

Government of Madras

HOME DEPARTMENT. (JUDICIAL)

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GIPE-PUNE-049250

No. 2949, 25th November 1920

Rioting at Nellore

READ—following papers:—

49250

I

Letter from M. E. COUCHMAN, Esq., I.C.S., Commissioner of Land Revenue.

To the Secretary to Government, Home (Judicial) Department.

Dated the 21st November 1919.

I have the honour to submit my report on the disturbances at Nellore in October

These are due to a longstanding dispute between the Hindus and Muhammadans at Nellore.

2. The last Census report shows that in the whole district there were 1,136,263 Hindus; only 81,799 Muhammadans, but in the town of Nellore there are 6,091 Muhammadans against 22,710 Hindus. Throughout the district the Muhammadans live more in towns than Hindus, and in most of the towns in the district there is perpetual recurring trouble between the two communities, especially at the times when Dasara and Muharram coincide.

Epitome of the subject.—Diwan Bahadur Swamikannu Pillai, a recognized authority on Indian chronology, says that the Dasara and Muharram coincide once in 30 years and then these two festivals coincide for three consecutive years. So far back as 1820 we find District Magistrates issuing orders to regulate the processions on the days of these festivals. Similar orders were passed by the District Magistrate in 1857, 1885, 1886, 1887, by Messrs. Grose, Underwood and Maclean and the form these orders took was that of prescribing separate routes for the Muhammadan and Hindu processions, to avoid their clashing. In particular, Hindu processions were not allowed to pass with music down the main Bazaar street, where there are several ancient Muhammadan mosques and other sacred places.

3. In 1917 the Dasara and Muharram festivals fell together again, and in that year the District Superintendent of Police requested that orders might be issued under section 144, Criminal Procedure Code, to regulate the processions.

Accordingly the Sub-Divisional Magistrate, Mr. C. Muhi-ud-din Khan, issued a notice prescribing routes, but inasmuch this did not exactly follow the mamul routes, Muhammadans took objection to it and at their request the District Magistrate (Mr. Swamikannu Pillai) revised the order, following the proclamations of 1885 in the following years. Amongst the provisions of this revised order was one which prohibited the Hindu processions from going through the Bazaar road and Sigamvari street. The Hindus presented a petition to the District Magistrate objecting to this, on which the District Magistrate made the following endorsement:—

"Petitioners are at liberty to seek redress for their grievances in Civil Courts. So far as the magistracy is concerned, it has been decided to enforce mamul orders. As the same difficulties are likely to recur in 1918 and 1919, the petitioners should ever come to an understanding with their Muhammadan fellow citizens in time, which is the most prudent course, or establish their rights in Civil Courts."

4. In 1918 a civil suit was filed by representatives of the Hindu the District Munsif's Court at Nellore, praying for a declaration of the rights (Hindus to go in procession attended with music in connexion with their religious and other ceremonies in all the streets of Nellore, subject to the limitation that they should stop music in front of mosque during the three periods prescribed by the High Court of Madras, as being the times of prayer, and asking for an injunction to prevent the Muhammadans from interfering with their rights.

The District Munsif observed that it had been established by a series of decisions of the Courts that every citizen had an inherent right to go in procession attended with music in the public streets. "Music forms part and parcel of a procession. Without it, the idea of a procession appears to be strange except of course funeral procession of certain classes. If a person is entitled to go in a street, he is entitled to go in any way he pleases, provided he does not infringe the rights of others. If he is entitled to walk, he is entitled to go in a carriage or on a horse, it would be repugnant to the feelings of a high caste Hindu to see a low caste man walk in the streets with shoes on. This is evident in the village parts. Yet, it is said that the low caste man has no right to use the shoes if he chooses to wear them as a part of his dress, because he can afford to walk without shoes, and that walking with shoes on is not a proper user of the road, because the shoes might well be avoided as unnecessary?"

In the event he found that the Hindus of Nellore were entitled to go in procession with music in all the streets of the town and in front of mosques all hours of the day except during 5 to 7-30 a.m., 12 noon to 2-30 and 5 p.m. to 8 p.m. and that they were entitled to go in procession with music in front of "Pehanas" at all hours of the day and at all times.

5. The decree is dated 2nd October 1918, and on the same day District Munsif wrote to the District Magistrate informing him that the decree had been granted, and its purport and a copy of the letter was sent to the Sub-Divisional Magistrate on 3rd idem, but the Sub-Divisional Magistrate reported that he had already, on October 1st, issued an order under section 144, Criminal Procedure Code, in view of the extremely strained feeling then existing between the Hindu and Muhammadan communities. The order was based on the established custom of the town.

On 3rd October the Hindu community of the town presented a petition to the District Magistrate for the cancellation of the order on the strength of the decree just obtained. One paragraph of the petition ran as follows:—

"The only way in which the policy of perfect religious neutrality followed by the benign Government can be enforced is by making the aggressors learn the lesson, though with some unpleasantness if necessity arises, that thought to respect the rights of other religionists who are also British subjects."

The District Magistrate (Diwan Bahadur Swamikannu Pillai) declined to cancel the order, on the ground that the order of the Sub-Divisional Magistrate was passed before he had received a copy of the District Munsif's letter informing him of the decree obtained by the Hindus. Moreover, the order was not a routine one passed from year to year, as the petitioners alleged, but had been passed after careful consideration of the state of feeling in the town, and there was always a possibility of Hindus and Muhammadans coming to terms of mutual agreement. The orders were not contrary to public policy and he confirmed them as the best which could be made under the circumstances.

6. After the Muharram was over, on 17th October 1918 one D. Pappan applied for permission to take a procession with music past the mosque in accordance with the decree. The Sub-Divisional Magistrate directed that music should be stopped in front of mosques according to the long-established custom. Doing so he remarked—

"It is evident from the facts stated in the petitions that the petitioner himself apprehends a breach of the peace if the procession is carried on with music in front of mosques as per the decree referred to by him, and therefore applies for

police aid and Magistrate's help. I am also of the same opinion, considering the present in which is running high between the Hindu and Muhammadan communities.

7. On 18th October 1918 one V. Narasimhayya, gumasta of the Shri Moolastaneshwaraswami temple, in Nellore town, applied for permission to

conduct a procession with music in front of the mosques. The Deputy Magistrate granted permission to have the procession, but on condition of stopping music in front of mosques on the ground that the feelings between the two communities still continued, a compromise had been effected, and playing music in front of the mosque was to cause a breach of the peace.

On the following day the District Superintendent of Police wrote to the District Magistrate that it was highly objectionable to Muhammadans that Hindu

processions with music should pass their mosques at any hour, and as it appeared that the Hindus were intending to enforce their decree, he thought it was necessary that all processions in Nellore Municipality should only take place under licence.

