1218

M.R.O. 1—20,002—12-8-65.

(1) Number of Pages 20.

(2) Date of repair 21-1-67.

(3) Initials of the Referencer

MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue. DEPARTMENT

G.O. No. / B.P. No.	1218	Press / Mis.

Dated 25-9-1874 ~~196~~ .

Not to be folded or roughly handled

1/1218

Proceedings of the Madras Government, Revenue Department,
25th September 1874.

No. 227. Read the following Proceedings of the Board of Revenue, dated 4th September 1874, No. 2,496 :—

Read the following letter from J. HUNTER BLAIR, Esq., Collector of Sea Customs, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Madras, 14th August 1874, No. 939 :—

I HAVE the honor to forward, for the information of the Board, an original report* from K. Arnachellum Mudelly, the Manager of the Custom House, giving a full account of the examination of witnesses on the Commission on Suit No. 52 of 1874, held at the Jaffna District Court on the 24th July 1874, and beg that a copy thereof may be forwarded to the Government Solicitor, as it contains information on several important points, which probably may not be found in the Commissioner's file of depositions.

* A.

2. I also forward copy† of Mr. Thwaites' brief report on the same subject.

† B.

3. The Board will observe that both Mr. Thwaites and the Manager consider the result of the inquiry to be most favorable to Government.

4. I agree with the Manager in the views expressed in paragraph 35 of his letter regarding the difficulties of obtaining evidence in the present suit.

5. My reason for fining the plaintiff and other smugglers without giving them previously an opportunity of explanation is fully borne out by the fact that the plaintiff has already sold his Dhoney *Annalutchmy* for fear of its being seized on account of the fine. *Vide P.S.* of the Manager's report.

6. I have asked the Government Solicitor to procure a copy of the Commissioner's notes (referred to by Mr. Thwaites in *P.S.*), and will forward to the Board on receipt.

7. I have finally to call the Board's favorable attention to the remarks of Mr. Thwaites (paragraph 3) as to the valuable aid and assistance rendered to him by the Manager. The expenses of the two trips taken by the Manager have been about Rupees 600, and Rupees 650 have been paid to Mr. Thwaites.

8. If Mr. Barclay had been sent, the cost would have been from Rupees 10,000 to 11,000, and even in that case it would have been impossible for him to procure information and collect the witnesses necessary for the inquiry without the Manager. There has, therefore, been a saving of expense to Government of about Rupees 10,000.

9. The Manager was also exposed to a certain amount of personal risk in proceeding to Jaffna on a matter affecting the interests of many of the wealthy traders of that port and Point Pedro, who had been smuggling opium, and whose trade in that commodity has been stopped.

10. I therefore trust that the special services rendered by the Manager may be recorded by the Board, so that they may be taken into favorable consideration when opportunity offers.

ENCLOSURE No. 1.

From A. ARNACHELLUM MUDELLY, Manager, to J. HUNTER BLAIR, Esq., Collector of Sea Customs, dated Madras, 12th August 1874.

I HAVE the honor to report that, as directed in the Board's Proceedings, No. 952 of 22nd April 1874, I proceeded to Jaffna to represent the defendant (the Collector of Sea Customs), on the Commission issued by the High Court in original suit No. 52 of 1874.

2. The examination of witnesses occupied three full days—eight witnesses were examined on behalf of the plaintiff and ten on behalf of the defendant.

3. *Plaintiff's witnesses.*—The most important witnesses of the plaintiff were Mr. Vanzyl, F. John Pulle, Simon Pulle, and K. Vyravey Pillay.

4. *1st witness.*—The examination of Mr. Vanzyl, the Sub-Collector of Customs at Point Pedro, occupied nearly one whole day. He was closely cross-examined and the result is as follows:—

(1).—He deposed that K. Vyravey is not a merchant; that he is "*a beggar*" or "*a cooly.*" This contradicts the statement of the plaintiff that he is a "merchant."

(2).—He admitted having known at the time that K. Vyravey could not have been the *bona-fide* owner or consignee of the opium smuggled in the Dhoney *Annalatchemy*.

(3).—He stated that the Ceylon Custom's Ordnance provides* for punishment of cases where incorrect statements are made by the master of a vessel in regard to goods declared in his presence as to quantity, quality, the name of the consignee, &c.

* Section 92 of Act XVII. of 1869.

(4).—With reference to the consignments of opium by "*Sivasoondarpuravey*" *in April* 1872, he deposed that he was fully aware that all the opium imported into Point Pedro was smuggled from India.

(5).—That he knew K. Vyravey could not be the real owner or consignee of the 116 purses.

(6).—That in the manifest, the plaintiff's name was first entered as consignee and afterwards altered to K. Vyravey, by the tindal under plaintiff's orders, because plaintiff was afraid of being detected and punished at a future time by the Madras Government.

5. Knowing, as he did, all these circumstances, Mr. Vanzyl allowed K. Vyravey to clear the opium, and did not punish the tindal for any false declaration, although he was liable to be dealt with under Section 92 of the Ceylon Customs' Ordnance.

6. To show again that Mr. Vanzyl has all along been for the plaintiff, I may state the fact that he, in order to favor the plaintiff, produced *my confidential* letter† to him, applying for information regarding the opium case in question to the Commissioner in the other suit No. 761 of 1873, in order to show that I was trying to bribe him to give information against the plaintiff; on the other hand, Mr. Murray, Assistant Government Agent, declined to produce or divulge the contents of any communication received from the Madras Government, or the Collector of Sea Customs.

† Copy herewith sent. C.

