from, the assessors, the Judge convicted the 3rd, 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 said Mahanandi Reddi, and committing rioting armed with deadly weapons (to wit, sticks) and sentenced the 3rd and 4th to transportation for ten years and the 10th and 11th to transportation for seven years, each, and convicted the 5th prisoner of simple rioting only, and sentenced him to two years' rigorous imprisonment.

The 6th, 7th, 8th, 9th and 13th accused, he, 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 and 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 he was or was not guilty (1) of rioting; of the abetment of the murder, or of the culpable homicide of, or of causing grievous hurt to Mahanandi Reddi. But this accused person was entitled to acquittal on those charges if found not guilty, and should have been convicted if found guilty, in any case there should have been a distinct finding, one way or the other.

In the case of the 2nd prisoner, there is no finding whatever on any of the 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 3rd, 4th, 10th and 11th prisoners, the acquittal in respect of the charge of the murder of Mahanandi Reddi rendered unnecessary any except a formal order of acquittal in respect of the minor charges relating to that man's death but there is no finding as to whether they were concerned in Kondayya'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 those charges.

In the case of the 9th prisoner, he is no doubt acquitted on all charges, and 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

the question whether there was an assembly or two assemblies collected for an unlawful object or objects, the greatest clearness and very considerable detail were required .

We are compelled to say that 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 conclusion 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 acquitted. There is no statement of the circumstances which led to the two bodies of opposing parties coming to the place where they came in conflict; no statement of the several points for determination, and in this case they are very numerous, nor, except in one or two points, of the reasons for the conclusions arrived at. And if the finding as to the 1st prisoner having intentionally caused the death of Pedda Kondayya with a sharp dagger, by stabbing him once in the chest and once in the back be correct, it should have been most clearly stated on what grounds the offence was held to be not murder but culpable homicide not amounting to murder. It is clearly found, first, that the deceased Mahanandi Reddi started the quarrel by striking the 1st prisoner on the head with a stick, on which the latter used his dagger; and, secondly, that the wounds, from the results of which Mahanandi Reddi eventually died, were inflicted by a dagger, and not by a sickle or reaping-knife; and that they were inflicted by the 1st prisoner. There is also a finding that the 3rd prisoner did not tell the truth when he confessed and stated that it was he and not the 1st prisoner who stabbed Pedda Kondayya. I cannot say that anything else is clearly and distinctly found; if there are any other distinct findings, there are not clearly stated grounds in support of such findings.

Having done our best to understand that part of the Judge's judgment in which he states his conclusions as to what immediately led to Pedda Kondayya being stabbed, and as to the cause which led the 1st prisoner to stab him, and the motive of, and the excuse (if any) for the 1st prisoner's act, it comes to this: that Mahanandi Reddi being on the ground being beaten, and kicked in the midst of a general *mélée*, 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 get 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 on the head), the 1st prisoner stabbed Pedda Kondayya twice.

If the finding is really that Pedda Kondayya accidentally, 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 witness intentionally interposed between 1st prisoner and Mahanandi, intending to prevent the former either from helping to kill the latter by kicking, beating, or otherwise doing violence to him or to prevent him from using his dagger on Mahanandi, then also the 1st prisoner was assuredly guilty of murder, whether by reason of such intervention he intentionally stabbed Pedda Kondayya, so as to kill him, or whether aiming blows at Mahanandi with his dagger he stabbed and killed Pedda Kondayya instead, and 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 and (*b*) of Pedda Kondayya, can be supported: this is necessary, because (as before said) the judgment contains no summary of the evidence, no balancing of the evidence for the prosecution and 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 Sessions 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 claimed their crop. On the 10th October 1885 Govindu went to the 1st witness, Venkata Reddi, and told him that the other party who asserted a right to cut the crop had gone to the field and asked whether he and should go to cut the crop; Venkata advised them not to go as there would be a fight; Govindu again asked him to go, taking others, respectable people, to prevent the crop being wrongfully taken, and, if possible, to settle matters amicably, They went for this purpose—viz., 2nd witness, 6th witness, 3rd witness, the 4th and 5th witnesses for the prosecution, Vajjrala Kondayya and Chinna Kondayya, who eventually mediated, and others.

It may be as well to say here that the 1st prisoner, Reddi Seshi Reddi, and his five brothers were the principal persons who claimed the indigo crop, as against Govindu Reddi and his party. The 2nd, 3rd, 8th, 11th and 12th accused are the 1st prisoner's brothers.

There was very nearly being a fight at the field, not an agreement was come 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 for the prosecution, a cry was raised that the prisoner's party, who, it seems, were going in advance, had killed Govindu Reddi, who, it is said, was walking near them, the mediators coming next, and the party of Govindu following: other witnesses say

positively that high words began again between A. Sesha Reddi, the 11th prisoner, one of 1st prisoner's brothers, and Govindu, on which the former struck the latter with his stick; and that on that Mahanandi Reddi, one of the deceased, rushed at the 1st prisoner and struck him on the head with the stick *he* had in his hand: then a general fight began and Mahanandi was borne down, illused, kicked, and, as some witnesses say, struck repeatedly with an axe, and eventually died.

Now, it is quite clear that neither of these two parties or factions were, at the time when this fight commenced, collected for an unlawful purpose. No doubt an assembly not unlawful in its inception may become an unlawful assembly, but the question is whether the prisoner's party can be said to have had, at the time when A. Sesha Reddi, the 11th prisoner, first struck Govindu (if he did strike him), the common object of using force or violence to the opposite 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 Mahanandi. It 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 contrary, while he says the 11th prisoner first struck Mahanandi, states that the latter had no stick in his hand at all.

The 4th and 5th witnesses seem to say that Govindu, either by taunts or satire, lashed Mahanandi Reddi into fury, so that the latter struck 1st prisoner with a stick.

The 6th witness, Govindu, says he, 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 and 12th witnesses.

The 8th to the 12th witnesses are not of the Reddi caste, but the 8th is of the washerman caste, and the other four are Madigas (Pariahs). They speak of a "fight" only; but according to their account the fight consisted in the prisoners' 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 object, being armed with deadly weapons, that common object being to cause hurt or grievous hurt to Mahanandi Reddi.

What was the object common to the 1st prisoner and the other prisoners convicted? For he is convicted of rioting. Was it to use force and violence to Mahanandi? But the 1st prisoner is acquitted of the murder, and indeed of having anything to do with the death of or with hurting Mahanandi.

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

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

It is difficult to see how the conviction of the 2nd and 5th prisoners (the 2nd and 3rd appellants) for rioting can be supported, if they cannot properly be convicted on some of the more serious charges. It remains to consider whether the convictions should not be upheld in revision on the ground that the prisoners should have been and should now be convicted of another offence or other offences in this case.

We continue to consider the case arising out of Mahanandi's death, in connection with the conviction of the 10th and 11th prisoners, the 4th and 5th appellants.

There is not one single word in the judgment to show on what evidence the judge convicted these men of having killed Mahanandi Reddi.

There is evidence that the deceased was cut again and again on the head with an axe: two witnesses (the 3rd and 8th) say the 2nd prisoner took the axe out of the hands of the 13th prisoner and clave the deceased's head while the 7th witness swears that it was the 13th prisoner who felled Mahanandi with his axe. We may observe again here that the 13th prisoner was aquitted on all charges, and the 2nd prisoner on all charges except rioting.

The witnesses of the Pariah hamlet above referred to, who speak to having seen Mahanandi to death by beating, not only say not a word about an axe being used, but two, the 9th and the 16th, distinctly say they did not see any axe at all.

The 15th, 16th, 17th, 18th, 20th and 21st witnesses, who also profess to have seen more or less of the beating of this deceased man, say nothing about an axe.

Now is this evidence about the deceased being felled again and again with an axe true, or is not?

It must be assumed the Judge disbelieved it: if so, the evidence of those (the 3rd, 7th and 8th) witnesses who speak to it is clearly entitled to little, if any, credit in the case of the other persons whom they speak against, or 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 the 8th witness swears that after he fell all the other accused beat him with sticks, but the Judge acquits the 9th prisoner on all counts, and the 6th and 7th everything but rioting with 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 those appellants. Is it sufficient? If it is, it is beyond comprehension why they were not sentenced to transportation 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 is not suggested that those who killed him—the 1st prisoner is not convicted of having taken part in killing him—had any sued provocation as would ever reduce the offence from a crime of the first to a crime of the seconh degree in death-causing, and we cannot but express surprise that there was no application on behalf of Government in this case to this Court to exercise its discretion in revision, and that on regular appeal was preferred against the acquittals in the case of some of the accused at least. To return to the evidence against the 10th and 11th prisoners. The 1st witness, Venkata Reddi, says "all the people there, except the 1st prisoner, the 5th 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 means direct. As to his saying "the first three prisoners standing in a row behind the prisoners' 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 12th prisoners set to work to beat *Pedda Kondayya*, when Mahanandi fell down; that, when the latter fell down, so many people pressed around that *it was impossible then to identify any one.* It is clear this witness' evidence is worth little or nothing in detail, or as against these two appellants.

The 2nd witness, T. R. Seshi Reddi, says "all the men (prisoners?) before the Court beat Mahanandi." Then he particularises the 11th prisoner and two other 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 against this prisoner by name in connection with the beating of Mahanandi.

This witness says nothing about the axe, but he speaks about Mahanandi standing looking in a particular direction when he was stabbed.

He is the only witness who speaks of Mahanandi's having been stabbed.

The 3rd witness, Ramsing, says "after Mahanandi was beaten down" they beat Govindu; the 3rd and 12th prisoners beat Govindu; "the 10th prisoner pursued him;" Govindu ran home: the 11th prisoner beat Mahanandi, but did not beat Govindu. He says Venkata Reddi, the 10th prisoner, 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 the 11th prisoner was present. He does not say whether 10th prisoner was or was not there. He says he can't say whether he said before the magistrate that prisoner was present. He states that the deceased Pedda Kondayya struck the 11th prisoner. He says nothing else to implicate these appellants. The 6th witness deposes that the 10th and 11th prisoners struck him, the former with a stick: that the 11th prisoner went back to 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.

The 7th witness, Bhimi Reddi, says Govinda Reddi and the 11th prisoner *went away* (from the crowd?) disputing.

He does not say one word against the 10th prisoner. Nor does his evidence implicate the 11th prisoner directly, or seriously in any way.

The 8th witness, P. Mada Reddi, only speaks generally as to "all the Kottapalli people being present when the quarrel took place." He gives no direct evidence against these two appellants. The Pariah witnesses, 9th, 10th, 11th and 12th witnesses, speak, most of them, only in the most general 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 15th accused, but not the 10th or 11th prisoners. The 12th witness names the 13th, 14th and 15th accused but not the 4th and 5th appellants.

The 15th witness, P. Kristadu, a cooly, does name these appellants as having beaten Mahanandi with sticks.

The 16th witness, C. Kristadu, a cooly, says first that all the prisoners except the 1st beat Mahanandi. Then, he says, "I have not seen the Kottapalli 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, Chinnigadu, 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!

The 18th witness, Nagadu, a shepherd, says twice and positively he saw the 11th prisoner and 3 others named beating Mahanandi.

The 20th witness speaks generally as to 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 deceased 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 the evidence against these appellants. We pass on to the death of Pedda Kondayya.