The District Inspector had already made the same request to the Deputy Magistrate and the Deputy Magistrate on 19th October 1918 passed an order directing that all sorts of processions whether Hindu or Muhammadan accompanied by music in the town should be licensed. He added "The District Inspector will please see that in granting licences, customary rights of the different sections of the community are not infringed and the public peace is maintained."

8. On 22nd December V. Narasimhayya, the petitioner referred to above, applied to the District Munsif of Nellore for

sanction to prosecute the Deputy Magistrate for contempt of Court, and for offences punishable under sections 166, 188 and 219, Indian Penal Code, on the ground that the orders last quoted were a defiance of the orders of the Civil Court, permitting processions with music, except at the stated times.

The District Munsif said: "There is (in the Deputy Magistrate's order) a foundation of jurisdiction that the Magistrate gave himself and meant to give himself a more extensive jurisdiction than is covered by section 144, Criminal Procedure Code, as shown in the case quoted in Indian Law Reports, 38, Madras 489. Such a factless expression of opinion, if I understand the vehemence exhibited before me, seems to have misled the Hindu public into the belief that this learned Deputy Magistrate, who is a Muhammadan, is actively taking sides with the Muhammadans and, according to the petitioner, is wreaking his vengeance on the Hindus. This is the complaint of the petitioners. These are perhaps good grounds for getting his orders revised or quashed by superior authorities. The case quoted above shows that the High Court has jurisdiction to revise such illegal orders." After these *obiter dicta*, the District Munsif proceeded to say:

"But the question for consideration is whether any contempt or disobedience was shown to the order of this Court." He then arrived at the conclusion that as the order was issued in the public capacity of the Deputy Magistrate the case did not come within the purview of the Indian Penal Code."

An appeal is still pending in the District Court of Nellore against this order, but the High Court refused to revise the order of the Deputy Magistrate, disregarding the advice of the District Munsif there that there were 'perhaps' good grounds for revising it.

9. Following these events the Hindus of Nellore petitioned to Government in October 1918 that the Sub-Divisional Magistrate who was a Muhammadan, might be transferred from the district on account of his action.

In G.O. No. 7, Home (Judicial), dated the 12th April 1919, the Government stated that they considered that the Sub-Divisional Magistrate's order was justified and declined to transfer him.

Paragraph 2 of the Government Order went on to say—

“As regards the future, all practicable assistance will be given towards the enforcement of the decree so long as it remains in force and can be given effect to without endangering the public peace, but no assurance can be given that the decree will be enforced in all circumstances. The local officers must have discretion to deal with exceptional conditions to the best of their judgment.”

10. On 5th September 1919 the District Superintendent of Police requested the District Magistrate to direct the Sub-Divisional Magistrates of the five chief towns in the district to hold conciliation meetings, so that a *modus operandi* for working the two festivals (which commenced on 25th September) should be arrived at unless the District Magistrate considered that the same steps taken last year should again be followed this year. Both parties should send in their full and complete programme for the processions by 20th idem.

11. The present District Magistrate (M.R. Ry. A. R. Nedungudi) took charge of the district on 10th September. On 13th September 1919. the Sub-Divisional Magistrate issued orders on the same lines as he had issued the former years and on the 15th the Hindus petitioned that they might be allowed to give effect to the decree.

On the 24th September and two following days the District Magistrate held meetings between five representatives on 24th and 27th September 1919. each community, to try to compose their differences. The attempt failed, and on 27th the District Magistrate dismissed the petition of the Hindus with the remark that he had tried his best during the previous three days to effect a compromise regarding the festival, but had not succeeded, and did not think that they would come to any real compromise in the immediate future. He said that the order of the Sub-Divisional Magistrate appeared equitable also, as it gave sufficient scope for both the communities to celebrate their festivities separately and in peace. He therefore confirmed it and dismissed the petition.

Thereafter the two festivals passed off quietly.

On October 15th the following notice in Telugu was issued in Nellore :—

“A meeting of Hindus, Muhammadans and Christians under the presidency of Mr. Amancharia Krishna Rao Pantulu Gara to be held at 5-30 p.m. in the evening of Friday, the 17th October 1919 in the Barracks Maidan.”

Caliphate Day.

Message sent to (India) Bharata Desā by our Muhammadan leaders. There is now a great danger to the Islam religion. Foreigners have now occupied a few of our holy Muhammadan territories. Egypt, Tripoli and Morocco have been seized by the leaders of the Christian faith. Attempts are being made to divide the Turkish Empire. Brothers! In other lands even lives were sacrificed for the uplift of the Muhammadan religion. As the Muhammadans of India also have to show their sacrifice one day, be prepared.

All the Muhammadans of the several villages should give up their work for the day, meet together, fast and pray in their masjids on Friday, the 17th of October 1919, as is being done by the grand Muhammadan assembly of India at Lucknow, to safeguard the sanctity of Caliphate.

Message of Mahatma Gandhi.

In regard to the above matter, all Hindus, Muhammadans and Christians are warned that it is important that they should all act with a brotherly feeling and are enjoined to give up their daily work on that day, to pray in their temples for the safety of the honour and religious leadership of the Sultan of the Turkish Empire and to intimate our prayers to the public authorities immediately.

Lectures will be delivered in the evening at 5-30 in the Barracks Maidan on the above subjects. All are requested to attend this public meeting.

Sheik Abdur Rahiman.
Yahya Ali.
P. Punnaayya.
A. Hanumantha Rao.

B. Annarami Ayyar.
Nandagiri Ramachandra Rao.
Kandadi Sreenivasa Charyudu.

Nellore, 15th Oct. 1919.

12. The meeting was held on 17th October. Mr. A. S. Krishna Rao presided. Fiery speeches were made by some of the Hindus, among whom were included the most prominent vakils who were taking a leading part in asserting the rights of the Hindus to take processions with music past the mosque. Mr. Annaswami Ayyar informed the meeting that the Government intended to reduce the Sultan of Turkey to a position approximating to that of the Raja of Pudukkottai. In giving evidence before me, Mr. Annaswami Ayyar said explicitly that his motive in taking part in this meeting was a purely political one, prompted by resentment at an Asiatic Power being expelled from Europe.

While the Muhammadans seem to have welcomed the presence of their Hindu allies, to lend greater weight to the meeting, they do not appear to have been under any illusion that their presence at the meeting was an earnest of amicable relations between the two communities in future. One Muhammadan witness says:—

“Mr. Annaswami Ayyar made a spirited speech saying that Government wants to make the Sultan into a kind of Raja of Pudukkottai, so all of us must write to request Government humbly to help Turkey. By Government I understand the British Government. I think the Hindus came to the meeting to express outward love to us. I think the love was not from their hearts. Muhammadans have no interest in Hindu shrines. I never thought that the relations between the Hindus and Muhammadans would be improved by these proceedings.”