7. I leave to you and the Board to decide Mr. Vanzyl's conduct in the matter, who is an officer of Ceylon Government of nearly *thirty* years' standing, and also a "Justice of the Peace."

8. The credibility of the undermentioned statements of Mr. Vanzyl requires also to be considered.

(1).—That no Agent has ever transacted business in the Point Pedro custom-house, and that he did not grant a license‡ to any Agent to do so.

‡ Clause 88, Ceylon Customs' Act XVII. of 1869.

(2).—That plaintiff stopped his trade since he was fined, and Mr. Vanzyl calculates the losses of the plaintiff at 5,000 Rupees per annum on the amount of Customs' duty paid by him during the last four years.

9. *2nd witness.*—F. John Pulle's—Shroff of the Point Pedro custom-house—evidence is on the whole anything but favorable to the plaintiff. His statements manifest undue interest on the

case, and his determination to depose that K. Vyravey had nothing to do with the plaintiff. He said that the opium in question was delivered by him to certain merchants, but not to the plaintiff; that he found no mark of Poonea Chittambaram on any *one* of the eighty-four purses, &c. But he broke down in the cross-examination, and prevaricated and contradicted himself most disgracefully. I moved the District Judge to note the conduct of this witness and he promised to do so.

10. *3rd witness.*—Simon Pulle, an entry clerk paid by merchants for writing applications, &c., is a man not at all in well-to-do circumstances. The nature of his evidence would show that what he deposed was previously taught him. *He depends entirely on the merchants of Point Pedro for his livelihood, the plaintiff being one of the principal merchants.*

11. *4th witness.*—K. Vyravey Pillay. His evidence is only what we expected. He stated that he was not the plaintiffs' Agent or servant. That the opium in question was delivered by him to the persons mentioned in his letter, but that he has no accounts to prove it; which accounts he declared in his letter he could produce.

12. The remaining witnesses, I do not think, deposed to any material fact, such as agency of K. Vyravey, &c. They stated that the plaintiff stopped his trade since he was fined by the Collector, and thereby sustained losses. This is simply an attempt of the plaintiff to establish damages.

13. Plaintiff's witnesses were questioned by his counsel regarding cases of smuggling opium by other persons in the years 1872 and 73, with a view to prove malice on the part of the defendant. These questions were, however, considered by the Commissioner as irrelevant to the case, because they would not go to exonerate plaintiff from his present liability, and moreover that no malice could be proved by them.

14. *Defendant's witnesses.*—Of the ten witnesses examined on behalf of the defendant, the evidence of seven was so favorable that the District Judge, Mr. Thwaites, and other Advocates in Court expressed their opinion that they would have no fear of the case being decided in favor of the Madras Government, if the suit was to be decided in that Court.

15. *1st and 2nd witnesses*—Mr. Koch and Mr. Lembregen, Customs officers, deposed distinctly that K. Vyravey was the "*Agent*" and "*Conicopoly*" of Poonea Chittambaram, the plaintiff; that they never knew him transact any other person's business. These two witnesses were quite unshaken on cross-examination. The respectability of these two witnesses can be ascertained, if necessary, by reference to Mr. Twynam or Mr. Dickson of the Ceylon Civil Service.

16. It is not, I think, out of place to mention that in conversation with the latter gentleman he told me that in his opinion the evidence of Messrs. Koch and Lembregen is *very* much more trustworthy than that of Mr. Vanzyl.

17. It was my earnest desire that these two witnesses should be questioned as to whether Mr. Vanzyl was aware of K. Vyravey's being plaintiff's gumastah or agent; but Mr. Thwaites objected to such questions being put as tending to create ill-feeling between the officers of the same department.

18. *3rd witness.*—Saravanamoothoo, late Shroff of the Oriental Bank, deposed that K. Vyravey on several occasions accompanied plaintiff to the Bank; that he on several occasions brought large sums of money (5,000 or 6,000 Rupees) to pay into the Bank when the plaintiff's bills became due; and that he also endorsed currency notes for the plaintiff.

19. Although this witness ceased to be a Shroff of the Bank in 1871, his evidence, I submit, goes to show that K. Vyravey is or was not a "cooly" or a "beggar," and it also disproves the statement of the plaintiff, that he had nothing whatever to do with K. Vyravey at any time. The fact that K. Vyravey was entrusted with £500 to pay into the Jaffna Bank, which is 21 miles from the residence of the plaintiff at Point Pedro, is worthy of particular consideration, as it shows beyond a doubt that the plaintiff and K. Vyravey were connected with each other, either as master and servant, or principal and agent, or in some other relationship, *with feelings of confidence and sincerity between them.*

20. The 4th witness, Moorga Pillay, one of the persons named by K. Vyravey as the owner of the opium in question, was identified by K. Vyravey as the person referred to by him. He

deposed that he never had anything to do with K. Vyravey; that he received no opium from him; and that he knew nothing about the opium said to be imported and delivered to him by K. Vyravey.

21. The 5th and 6th witnesses deposed that they knew K. Vyravey to be the plaintiff's Agent; that in August 1872, both K. Vyravey and plaintiff received the opium in question from the Point Pedro custom-house; that they saw the opium being taken in the direction of Poonea Chittambaram's godown, &c., all showing that K. Vyravey and plaintiff were *not unconnected even in this particular transaction.*

A. Chittambaram Pillay and Kunda Pillay.

22. Much the most important witness of the ten for the defence, is the 7th, K. Vyravan Chetty, a respectable merchant of Jaffna, carrying on business in the name of the firm of P. L. Vyravan Chetty and Co. Although his evidence does not refer to the opium smuggled in the *Annalatchemy*, still it is most valuable. He deposed that in April or May 1872 (*three months previous to the smuggling of opium under dispute*) he purchased fourteen purses of opium (*of the quantity smuggled by the Sivasundarapuravey*) from Poonea Chittambaram, which had been passed through the custom-house under the bill of entry and duty bill signed by K. Vyravey for Rupees 2,820; that he re-exported it in the steamer *Serendib* to Colombo twenty days after purchase. These statements were verified by the Jaffna custom-house records.