The 3rd accused, Venkata Reddi, has from the first given a clear and consistent account of what happened: he says he and others were beating Mahanandi Reddi when the deceased Pedda Kondayya came to strike him with a stick; that he warded off the blow with the stick he (the 3rd accused) had in his hand and with his other hand used the sickle or reaping-knife he had taken for the indigo-cutting and stabbed Pedda Kondayya.

His admissions and confession implicate him in the matter of Mahanandi's death, and make him solely responsible for the death of Kondayya. There is sworn evidence in support of this story not only on the side of the defence but on the side of the prosecution.

The 4th and 5th witnesses, the two Kondayyas, mediators and not men of either of the two factions, speak to it. No attempt was made in cross-examination to shake them. There may be some slight want of precision as to how and when the respective stabs in the front and rear of the chest were inflicted, but it appears to me this evidence is certainly as clear and consistent as that given by the witnesses who speak to the stabbing by 1st prisoner with a dagger, if not indeed more so.

The 8th witness, Madi Reddi, at first said that the 1st prisoner "stabbed" him in the belly, then it came down to a slight scratch; and this tallies exactly 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 he was trying to run away into the village the 1st prisoner came in front of him, having a dagger in his hand: he does not say how or by whom he was stabbed in the chest; and he says that the stab in his back was inflicted not by the 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 15th 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 prosecution, of those who profess to speak to this incident, the 1st witness says positively that 1st prisoner inflicted the two stabs, the first in the back as the deceased was going away, and the second in front, when he turned round.

The 2nd witness says he saw 1st prisoner stab Kondayya in the belly, and saw that the latter had a stab in his back but does not know who inflicted it.

The account given by the 3rd witness is almost the same as that given by 1st witness.

The 6th witness does not say who stabbed Kondayya. The 7th witness says the same.

The 8th witness says generally that 1st prisoner *having stabbed* Kondayya wounded him (witness). I have before stated reasons for distrusting this man's evidence, and he does not say he saw 1st prisoner stab the deceased.

The 9th witness in examination-in-chief simply speaks of the stabbing of deceased by 1st prisoner; in cross-examination he says he saw the stab in the chest inflicted, but not the stab in the back: the 10th witness says the same: he adds that *as soon as ever the deceased was stabbed* (he only saw him stabbed in the back), the deceased ran away.

The 11th witness saw only the stab in front inflicted, and he speaks of an incident mentioned by no other witness, namely, that the Kondayya had a dagger which 1st prisoner took away from him!

The 12th, 15th and 16th witnesses speak to only 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 20th witness speaks to stabbing in general terms. He does admit that before the magistrate he said 1st prisoner used a dagger.

The 21st witness introduces a totally new element; he says 1st prisoner used *a sword.* He adds that 1st prisoner had a dagger, but 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 rejects in favor of the conflicting, in many ways inconsistent, and in some respects defective evidence for the prosecution, and of the statements made by the deceased which differs from that evidence on the ground apparently that the medical evidence renders it absolutely impossible to believe the former account.

We must suppose the Sessions Judge finds, then, that the 3rd accused falsely implicated himself as responsible, with others, for the death of Mahanandi, and as responsible solely for Kondayya's death. Of course, this is not absolutely impossible, but it is extremely improbable that fraternal affection 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 "rather jagged at the edges." The hinder wound, no doubt, the Assistant Surgeon describes as "clean cut, with straight edges and equal ends." He "concludes," that is, infers, that "at least" the posterior wound was caused by a two-edged weapon, the two edges of which were equally sharp. He "does not think it could have been caused by the sickle produced," but he does not say it *could* not have been.

As to the front wound, he says: "I should have expected to have found the flesh more lacerated" if the sickle had been used; but he does not say that it could not possibly have 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 that others or he should have had daggers on their persons; not putting this aside altogether, and taking the evidence that one or more of those present had daggers with them, then, although the 3rd accused's confession be not accepted as true, and we incline to think it is true, the 1st prisoner cannot be convicted, unless the evidence is taken to be so clear, so trustworthy, as to leave it not open to reasonable doubt that in the *méleé* some one other than the 1st prisoner stabbed the deceased. 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 appear why, if one or more could see quite plainly, that the 1st prisoner stabbed deceased both in the chest and back, none of the Pariah witnesses saw the hinder wound inflicted, or that they could not have seen it if it was inflicted.

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

The case has not been dealt with as it should have been, 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.

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

Notes of a Divisional Bench in Criminal Appeal 123 of 1886.

S. C. 36 *of* 1885, *Kurnool.*

Fifteen persons, namely (1) Reddi 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 Lakshmi Reddi), (11) Aruvalla Seshi Reddi, (12) Krishna Reddi (brother of the 1st prisoner, Reddi Seshi Reddi), (13) Kasi Nagadu, (14) Pedda Seshi Reddi (*alias* Pedda Seshanna) of Kottapalli and (15) Chinna Seshi Reddi or Seshanna of Kottapalli, were charged in this case, firstly, with being concerned in causing the death of one Mahanandi Reddi, at Yerragudi, on the 10th October 1885; and, secondly, with being concerned in causing grievous hurt and hurt to the said man.

The 2nd, 3rd, 4th, 6th, 7th, 8th, 9th, 10th, 11th and 13th accused were charged (1) with having murdered the said man; (2) with having caused his death in such manner and with such intention or knowledge that they are guilty of culpable homicide not amounting to murder; (3) with having intentionally caused to him grievous hurt; (4) with having abetted the murder; (5) with, aving abetted culpable homicide in respect of him; (6) with having abetted the intention of causing grievous hurt to him.

Then the 1st, 5th, 12th, 14th and 15th, that is, the remaining accused persons, were charged (1) with having abetted the murder of, (2) the culpable homicide of, (3) the causing of grievous hurt to, the said person. All fifteen are also charged that they, being members of an unlawful assembly, at the same place and time, used violence towards the said Mahanandi Reddi and another (Konda Reddi), and thereby committed rioting, and they are further charged with rioting, being armed with sticks, which, used as weapons of offence, are deadly weapons.

The 1st prisoner (1st appellant) is further charged (1) with having, at the said time and place, caused the death of one Pedda Kondayya, *alias* Pedda Konda Reddi (hereafter styled Pedda Kondayya) in such manner as to be guilty (*a*) of his murder; of culpable homicide in respect of him; (2) with having voluntarily caused grievous hurt to the said Pedda Kondayya; and the other (14) accused persons with having abetted (*a*) the murder, (*b*) the culpable homicide, (*c*) the voluntary causing of grievous hurt to the said Pedda Kondayya.

The Sessions Judge, differing from the assessors in respect of the 1st prisoner (1st appellant), who was found by them not guilty of any offence, convicted the said 1st prisoner of culpable homicide not amounting to murder in respect of Pedda Kondayya and sentenced him to transportation for life. Concurring with the assessors, the Judge convicted the 2nd prisoner, Chinna Nagi Reddi, of rioting and rioting armed with a deadly weapon, to wit, a stick or club, and sentenced him to three years' rigorous imprisonment and to a fine of 100 rupees, and, in default, to six months' further rigorous imprisonment.

Concurring in part with, and differing in part from, the assessors, the Judge convicted the 3rd, 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 said Mahanandi Reddi, and committing rioting armed with deadly weapons (to wit, sticks) and sentenced the 3rd and 4th to transportation for ten years and the 10th and 11th to transportation for seven years, each, and convicted the 5th prisoner of simple rioting only, and sentenced him to two years' rigorous imprisonment.

The 6th, 7th, 8th, 9th and 13th accused, he, 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 and 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 he was or was not guilty (1) of rioting; of the abetment of the murder, or of the culpable homicide of, or of causing grievous hurt to Mahanandi Reddi. But this accused person was entitled to acquittal on those charges if found not guilty, and should have been convicted if found guilty, in any case there should have been a distinct finding, one way or the other.

In the case of the 2nd prisoner, there is no finding whatever on any of the 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 3rd, 4th, 10th and 11th prisoners, the acquittal in respect of the charge of the murder of Mahanandi Reddi rendered unnecessary any except a formal order of acquittal in respect of the minor charges relating to that man's death but there is no finding as to whether they were concerned in Kondayya'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 those charges.

In the case of the 9th prisoner, he is no doubt acquitted on all charges, and 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

the question whether there was an assembly or two assemblies collected for an unlawful object or objects, the greatest clearness and very considerable detail were required.

We are compelled to say that 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 conclusion 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 acquitted. There is no statement of the circumstances which led to the two bodies of opposing parties coming to the place where they came in conflict; no statement of the several points for determination, and in this case they are very numerous, nor, except in one or two points, of the reasons for the conclusions arrived at. And if the finding as to the 1st prisoner having intentionally caused the death of Pedda Kondayya with a sharp dagger, by stabbing him once in the chest and once in the back be correct, it should have been most clearly stated on what grounds the offence was held to be not murder but culpable homicide not amounting to murder. It is clearly found, first, that the deceased Mahanandi Reddi started the quarrel by striking the 1st prisoner on the head with a stick, on which the latter used his dagger; and, secondly, that the wounds, from the results of which Mahanandi Reddi eventually died, were inflicted by a dagger, and not by a sickle or reaping-knife; and that they were inflicted by the 1st prisoner. There is also a finding that the 3rd prisoner did not tell the truth when he confessed and stated that it was he and not the 1st prisoner who stabbed Pedda Kondayya. I cannot say that anything else is clearly and distinctly found; if there are any other distinct findings, there are not clearly stated grounds in support of such findings.

Having done our best to understand that part of the Judge's judgment in which he states his conclusions as to what immediately led to Pedda Kondayya being stabbed, and as to the cause which led the 1st prisoner to stab him, and the motive of, and the excuse (if any) for the 1st prisoner's act, it comes to this: that Mahanandi Reddi being on the ground being beaten, and kicked in the midst of a general *mélée*, 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 get 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 on the head), the 1st prisoner stabbed Pedda Kondayya twice.

If the finding is really that Pedda Kondayya accidentally, 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 witness intentionally interposed between 1st prisoner and Mahanandi, intending to prevent the former either from helping to kill the latter by kicking, beating, or otherwise doing violence to him or to prevent him from using his dagger on Mahanandi, then also the 1st prisoner was assuredly guilty of murder, whether by reason of such intervention he intentionally stabbed Pedda Kondayya, so as to kill him, or whether aiming blows at Mahanandi with his dagger he stabbed and killed Pedda Kondayya instead, and 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 and (*b*) of Pedda Kondayya, can be supported: this is necessary, because (as before said) the judgment contains no summary of the evidence, no balancing of the evidence for the prosecution and 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 Sessions 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 claimed their crop. On the 10th October 1885 Govindu went to the 1st witness, Venkata Reddi, and told him that the other party who asserted a right to cut the crop had gone to the field and asked whether he and should go to cut the crop; Venkata advised them not to go as there would be a fight; Govindu again asked him to go, taking others, respectable people, to prevent the crop being wrongfully taken, and, if possible, to settle matters amicably, They went for this purpose—viz., 2nd witness, 6th witness, 3rd witness, the 4th and 5th witnesses for the prosecution, Vajjrala Kondayya and Chinna Kondayya, who eventually mediated, and others.

It may be as well to say here that the 1st prisoner, Reddi Seshi Reddi, and his five brothers were the principal persons who claimed the indigo crop, as against Govindu Reddi and his party. The 2nd, 3rd, 8th, 11th and 12th accused are the 1st prisoner's brothers.