13. As a matter of fact, the Hindus were already concerting measures to enforce their rights under the decree. A notice was issued, dated 16th October, signed by a number of the leading Hindus, including Mr. Annaswami Ayyar. The following is a translation of the Telugu notice:—

“Some have been standing in the way of the Hindus taking out their processions of all sorts along the public streets of Nellore, attended with music, according to the decree given by the District Munsif of Nellore. To discuss about this and to devise befitting ways of enforcing the rights of the Hindus, a meeting will be held at 4 p.m. on Sunday the 19th instant in the temple of Shri Kanyikaparameshwari in Stonehousepet.

All Hindus are invited to attend the meeting.”

Mr. A. S. Krishna Rao presided over the meeting.

The Town Sub-Inspector went to the meeting but was told by the Chairman to withdraw if he was there not as a Hindu, but in his public capacity. A report of the proceedings was prepared by a constable and head constable immediately after the meeting was over. A copy of this report is appended (Appendix I). Again, as at the Caliphate meeting, Mr. Annaswami Ayyar took a prominent part in the proceedings. He is reported to have said that “they should submit to any sentence that the Government may pass in case there should be rioting and that he was even prepared to undergo a sentence of transportation, and that he would lead the procession.” There was a “Moderate” party which was in favour of procrastination, on the ground that they should deliberate calmly before taking any action, and that there was no reason for a procession on the 22nd.

The witnesses examined by me say that extremist sentiments were confined to Mr. Annaswami Ayyar, but it is clear that whatever expressions were used by other speakers the great majority of the meeting was in favour of immediate and forcible execution of the decree. The Police report was written at 10–30 p.m. the meeting having lasted till 9 p.m. so that the events were perhaps fresher in the minds of the Police reporter than in the minds of the witnesses who appeared before me some three weeks afterwards. Moreover, in view of the riot which had occurred, and the loss of life, in consequence of the meeting it is natural that those who had attended it should be anxious to represent that the “Moderates” were in the majority.

Mr. A. S. Krishna Rao informs me that only two resolutions were actually passed at the meeting, the first of which was as follows:—

“The meeting resolves that a Hindu procession of Shree Kodandaramaswami in the Shree Anjaneyaswami temple, Rayajee Street, be taken with music in

conformity with the rights obtained by the Hindus under the decree, on 22nd instant (Deepavali festival) along the trunk road, old Post office road, Barracks bazaar, Iron Foundaries street, High road and back again to the temple."

The other resolution appointed certain persons to carry out the resolution. Mr. Annaswami Ayyar refused to be on the committee; because his view had not been accepted that no licence should be applied for and that the procession should be forced through even although the local officials should forbid it.

Mr. A. S. Krishna Rao says that several persons including himself urged postponement on the ground that the proposed procession was not a mamul procession, and that to hold the procession would prevent the reconciliation of the Hindus and Muhammadans, which he had been working for some time.

I may note, in passing, that the only positive reason which I can discover for fixing the procession for the 22nd October was that that day was the birthday of Mr. Y. Venkatchellam, the Pleader who conducted the civil suit, and one of the leaders of the Hindus throughout.

No Deepavali procession had ever been taken from the Anjaneyan temple of recent years, and no Hindu processions with music had ever passed along the Bazaar street before.

14. On receipt of the report of the head constable, the Sub-Inspector reported the substance of it to the Deputy Magistrate. He stated—

20th October 1919.

"If music is not stopped in front of mosques and if the Muhammadans object to that, there may probably be some trouble. Under the leadership and advice of the representative pleaders, the Hindus appear to have resolved to carry on the procession without ceasing music at any cost. I request that such action as you deem fit may be taken to prevent any breach of the peace and orders passed on the subject for the Police to act."

The District Magistrate (Mr. A. R. Nedungadi) was in camp, but returned on the evening of 20th.

The District Magistrate consulted the Government Pleader whether the Hindus should move the Civil Court which passed the decree for the execution of the decree, or whether they could execute the decree themselves in the manner (i.e., by force) reported by the Sub-Inspector and whether it could be allowed at any cost.

21st October 1919.

The Government Pleader replied: "The decree is one declaring rights and granting injunction restraining persons concerned from obstructing Hindus exercising their rights regarding processions covered by the decree. Such a decree does not require execution by Court before the rights therein declared can be exercised. It is only when the defendants have had an opportunity to obey the decree and they do not so obey that the Court can issue any orders, and then the only orders that can be passed would be for confining the defendants or obstructors in the Civil Jail (Vide Or. 21 R. 32, Civil Procedure Code).

It appears to me therefore that neither the defendants nor the Magistrates can object to the procession on the ground of want of execution through Court.

If the Magistrate apprehend any breach of the peace, the only course is to pass such orders under section 144, Criminal Procedure Code, as may be necessary either to help the procession or, if that is not possible, to stop it."

In the meantime a second report was submitted to the Deputy Magistrate by the Sub-Inspector of Police on 21st October that—

"Enquiries were made regarding the feelings of Muhammadans and I learn that no one comes forward to say that the Muhammadans are going to oppose or create disturbance. But the rumour goes to say that they may do some mischief. Nothing further definite could be reported at this stage."

15. On the same date (21st October) a petition was submitted by the Muhammadans to the District Magistrate to the effect that the Hindus had deliberately chosen the route so that they might pass as many mosques as possible, and prayed that the Hindus might be ordered to stop their music in front of the mosques, and a sufficient police guard posted to see that this was done.

The District Magistrate endorsed on this: "Forwarded to District Superintendent of Police for necessary action. The petitioners have been informed personally that the District Magistrate cannot prohibit any procession conducted in accordance with a Civil Court's decree, but that every arrangement possible will be done by the Police to see that none is allowed to commit any breach of the peace."

The next day the District Superintendent of Police requested the District Magistrate to direct the Deputy Magistrate to attend the procession as he apprehended trouble. This was forwarded to the Deputy Magistrate who was ordered to "be with the procession throughout and see that no breach of the peace takes place."

22nd October 1919 (9 a.m.).

16. In the morning of the 22nd, the District Superintendent of Police wrote to the District Magistrate that the Muhammadans were likely to cause trouble, as had been indicated by the fact that Vakil Mr. Y. Venkatachellam, one of the Hindu leaders, had been assaulted the previous night by Muhammadans, and requesting the District Magistrate to issue an order prohibiting Muhammadans from assembling in numbers of more than five along the route of the procession, between the hours of 1 p.m. and 7 a.m.

The Deputy Magistrate accordingly issued the necessary proclamation. The arrack and toddy shops were also ordered to be closed from noon.

22nd October 1919.