23. I respectfully submit that this evidence conclusively proves the facts that Poonea Chittambaram *traded in opium three months previous to August* 1872; that the opium by the *Sivasundarapuravey belonged to the plaintiff*, and ON THAT OCCASION HE EMPLOYED K. VYRAVEY TO CLEAR IT FOR HIM. (This point is also corroborated by plaintiff's witness Mr. Vanzyl).

24. 8th and 9th witnesses deposed in favor of both plaintiff and defendant. They evidently wished to speak the truth and also to give evidence in favor of the plaintiff. They deposed that K. Vyravey worked for plaintiff more than for any others; that he kept regular accounts of all the goods landed by plaintiff's vessels; that Mr. Vanzyl had opportunities of knowing these facts. Although the 8th witness K. Arnachellum was cited by the plaintiff, he failed to examine him, simply because he subsequently discovered that he was not prepared to speak altogether on his side. Of course *we* called him, as he was one of the Customs officers, and as such we expected him to speak the truth.

K. Arnachellum and T. Kathirthumbee.

25. The plaintiff was examined by the advice of Mr. Thwaites, our counsel, as an "*adverse*" witness under the Ceylon procedure. Though plaintiff's counsel objected to the examination, I do not think it is of any weight, as he afterwards cross-examined him.

26. He was examined as to whether he sent from Point Pedro or received from Madras any of the telegrams on the record

27. He denied either having sent or received any telegram, notwithstanding he was on his oath. He also declined to answer every single question about the consignment of opium in the *Sivasundrapuravey*.

28. I think the plaintiff has committed perjury. His total denial of both *the despatch* and *the receipt of telegrams* (sent from Madras by his Agent) is a decided untruth. The original telegrams and the Post Office records at Jaffna and at Point Pedro will amply prove the charge, if preferred against him.

29. Lastly, I beg I may be permitted to note that not one of our witnesses broke down in the cross-examination, though the same cannot be said with regard to plaintiff's witnesses.

30. Having given an abstract of the evidence on both sides of the Commission from the notes taken by me at the time of examination, I beg to bring to your notice the omission of the plaintiff to prove his innocence.

(1). The plaintiff did not produce the tindals of *Annalatchemy* or *Sivasundrapuravey* to prove that the opium imported by those vessels did not belong to him.

(2). Plaintiff failed to call any one of the persons named by K. Vyravey as the owners of the opium. I made every effort to procure their attendance, but succeeded in getting hold of only one.

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Proceedings of the Madras Government, Revenue Department,
25th September 1874.

31. Taking into consideration the several facts proved in favor of the defendant by *respectable* and *uninterested* witnesses, the serious omission on the part of the plaintiff to prove his innocence, his personal character in regard to the denial of *both the receipt and despatch* of the telegrams, the several contradictions between the statements in the plaint and those deposed by his own witnesses, I am of opinion that the result of the case cannot but be expected to be favorable to Government.

32. Although there is not such a strong *documentary* evidence in regard to the opium under dispute as there is regarding the 116 purses smuggled in the *Sivasundrapuravey*, yet if the two transactions, *which took place at an interval of three months*, are connected together, there can, I think, be no reasonable doubt that the plaintiff was concerned in the smuggling of the opium in the *Annalatchemy to the same extent* as in smuggling the 116 purses in the *Sivasundrapuravey*.

33. It was argued at the time of examination that if the plaintiff was the owner of the 84 purses, why were they cleared in piecemeal instead of in lump? This is sufficiently explained by the former transaction of the 116 purses. It will be noted that all the opium smuggled and imported into Point Pedro is not consumed there, but re-exported to Colombo and other places. The merchants of Jaffna and other places purchase the opium from the smugglers with a duty bill for the quantity bought, to be produced at the place of re-exportation, in proof of duty having been paid on the original importation, and it is for this reason opium is cleared in small quantities and sold to merchants with duty bills.

34. Even if the two transactions are not connected, I submit that the oral evidence of our witnesses and other circumstances connected with the case are sufficient to raise at least a very strong presumption that the plaintiff was not and could not be *unconcerned* in the smuggling of the 84 *purses*.

35. I respectfully submit that it should be remembered that the defendant in the suit is the Madras Government, and that in the majority of Government suits the evidence procurable is generally scanty, as persons are not so willing to give evidence as in suits in which individual and private interests are involved. The disadvantage in the present suit was still greater, as the people and Customs officers at Point Pedro and Jaffna were asked to give evidence in favor of a *foreign Government against their own countrymen, and the interests of traders at both ports.*

P.S.—I have also had it shown in evidence that the plaintiff transferred and sold the dhoney *Annalatchemy* to some other person after he was fined—evidently to evade the seizure of it on account of the fine—with a view to show the Court and the Board that he would have done the same or instigated one or two more false claims to the palmyras, now in our charge, if an opportunity had been given him to explain, before he was fined.