There was very nearly being a fight at the field, not an agreement was come 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 for the prosecution, a cry was raised that the prisoner's party, who, it seems, were going in advance, had killed Govindu Reddi, who, it is said, was walking near them, the mediators coming next, and the party of Govindu following: other witnesses say

positively that high words began again between A. Sesha Reddi, the 11th prisoner, one of 1st prisoner's brothers, and Govindu, on which the former struck the latter with his stick; and that on that Mahanandi Reddi, one of the deceased, rushed at the 1st prisoner and struck him on the head with the stick *he* had in his hand: then a general fight began and Mahanandi was borne down, illused, kicked, and, as some witnesses say, struck repeatedly with an axe, and eventually died.

Now, it is quite clear that neither of these two parties or factions were, at the time when this fight commenced, collected for an unlawful purpose. No doubt an assembly not unlawful in its inception may become an unlawful assembly, but the question is whether the prisoner's party can be said to have had, at the time when A. Sesha Reddi, the 11th prisoner, first struck Govindu (if he did strike him), the common object of using force or violence to the opposite 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 Mahanandi. It 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 contrary, while he says the 11th prisoner first struck Mahanandi, states that the latter had no stick in his hand at all.

The 4th and 5th witnesses seem to say that Govindu, either by taunts or satire, lashed Mahanandi Reddi into fury, so that the latter struck 1st prisoner with a stick.

The 6th witness, Govindu, says he, 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 and 12th witnesses.

The 8th to the 12th witnesses are not of the Reddi caste, but the 8th is of the washerman caste, and the other four are Madigas (Pariahs). They speak of a "fight" only; but according to their account the fight consisted in the prisoners' 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 object, being armed with deadly weapons, that common object being to cause hurt or grievous hurt to Mahanandi Reddi.

What was the object common to the 1st prisoner and the other prisoners convicted? For he is convicted of rioting. Was it to use force and violence to Mahanandi? But the 1st prisoner is acquitted of the murder, and indeed of having anything to do with the death of or with hurting Mahanandi.

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

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

It is difficult to see how the conviction of the 2nd and 5th prisoners (the 2nd and 3rd appellants) for rioting can be supported, if they cannot properly be convicted on some of the more serious charges. It remains to consider whether the convictions should not be upheld in revision on the ground that the prisoners should have been and should now be convicted of another offence or other offences in this case.

We continue to consider the case arising out of Mahanandi's death, in connection with the conviction of the 10th and 11th prisoners, the 4th and 5th appellants.

There is not one single word in the judgment to show on what evidence the judge convicted these men of having killed Mahanandi Reddi.

There is evidence that the deceased was cut again and again on the head with an axe: two witnesses (the 3rd and 8th) say the 2nd prisoner took the axe out of the hands of the 13th prisoner and clave the deceased's head while the 7th witness swears that it was the 13th prisoner who felled Mahanandi with his axe. We may observe again here that the 13th prisoner was aquitted on all charges, and the 2nd prisoner on all charges except rioting.

The witnesses of the Pariah hamlet above referred to, who speak to having seen Mahanandi to death by beating, not only say not a word about an axe being used, but two, the 9th and the 16th, distinctly say they did not see any axe at all.

The 15th, 16th, 17th, 18th, 20th and 21st witnesses, who also profess to have seen more or less of the beating of this deceased man, say nothing about an axe.

Now is this evidence about the deceased being felled again and again with an axe true, or is not?

It must be assumed the Judge disbelieved it: if so, the evidence of those (the 3rd, 7th and 8th) witnesses who speak to it is clearly entitled to little, if any, credit in the case of the other persons whom they speak against, or 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 the 8th witness swears that after he fell all the other accused beat him with sticks, but the Judge acquits the 9th prisoner on all counts, and the 6th and 7th everything but rioting with 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 those appellants. Is it sufficient? If it is, it is beyond comprehension why they were not sentenced to transportation 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 is not suggested that those who killed him—the 1st prisoner is not convicted of having taken part in killing him—had any sued provocation as would ever reduce the offence from a crime of the first to a crime of the seconh degree in death-causing, and we cannot but express surprise that there was no application on behalf of Government in this case to this Court to exercise its discretion in revision, and that on regular appeal was preferred against the acquittals in the case of some of the accused at least. To return to the evidence against the 10th and 11th prisoners. The 1st witness, Venkata Reddi, says "all the people there, except the 1st prisoner, the 5th 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 means direct. As to his saying "the first three prisoners standing in a row behind the prisoners' 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 12th prisoners set to work to beat *Pedda Kondayya*, when Mahanandi fell down; that, when the latter fell down, so many people pressed around that *it was impossible then to identify any one.* It is clear this witness' evidence is worth little or nothing in detail, or as against these two appellants.

The 2nd witness, T. R. Seshi Reddi, says "all the men (prisoners?) before the Court beat Mahanandi." Then he particularises the 11th prisoner and two other 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 against this prisoner by name in connection with the beating of Mahanandi.

This witness says nothing about the axe, but he speaks about Mahanandi standing looking in a particular direction when he was stabbed.

He is the only witness who speaks of Mahanandi's having been stabbed.

The 3rd witness, Ramsing, says "after Mahanandi was beaten down" they beat Govindu; the 3rd and 12th prisoners beat Govindu; "the 10th prisoner pursued him;" Govindu ran home: the 11th prisoner beat Mahanandi, but did not beat Govindu. He says Venkata Reddi, the 10th prisoner, 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 the 11th prisoner was present. He does not say whether 10th prisoner was or was not there. He says he can't say whether he said before the magistrate that prisoner was present. He states that the deceased Pedda Kondayya struck the 11th prisoner. He says nothing else to implicate these appellants. The 6th witness deposes that the 10th and 11th prisoners struck him, the former with a stick: that the 11th prisoner went back to 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.

The 7th witness, Bhimi Reddi, says Govinda Reddi and the 11th prisoner *went away* (from the crowd?) disputing.

He does not say one word against the 10th prisoner. Nor does his evidence implicate the 11th prisoner directly, or seriously in any way.

The 8th witness, P. Mada Reddi, only speaks generally as to "all the Kottapalli people being present when the quarrel took place." He gives no direct evidence against these two appellants. The Pariah witnesses, 9th, 10th, 11th and 12th witnesses, speak, most of them, only in the most general 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 15th accused, but not the 10th or 11th prisoners. The 12th witness names the 13th, 14th and 15th accused but not the 4th and 5th appellants.

The 15th witness, P. Kristadu, a cooly, does name these appellants as having beaten Mahanandi with sticks.

The 16th witness, C. Kristadu, a cooly, says first that all the prisoners except the 1st beat Mahanandi. Then, he says, "I have not seen the Kottapalli 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, Chinnigadu, 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!

The 18th witness, Nagadu, a shepherd, says twice and positively he saw the 11th prisoner and 3 others named beating Mahanandi.

The 20th witness speaks generally as to 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 deceased 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 the evidence against these appellants. We pass on to the death of Pedda Kondayya.

The 3rd accused, Venkata Reddi, has from the first given a clear and consistent account of what happened: he says he and others were beating Mahanandi Reddi when the deceased Pedda Kondayya came to strike him with a stick; that he warded off the blow with the stick he (the 3rd accused) had in his hand and with his other hand used the sickle or reaping-knife he had taken for the indigo-cutting and stabbed Pedda Kondayya.

His admissions and confession implicate him in the matter of Mahanandi's death, and make him solely responsible for the death of Kondayya. There is sworn evidence in support of this story not only on the side of the defence but on the side of the prosecution.

The 4th and 5th witnesses, the two Kondayyas, mediators and not men of either of the two factions, speak to it. No attempt was made in cross-examination to shake them. There may be some slight want of precision as to how and when the respective stabs in the front and rear of the chest were inflicted, but it appears to me this evidence is certainly as clear and consistent as that given by the witnesses who speak to the stabbing by 1st prisoner with a dagger, if not indeed more so.

The 8th witness, Madi Reddi, at first said that the 1st prisoner "stabbed" him in the belly, then it came down to a slight scratch; and this tallies exactly 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 he was trying to run away into the village the 1st prisoner came in front of him, having a dagger in his hand: he does not say how or by whom he was stabbed in the chest; and he says that the stab in his back was inflicted not by the 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 15th 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 prosecution, of those who profess to speak to this incident, the 1st witness says positively that 1st prisoner inflicted the two stabs, the first in the back as the deceased was going away, and the second in front, when he turned round.

The 2nd witness says he saw 1st prisoner stab Kondayya in the belly, and saw that the latter had a stab in his back but does not know who inflicted it.

The account given by the 3rd witness is almost the same as that given by 1st witness.

The 6th witness does not say who stabbed Kondayya. The 7th witness says the same.

The 8th witness says generally that 1st prisoner *having stabbed* Kondayya wounded him (witness). I have before stated reasons for distrusting this man's evidence, and he does not say he saw 1st prisoner stab the deceased.

The 9th witness in examination-in-chief simply speaks of the stabbing of deceased by 1st prisoner; in cross-examination he says he saw the stab in the chest inflicted, but not the stab in the back: the 10th witness says the same: he adds that *as soon as ever the deceased was stabbed* (he only saw him stabbed in the back), the deceased ran away.

The 11th witness saw only the stab in front inflicted, and he speaks of an incident mentioned by no other witness, namely, that the Kondayya had a dagger which 1st prisoner took away from him!

The 12th, 15th and 16th witnesses speak to only 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 20th witness speaks to stabbing in general terms. He does admit that before the magistrate he said 1st prisoner used a dagger.

The 21st witness introduces a totally new element; he says 1st prisoner used *a sword.* He adds that 1st prisoner had a dagger, but 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 rejects in favor of the conflicting, in many ways inconsistent, and in some respects defective evidence for the prosecution, and of the statements made by the deceased which differs from that evidence on the ground apparently that the medical evidence renders it absolutely impossible to believe the former account.

We must suppose the Sessions Judge finds, then, that the 3rd accused falsely implicated himself as responsible, with others, for the death of Mahanandi, and as responsible solely for Kondayya's death. Of course, this is not absolutely impossible, but it is extremely improbable that fraternal affection 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 "rather jagged at the edges." The hinder wound, no doubt, the Assistant Surgeon describes as "clean cut, with straight edges and equal ends." He "concludes," that is, infers, that "at least" the posterior wound was caused by a two-edged weapon, the two edges of which were equally sharp. He "does not think it could have been caused by the sickle produced," but he does not say it *could* not have been.

As to the front wound, he says: "I should have expected to have found the flesh more lacerated" if the sickle had been used; but he does not say that it could not possibly have 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 that others or he should have had daggers on their persons; not putting this aside altogether, and taking the evidence that one or more of those present had daggers with them, then, although the 3rd accused's confession be not accepted as true, and we incline to think it is true, the 1st prisoner cannot be convicted, unless the evidence is taken to be so clear, so trustworthy, as to leave it not open to reasonable doubt that in the *méleé* some one other than the 1st prisoner stabbed the deceased. 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 appear why, if one or more could see quite plainly, that the 1st prisoner stabbed deceased both in the chest and back, none of the Pariah witnesses saw the hinder wound inflicted, or that they could not have seen it if it was inflicted.

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

The case has not been dealt with as it should have been, 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.