17. The procession started at about 2-30 p.m. from the temple. The witnesses differ a good deal in regard to the size of the procession. It seems, however, to have numbered more than 1,000, and possibly 2,000 or 3,000 persons. Some Pariahs armed with sticks are said to have been with the procession, though the evidence on this point is contradictory. The following Police escort accompanied it. In front of the procession were two Sub-Inspectors, two head constables and six constables. Behind were one Sub-Inspector, two head constables and ten constables. At the sides of the procession were two Sub-Inspectors, two head constables and 12 constables. Six more constables were posted in front of the mosques, and at the entrances of the side-streets. These were all Taluk Police, not armed with carbines, but only with batons. Some of the Sub-Inspectors carried revolvers.

In addition, a European Sergeant, one head constable and 20 constables of the Reserve armed with carbines were ordered to accompany the procession throughout. A European second-class Inspector, with a European Sergeant, 7 head-constables and 42 men were posted in the Barrack Square, with orders to move on by a by-street after the procession had passed the Barrack Square, and take up their position in front of the Police station in Bazaar street. These were all Reserve Police armed with carbines. There were thus in all 1 Inspector, 7 Sub-Inspectors, 14 head constables, 96 constables.

In addition, in front of the procession there were the Deputy Superintendent, the Town Inspector, the first-class Taluk Magistrate, and the Sub-Magistrate. The Deputy Magistrate, who had asked to be excused, as he was ill (he had recently had influenza and was still very weak and was suffering from piles); but the District Magistrate did not accept his plea, and directed him to be with the procession, offering him his motor car. The Deputy Magistrate preferred a jutka and took up his place in front of the procession which he joined opposite Sarishtadar Abboy Nayudu's house, some distance before the Barrack Square.

18. All went well till the procession reached the Bazaar street. It had passed one mosque before reaching Bazaar street, and no disturbance had occurred. When the procession was about 50 yards distant from Bhaskarla street (a side street running into Bazaar street) stones began to be thrown at it, and a body of Muhammadans, estimated between 30 and 50 men, ran out of Bhaskarla street. About six of them were armed with swords, some more had sticks, and the rest were throwing stones. The procession stopped. The Muhammadans assumed a defiant attitude, brandishing their swords and sticks, challenging the Hindus to fight, and throwing stones. Some lay down on the ground and made signs that they defied the procession to pass over their bodies. The Magistrates, the Deputy Superintendent and other officers accompanying the procession shouted out to them to desist, and told them to

go away without result. Stone-throwing continued, the Muhammadans making insulting gestures, and advanced a few yards nearer to the procession. They do not however, appear to have approached nearer than about 30 or 40 yards to the procession. This went on for 10 or 20 minutes when finding persuasion useless the first-class Taluk Magistrate and Sub-Magistrate asked the Deputy Superintendent to direct the Reserve to fire on the Muhammadans. The Police at the head of the procession could not have fired without risk of hurting the other people in the street, who did not belong to the rioter's party. The Deputy Superintendent despatched a constable via the Langarkhana street to tell the Reserve Inspector who was by that time drawn up with his men in front of the Police Station, about 75 to 100 yards from the head of the procession, to fire upon the Muhammadans to clear them out of the way. The Muhammadans had intervened between the Deputy Magistrate who was about 75 to 100 yards in front of the procession in his jutka and the Deputy Superintendent and other officers present with the procession assumed (incorrectly as it turned out) that he was not there at all. This explains why he did not take his orders before ordering the Reserve to fire and why the constable had no orders to consult the Deputy Magistrate, whose jutka was still near the Police Station. He delivered the message direct to the Sub-Inspector in charge of the Station, who communicated it to the Inspector.

19. The Inspector thereupon detached a Sergeant and 20 men to clear the Muhammadans away from the street by firing on them. The 20 men were formed into two lines of ten men in each, and were directed to fix bayonets and charge. They charged, but in a half-hearted way, and came to a standstill some 5 or 6 yards from the Muhammadans. Some of the latter seem to have been frightened into retiring up the street from which they had come, but others remained in the Bazaar street and one of them, a retired sepoy, in uniform, rushed forward and seized hold of the carbine of one of the reserve constables and tried to wrest it from him. Another constable then fired at him, and the constable with whom the sepoy was wrestling also fired and the sepoy staggered off and lay down on a pial. The Muhammadan died shortly afterwards. The Medical Officer who conducted the post-mortem speaks of scorching on the body, thus corroborating the fact that the shot was fired at a very short distance. This only infuriated the Muhammadans who became more aggressive, whereupon the Sergeant in charge of the party ordered some more men to fire, and the Muhammadans fled up the Bhaskarla street. The fire of the Police was directed diagonally across the Bazaar street, and judging from the bullet marks shown to me the shots seem to have gone right up Bhaskarla street. The Deputy Magistrate alighted from his jutka, and waved his arms and seems to have tried to pacify the mob, without avail. As soon as the firing began he drove off to the District Magistrate's house, which is about two miles away.

20. In the meantime a similar disorderly crowd of Muhammadans had come out of Janda street, just beyond the Police station, and the Inspector had fired on them to disperse them, carrying out the orders sent to him to clear the Muhammadans from the street by fire. One Muhammadan was killed here. A few Muhammadans seem to have also attacked the rear of the procession from Dadivari street, but they were few in number, there was no firing here and no serious casualties occurred at this point. The procession then moved up the Bazaar street and followed the route arranged without further interruption beyond occasional stone-throwing. Two Muhammadans were killed and one is in a precarious condition in the hospital. No serious injuries were received by any of the Hindus or Police officers.

21. The following questions naturally suggest themselves:—

- (1) Should the District Magistrate have permitted the procession to go past the mosque with music?
- (2) Should the District Magistrate or the District Superintendent of Police have been present themselves with the procession?
- (3) Could the Deputy Magistrate have done more to quell the riot?
- (4) Was the First-class Magistrate justified in ordering the Police to fire?
- (5) Was the firing continued longer than necessary?
- (6) Were the Police arrangements the best possible?

22. (1) *Should the District Magistrate have permitted the procession to go past the mosque with music?*—This has to be answered in the light of the previous history of the question in the district.

In 1912 the District Magistrate (Mr. Ramachandra Rao) issued a circular to all Magistrates directing the formation of conciliation boards to settle differences between Hindus and Muhammadans. In paragraph 5 he remarked—

“If the Board is unable to come to any unanimous resolution, the Divisional Magistrate will examine if there are any Civil Court decrees or panchayatnamas at least 50 years old governing the subject matter of differences. If so, these should be enforced.”

In the next year, however, the same District Magistrate was obliged to bring to the notice of Government the strange conduct of a District Munsif, who, in the District Magistrate's words “Without the slightest consideration of the difficulties the Magistrate had to undergo, granted the injunction. It had not the courtesy

Note.—This had the effect of cancelling the Magistrate's order under section 144, Criminal Procedure Code. The nazir of the Court sent special instructions to the process-server to publish the order before the 20th December. The

Court did all in its power to favour the Hindu party to facilitate their procession on 20th December.”