I may add that it is of the *utmost importance to the interests* of the defendant that the final hearing of the suit should be adjourned to some day on or after the 15th September 1874, as I fully expect a very *material* witness to be here before that time to depose to the *most important facts*, and whose evidence, I submit, will also enable the Court to arrive at an easy decision of the case.

(Signed) A. ARNACHELLUM MUDELLY.

ENCLOSURE No. 2.

From H. THWAITES, Esq., to J. HUNTER BLAIR, Esq., Collector of Sea Customs, Madras,
dated Jaffna, 3rd August 1874.

I HAVE the honor to inform you that the examination of witnesses of both sides on the commission from the High Court of Madras was brought to a conclusion last week.

1. As to the general evidence brought by the plaintiff, I am of opinion that he has failed satisfactorily to prove that he was ignorant of the fact that opium was on more than one occasion brought by his vessels to Point Pedro; and though his witnesses swore hard that K. Vyravey was

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not connected with him in business, still I think there is quite sufficient evidence to raise a *very strong* presumption *at least* against him, that he did actually *connive with plaintiff* in clearing and passing the opium in question. *He declares himself a broker*, whereas his co-witnesses swear he is nothing of the sort, but only "a common cooly." The evidence of Mr. Vanzyl was clearly interested, or rather that of a *partizan*, as also that of Mr. F. John Pulle, who contradicted himself, and stated what he knew, and all in Court knew, to be false.* I drew the Commissioner's attention to his conduct at the moment he left the box, and shall move that a note be made on the record of such conduct.

* But these were mostly on collateral points.

It will be of some importance to note that of all those whom Vyravey named as persons who cleared the opium, not one is called by the plaintiff, *and though* every effort was made by us to secure the attendance of all, yet we could only get hold of *one, who was identified as the same man by Vyravey*, but who swore he never received or cleared the opium! Now the latter is a respectable person, and was mistaken in cross-examination, which cannot be said for Vyravey.

With regard to the opium in question, there is not such strong evidence as there is as to the 116 purses, but if the two be connected, there can be no reasonable doubt but that plaintiff was aware of the smuggling, that he was a party to it, and that K. Vyravey was his abettor in both the matters.

It may be well to mention that the manager wished me to put several questions tending to involve *other parties* in connection with the *other transactions*, but as such evidence was irrelevant to *this case*, I as a lawyer, bringing *legal* evidence to a *Court of law*, did not consider myself justified in putting them; so that evidence which might have been of use in other future proceedings has not been recorded. The Manager was no doubt doing his duty, and if in regard to this you consider that there is any blame attributable to any one, I must exonerate the Manager and take all such to myself.

As I was very busy, up to the day of the examination, with the Supreme Court assizes and a heavy calendar of cases, I was quite unable to attend to any preparation of the cases. This was done by the Manager of Sea Customs and his Proctor, who in conjunction did all that could have been done, and indeed I may say that without him, and his technical experience in Customs matters, I should have found much difficulty in getting as much as I did out of the witnesses.

I was requested by the Manager to add to the bill of costs the sum of £5 5*s*. as fees to Mr. Sinnecutty (Proctor), who was of service to me in the case. I annex a formal bill, which I shall be obliged if you will be kind to remit when convenient.

P.S.—Should you find it convenient, I shall cause a copy of the Proctor's notes of the examination of each witness to be forwarded to you. If, however, you can obtain a copy of the *Commissioner's* note (on motion to the High Court), of course they would be more valuable. I do not know how the evidence will appear on paper before that Court, but this I can say with confidence, that if the case was to be decided at *this* Court, I should have no fear whatever as to the result being in favor of the defendant.

Fees.

	Rs.	A.	P.
To me as Counsel agreed by telegram, thirty-five guineas*	367	8	0
To Mr. Proctor Sinnecutty	52	8	0
To copy of extract from "Re-export of Opium Journal"	1	8	0
Total...	421	8	0

* Note.—In answer to your first telegram I replied, as the case was long and heavy, I should require "fifty guineas." Reply to that was that the case was not heavy or difficult, but that there were a good many witnesses. I replied in return that I would appear for "thirty-five, including Proctor's £5 5*s*." meaning thereby "thirty-five guineas, and that out of that I should pay a Proctor five guineas." This I have done, and hope that you understood this at the time. Mr. Sinnecutty was not engaged by me but at the sole instance of the Manager, who requests me to put his name down in the list.

(Signed) H. THWAITES.

I should be glad to know the result of each case when decided, and shall feel obliged if you would be kind enough to communicate the same to me.

(Signed) H. THWAITES.

The Collector of Sea Customs submits a report by his Manager, A. Arnachellum Mudelly, on the result of a Commission issued by the Madras High Court to the Jaffna District Court for the examination of witnesses in Suit 52 of 1874, "Poonear Chettambaram, *versus* the Collector of Sea Customs," the defence of which was sanctioned in G. O., 9th December 1873, No. 1,382.

2. The Board agree with the Collector that the services of the Manager have been such as to deserve recognition. He showed great resolution in proceeding to Jaffna, and while there his activity and ability in preparing for and assisting in the inquiry have been of great service to Government.

3. If the notes referred to in paragraph 6 bear out the Manager's report, the Board will be able to dispose of the appeal from Poonear Chettambaram, which is now pending before them, without waiting for further evidence.

4. A copy of the Report will be sent to the Government Solicitor as suggested by the Collector.

5. These Proceedings will be submitted to Government.

No. 228. Order thereon, 25th September 1874, No. 1,218.

Separate Revenue, No. 16.
Customs.

His Excellency the Governor in Council is pleased to mark his approval of the manner in which K. Arnachelum Moodali, Manager of the Custom-house, has performed the special duty entrusted to him by granting him a honorarium of three months' pay.