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

Read again Order of Government, dated
188 , No.

Back Paper, No.

Further Paper, No.

Enclosures.

Current, No.

Statement with ditto.

Order, &c. of Government—A.

Papers kept out of File for despatch in original
(not paged.)

umber of copies required.
- Order complete.
- Letter only.
- Order complete with Letter.

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.

Confidential (47)
(1) 1887
Work & S.C.

C.C. in
Minerals

ORDINARY PRINTED

Public DEPARTMENT.
G.O. DATED 8 March/87
No. 6

Retd. from 1.8.1887 on invalid pension (£450)

First copy sent to Press.

Returned for signature.

Despatched in print.

[Despatch Abstract.]

Home Despatch abstract

Reporting the unfitness of Mr. F. G. Gibson, C.S. for the office of Dt. & Sessions Judge and of which it has become necessary to ~~remove~~ relieve him ~~to hold the offc.~~ for that offc. as also ... of a Dt. Revenue officer expressing the op... that in the pub... interests he cont... again be employed in the country.

I

No 544

2 may February 1887. Dent's Gardens Hotel. Madras

From F. C. Gibson Esqre. Madras Civil Service (now on the un-employed List) but lately Acting District and Sessions Judge of Kurnool, to H. E. Stokes Esqre., Madras Civil Service, Acting Chief Secretary to the Government of Fort St. George, Madras.

CHIEF SECRETARY 27

Sir. Referring to your demi-official note of the 22nd November 1886. No 492 D, and to the two G. O. S. Nos 2244. Public Misc. 23rd October 1886, and 2494 Misc. Public, dated 30th November 1886. I have now the honour to submit the Representations, which I was directed in your demi-official note of the 22nd November 1886 above referred to, to make in writing.

II

2 I have at the outset to explain, that as I find considerable difficulty in fully setting forth what I wish to lay before the Government in writing, I trust that I may, hereafter, be permitted to further elucidate what I have to lay before the Council, in personal interviews with H. E. the Right Honourable Mr Bourke and the Members of Council, for which I need hardly say I intend, in due course, to apply to the Governor and Messrs Masters and Hutchins, myself.

3 In the next place, I would beg the attention of the Government to the last paragraph of the letter of the Registrar of the High Court, dated the 1st of October, 1886 - which is incorporated in the G. O of the 23rd idem, the para- begining "I am

~~that, &c~~ to add" etc.

4 I venture to allude pointedly to that portion of the Registrar's letter, because I am constrained to surmise that the Government, in passing their resolution of the 23rd of October 1886, directing my summary removal from the Kurnool Court, amounting in effect to an almost public degradation from a high Judicial Office, ignored, or at least, failed to attribute to the said paragraph that special significance, which I have excellent reasons to suppose that the Honourable the Judges intended should be attached to that particular qualifying observation in the letter.

[illegible]

5 I next proceed to notice the substance of this letter i.e. what the Honourable Judges allude to as the illustrations of his, (my) incapacity.

demonstrating my unfitness for a District and Sessions Judgeship, or rather to be District and Sessions Judge of Kurnool, i.e. of a light Court, as the Government are aware, that it is at present, at all events.

6 The honourable Judges cite four (4) Criminal cases (Sessions trials) all of which came before the High Court, either on reference by myself, 2 for confirmation of the sentence of death passed by me, as presiding Judge, on one accused "Madar Sahib", in both of which my conviction and sentence were confirmed.

7 Of the two other Criminal Trials one was the case of a certain "Kurnum Krishnappa", who was charged before myself with murder, i.e. poisoning his enemy with arsenic intending to cause death.

8 It appears from my own judgment in this case; and still more clearly from my charge to the Assessors that I myself did not fail to note that point as to the probable largeness of the dose

which was remarked on by the Hon Mr Justice Brandt who, sitting alone, in revision of this case, and the prisoner not being represented, finally decided to do nothing, vide his judgment (not before Government) at the time of their order of the 23rd October, 1886,).

9 There remains only one more criminal trial, viz, the one referred to in the beginning of the letter of the registrar.

10. I cannot be surprised that the two Judges, who sat on that case found very considerable difficulty in arriving at a final decision, but I would submit for the consideration of those learned Judges, and of the Government, that the difficulties arose in the first place and primarily from the nature of the case itself, rather than from the imperfections, (chiefly technical deficiencies), of my written judgment, on which the Judges comment in their judgment.

11 In the result, however, the learned Judges,

Kernan and Brandt J.J. contented themselves with leaving the convictions and acquittals un-disturbed, whether on the Appeal, or in their exercise of their powers as a Court of Revision.

Having thus noticed each and every one of the four criminal trials cited as Illustrations of my unfitness to be a Sessions Judge, I now proceed, with the kind permission of the Government, briefly to refer to the only two (2) Civil Cases quoted against me, in the letter of the Registrar under consideration, as showing my incapacity for exercising the important and responsible duties of a District, i.e. Civil Judge, hearing Appeals from Moonsiffs, etc (besides Original Work

12 Both the cases are appeals, and, in the High Court, second or special Appeals, i.e Appeals to the High Court on Law points.

13 In one of these, I confirmed the Judgment and Decree of the native Judge, of the Court of first instance - a junior Monsiff, and the Judges of the High Court, Mootuswami Ayyer and Brandt J. J. upheld my decision, confirming that of the Monsiff, tho' remarking that they did not consider that I was entitled to rest my decision on a matter not pleaded, and as to which no issue had been framed in either Court, an objection which the Appellants Pleader failed to take in my Court, (tho' the Judgment was pronounced in open Court, as required by Law, and in accordance with my invariable practice, both on the Civil and Criminal sides of the Court.).

14 In the only remaining Civil Case cited, I reversed the decision of a native Monsiff of but little Judicial experience, who had, moreover, as it

Court, with a direction that the Appeal should be re-heard, and a revised Judgment submitted, which has, I understand, now been done by my successor, to whom I purposely handed over the disposal of the re-hearing, which had been posted for the very same day on which I received the G. O. of October 23rd, directing that I should be relieved of the charge of the Court, at an early date.

17 There remains one other paper, referred to in the Registrar's letter, which was sent to the Government, as part & parcel of the evidence on which the High Court based, avowedly their opinion of my proved incapacity as District and Sessions Judge of Kurnool.

18 I applied to the Judges for a copy of the notes of a divisional Bench in the case of Queen versus Reddi Seshi Reddi and others, expressly basing my application on the ground that these also

8

appeared to me, failed to hear the whole of the evidence, which the Defendants, who were cast in the Suit, wished to adduce, had not the Monsiff refused the necessary Adjournment, which the Defendants asked for, to summon the Village Officers to give material evidence.

15 Under these circumstances, contrary to my usual rule in such cases, not to reverse the Decree of the native Judge of the Court of first instance, on grounds of Evidence, and of the intrinsic probabilities of the Case on both sides: for the reason set out in my Judgment, I did venture, in this instance, to set aside his decision.

[illegible]

16 The High Court, however, (again Mootuswamy Ayyer & Brandt. J. J. being the Judges of the Court of last Appeal) decided that my Judgment did not sufficiently fulfil the requirements of Section 574. of the Code of Civil Procedure, 1882, & therefore remanded the Case to the District

had been sent up to Government with the High Court letter of the 1st October, 1886, but I was told that I could not have them.

19 Under these circumstances, I have no other course open to me, than to ask the Government, whether they-too- will refuse to permit me to see the only portion of the evidence, on which I have been condemned, which I have not been fortunate enough to procure.

20 What, however, I would especially beg of His Excellency in Council is, that all the circumstances, which have led to my being placed on the unemployed List may, without delay, be reported to the Secretary of State for India in Council, if this has not already been done, and also that at least some proceedings of the Government may be passed, in some shape that I can make

use of, to the effect that, during the nineteen (19) years (completed) of my service, I have not been found an unworthy, or inefficient servant of the Government, or of her Majesty, taking my whole career together, and making indulgent allowance for ill-health, which, I think I may say, should justly be attributed, almost entirely, to the conditions of service in India, as more fully set forth in my Memorial to His Grace the Duke of Buckingham and Chandos, Governor in Council, presented in the early part of the year 1880.

21 As I, unfortunately, have not preserved a copy of the said Memorial, I have to request the Government, kindly to make reference to the Original, which is doubtless to be found in the Chief Secretary's Office.

22 I would beg to be permitted to repeat what is stated in that Memorial upon another matter.

23 If my memory serve me, I asseverated in that Petition that I was at that time poorer by about £2000 sterling, than I was when I went up for the Open Competition of the Civil Service of India, and as I returned from leave on medical Certificate only about two years ago, and have even yet scarcely completed my repayment of the debt incurred on that occasion to the Civil Fund, (Charity Branch) and was constrained to further expend monies out of my private funds owing to the insufficiency of furlough allowances under peculiar circumstances; the result is, that I find myself now in a position, but little, if at all better, than that in which I stood before proceeding on leave in the beginning of 1883.

24 The Government will not, I trust, omit to remember that since the end of November, I have drawn only the Subsistence Allowance of my rank, which,

in my case, means, that I receive (nett) between Rs 10 and 11. only a day.

25 My immediate object in setting out these details of my private finances is, to urge on the attention of Government, that, so far from having saved money during my nineteen years service, I am actually a poorer man than when I entered the service.

26 As moreover, my private resources in England will, even in the future, be extremely small, it will, I trust, be sufficiently apparent to the Members of the Government, that my pension of £450. a year will afford me, but very straitened means.

I am, therefore, specially desirous that the Government should be graciously pleased, as I said before, to place on Record in their Proceedings something to partially wipe out, the apparent disgrace that usually attaches to being placed on the unemployed List.

27 This request I make for a two-fold purpose; firstly, in the possible event of my return to India I may not be precluded from receiving from Government, some employment suitable to my length of Service.

28 Secondly, an alternative object is, that I may be able in the event of my seeking any employment, public or private, in England, to show that I did not resign the Service under any slur.

Requesting early orders.

I have the honour to be, Sir,
Your most obedient servant
F. E. Gibson
Madras Civil Service —
Out of Asylum — Feby 2nd 1887

CURRENT NO. 544

Public

From.

F. E. Gibson Esq
M. C. S
Madras

Dated 2-2-87 }
Received 2-2-87 }

2-2-87

Subject

Memorial from F. E. Gibson Esq about his being placed on the unemployed list

---

Despd 22/2/87

Dear Sir Arthur Collins,

With his d. o. dated the 1st Oct. 1886, Mr Ross forwarded for the information of Govt., among other papers, a copy of Mr F. E. Gibson's judgment in Cal. case No 36 of 1885 on the file of the Kurnool Sessions Ct., together with the notes thereon of a Divl. Bench of the High Ct. in Crim. Appeal No. 123 of 1886. A copy of Mr Ross's letter was forwarded to Mr Gibson to acquaint him with the evidence upon wh. the Govt had acted in removing him from his judgeship, and he now asks that he may be furnished with a copy of the 'notes' referred to above, as that is the only paper mentioned in Mr Ross's letter which he has not seen. He states that the High Ct. has ~~already~~ ~~a~~ refused to grant him a copy, and I am therefore ~~to ask~~ that H.E. the G. in C. may be informed whether ~~there is any and if~~

Gicc 12

this is so and if it is that the
first [illegible] furnished with information
~~so~~ what the objection is to
supplying Mr. Gibson with
a copy of the paper
in question.