On a similar occasion in the same place in 1917, the Sub-Magistrate passed an order directing that a Hindu who wished to take a procession through the street should get a licence from the Police “in view of the past history of the place and the obvious existence of strong feeling on both sides.”

Thereupon the Subdivisional Magistrate passed the following order:—

“A decree having been passed, it was the obvious duty of the Magistrate and the Police to see the decree is carried out. The Sub-Magistrate's order is wrong, and the Deputy Superintendent of Police should have then and there enforced the decrees.”

The District Magistrate called on the Sub-Magistrate to explain “Why, in face of my orders, he gave orders in variation of the decree, or, if he considered the matter so serious, why he has not himself returned to Kandukur. The Sub-Magistrate should be called upon to explain why he passed a proceedings against the decree. Magistrates are expected to obey the law and not to act like cowards.”

I quote these orders to show that there was if anything a bias in the district in favour of taking risks where the decrees of Civil Courts were concerned. This may have had some weight in deciding Mr. Nedungadi to allow the procession, but what weighed with him most was paragraph 2 of G.O. No. 857 of 12th April 1919. This ran as follows:—

“As regards the future, all practicable assistance will be given towards the enforcement of the decree so long as it remains in force and can be given effect to without endangering the public peace, but no assurance can be given that the decree can be enforced in all circumstances. The local officers must have discretion to deal with exceptional conditions to the best of their judgment.”

He was also under the erroneous impression that the attendance of Hindus at the Caliphate meeting on 17th October indicated “feelings of brotherhood and good-will.” As I have shown above, neither party seems to have regarded the meeting in that light. It was a purely political demonstration. Accordingly on 21st he passed the order already quoted on the memorial of the Muhammadans in which he said that he “could not prohibit any procession conducted in accordance with a Civil Court's decree, but that every possible arrangement will be done by the Police to see that none is allowed to commit any breach of the peace.”

It seems strange that the Police were unable to obtain any definite information about the intentions of the Muhammadans. Their attacks were clearly premeditated and co-ordinated, and it should have been possible to get wind of them. In the absence of any such definite information, I do not think that any blame can attach to the District Magistrate for declining to stop the procession. It is, however, impossible that he can have intended that the decree should be enforced by bloodshed,

and it would have been better if he had instructed the Magistrates and Police that the procession should be stopped if serious rioting would result from persisting in it. I shall show below that this could have been done.

23. (2) *Should the District Magistrate or District Superintendent of Police have been present themselves with the procession?*—The District Superintendent of Police was suffering from serious heart trouble, and had applied for leave about a month previously, as he was confined to his bed by orders of the Doctor. He was permitted by the Inspector-General to remain on duty, and confine himself to dealing with his tappal. He was in bed for a month, and had only been allowed to get up two days before the riot. He is still unwell. In the absence, therefore, of the most positive information that serious trouble was anticipated, he was right to depute the Deputy Superintendent to take his place with the procession.

The District Magistrate was in Nellore, and had intended joining the procession, which seems to have started sooner than he expected.

I do not however think that it is advisable for the head of the district to intervene personally, and take matters out of the hands of his subordinates, unless the gravest trouble is anticipated, and then only as a last resort; because, if he fails, there is nothing to fall back upon. I have shown above that no definite information was available that any serious trouble was anticipated. It might be argued that the very large Police force deputed to accompany the procession showed that the Police were apprehensive, but I think that their intention was to overawe the turbulent elements by a show of overwhelming force, and that they did not expect any serious opposition. The District Magistrate was quite new to the district, does not know Telugu, and was probably personally unknown to the mob, and I doubt, therefore, if his presence would have had any pacifying effect. I therefore think that he cannot be blamed for not being with the procession, but perhaps, as his house is quite two miles from the Bazaar street, where, if anywhere, trouble would occur, he would have done well to have been in his office, which is close to the street, where he could have kept in touch with the state of affairs.

24. (3) *Could the Deputy Magistrate have done more to quell the riot?*—I have shown above that he was really physically unfit to go with the procession at all as he was too weak to walk. The irruption of the Muhammadans from Bhaskarla street, between him and the procession, prevented him from being in touch with the subordinate Magistrates and the Deputy Superintendent who were unable to see him, and thought that he had gone away altogether. Orders were communicated to the Reserve Inspector to fire on the Muhammadans without consulting him, and once firing had commenced, I much doubt if the Deputy Magistrate could have done any good by remaining in the street any longer. He was one of my Divisional Officers in the Gōdāvāri district and I formed a high opinion of him, and should certainly not describe him as wanting in moral courage. He is 56 years of age, having been granted an extension on account of his firmness in dealing with the situation in previous years, and had he been in good health, probably he would have tried to intervene personally and retrieve the situation. As it was, it was physically impossible for him to have forced his way through the mob to reach the scene of the firing nor were the Muhammadans in the mood to listen to reason when they had been fired upon and blood had been shed. I do not, therefore, think that he can be blamed for going straight away to tell the District Magistrate what had occurred.

25. (4) *Were the First-class Taluk Magistrate and the Sub-Magistrate justified in ordering the Police to fire?*—When the procession halted, the Muhammadans were fifty yards from the head of the procession. I paced the distance myself. It takes a fairly expert thrower to hit a man at this distance or even to throw a stone at all to carry so far as I found by experiment on the spot. Large stones, such as would inflict dangerous wounds, could not be thrown by an average man half this distance. At no time did the Muhammadans show signs of closing with the procession. That being so, and in view of the large police force guarding the procession in front, there was absolutely no danger to life to be apprehended on the part of the front of the procession from the Muhammadans. At this stage the proper course would clearly have been for the Magistrate to go forward alone and speak to the Muhammadans and warn them that if they did not disperse they would be fired upon.

Actually, neither the First-class Taluk Magistrate, nor the Sub-Magistrate nor the Deputy Superintendent of Police seems to have gone out in front of the procession to personally reason with and warn the rioters. They contented themselves with shouting at them from a distance of between 30 and 40 yards, and in the noise that was going on, it is unlikely that they can have made themselves heard. Failing this, an attempt should have been made to arrest the ringleaders of the rioters. The police force present was sufficient for the purpose, and the Muhammadans were shut in between the two bodies of police, viz. those at the head of the procession and the large force of reserve police drawn up at the police station. There were over 100 police present on the spot while the number of rioters between the procession and the police station was only 30 or 40. The Janda street rioters had not yet appeared on the scene. If both bodies of police had made a concerted rush on the rioters, they could have arrested many of them, when the others would have disappeared.