2. The charge will be met from savings under the head Customs.

(True Extract.)

(Signed) C. G. MASTER,
Acting Secretary to Government.

To the Board of Revenue.
„ the Accountant-General.

Exd. F. R. Bantleman.

Cash of 1874 and Court of
REVENUE.

To

THE BOARD OF REVENUE

&c. &c. &c.

Dated September 25th.

Read

SEPTEMBER.

Nos. 227-228.

Suit No. 62 of 1874, on the [illegible] Madras
Courts—Granting a honorarium of three
Fee to Arrambelium Mudali, Manager
Chicacole, as a mark of the
Government of the manner in which he
at the special duty in connection with
mission issued by the High Court
District Court for examination of witnesses

REVENUE DEPARTMENT.

5/1218

C No. 3057.

From Pro: Bd of Rev:
Dated 4th September 1874.

FOR ORDERS.

I think we may let the
the Manager a Cert
(by Rs 1000) for his ex
ertions

L.O.C.

Issued
16/9

17/9

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FOR ORDERS.

1218

C 10th Sept 74 R 18th

No. 2,496.

1218

PROCEEDINGS OF THE BOARD OF REVENUE, dated 4th September 1874.

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2. I also forward copy† of Mr. Thwaites' brief report on the same subject.

† B.

3. The Board will observe that both Mr. Thwaites and the Manager consider the result of the inquiry to be most favorable to Government.

4. I agree with the Manager in the views expressed in paragraph 35 of his letter regarding the difficulties of obtaining evidence in the present suit.

5. My reason for fining the plaintiff and other smugglers without giving them previously an opportunity of explanation is fully borne out by the fact that the plaintiff has already sold his Dhoney *Annalutchmy* for fear of its being seized on account of the fine. *Vide P.S.* of the Manager's report.

6. I have asked the Government Solicitor to procure a copy of the Commissioner's notes (referred to by Mr. Thwaites in *P.S.*), and will forward to the Board on receipt.

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8. If Mr. Barclay had been sent, the cost would have been from Rupees 10,000 to 11,000, and even in that case it would have been impossible for him to procure information and collect the witnesses necessary for the inquiry without the Manager. There has, therefore, been a saving of expense to Government of about Rupees 10,000.

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10. I therefore trust that the special services rendered by the Manager may be recorded by the Board, so that they may be taken into favorable consideration when opportunity offers.

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From A. ARNACHELLUM MUDELLY, Manager, to J. HUNTER BLAIR, Esq., Collector of Sea Customs, dated Madras, 12th August 1874.

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4. *1st witness.*—The examination of Mr. Vanzyl, the Sub-Collector of Customs at Point Pedro, occupied nearly one whole day. He was closely cross-examined and the result is as follows :—

(1).—He deposed that K. Vyravey is not a merchant; that he is "*a beggar*" or "*a cooly.*" This contradicts the statement of the plaintiff that he is a "merchant."

(2).—He admitted having known at the time that K. Vyravey could not have been the *bona-fide* owner or consignee of the opium smuggled in the Dhoney *Annalaichemy*.

(3).—He stated that the Ceylon Custom's Ordnance provides* for punishment of cases where incorrect statements are made by the master of a vessel in regard to goods declared in his presence as to quantity, quality, the name of the consignee, &c.

* Section 92 of Act XVII. of 1869.

(4).—With reference to the consignments of opium by "*Sivasoondarpuravey*" *in April* 1872, he deposed that he was fully aware that all the opium imported into Point Pedro was smuggled from India.

(5).—That he knew K. Vyravey could not be the real owner or consignee of the 116 purses.

(6).—That in the manifest, the plaintiff's name was first entered as consignee and afterwards altered to K. Vyravey, by the tindal under plaintiff's orders, because plaintiff was afraid of being deceived and punished at a future time by the Madras Government.

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6. To show again that Mr. Vanzyl has all along been for the plaintiff, I may state the fact that he, in order to favor the plaintiff, produced *my confidential* letter† to him, applying for information regarding the opium case in question to the Commissioner in the other suit No. 761 of 1873, in order to show that I was trying to bribe him to give information against the plaintiff; on the other hand, Mr. Murray, Assistant Government Agent, declined to produce or divulge the contents of any communication received from the Madras Government, or the Collector of Sea Customs.

† Copy herewith sent. C.

7. I leave to you and the Board to decide Mr. Vanzyl's conduct in the matter, who is an officer of Ceylon Government of nearly *thirty* years' standing, and also a "Justice of the Peace."

8. The credibility of the undermentioned statements of Mr. Vanzyl requires also to be considered.

(1).—That no Agent has ever transacted business in the Point Pedro custom-house, and that he did not grant a license‡ to any Agent to do so.

‡ Clause 88, Ceylon Customs' Act XVII. of 1869.

(2).—That plaintiff stopped his trade since he was fined, and Mr. Vanzyl calculates the losses of the plaintiff at 5,000 Rupees per annum on the amount of Customs' duty paid by him during the last four years,

9. *2nd witness.*—F. John Pulle's—Shroff of the Point Pedro custom-house—evidence is on the whole anything but favorable to the plaintiff. His statements manifest undue interest in the case, and his determination to depose that K. Vyravey had nothing to do with the plaintiff. He said that the opium in question was delivered by him to certain merchants, but not to the plaintiff; that he found no mark of Poonea Chittambaram on any *one* of the eighty-four purses, &c. But he broke down in the cross-examination, and prevaricated and contradicted himself most disgracefully. I moved the District Judge to note the conduct of this witness and he promised to do so.