H.C.S.
21/2

J.E.S.

DEPARTMENT.

No.

From F. E. Gibson Esqr.

dated 2 Feb. 1887.

FOR ORDERS.

J.E.S.

§§ 3, 4. I have tried in vain to imagine what
special significance is to be attached
to the Registrar's statement that the Jud
have not in any way intimated to Mr.
Gibson their opinion that he is utterly
unfit to be a Judge.

§§ 5–16 Deal with illustrations of this un
fitness. It is useless to discuss them. I, as
a Judge of the High Court, long ago arrived
precisely the same conclusion on quite dif
examples or instances. § 15 lays down a cu
rule for the guidance of a Judge who has t
hear appeals on facts, viz. never to reverse

§§ 17–19 These relate to Cr. Ap. 123/86 in wh. ad
have what are called the notes of a Di
Bench, the judgment or calendar of Mr.
Gibson & the prov. order of the H. Ct.
these ought to be furnished to Mr. Gibson
[illegible] be [illegible] to ask the Ju[illegible]

Ccc
12

Dated 9/3/87

BACK PAPER, No.

§20 I certainly think we should report the case at once to the Sec.y of State. We cannot possibly say Mr G. has ever been efficient – he is & has for some time been "almost fatuous", as the late Gov.r forcibly expressed it.

As to the rest of the memorial the papers of 1881 certainly do not help Mr Gibson, & I may safely say that in no other country or service could he have earned anything like the large sums paid to him as salary during the past 19 years. A pension of 450£ is undoubtedly a great deal more than such work as he has done is worth.

I don't see the use of any private interview.

6 Feb/1

The principal request (paragraph 20) that the circumstances of the case sh.d be reported to the Secretary of State sh.d certainly be complied with: I suppose we have been merely awaiting the receipt of these "representations" to enable the necessary despatch to be prepared.

The certificate of character asked for is not so easily made out: at least not in the sense Mr Gibson w.d like

7/2

this is so and if it is that the
[illegible] with reform

S

se

a

c

Mr. F. E. Gibson MCS

FOR ORDERS.

BACK PAPER, No. of 188

[5] 15

Public Dept.

Papers to be read in Proceedings:—

Again G.O., dated 188 , No.
Current No. 544 of 1887, dated 2nd Feby. from F. E. Gibson Esqre.
D.O. of 24th Feby. " The Regr of the High Ct. App. Side.
Current No. of 188 , dated from

Order. 8 March/87 No. 343 Mis.

~~A copy of the~~

The Hon. the Judges of the High Ct. having intimated that they have no objection to Mr Gibson being furnished with a copy of the paper referred to in para 17 of ~~his~~ his letter read above, a copy will be forwarded to him.

2. H. E. the G. in C. regrets that he is unable to place on record any such statement regarding Mr Gibson's efficiency as ~~as~~ that officer desires. ^

3. Mr Gibson's case will no

we mt add:—
There is however nothing against Mr Gibson's moral character wh. could be an obstacle to his obtaining other employment for wh. he may be fit.

JMB
28 Feb

Dated 9/3/87

Ecd 1/3

that the

READ AGAIN ORDER OF GOVERNMENT, dated
188 , No. MISCELLANEOUS.

F. Gibson Esq

ENCLOSURES.

CURRENT NO.

544 —

STATEMENT WITH DITTO.

ORDER OF GOVERNMENT. .. .. .. A A

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL (not paged).

With papers
[illegible]

N.B.—

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

BACK PAPER, NO. OF 18

FURTHER PAPER, NO. OF 188

High C

24 Feb. 87

24 FEB 87
GOVERNMENT OF MADRAS

My dear Mr. Stokes,

In reply to yours of the 22nd inst. to the address the Chief Justice, I am to that as the Notes of the Divisional Bench in Criminal Appeal No. 123 of 1886 formed neither a public, nor a complete, record; and as it is not usual to grant copies of such papers, the Hon. the Judges

I

Hon. Mr Brandt's letter
Letter to C.J. d/ 8.9.86
Letter from Mr Ross d/ 1.10.86
Enclosures to ditto
G.O. d/ 23rd Oct. /86 No 2246
Mis.

II

Demi-official correspondence
betn Mr J. E. Gibson & the Chief
Secy.

{ Letter from Mr G. of Oct. 30/86
{ " to " d/ Nov. 3/8
{ " from " d/ Nov 6/86
{ " to " d/ " 12/86
{ " from " d/ " 22/86
{ " to " d/ " 22/86
{ " from " d/ " 26/86
{ G.O. d/ 30th Nov /86 No 2494 Mis.
Public
{ Letter from Mr G. d/ Dec 8/86
{ " to " " d/ " 14/86

III

Letter from Mr Gibson
d/ 2nd Feby. 1887
.O. d/ Mar /87 No. P..

[illegible] that the

[illegible]

[illegible]

[illegible] எண் ________ , தேதி ________ 197 .

எடுத்த தேதி.	எதன் பொருட்டு.			நான் எடுக்கும் எழுத்தர் அல்லது சிற்றெழுத்தர் கையொப்பம்.	திருப்பிக் கொடுத்த தேதி.	சிற்றெழுத்தரின் கையொப்பம்.
	துறை.	நடப்பு எண்.	ஆண்டு.			

P = Copy abstract only.
Q = Copy heading only.

G.O. 484 Public dt 2. 4. 1887

26 4/80	8414	RH L	80			

GOVERNMENT OF MADRAS

Separate Note

In connection with the Memorandum herewith circulated I would wish H.E. & Mr Hutchins to read the note put up with original Despatch No 14 d/8 June 1882 so far as it relates to Mr Rohde's case.

The Secretary (Mr Webster) noted: Mr Rohde's purchase of land was however, as may be seen from his sons' letter, quite unimpeachable.

The Hon'ble Mr Hudleston

P = Copy abstract only.
Q = Copy heading only.

that the

observed

'Mr Rohde in effect bought—provided funds to buy—for his son a share in Mr Ouchterlony's estate & bound his son to reimburse him when he shd be in a position to do so.'—

GCW
14/3/87

P = Copy abstract only.
Q = Copy heading only.

that the

I am confident we s^d not now allow any Civilian to do what M^r Rohde did then

16 march

P = Copy abstract only.
Q = Copy heading only.

GOVERNMENT OF MADRAS

As I understand, H.E. wishes the Despatch home & the letter to India to be merely covering letters forwarding Mr Master's Minute for such orders as may be thought necessary. My notes were not written either with a view to their being formally recorded or to their being made the basis of a Despatch. If I understand

that the

H.E.'s wish correctly it seems to me that Mr Master would have no difficulty in signing the despatch, but as it is a personal matter (not because he is in the posn. of an accused) I think it wd be better for him not to do so.

PMR
19 March

B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.

Mr Hutchins's view
is possibly quite right
but I feel disposed
to allow the matter
to go forward in the
form most in accordance
with Mr Masters
wishes VB

B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.

that the

Minute No 2

GOVERNMENT OF MADRAS

I have nothing to add
to the Memorandum
I have already written.
I now turn it into a
Minute and request
that it may be sent
forward with the
letter & despatch.

If a new rule on
the subject is to be
made, by all means

B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.

let it so be done.

I have no objection to offer to His Excellency's proposal that the Despatch to England shd be signed by himself and Mr Hutchins's alone beyond this that such a course practically puts me in the position of an accused person

B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.

[illegible] that the

a position which I am not disposed to accept. Judging from the notes which have passed the terms of such &c. Health will probably be such as I could hardly assent to if it goes the length of condemning action wh has never yet been called in question.

B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.

that the

I suggest that the proper course is for the Despatch to go home through India — as it relates to general Questions wh has been the subject of correspondence between the Supreme Govt & the Sec of State.

C Wastes

March 19th 1887

B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.

that the

HC 30.3.87

GOVERNMENT OF MADRAS

Office. This. 31/3 [illegible]

Dear Stokes,

Please order to be sent me copy of the letter to India and Despatch to Sec of State on my recent Minute and six copies of the Minute

Yours sincerely

30/3/87

B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.

Government House

I have read these papers carefully —

I never had any intention of replying to the Observations in the "Standard" so that question need not be discussed —

But the whole matter had better now be submitted to the Viceroy and the Secretary of State, each being told that we have informed the other —

I incline to think that the best way of

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

(46)

C.F. 73. DEPARTMENT.

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

Press
Miscellaneous No. ____________, dated ____________ 19
Routine

Date taken out.	FOR WHAT PURPOSE.			Initials of clerk taking the paper or of attender.	Date returned.	Initials of attender.
	Department.	C. No.	Year.			

CURRENT NO. 720

Public (1887) Department.

From C. D. MACLEANE, ESQ.,
Tamil Translator
to Government,
To THE CHIEF SECRETARY
TO GOVERNMENT,
Fort St. George.

No. 26.

Dated 9th February 1887.

Received 11

CHIEF SECRETARY
11 FEB 87
OF MADRAS

Subject.

Report on Tamil Newspapers for the week ending 29th January 1887, containing extracts from the Swadeshabhimany and the Swadeshamitra.

anniversary of the Jubilee falls in June, how can o consent to its celebration in February? Secondly, is i not necessary to have ample time for making prep -tions to observe it as a grand day? Thirdly, the lamen in the city on account of the Park Fair Catastroph has not yet ceased. It may perhaps be that the c was so early fixed for in February because Governm would not be in the city on the 20th June.

Tamil Translator's Office, }
Ootacamund, 9th. February 1887. }

Tamil Translator to Governm

Abstract.

	Subject
Paragraph 1.—	That two more offices for the registra of documents should be establishe Madras.
" 2.—	Remarks on the celebration Queen's Jubilee fixed for 16th February.
" 3.—	Do. Do.

Sub-Registrar's Offices established in other parts of the city.

2. The same Editor says that the 16th of February hich was fixed by the Viceroy for the celebration of the Jubilee f the Queen's reign throughout India is unsuited to Madras, or; in the first place, the city of Madras and other towns n the Presidency are in mourning for those who lost their ives at the recent Park Fair Catastrophe, and in the econd, the time is too short for suitable preparations eing made for the grand occasion.

3. The Editor of the Swadeshamitra with regard to the celebration of the Queen's Jubilee year on he 16th February says as follows—

It is not customary among the Hindoos to celebrate n event on any other day than its anniversary. While in England preparations are being made to celebrate this event on the 20th June, why should Government strain the people to celebrate it in this country the 16th February? The day fixed by the Viceroy for e celebration is one of bad choice. Firstly, as the

anniversary

No. 2

Report on Tamil Newspapers for the week ending 29- January 188

Serial No. of Newspaper.	Names of Newspapers received during the week.	Place of Publication.	How often issued.	Number of copies ordinarily issued.
3	Travancore Abhimanny (20 January 1887).	Nagercoil.	Tri-monthly.	35
2	Hindoo Janabhooshany (21st January 1887).	Madras	Weekly	200
4	Vettikodiyon (22d January 1887).	Do.	Do.	250
40	Swadeshabhimanny (22d January 1887).	Do.	Do	480
41	Swadeshamitra (22d January 1887).	Do.	Do.	1200
23	Soojanamanoranjany (22d January 1887).	Palamcottah.	Do.	220
4	Tatwavivechiny (23d January 1887).	Madras.	Do.	140

The Editor of the Swadeshabhimanny says that it
not meet the requirements of the city of Madras, which is
centre of commerce and contains a population of 400,000, t
have one Registrar's office in Black Town and one Sub-
Registrar's office in Mount Road for the registration of
documents. The work thrown on the two offices is great,
and the time lost to the merchants by the delay in t
registration of their documents is considerable. It is a
-visable, therefore, in the interests of the community
and for the advancement of commerce, to have tw
m

CURRENT No.