26. If the Magistrate and the Deputy Superintendent had, however, thought that this was impossible and that the Muhammadans could not have been cleared out of the street without firing, the proper course would have been to stop the procession and disperse it, proceeding afterwards against the rioters criminally, to deter them from a repetition of the offence. As remarked by Sir Charles Turner in the well-known Salem case (Madras VR 203) there is a distinction between primary rights and secondary rights, and the preservation of life and property is a primary right, while the right to go in procession through the public streets with music is a secondary right. Where the exercise of secondary rights creates such excitement that a large police force is required to assert it, "The Government is not bound to deprive some members of the community of the services of the force that is found necessary for the protection of their lives and property, to enable others to exercise a right which not only is not indispensable to life or to the security of property, but, in the case assumed, creates an excitement which endangers both."

In other words, the Government is not bound to denude any portion of the country of police necessary to protect life and property simply to enforce a secondary right, the right of procession.

A fortiori, it is no part of the duty of Government to shoot down one section of the population in order that another section may enjoy a secondary right, that of going in procession with music in a public place. Neither is it possible to say that firing was necessary in self-defence. "The right of self-defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence" (Indian Penal Code, section 99).

In the present case, there was no danger to life at this stage. The Muhammadans did not dare to attack the Police at close quarters. They had no firearms, and the distance from which the stones were being thrown was such that most of the stones did not even carry as far as the procession. Stones large enough to cause danger to life could not have been thrown so far. Why, then, was not the procession stopped?

27. The First-class Magistrate says that he was not under the impression that the procession was to be forced through at all costs, and that it was impossible to disperse the procession, because the rear of the procession was being attacked by Muhammadans, and because the Hindus composing the procession would not have dispersed.

In spite of his denial, I think that it is extremely probable that he was under the impression that he was expected to carry the procession through and would be found fault with if he failed to do this, and in fact his conduct can only be explained by this supposition. I have shown above that the District Magistrate himself was under the impression that the Government Order of 12th April 1919 laid that duty upon him and it is therefore even more probable that the subordinate Magistrates were of the same opinion. It was not at all impossible to disperse the procession. In the first place, I am not satisfied that it was impossible for the rear-guard of police to have cleared away the few Muhammadans attacking the back of the procession, so that the procession could have been dispersed by that road. Failing that, a reference to the plan attached to this report shows that the Hindus could have been sent away down the Langarkhana street, which was not in the occupation of the

Muhammadans, as is shown by the fact that the constable who was sent to tell the reserve police to fire had no difficulty in going to the police station by that way. It is not on the Muhammadan side of bazaar street, nor was it occupied by Muhammadans during the riot.

I do not believe that the Hindus would have refused to disperse if ordered to. There is evidence that the procession was spontaneously showing signs of breaking up. Witness Hassan Khan says "Some vakils and clerks in the offices wished to go back. The Inspector and some other people said 'We will protect you, come on with us'."

Witness P. Subbiah maistri says "I did not run away, because the police asked us to stop." The unanimity with which all the officials say, in face of the clearest evidence to the contrary, that it was absolutely impossible to have stopped the procession or dispersed the Hindus is suspicious, and shows that they regard this as the weakest point about their case. It is quite obvious that no official in the procession ever really thought of stopping the procession as a possible alternative, obsessed as they were with the idea that the procession had to be forced through at all costs.

28. It would have been better if the Magistrate had simply authorised the police to use whatever means they thought fit to disperse the rioters, instead of ordering them to fire. There are other means of dispersing mobs than by firing on them. It is true that the bayonet charge made by the police failed, but this was, because it was not pressed home. The charge stopped at a distance of about six yards from the rioters. Even so, many of the rioters seem to have been driven back into the Bhaskarala street. The fire of the police was directed westwards up Bhaskarala street, which shows that all the Muhammadans were at that time in Bhaskarala street, or close to the entrance to it. A determined bayonet charge would unquestionably have cleared them all out. I may, in passing, allude to the fact that baton charges do not seem to be resorted to by the police in such cases. I am told that the police are not taught to regard their batons as weapons of offence. A baton charge is the natural method of dispersing a disorderly, but for the most part, unarmed mob. It effects the purpose of clearing the street without bloodshed, which inevitably rouses the deepest and most enduring resentment. The funeral procession which followed the riot will be long remembered and will embitter the relations of the two communities for generations. It would be well if the police were taught to regard the baton as their first and most natural weapon for dealing with mobs. Firing should be the last resort.

29. I therefore find that—

(1) The Magistrate should have made some attempt to personally reason with the rioters and warn them that firing was about to be ordered if they persisted in their unlawful actions.

(2) That an attempt should have been made to arrest some of the ring-leaders before going to the extremity of firing on them.

(3) That if both these courses were considered impracticable, the procession should have been stopped, and the people composing it should have dispersed.

At the same time, Government will no doubt give the Magistrate credit for moral courage in ordering the police to fire, having in view the frame of mind in which all the officials were. Very many men of his class would have lost their heads altogether, and allowed the situation to drift into a much more serious stage, when both mobs might have become mixed up, when greater loss of life would have occurred.

30. (6) *Were the police arrangements the best that could have been done?*—A reference to the plan shows that the streets chiefly inhabited by the Muhammadans are all to the west of the Bazaar street. Although there are three mosques in the Bazaar street, practically all the shops and houses are owned by Hindus. The direction from which danger was to be apprehended was, therefore, from the streets to the west of Bazaar street. That the people realised this is shown by the fact that two or three constables were posted to watch these streets. It would have been better if the large police force available had been posted in these streets, to prevent

the Muhammadans from coming out of them to attack the procession. Prevention is better than cure. There are only three small lanes, and one alley to be guarded and a strong guard posted in these places would have warded off any attack.

Having received positive orders from the Magistrate to fire, the police cannot be blamed for carrying them out. It is to their credit perhaps, that they tried a bayonet charge first. That having failed, they could not do otherwise than carry out the order to fire, and once firing had begun, it was necessary that it should be continued till it had effected its purpose. The firing was well controlled, and was not continued longer than necessary.

APPENDIX

(1)

To the Sub-Inspector in charge of the Nellore town.