10. *3rd witness.*—Simon Pulle, an entry clerk paid by merchants for writing applications, &c., is a man not at all in well-to-do circumstances. The nature of his evidence would show that what he deposed was previously taught him. *He depends entirely on the merchants of Point Pedro for his livelihood, the plaintiff being one of the principal merchants.*

11. *4th witness.*—K. Vyravey Pillay. His evidence is only what we expected. He stated that he was not the plaintiffs' Agent or servant. That the opium in question was delivered by him to the persons mentioned in his letter, but that he has no accounts to prove it; which accounts he declared in his letter he could produce.

12. The remaining witnesses, I do not think, deposed to any material fact, such as agency of K. Vyravey, &c. They stated that the plaintiff stopped his trade since he was fined by the Collector, and thereby sustained losses. This is simply an attempt of the plaintiff to establish damages.

13. Plaintiff's witnesses were questioned by his counsel regarding cases of smuggling opium by other persons in the years 1872 and 73, with a view to prove malice on the part of the defendant. These questions were, however, considered by the Commissioner as irrelevant to the case, because they would not go to exonerate plaintiff from his present liability, and moreover that no malice could be proved by them.

14. *Defendant's witnesses.*—Of the ten witnesses examined on behalf of the defendant, the evidence of seven was so favorable that the District Judge, Mr. Thwaites, and other Advocates in Court expressed their opinion that they would have no fear of the case being decided in favor of the Madras Government, if the suit was to be decided in that Court.

15. *1st and 2nd witnesses*—Mr. Koch and Mr. Lembregen, Customs officers, deposed distinctly that K. Vyravey was the "*Agent*" and "*Conicopoly*" of Poonea Chittambaram, the plaintiff; that they never knew him transact any other person's business. These two witnesses were quite unshaken on cross-examination. The respectability of these two witnesses can be ascertained, if necessary, by reference to Mr. Twynam or Mr. Dickson of the Ceylon Civil Service.

16. It is not, I think, out of place to mention that in conversation with the latter gentleman he told me that in his opinion the evidence of Messrs. Koch and Lembregen is *very* much more trustworthy than that of Mr. Vanzyl.

17. It was my earnest desire that these two witnesses should be questioned as to whether Mr. Vanzyl was aware of K. Vyravey's being plaintiff's gumastah or agent; but Mr. Thwaites objected to such questions being put as tending to create ill-feeling between the officers of the same department.

18. *3rd witness.*—Saravanamoothoo, late Shroff of the Oriental Bank, deposed that K. Vyravey on several occasions accompanied plaintiff to the Bank; that he on several occasions brought large sums of money (5,000 or 6,000 Rupees) to pay into the Bank when the plaintiff's bills became due; and that he also endorsed currency notes for the plaintiff.

19. Although this witness ceased to be a Shroff of the Bank in 1871, his evidence, I submit, goes to show that K. Vyravey is or was not a "cooly" or a "beggar," and it also disproves the statement of the plaintiff, that he had nothing whatever to do with K. Vyravey at any time. The fact that K. Vyravey was entrusted with £500 to pay into the Jaffna Bank, which is 21 miles from the residence of the plaintiff at Point Pedro, is worthy of particular consideration, as it shows beyond a doubt that the plaintiff and K. Vyravey were connected with each other, either as

master and servant, or principal and agent, or in some other relationship, *with feelings of confidence and sincerity between them.*

20. The 4th witness, Moorga Pillay, one of the persons named by K. Vyravey as the owner of the opium in question, was identified by K. Vyravey as the person referred to by him. He deposed that he never had anything to do with K. Vyravey ; that he received no opium from him ; and that he knew nothing about the opium said to be imported and delivered to him by K. Vyravey.

21. The 5th and 6th witnesses deposed that they knew K. Vyravey to be the plaintiff's Agent ; that in August 1872, both K. Vyravey and plaintiff received the opium in question from the Point Pedro custom-house ; that they saw the opium being taken in the direction of Poonea Chittambaram's godown, &c., all showing that K. Vyravey and plaintiff were *not unconnected even in this particular transaction.*

A. Chittambaram Pillay and Kunda Pillay.

22. Much the most important witness of the ten for the defence, is the 7th, K. Vyravan Chetty, a respectable merchant of Jaffna, carrying on business in the name of the firm of P. L. Vyravan Chetty and Co. Although his evidence does not refer to the opium smuggled in the *Annalatchemy*, still it is most valuable. He deposed that in April or May 1872 (*three months previous to the smuggling of opium under dispute*) he purchased fourteen purses of opium (*of the quantity smuggled by the Sivasundarapuravey*) from Poonea Chittambaram, which had been passed through the custom-house under the bill of entry and duty bill signed by K. Vyravey for Rupees 2,820 ; that he re-exported it in the steamer *Serendib* to Colombo twenty days after purchase. These statements were verified by the Jaffna custom-house records.

23. I respectfully submit that this evidence conclusively proves the facts that Poonea Chittambaram *traded in opium three months previous to August* 1872 ; that the opium by the *Sivasundarapuravey belonged to the plaintiff*, and ON THAT OCCASION HE EMPLOYED K. VYRAVEY TO CLEAR IT FOR HIM. (This point is also corroborated by plaintiff's witness Mr. Vanzyl).