Public (1887) Department.

From C. D. MACLEANE, ESQ.,
Tamil Translator
to Government,
To THE CHIEF SECRETARY
TO GOVERNMENT,
Fort St. George.

No. 16.

Dated 24th January 1887.

Received 26

CHIEF SECRETARY
5 JAN 17
GOVERNMENT OF MADRAS

Subject.

Report on Tamil Newspapers for the week ending 22d January 1887, containing extracts from the Swadeshabhimanny.

CURRENT NO. 401

29

No. 16.

Report on Tamil Newspapers for the week ending 22d. January 1887

Serial No. of Newspaper.	Names of Newspapers received during the week.	Place of Publication.	How often issued.	Number of copies ordinarily issued.
2	Travancore Abhimauny (10th January 1887).	Nagercoil.	Tri-monthly.	350
3	Vettikodiyow (15th January 1887).	Madras.	Weekly.	250
39	Swadeshabhimauny (15th January 1887).	Do.	Do.	480
40	Swadeshamitra (15th January 1887).	Do.	Do.	1,200
2	Calamidhy (15th January 1887).	Coimbatore.	Bi-monthly.	300
2	Swadeshabhimauny (15 January 1887).	Salem.	Do.	150
11	Brahma Ghyauna Bhodiny (15th January 1887).	Bangalore.	Do.	92
3	Tatwavinechiny (16th January 1887).	Madras.	Weekly.	140

The Editor of the Madras Swadeshabhimauny observes that if instead of giving the sufferers at the Madras Park Fair Catastrophe a sum of money in a lump to relieve them and their families, a pension to continue for life be accorded to the sufferers proportioned to the nature and extent of loss sustained by them, it will be to the glory of Government, and will carry out the real wishes of the donors to the "Relief Fund". Government should mark with approbation the conduct of those European and Native gentlemen who rendered good service in rescuing lives and ministering to the wounded. Some should be

rewarded,

warded, and others invested with titles of honor.

2. The same Editor observes that it is reported that five Europeans who were sent for trial before the Town Magistrate, Mr. Cowjee, for travelling without tickets by Railway from Tuticorin to Tirpapooliyar, were sentenced to pay a fine; and were in default of payment, committed to jail. The officer in charge of the jail, it is said, refused to admit them as suitable provision was not made for the dieting of European prisoners within the jail. The prisoners, it is said, were afterwards provided with money and sent away by Rail. May not one easily see by this, the difference which exists in the treatment of European and Native prisoners? This is a point to be noted by Government.

Tamil Translator's Office,
Madras, 24th January 1887.

C. D. Macleane
Tamil Translator to Government.

Abstract.

Subject.	Page.
Paragraph 1.— How the Fund, which was started for the relief of the sufferers by the Park Fire, should be applied.	
" 2.— The difference that exists in the treatment of European and Native prisoners.	

CURRENT NO. 329

Public (1887) Department.

From C. D. MACLEANE, ESQ.,
Tamil Translator
to Government,

To THE CHIEF SECRETARY
TO GOVERNMENT,
Fort St. George.

No. 11

Dated 21st January 1887.

Received 22

CHIEF SECRETARY 21 JAN 87 GOVERNMENT OF MADRAS

Subject.

Report on Tamil Newspapers for the week ending 15th January 1887, containing extracts from the Vettekodiyon and the Swadeshabhimany.

those distressed by the fire. Have they the right only of demanding payment to admit people into the enclosure and of using the money collected as they chose, but not the obligation of watching over the safety of the people till they leave the Fair?

Tamil Translator's Office,
Madras, 21st January 1887.

C. D. Maclean
Tamil Translator to Government.

Abstract.

Subject.	Page.
Paragraph 1.- Remarks on the occurrence of the Conflagration at the Madras Park Fair.	
" 2.- Do. Do. Do.	

brought on the scene? Because the gate-keep at the four barrier gates of the enclosure refused egress to the people, many were pressed to death. Various rumours are afloat as to the number of deaths at the Conflagration; it is probable that it would not fall short of a thousand. Ah, ah! of what use were the Police when the booths were burning? They, it is said, rendered much valuable assistance without attending to their own profit! They, it is said, did good service in catching the thieves who despoiled the burning bodies of the jewels on them! It is said that among the thieves are to be numbered some who ought not to thieve. If those who are appointed to root out thieves and promote public peace render such assistance, what evils may we not predict? Whose obligation is it now to relieve those families left destitute by the occurrence of the Fire? As the Municipal Commissioners allowed ingress into the enclosure only on payment of a fee, and as they attempted to light up the electric lamps and were thus the cause of the conflagration, the obligation rests on them to relieve

those

other places, but how did they permit the erection of so many pandals around the band-stand and in so close a proximity to each other? Did the members of the Park-Fair Committee, being themselves for the most part Municipal Commissioners, think that they were exempted by the law in their own case?

2. In a supplement published with the *Swadeshabhimany*, the following remarks are made with reference to the same disaster—

People say that the fire at the Park Fair was caused by the unsound condition of the wires which passed over the booths connecting the electric machine with the lamps within the band-stand. It is surprising that the members of the Fair Committee did not comprehend the danger of working an electric battery which was out of order. We see that, when in such substantial buildings as the Banquetting Hall and others, any tamasha is going on, fire-engines are placed on all sides with the tanks filled and ready for play; and what greater precautions should not be adopted in the case of booths made up of such flimsy materials? Why were not fire-engines ready to hand around the booths on that day? Was it not after the work of destruction was nearly completed that the fire-engines were

brought

No. 11.

CURRENT NO. 329

Report on Tamil Newspapers for the week ending 15th January 1887

Serial No. of Newspaper.	Names of Newspapers received during the week.	Place of Publication.	How often issued.	Number of copies ordinarily issued.
22	Soojanamanoranjany (8th January 1887).	Palamcottah	Weekly.	220
2	Vettikodiyon (8th January 1887).	Madras	Do.	250
38	Swadeshabhimauny (8th January 1887).	Do.	Do.	480
39	Swadeshamitra (8th January 1887).	Do.	Do.	1200
2	Tatwavivechiny (9th January 1887).	Do.	Do.	140

The Editor of the Vettikodiyon, speaking of the catastrophe at the Madras Park Fair, observes that if the Municipality of Madras had taken more precautions, the loss of life would have been less. They should have kept ready numerous fire-engines by the band-stand booths instead of only one. They should have taken care that the hydrants within the band-stand enclosure were not locked, for in order to procure the keys to open them, ten or fifteen minutes were necessarily lost, during which time much might have been done. The Municipality prohibit the erection of pandals in houses and

other

CURRENT No. 175

Public (1887) Department.

From C. D. MACLEANE, ESQ.,
Tamil Translator
to Government,
To THE CHIEF SECRETARY
TO GOVERNMENT,
Fort St. George.

No. 5.

Dated 12th January 1887.

Received 15

Subject.

Report on Tamil Newspapers for the week ending 8th January 1887.

CHIEF SECRETARY
15 JAN 87
GOVERNMENT OF MADRAS

CURRENT NO. 175

No. 5.

Report on Tamil Newspapers for the week ending 8th January 1887

Serial No. of Newspaper.	Names of Newspapers received during the week.	Place of Publication.	How often issued.	Number of copies ordinarily issued.
21	Soojanamanoranjany (29th December 1886).	Palamcottah.	Weekly.	220
1	Travancore Abhimauny (1st January 1887).	Nagercoil.	Tri-monthly.	350
1	Calaunidhy (1st January 1887).	Coimbatore.	Bi-monthly.	300
1	Swadeshabhimauny (1st January 1887).	Salem.	Do.	150
10	Brahma Ghyanna Bhodiny (1st January 1887).	Bangalore.	Do.	92
1	Vettikodiyon (1st January 1887).	Madras.	Weekly.	250
1	Tatwaminee hiny (2nd January 1887).	Do.	Do.	100
1	Hindoo Jnanabhooshany (7th January 1887).	Do.	Do	200

There is nothing deserving of notice in the Tamil Newspapers this week.

C. D. Macleane

Tamil Translator's Office,
Ootacamund, 12th January 1887.

Tamil Translator to Government.

CURRENT NO. 167

Public (1887) Department.

From C. D. Macleane, Esq.,
Tamil Translator
to Government,
To The Chief Secretary
to Government,
Madras.

No. 4

Dated 11th January 1887

Received 14

Subject.

Report on Tamil Newspapers for the week ending 1st January 1887, containing an Extract from the Swadesh-abhimauny.

CHIEF SECRETARY
4 JAN 87

English and in the vernaculars? The procedure of Government in considering the Suggestions of only a few who happen to know English is opposed to he Spirit of Her Majesty's Proclamation. Is it enough to learn the opinions only of the Editors f English Newspapers and of English-knowing people? Should not the Editors of Native Newspapers and Natives who do not know English lso give their opinions? Are not the opinions of he Native papers worthy the consideration of overnment? The best course will be to send the Bills in English and in the vernaculars free of ost to the Editors of Newspapers, and on receipt f their Suggestions pass those Bills into law.

Tamil Translator's Office,
Ootacamund, 11th January 1887 }

Tamil Translator to Government.

Abstract.

Subject.	Page
Paragraph 1.— Remarks on the procedure adopted by Government of passing Legislative Bills into law.	

No. 4.

Report on Tamil Newspapers for the week ending 1st January 138

Serial No. of Newspaper.	Names of Newspapers received during the week.	Place of Publication.	How often issued.	Number of copies ordinarily issued.
95	Dravidavartamaumy (19th December 1886)	Madras	Bi-weekly	450
20	Soojanamanoranjany (22nd December 1886)	Palamcottah	Weekly	220.
50	Hindoo Janabhooshany (24th December 1886)	Madras	Do	200.
52	Vettikodiyon (25th December 1886)	Do	Do	250
37	Swadeshabhimaumy (25th December 1886)	Do	Do	480
38	Swadeshamitra (25th December 1886)	Do	Do	1200.
52	Tatwaviveching (26th December 1886)	Do	Do	100.

The Editor of the Swadeshabhimaumy asks of what use will it be if the Bills introduced into the Legislative Council are passed into law, before they have been translated into the vernaculars and the opinions and suggestions of the people are received. The number of people who know English is small when compared with the number of those who know only the own vernaculars. If Government, on receipt of the opinions of the English-knowing few, proceed to amen and pass the Bills, will it be acceded to by the many who do not understand English? Why ma not the Bills be published simultaneously in

English

Report on Telugu Newspapers for the Month of January 1887.

No.	Names of Newspapers.	Place of Publication.	Editions	Number of copies is
1.	Purushārdhapradāyini (republished)	Musilipatam	Monthly	
29, 30, 1 & 2.	Vivēkavardhani	Rajamandry	Weekly	300.
51, 1 & 2.	Andhraprakāsika	Madras	Do	50
1, 2, 3 & 4.	Sujanamanōllāsini	Do	Do	6
6.	Hindujanasamskārini	Do	Monthly	100
7.	Rasikōllāsini	Guntur	Do	200

Purushārdhapradāyini No. 1 states that Theebaw has requested Government to restore him to his dominions. It is strange to see that the Governor-General intends to suppress the Burmese totally, at the expense of our men and money.