In obedience to your orders directing me to watch the proceedings of the meeting held to-day at the Kanyikaparameswari temple in Stonehousepet I was in mufti and observed the proceedings. Amancherla Krishna Rao presided over the meeting. This meeting was attended by traders, vakils and other Hindus and consisted of about 300 persons. Among vakils the principal speakers were—Y. Venkatachalam, Annaswami Ayyar, Voruganti Venkatasubbayya Acharlu of Ranganayakulapeta and Amancherla Krishna Rao. Of the traders Pratti Sreeramulu and Bachu Venkatasubbayya spoke. They resolved that a procession should be taken out from the Anjaneyaswami temple in the Rayaji street at 2 p.m. on the 22nd instant, that music should not be stopped anywhere on the route, that it should not be stopped even if the Muhammadans should object, that all should co-operate and take out the procession without losing courage with an endeavour that the Collector should be petitioned to two days before the date of the procession, that the traders jointly bear the cost whatever it may be and that the vakils should plead without fees. Annaswami Ayyar told that they should submit to any sentence that the Government may pass in case there should be a rioting and that he is prepared even to undergo a sentence of transportation and that he would lead the procession. Pratti Sreeramulu Chetti said that he would finance to whatever extent is required. Bachu Venkatasubbayya told that they should not be rash, that they should calmly deliberate before taking any action, that there was no reason to take out a procession on the 22nd following, that it would be better to take out a procession on some proper occasion, that the procession on the 22nd would be interpreted as one for courting quarrels and that it would be better to wait till the disposal of the appeal. Vakil Sivaramayya was also of the same opinion and advised them not to be rash. Annaswami Ayyar and Y. Venkatachalam Pantulu that it should be done in the heat of the moment and that there should be no delay. They finally resolved to do things even if officials do not turn up. I submit this for your information. The meeting went on till 9 in the night.

Begging to be excused.

19th October 1919, 10-30 p.m.

Sir,

Of the facts reported above I heard a portion. It is a fact that they took place.

Head constable (47).

II

Memorandum No. 4266 B-1, Home (Judicial), dated 19th January 1920.

In connexion with the riot which occurred in Nellore on the afternoon of the 22nd October 1919, the Inspector-General of Police is requested to submit to Government at a very early date a copy of the report of the departmental inquiry which, it is understood, was made by the Deputy Inspector-General, together with the Inspector-General's own remarks. The Government desire to have in respect of the police officers concerned (including the Deputy Superintendent) a definite statement as to the part taken by each in the suppression of the disturbance.

2. The Inspector-General's opinion is specially required on the questions (1) whether the street could not have been cleared without firing and (2) why the attempted bayonet charge was unsuccessful and (3) whether in the circumstances the

police were bound to carry out the literal order to fire or whether they should not have used their discretion as to the best means of clearing the street.

R. RAMACHANDRA RAO,
Secretary to Government.

To the Inspector-General of Police.

III

Memorandum No. 4266 B-2, Home (Judicial), dated 6th February 1920.

The Government have gone through the report submitted by the Hon'ble Mr. Couchman on the riot which occurred at Nellore on the 22nd October 1919, and find that it does not afford a sufficiently complete and definite review of the circumstances to allow of final orders. Mr. Couchman is therefore requested to proceed to Nellore at a very early date and conduct a further investigation on the spot and make a further report on the incident with special reference to the questions noted below. He will also procure and submit for inspection a copy of the Munsif Court's decree and a copy of the appeal petition pending in the District Court:—

- (1) whether the procession organised had any religious significance;
- (2) whether there is any precedent for a procession from the particular temple in question and, whether the route taken was that commonly adopted on similar occasions;
- (3) whether there is any truth in the allegation of the Muhammadans that the District Magistrate said openly that he was going to carry the procession through, even if he had to shoot some Muhammadans in doing so;
- (4) whether in view of the intentions of the Hindus and of the attitude of the Muhammadans, the District Magistrate should not have bound over the ring-leaders of both parties;
- (5) whether the District Magistrate's order to, and treatment of, the Deputy Magistrate were proper;

(Note.—The whole sequence of the District Magistrate's orders to the Deputy Magistrate and of the latter's action on the day of the riot should be elucidated.)

(6) which Magistrate was in actual charge of the procession, who gave the orders to fire, what were the circumstances which seemed to him to justify firing, and to whom was the order given;

(7) whether the prescribed procedure relating to orders for firing was strictly observed by the magistracy and the police;

(8) what were the circumstances that accompanied the actual firing and how many rounds were fired;

(9) whether it is a fact that after the firing the Muhammadan houses were looted and their tombs and mosques dishonoured; and

(10) whether the police were justified in the circumstances in carrying out the order to fire. (This point should be answered in consultation with the Inspector-General of Police.)

Note.—The procession was about 2,000 strong and the police numbered 118 men as against a handful of 50 Muhammadans only one of whom had any arms—a sword.

R. RAMACHANDRA RAO,
Secretary to Government.

To the Hon'ble Mr. M. E. Couchman, I.C.S., Member, Board of Revenue.

IV

Letter—from the Hon'ble Mr. M. E. COUCHMAN, I.C.S., Second Member, Board of Revenue and Commissioner of Land Revenue.

To—the Secretary to Government, Home (Judicial) Department.

Dated—Madras, the 23rd February 1920.

I have the honour to submit my reply to Memorandum No. 4266-B/2, dated the 6th instant, from the Home Department.

Copies of the Munsif's Court decree and the appeal petition pending in the District Court are enclosed.

The questions which I am required to answer are as follows:—

(1) Whether the procession organised had any religious significance?—

Deepavali means a collection of lights. It is the festival which commemorates the destruction of Narakasura by Krishna and the essential portion of the festival is the illumination which is customary in private houses and temples. It is said that only Vishnu temples have processions on Deepavali day. The Anjaneya temple is a Vishnu temple. The evidence whether such processions are obligatory is conflicting. One witness says that processions are obligatory for all Vishnu temples on Deepavali day, but all agree that there had never been any Deepavali procession before from the Anjaneya temple. Moreover, the Deepavali processions should be at night, inasmuch as illuminations are the chief feature of Deepavali celebrations. The procession on 22nd October 1919 was in the early afternoon, starting about 2 to 2-30 p.m. As already reported, the real reason why a procession was conducted on that day was, that the Hindus had resolved on having a procession to assert their rights declared by the Civil Court and that the 22nd October was the birthday of M.R.Ry. Venkatachellam, the pleader who filed the civil suit to establish the right of the Hindus to conduct processions with music throughout all streets of the town, without stopping the music in front of mosques. Although, therefore, all Hindu processions on Deepavali day have some religious significance, the motive which prompted the procession on 22nd October 1919 were not primarily religious. It was also specially arranged for at the meeting of the Hindus on 19th October as a demonstration in force of the rights of the Hindus as declared by the Civil Court.

(2) Whether there was any precedent for a procession from the particular temple in question and whether the route taken was that commonly adopted on similar occasions?

As reported in paragraph 13 of my former report, Mr. A. S. Krishna Rao has stated that this was not a mamul procession. Objections to its taking place on this day on the ground that there was no reason for a procession on that day had been raised at the meeting of 19th October. There was no precedent for a procession on Deepavali day from the particular temple. The route via Bazaar street is occasionally followed by some Hindu processions, but music has been invariably stopped at a distance from the mosques, and not resumed till after the mosques have been passed. The Manager of the Anjaneya temple says that they had never taken the procession from that temple to Bazaar street even in the years in which Dasara and Muharram did not coincide. Hindu processions more commonly confine themselves to the Brahman quarter of the town.