24. 8th and 9th witnesses deposed in favor of both plaintiff and defendant. They evidently wished to speak the truth and also to give evidence in favor of the plaintiff. They deposed that K. Vyravey worked for plaintiff more than for any others ; that he kept regular accounts of all the goods landed by plaintiff's vessels ; that Mr. Vanzyl had opportunities of knowing these facts. Although the 8th witness K. Arnachellum was cited by the plaintiff, he failed to examine him, simply because he subsequently discovered that he was not prepared to speak altogether on his side. Of course *we* called him, as he was one of the Customs officers, and as such we expected him to speak the truth.

K. Arnachellum and T. Kathirthumbee.

25. The plaintiff was examined by the advice of Mr. Thwaites, our counsel, as an "*adverse*" witness under the Ceylon procedure. Though plaintiff's counsel objected to the examination, I do not think it is of any weight, as he afterwards cross-examined him.

26. He was examined as to whether he sent from Point Pedro or received from Madras any of the telegrams on the record.

27. He denied either having sent or received any telegram, notwithstanding he was on his oath. He also declined to answer every single question about the consignment of opium in the *Sivasundrapuravey*.

28. I think the plaintiff has committed perjury. His total denial of both *the despatch* and *the receipt of telegrams* (sent from Madras by his Agent) is a decided untruth. The original telegrams and the Post Office records at Jaffna and at Point Pedro will amply prove the charge, if preferred against him.

29. Lastly, I beg I may be permitted to note that not one of our witnesses broke down in the cross-examination, though the same cannot be said with regard to plaintiff's witnesses.

30. Having given an abstract of the evidence on both sides of the Commission from the notes taken by me at the time of examination, I beg to bring to your notice the omission of the plaintiff to prove his innocence.

(1). The plaintiff did not produce the tindals of *Annalatchemy* or *Sivasundrapuravey* to prove that the opium imported by those vessels did not belong to him.

(2). Plaintiff failed to call any one of the persons named by K. Vyravey as the owners of the opium. I made every effort to procure their attendance, but succeeded in getting hold of only one.

31. Taking into consideration the several facts proved in favor of the defendant by *respectable* and *uninterested* witnesses, the serious omission on the part of the plaintiff to prove his innocence, his personal character in regard to the denial of *both the receipt and despatch* of the telegrams, the several contradictions between the statements in the plaint and those deposed by his own witnesses, I am of opinion that the result of the case cannot but be expected to be favorable to Government.

32. Although there is not such a strong *documentary* evidence in regard to the opium under dispute as there is regarding the 116 purses smuggled in the *Sivasundrapuravey*, yet if the two transactions, *which took place at an interval of three months*, are connected together, there can, I think, be no reasonable doubt that the plaintiff was concerned in the smuggling of the opium in the *Annalatchemy to the same extent* as in smuggling the 116 purses in the *Sivasundrapuravey*.

33. It was argued at the time of examination that if the plaintiff was the owner of the 84 purses, why were they cleared in piecemeal instead of in lump ? This is sufficiently explained by the former transaction of the 116 purses. It will be noted that all the opium smuggled and imported into Point Pedro is not consumed there, but re-exported to Colombo and other places. The merchants of Jaffna and other places purchase the opium from the smugglers with a duty bill for the quantity bought, to be produced at the place of re-exportation, in proof of duty having been paid on the original importation, and it is for this reason opium is cleared in small quantities and sold to merchants with duty bills.

34. Even if the two transactions are not connected, I submit that the oral evidence of our witnesses and other circumstances connected with the case are sufficient to raise at least a very strong presumption that the plaintiff was not and could not be *unconcerned* in the smuggling of the 84 *purses*.

35. I respectfully submit that it should be remembered that the defendant in the suit is the Madras Government, and that in the majority of Government suits the evidence procurable is generally scanty, as persons are not so willing to give evidence as in suits in which individual and private interests are involved. The disadvantage in the present suit was still greater, as the people and Customs officers at Point Pedro and Jaffna were asked to give evidence in favor of a *foreign Government against their own countrymen, and the interests of traders at both ports.*

P.S.—I have also had it shown in evidence that the plaintiff transferred and sold the dhoney *Annalatchemy* to some other person after he was fined—evidently to evade the seizure of it on account of the fine—with a view to show the Court and the Board that he would have done the same or instigated one or two more false claims to the palmyras, now in our charge, if an opportunity had been given him to explain, before he was fined.

I may add that it is of the *utmost importance to the interests* of the defendant that the final hearing of the suit should be adjourned to some day on or after the 15th September 1874, as I fully expect a very *material* witness to be here before that time to depose to the *most important facts*, and whose evidence, I submit, will also enable the Court to arrive at an easy decision of the case.

(Signed) A. ARNACHELLUM MUDELLY.

ENCLOSURE No. 2.

From H. THWAITES, Esq., to J. HUNTER BLAIR, Esq., Collector of Sea Customs, Madras, dated Jaffna, 3rd August 1874.

I HAVE the honor to inform you that the examination of witnesses of both sides on the commission from the High Court of Madras was brought to a conclusion last week.

1. As to the general evidence brought by the plaintiff, I am of opinion that he has failed satisfactorily to prove that he was ignorant of the fact that opium was on more than one occasion brought by his vessels to Point Pedro; and though his witnesses swore hard that K. Vyravey was not connected with him in business, still I think there is quite sufficient evidence to raise a *very strong* presumption *at least* against him, that he did actually *connive with plaintiff* in clearing and passing the opium in question. *He declares himself a broker*, whereas his co-witnesses swear he is nothing of the sort, but only "a common cooly." The evidence of Mr. Vanzyl was clearly interested, or rather that of a *partizan*, as also that of Mr. F. John Pulle, who contradicted himself, and stated what he knew, and all in Court knew, to be false.* I drew the Commissioner's attention to his conduct at the moment he left the box, and shall move that a note be made on the record of such conduct.