2. Andhraprakāsika No. 3 suggests with regard to the Queen's Jubilee that a very good way of commemorati the Jubilee would be to found a village from money collec for that purpose and to call it after Her Majesty's name

Near a place which has a good supply of water a few houses should be built and Government should grant to the first tenants lands rent free. Another recommendable act would be to reduce the price of salt, and call this fixed price the jubilee price.

3. Sujanamanollāsini No. 4 reports that in the Kistna District the Police superintendence is very deficient, and highway robberies occur frequently. According to rumour the Police are in collusion with the robbers who live in great numbers in the Vinukonda, Palnád, Sattanapalle and Guntur Taluks. Government should enquire into this matter and protect the travellers and villagers by passing strict orders.

4. Hindujanasamskārini No. 6 contends that Government increased lately the Indian army as a safeguard against foreign kings; for no confidence

is placed in the loyal and law abiding natives of India. If Government gain the affection of the Indian people the latter will help them, and the English Government need not be afraid.

5. Another article of the same number says because the children of Zamindars of this Presidency are uneducated, they quarrel and spend all their wealth in litigation. To obviate this Government should take steps to educate and train them for an administrative career.

6. A third portion of the same paper states that the authorities of the Cutch State in the Bombay Presidency give to their subjects occasionally loans for cultivation purposes at 6 per cent per annum, and grant them in times of drought remissions of taxes. They have also ordered that the rich inhabitants in the state should not demand more than

the above rate of interest. The Editor says that the English Government instead of remitting the taxes in times of drought, increase them. He suggests the appointment of a Committee to represent the grievances of the Indian people to the English.

7. Commenting on the provision of Rs 3,20,000 in the Budget of the Madras Presidency under the head of salaries &c. for Christian Missionaries who have been sent from Europe to administer to European employees and soldiers in India, the Editor in a fourth article of the same paper questions whether it is right for the English to spend such a sum on the religion of the highly paid Europeans in India, out of the money collected from professors of other religions.

8. In a fifth article of the same paper it is tated that the Director of Public Instruction in Bengal as reported that natives, who have received a higher

education, and are competent to discharge the respons- functions, of Europeans, are easily procurable. A Considerable saving would therefore achieve by employing in futur natives as Inspectors of Schools and Head Masters of Institutions, instead of Europeans. The Editor thinks that the Directors of Public Instruction in other Presidencies sh follow this example.

9. Rasikollasini No. 7 complains that the present system of Local Self Government in this country is not perfect, and that business is not conducted as it ought to be. In the Local and Taluk Boards the offices of President and Vice-President are often filled by persons invested with magisterial powers, and most of the recently constituted members of the Boards are incompetent favourites of Collectors, or other subordinate Revenue Officials. They are

Consequently unable to administer justice as they are mere puppets in the hands of the Presidents and Vice Presidents by whom they are appointed. If the Members are Revenue Officials e.g. Tahsildars, Dy. Tahsildars and Village Munsifs, they cannot help listening to the words of the President who is their Collector and superior. This inconvenience is experienced in every Municipal town where Members are appointed by Government. If a person wants to be a Member he must win the favor of the Municipal Chairman. The same state prevails in the Local Fund Boards in the Kistna District, where most of the Members are either Europeans or Government Officials, ~~besides~~ a few Vakils excepted the remaining members being quite useless. In the Taluk Boards of Guntur and Bezwada there is not a single educated member notwithstanding that there are available many graduates, school Masters and highly educated Vakils from whom a selection could be made. Lord Ripon declared in a speech on Local Self Government that School Masters and Vakils are men competent to be Members of such Boards. The Editor therefore trusts that His Excellency the new Governor will call for the Proceedings of the Local Municipal Boards and appoint to the post of Vice-Presidents as far as possible men who are not in the Government Service and will secure at the same time a better selection of Members.

10. Another article of the same paper states that although the religious and charitable Institutions in this Presidency are well endowed and have good incomes they are in a very miserable condition as their trustees &c. appropriate the income for their own use and

not apply it to the benefit of those Institutions.

The existing Act No. 20 of 1863 is not working well and fears are entertained that the religious Institutions &c. will in the course of time decay. The Editor requests His Excellency the Governor to make an enactment to the effect that not less than three Members should be appointed for each Taluk who should go now and then on circuit and inspect the accounts of the said endowments. Their travelling expenses should be paid by Government which can re-coup themselves by retaining 5. p. c. of the income of the said endowments. The trustees and other servants should be subordinate to the said Committee and show their Monthly accounts and the Committee should be acting with the authority of Government.

11. Touching on the high School-fees and the Term fee system the Editor in a third article of the same paper says that as many pupils are apt to discontinu their studies owing to these obstacles, His Excellency the Governor should be pleased to reduce the School-fees.

12. Commenting on the new Income-tax, the Editor in a fourth article observes that some people complain that they cannot pay the said tax and others say that they are ten times overtaxed. He hopes therefore that this tax may not be imposed in this Presidency.

Gustav Oppert
Telugu Translator
to Government.

Telugu Translator's Office,
Madras 12th Febry. 1887

ENL NO. 765

2

Public

From

The Telugu Translator
to Government

To

The Chief Secretary
to Government

Dated 12th } February 1887
Received 14 }

Forwarding Report on Telugu Newspapers for the Month of January 1887.

1

CURRENT NO. 76

Report, on Telugu Newspapers for the Month of January 1887.

Abstract.

Subject	Page
Paragraph 1. On the acquisition of Burma.	
Do 2. Suggestions how to celebrate the jubilee.	
Do 3. About the deficient police arrangements in the Kistna District	
Do 4. Comments on the increase of the Indian Army.	
Do 5. Suggestions to educate the Children of Zamindars.	
Do 6. About grievances of the Indian people.	
Do 7. Comments about large sums being spent on Christian missionaries.	
Do 8. On the appointment of Natives to the post of Inspectors of Schools &c.	
Do 9. On the deficiency in the working of the Local Self Government.	
Do 10. On the mis-management of Indian Religious and Charitable Institutions.	
Do 11. Comments on the high School fees and the Term-fee system.	
Do 12. Complaints against the Income-tax.	

Public (1887) Dept.
CURRENT NO. 913

From

W. Dumergue Esq.

Malayalam Translator
to Govt.

To

The Chief Secretary to Government,

Fort St. George.

Dated 21st} February 1887.
Recd 23}

SECRETARY
23 FEB 87

Malayalam Newspapers —

Report on — for the month of January 1887.

Viceroy — Places visited by the — during the late tour, &c. K. M. — and I (8)

Village officials — The charges brought by, and against — K. P. II

Year 1886 — A retrospect of the — and new year greetings. K. M. III

---

to Tellicherry is an injustice done to him K. P. III (4)

Malayala Bhásha Parishkára Sabha" at Manjeri — Requesting the public to take interest in promoting the objects of the — K. P. II (2)

Municipality, Calicut — disclaiming their liability to maintain those roads that are not open for all classes without distinction of caste. K. P. I (7)

— — Regarding a resolution of the — that it will not undertake to clean or light any road other than those that may be used by all classes of people. K. P. II (8)

Muppan Caste — A person of the — raised a loan pledging his sons. K. P. III (6)

National Congress — Calcutta — An account of the proceedings of the late — K. M. I (4)

Public Service Commission — asking the Editor's opinion on certain papers. K. P. II (2)

Queen-Empress — An account of the life of the — &c. K. M. I (3)

Salt Revenue Collections — Regarding the decrease in the — in the year 1885. K. P. III (1)

Stamp vendors — About the annoyance caused to — coming to the Palghat Taluk Kacheri for stamps. K. P. II (9)

Sub-Registrar — Vatakkanchéri — Cochin — Annoyance caused by the — to the parties appearing before him. K. P. III (6)

Subscriptions — Indifference of subscribers as to the payment of their — to the paper. K. P. II (5)

Taxes — About the reduction of the number of instalments in which — are to be paid from 6 to 4. K. P. II (4)

Travancore — Regarding the selection of a new Dewan for — K. M. II (1)

— Regarding the recent ministerial changes in — K. M. II (6)

— No official arrangements required at present in — K. M. II (4)

{[illegible] with Extract} [illegible]

I Leading articles.
II Correspondence.
III Miscellaneous.
} Abstract. { Kerala Mitram – K. M.
Kerala Patrika – K. P.

Subject.	Page
Bribery—Current to a greater extent in Vaytiri and Chirakkal than elsewhere in the District. K. P. II (1)	
Burial—About getting a rule for—after peace is restored. K. P. II (6	
Civil Service Commission—The objects of the—, &c. K. P. I (6)	
Countess of Dufferin's Fund—The—regarding for giving medical aid to the females of India. K. P. I (3) & K. M. I (5)	
Distilleries—On the Establishment of—in municipalities. K. P. III (6	
Education—Thanking Government for the steps taken for diffusing—among the Moppilas in Malabar. K. M. II (2	
Europe—The Chief Powers of—are making preparations for war. K. M. II (7)	
Grant Duff—Sir M. E.—did not consult with natives or Europeans on matters connected with the administration of the Country. K. P. I (4)	
— — The administration of—did not deserve so much blame. K. M. III (1)	
Hindu Temples—Taking of the—under Government management is good for the tenants as well as for the temples. K. P. III (3)	
Jubilee—The Queen's—should be commemorated in Malabar by the establishment of an Industrial School. K. P. I (5)	
— — Malabar must do something for commemorating the— K. P. II (7)	
— — The people of the Madras Presidency will not like to celebrate—on the 16th February 1887. K. P. III (2	
Kalkulam–Travancore—The Tahsildar and Second Class Magistrate of—scarcely remains at his head quarters. K. M. II (3	
Kōmu Menon—Mr—Salt Inspector—The transfer of—from Calicut	

5

(6) The Sixth letter invites the attention of the Dewan of t to the various annoyances caused by the Sub-Registrar of Vat-Kánchri to the parties appearing before him on business.

(7) The seventh letter considers that Malabar like other Countries must do something towards commemorating the Jubile of the Queen, in whose reign innumerable boons have been Conferred upon the people. The writer also thinks that like the "National Fund" in Madras, every family should have a 'family fund' to serve in times of need.

(8) Referring to a resolution passed at a meeting of the Calicut Municipality that it will not undertake to clean or light any road other than those that may be used by all classes of people without any distinction of Caste, the eighth letter says that the resolution is due to a misconstruction put upon the term "public road", which means either "a road to which all persons have an equal right" or "to which many persons have a right in Common". It is also remarked that the resolution is informal as that subject was not one of those fixed for Consideration at that meeting and that the Hindu Community was not then sufficiently represented.

(9) The ninth letter, after referring to the great annoyance to which Stamp Vendors going to the Palghat Taluk Kacheri

Malayalam)" formed some time ago at Manjeri.

(3) The third letter thinks that the action of the Collector of Malabar in getting copies made of certain inscriptions on stones found in some of the temples during his late official tour, has something to do with the question of taking the Hindu temples under Government management — a step which tends to promote the interests of the Quanto as well as of the temples.

(4) Referring to the hardships caused by the order reducing the number of instalments in which instalments of revenue are to be paid from six to four, the fourth letter says that the leniency of Government towards its subjects in not ordering that the dues should be levied in one instalment is no doubt superfluous.

(5) Referring to the indifference of subscribers as to the payment of their subscriptions to the paper, the fifth letter says that some of them fear to find their names announced as subscribers, because some high officials do not like their friends and advisers subscribing to the paper, and suggests that in order to avoid the wrath of such officials, receipts be not acknowledged on the paper, but be privately granted.

(6)

ass Magist - do at Kalkulam in Travancore scarcely re-

of things without charge. It then states that the actions on either side are to some extent true, and that the advantages contemplated by Government in conferring various powers on Adhikaris are now not realized, as most of the Adhikaris being uneducated persons and paupers, oppress the people in order to obtain the means wherewith to please their superior officers. In order to remedy these evils it is suggested that the condition of the village officials should be improved. To this end, their salaries should be increased so as to put them beyond the reach of temptation, while the mere fact that the applicant has hereditary claims should not, of itself and without reference to his merits and qualifications, be taken as a sufficient reason for his appointment. The old warrants of appointment (Sunnads) should, now that the state of things is very different from what it was when they were granted, be scrutinized and fresh warrants granted to fit and proper persons.

(2) Referring to the Public Service Commission which has commenced its sittings in some parts of India and the result of which is expected to be favourable to the natives of India, as the members constituting the Commission are all

well-wishers of the natives, the second article intimates to the public the receipt from the Commission by the Editor, of certain interrogatories and some other important papers for the favor of his opinion.

(3) The third article mentions the advantages of giving instruction in medicine to the females of India, and asks the public to contribute what they can towards a fund which is being raised by the Countess of Dufferin for that purpose. A copy of the circular issued by the Countess on the 18th. January 1887 is annexed to the article.

(4) The fourth article observes that the late Governor Sir M. E. Grant Duff did not freely consult with either natives or Europeans on matters connected with the administration of the country, but solely depended upon whatever representations his councillors made, while the new Governor has begun to show that His Excellency is unlike his predecessor in this respect.

(5) Referring to the question as to how the Queen's Jubilee should be commemorated in Malabar — whether by the erection of a Town Hall or by the establishment of an Industrial School — the fifth article says that the latter should be preferred as it would better conduce to the welfare of the nation.

(6)

ass Magistrate of Kalkulam in Travancore scarcely re-

(6) The sixth article mentions the objects of the Civil Service Commission, as well as gives the names of the persons who are to be examined for the Madras Presidency and concludes with an expression of hope that those persons will discharge their duties properly.

(7) The seventh article refers to a resolution of the Calicut Municipality disclaiming their future liability to maintain the roads in certain localities hitherto generally frequented by high caste Hindus alone, provided the roads be not open for all classes without any distinction of caste.

II (1) A correspondent says that bribery is current to a greater extent in Vayteri and Chirakkal where the inhabitants are less educated and less civilized than elsewhere in the District, and observes that the co-operation of the public with the Government in the direction of diffusing education is not enough. It is also remarked that Tahsildars &ca, prevent the inhabitants from having any conference with the Collector or other superior officers visiting the taluks in their periodical tours.

(2) The second letter requests the people of Keralam to take particular interest in promoting the objects of the "Malayala Bhásha Parishkára Sabha (Society for the propagation

([illegible] with Extract)

Malayalam)" formed some time ago at Manjeri.

(3) The third letter thinks that the action of the Collector of Malabar in getting copies made of certain inscriptions on stones found in some of the temples during his late official tour, has something to do with the question of taking the Hindu temples under Government management — a step which tends to promote the interests of the Quants as well as of the temples.

(4) Referring to the hardships caused by the order reducing the number of instalments in which instalments of revenue are to be paid from six to four, the fourth letter says that the leniency of Government towards its subjects in not ordering that the dues should be levied in one instalment is no doubt superfluous.

(5) Referring to the indifference of subscribers as to the payment of their subscriptions to the paper, the fifth letter says that some of them fear to find their names announced as subscribers, because some high officials do not like their friends and admirers subscribing to the paper, and suggests that in order to avoid the wrath of such officials, receipts be not acknowledged on the paper, but be privately granted.

ass Magistrate of Kalkulam in Travancore scarcely remains at his head-quarters, but always goes on circuit without giving notice to parties in criminal cases as to when and where they are to attend.

(4) The fourth letter details what official arrangements are now to be made in Travancore in filling up the vacancy created by the resignation of the Dewan Mr. V. Ramaiengar.

III (1) A paragraph says that the administration of Sir M. E. Grant Duff was more severely blamed than it actually deserved, and that His Excellency became unpopular through having been partial to Muhammadans whom he found in need of support.

2. Kerala Patrika:—

I (1) The first article refers first to the charges generally brought against village officials, especially Adhikáris (village munsifs) that they oppress the inhabitants, receive illegal gratifications, and abuse their powers as village munsifs, and in the next place notices the counter charges made by these officials against their superior officers, such as the officials of the Taluk and divisional offices, to the effect that those officers insult them often and unnecessarily and require them to furnish them with all sorts of

1661

CURRENT NO. /

Report on Malayalam Newspapers for the m
# of January 1887.

No.	Name of the paper.	Place of publication.	Edition.	Number of Copies issued
1	Kérala Mitram.	Cochin	Tri-monthly.	200
2	Kérala Patrika.	Calicut	Weekly.	800

1. Kérala Mitram:—

I (1) The first article after giving a retrospect of the year 1886 with which the paper completed the sixth year of its existence, wishes a happy new year to Her Majesty the Queen-Empress and all the members of the Royal family, & the Rajas of Keralam and their families, & all the administrative officers of both Her Majesty and the Rajas of Keralam, and especially to the readers of the journal.

(2) The second article is a continuation of an article in a previous issue, mentioning the places visited by the Viceroy during His Excellency's late tour, together with an account of the reception at each.

(3) The third article is giving a short account of the life

The Acctt. Genl. with Extract } Despd

of the Queen-Empress, dwells at great length upon the admirable qualities possessed and the amusements pursued by Her Majesty. A lithographed likeness of the Queen is appended to the article.

(4) The fourth article gives an account of the proceedings of the National Congress lately held at Calcutta.

(5) The fifth article requests the people of the Malayalam Country to contribute what they can towards a fund which is being raised by the Countess of Dufferin for the purpose of giving instruction in medicine to the females of India. A copy of the Circular issued by the Countess in that connection on the 1st January 1887 is also annexed to the article.

(6) The sixth article which deals with the recent ministerial changes in Travancore, condemns the administration of Mr. V. Ramaiengar, while extolling that of a former Dewan Raja Sir T. Madhava Rao.

(7) Referring to the probabilities of war at no distant date between some of the Chief Powers in Europe, the seventh article hopes that both the parties in the British Parliament will, in spite of any differences existing between them, heartily join together towards defending the fame, glory and honor of Britain.

(8) The eighth article continues the subject of the second

II (1) Referring to a rumour that Mr. V. Ramaiengar, the Dewan of Travancore is likely to retire shortly, a correspondent cautions the Maharaja to be very careful in making his selection for the office of Dewan. And while the writer deprecates the selection of either Mr. Rama Rao, the Head Dewan Peishkar or Mr. Sankara Subbayyar, he suggests that any one of the following persons be selected for the office:— Mr. A. Govinda Pillai, B.A. and B.L.; or one of the judges of the local High Court; or Mr. Kunjan Menon, Sub-Judge of Tellicherry. The correspondent after noticing with regret the private Palace manager's excessive interference with the affairs of State, apprehends fearful consequences if the Viceroy, who is bent upon reducing the power and influence of Native Rajas and upon making them mere allowance receivers, becomes acquainted with the unsatisfactory state of affairs of the Country.

(2) The second letter thanks Government for the steps recently taken for diffusing education among the Mappilas in Malabar.

(3) The third letter complains that the Tahsildar and Second

ass Magistrate of Kalkulam in Travancore scarcely remains at his head-quarters, but always goes on circuit without giving notice to parties in criminal cases as to when and where they are to attend.

(4) The fourth letter details what official arrangements are now to be made in Travancore in filling up the vacancy created by the resignation of the Dewan Mr. V. Ramaiengar.

III (1) A paragraph says that the administration of Sir M. E. Grant Duff was more severely blamed than it actually deserved, and that His Excellency became unpopular through having been partial to Muhammadans whom he found in need of support.

2. Kerala Patrika:—

I (1) The first article refers first to the charges generally brought against village officials, especially Adhikáris (village munsifs) that they oppress the inhabitants, receive illegal gratifications, and abuse their powers as village munsifs, and in the next place notices the counter charges made by these officials against their superior officers, such as the officials of the Taluk and divisional offices, to the effect that those officers insult them often and unnecessarily and require them to furnish them with all sorts
of

1661

India Office.
London, 7th October 1886.

Public.

No. 17.

Sir,

1. I have to acknowledge the receipt of the letter of your Excellency in Council, No. 12, dated the 16th of July last, with which, in continuation of previous correspondence on the same subject, you forward further papers connected with the allegations made by Mr. Crole respecting Mr. H. E. Sullivan, a Member of the Council of the Governor of Madras.

2. These papers consist of a copy of a letter from Mr. Crole and of its five enclosures, purporting to be authentic copies of letters from Mr. J. D. Sullivan, the son of Mr. H. E. Sullivan, to Mr. P. Koteisami Tevar; a
copy

His Excellency,
The Right Honorable,
The Governor in Council,
Fort St. George.

[illegible] with extract } Despd

Public

No.

copy of the Proceedings of Your Government on the 14th of July last: a Memorandum by Mr. H. E. Sullivan on the letter of Mr. Crole; and a further memorandum by Mr. Sullivan on his connexion with the Richings property.

3. I have given most careful consideration to these papers in connexion with the decision conveyed to your Government in the despatch of my Predecessor in Council of the 29th of July last on the memorial submitted to him by Mr. Crole.

4. It is not necessary for me to travel over the whole ground covered by my Predecessor's despatch. In the conclusions at which he then arrived upon the evidence before him I fully concur. But the letters of Mr. J. T. Sullivan now forwarded by you, th for genuineness of which is impugned by Mr. H. E. Su

[illegible] Extract)

throw a new and important light upon Mr. H. E. Sullivan's position in the matter, and I regret that, after the most careful consideration of his explanations, I have been unable to regard them as in any degree satisfactory.

5. Mr. Sullivan's conduct throughout the transactions in question, alike in respect of his interest in the Richings estate, of his statements regarding it, and of his connexion with the intended sale of the property, has, I am concerned to say, been such as to impair very sensibly my confidence in him as an adviser and Counsellor of the Governor of Madras, and to raise in my mind an anxious and pressing consideration whether he ought to be allowed to remain in a position for which his fitness ha

open to such serious doubt?

6. I shall give this care of the case, the importance which it would be difficult to exaggerate, my immediate and careful attention.

7. Meanwhile, I am obliged to declare my conviction that I could not permit Mr. Sullivan to occupy, even temporarily, the important office of Governor of Madras to which as senior Member of Council he is in a position to succeed in the event of a temporary vacancy.

8. I shall consequently take measures for the appointment of a provisional Governor of Madras to fill any temporary vacancy which may occur.

9. I request that this despatch may be considered for the present