* But these were mostly on collateral points.

It will be of some importance to note that of all those whom Vyravey named as persons who cleared the opium, not one is called by the plaintiff, *and though* every effort was made by us to secure the attendance of all, yet we could only get hold of *one, who was identified as the same man by Vyravey*, but who swore he never received or cleared the opium! Now the latter is a respectable person, and was mistaken in cross-examination, which cannot be said for Vyravey.

With regard to the opium in question, there is not such strong evidence as there is as to the 116 purses, but if the two be connected, there can be no reasonable doubt but that plaintiff was aware of the smuggling, that he was a party to it, and that K. Vyravey was his abettor in both the matters.

It may be well to mention that the manager wished me to put several questions tending to involve *other parties* in connection with the *other transactions*, but as such evidence was irrelevant *to this case*, I as a lawyer, bringing *legal* evidence to a *Court of law*, did not consider myself justified in putting them; so that evidence which might have been of use in other future proceedings has not been recorded. The Manager was no doubt doing his duty, and if in regard to this you consider that there is any blame attributable to any one, I must exonerate the Manager and take all such to myself.

As I was very busy, up to the day of the examination, with the Supreme Court assizes and a heavy calendar of cases, I was quite unable to attend to any preparation of the cases. This was done by the Manager of Sea Customs and his Proctor, who in conjunction did all that could have been done, and indeed I may say that without him, and his technical experience in Customs matters, I should have found much difficulty in getting as much as I did out of the witnesses.

I was requested by the Manager to add to the bill of costs the sum of £5 5*s.* as fees to Mr. Sinnecutty (Proctor), who was of service to me in the case. I annex a formal bill, which I shall be obliged if you will be kind to remit when convenient.

P.S.—Should you find it convenient, I shall cause a copy of the Proctor's notes of the examination of each witness to be forwarded to you. If, however, you can obtain a copy of the *Commissioner's* note (on motion to the High Court), of course they would be more valuable. I do not know how the evidence will appear on paper before that Court, but this I can say with confidence, that if the case was to be decided at *this* Court, I should have no fear whatever as to the result being in favor of the defendant.

Fees.

				RS.	A.	P.
To me as Counsel agreed by telegram, thirty-five guineas*	...	...		367	8	0
To Mr. Proctor Sinnecutty	...	...		52	8	0
To copy of extract from "Re-export of Opium Journal"...	...	...		1	8	0
		Total...		421	8	0

* NOTE.—In answer to your first telegram I replied, as the case was long and heavy, I should require "fifty guineas." Reply to that was that the case was not heavy or difficult, but that there were a good many witnesses. I replied in return that I would appear for "thirty-five, including Proctor's £5 5*s.*" meaning thereby "thirty-five guineas, and that out of that I should pay a Proctor five guineas." This I have done, and hope that you understood this at the time. Mr. Sinnecutty was not engaged by me but at the sole instance of the Manager, who requests me to put his name down in the list.

(Signed) H. THWAITES.

I should be glad to know the result of each case when decided, and shall feel obliged if you would be kind enough to communicate the same to me.

(Signed) H. THWAITES.

THE Collector of Sea Customs submits a report by his Manager, A. Arnachellum Mudelly, on the result of a Commission issued by the Madras High Court to the Jaffna District Court for the examination of witnesses in Suit 52 of 1874, "Poonear Chettambaram, *versus* the Collector of Sea Customs," the defence of which was sanctioned in G. O., 9th December 1873, No. 1,382.

2. The Board agree with the Collector that the services of the Manager have been such as to deserve recognition. He showed great resolution in proceeding to Jaffna, and while there his activity and ability in preparing for and assisting in the inquiry have been of great service to Government.

3. If the notes referred to in paragraph 6 bear out the Manager's report, the Board will be able to dispose of the appeal from Poonear Chettambaram, which is now pending before them, without waiting for further evidence.

4. A copy of the Report will be sent to the Government Solicitor as requested by the Collector.

5. These Proceedings will be submitted to Government.

(True Copies and Extract.)

Secretary.

To the Acting Secretary to Government, Revenue Department.
Copy to the Collector of Sea Customs.
" to the Government Solicitor.

No. 3054.

Revenue 1874. 1874.

Board of Revenue,

MADRAS.

PROCEEDINGS, 4TH SEPT. 1874, No. 2,496.

Dup.s 5 Sept. 1874

Encl.

Received 7/9

SEPTEMBER.

No. 2,496.

Suit.—No. 52 of 1874, filed in Madras High Court by Poonea Chittambaram against Collector of Sea Customs, in connection with a case of opium-smuggling, copy of report of Custom House Manager of result of commission issued by Madras High Court to Jaffna District Court for examination of witnesses inforwarded to Government Solicitor—Concurrence expressed with Collector in opinion that services of his Manager have been such as to deserve recognition:

~~Forwarders on para 2~~
Is it necessary to express more than approbation with Order?

227-228.

Cir. 5th Sept. 1874 R. 8th

No. 1218

H.E. the Governor in Council is pleased to mark his approval of the manner in which Mr. Macfadyen Superintendent of the Custom House has performed the Special duty entrusted to him by granting Rajah a gratuity of three months pay ~~2 rupees a month~~

2. The charge will be met from Savings under the head Customs

Sd

Recd in Council 25/9/74

25 Sept 74

To Board of Revenue
Draft Cpd
Dep 5-10-74