(3) Whether there is any truth in the allegation of the Muhammadans that the District Magistrate said openly that he was going to carry the procession through even if he had to shoot some Muhammadans in doing so?

On 21st October the Muhammadans presented a petition to the District Magistrate protesting against the proposed Hindu procession as they apprehended danger to themselves. They also prayed for a police guard to make the Hindus stop music before the mosques.

The District Magistrate made the following endorsement on it:—

“Forwarded to the District Superintendent of Police, Nellore, for necessary action.

“The petitioners have been informed that the District Magistrate cannot prohibit any procession conducted in accordance with a Civil Court's decree, but that every arrangement possible will be done by the police to see that none is allowed to commit any breach of the peace.”

The District Magistrate does not know Telugu, he therefore asked two Brahman pleaders who were present before him in connexion with some other business to translate the orders to the Muhammadans. I have examined one of these pleaders, and he denies having told the Muhammadans that they would be shot if they resisted the procession.

On the other hand, one Abdulla Khan who was examined by me on the previous occasion, says “I took a memorial to the Collector about the Hindu procession. I gave it to him at 5-30 p.m. He read it and said something in

English to two pleaders of Ranganayakulupet and they translated his orders in Telugu to me 'we have allowed Hindus to take the procession with music before the mosques. You must not obstruct the procession or you will be shot.' I don't know Telugu well and do not know exactly what the pleaders said."

The District Magistrate absolutely denies having ordered any such threat to the petitioners and I have no hesitation in accepting his word. It is not possible to say what the Telugu words were which were used by the pleaders in translating the District Magistrate's orders to the Muhammadans.

(4) Whether in view of the intentions of the Hindus and of the attitude of the Muhammadans, the District Magistrate should not bind over the ring-leaders of both parties?

The District Magistrate writes as follows:—

"No. This was not a case for binding over parties under section 107, Criminal Procedure Code. The Hindus were carrying a procession in the exercise of their rights recognised by the decree of a civil court, and it was the duty of the Magistrate to help them as far as possible and not to prohibit them from doing it—vide case reported in I.L.R., VI Madras, 203, at page 221, and in this particular case there was the distinct order of Government that 'for the future all practicable assistance would be given towards the enforcement of the decree so long as it remained in force and could be given effect to without endangering the public peace'—vide G.O. No. 857, Home (Judicial), dated the 12th April 1919. As stated in paragraph 3 of my report No. 1951, dated the 24th October 1919, there was no Muhammadan festival of any kind on the 22nd and it was only 5 days previously that the Hindus and Muhammadans expressed feelings of brotherhood and good will at the Caliphate meeting. There was therefore no ground to bind over the Hindus.

"As for the Muhammadans there were no accredited leaders among them to proceed against and who would quiet the others if action was taken against them, and if I were to take proceedings under section 107, Criminal Procedure Code, I should have done it against all Muhammadans in the town, which was impossible. Besides, the Muhammadans did not openly assume a defiant attitude till the last moment, but only stated that the Hindus were going to create a breach of the peace and only wanted protection from them. In these circumstances I thought that an order under section 144, Criminal Procedure Code, was the proper order to pass against them and I had it passed. I thought that the precautions I had taken were enough to avoid the two communities from coming into contact during the procession and avert a breach of the peace."

The District Superintendent of Police writes as follows:—

"(a) There was no possible legal case to bind over the Hindus who had been given a licence for this procession.

(b) *Muhammadans*—

(1) There was up to the very moment of the riot no indication that any riot was anticipated.

(2) Had it been thought necessary to bind over Muhammadans the licence to carry out the procession enforcing the terms of the Civil Court decree could not have been granted under G.O. No. 857.

(3) There are no Muhammadan leaders in the real meaning of the term and it would have been necessary to bind over practically *every* Muhammadan."

Their replies are conclusive. Had there been any ground for apprehending a serious disturbance, the proper course would have been to prohibit the procession altogether under section 144, Criminal Procedure Code. There was no ground for the District Magistrate to bind over the leaders of either party.

(5) Whether the District Magistrate's order and the treatment of the Deputy Magistrate were proper?

Note.—The whole sequence of the District Magistrate's orders to the Deputy Magistrate and of the latter's action on the day of the riot should be elucidated.

Above 9 a.m. in the morning of 22nd October the Deputy Magistrate wrote the following demi-official to the Sub-Magistrate:—

“As a procession of Sri Anjaneyaswami’s temple of Rayaji street is taking place to-day from 2 p.m. you are requested to be present at the procession with the police. As I am unwell I am not able to attend the procession.”

The Sub-Magistrate replied in the following letter:—

“It appears that one of the principal leaders of the Hindu community Mr. Y. Venkatachellam Pantulu, B.A., B.L., was severely beaten by a Muhammadan last night at about 7-30 p.m. and that the offender ran away. This, I take, to be a premonitory symptom that there is every likelihood of a breach of the peace taking place unless strong measures are taken to prevent it. As you say that you are not able to be present at the procession on account of illness, I request that you will be pleased to address the District Superintendent of Police and the District Magistrate to attend the procession with sufficient force. I will be present at the procession as directed.”

The Deputy Magistrate forwarded this in original to the District Magistrate with the following endorsement:—

“Submitted to the District Magistrate for favour of information. If occasion requires I shall send for you and the District Superintendent of Police.”

The District Magistrate replies as follows:—

“I cannot accept your plea of illness. You must be present throughout the procession and see that no breach of the peace takes place.”

The action of the Deputy Magistrate on the day of the riot has been detailed in paragraphs 17, 18, 19 and 24 of my former report.

I do not consider that the order of the District Magistrate to the Deputy Collector was improper, nor was his treatment of him improper. I do consider that it was tactless and inconsiderate. The procession was an organised demonstration of the right of the Hindu to play music when passing the mosques. The Deputy Magistrate had, in previous years, passed orders under section 144, Criminal Procedure Code, to prevent this being done. His action had been bitterly attacked by the Hindus, but had been upheld by the High Court and Government. It was, therefore, tactless of the District Magistrate to order the Deputy Magistrate to personally enforce the decree against his co-religionists.

It was a fact that the Deputy Magistrate was not in a fit condition to conduct the procession. It was therefore inconsiderate of the District Magistrate to have ordered him to do so.

The District Magistrate no doubt considered the presence of the Deputy Magistrate indispensable, as he (the Deputy Magistrate) possessed some influence with the Muhammadans, and therefore his action in insisting on his attending the procession is excusable, though in my opinion it was an error of judgment.

(6) Which Magistrate was in actual charge of the procession, who gave the orders to fire, what were the circumstances which seemed to him to justify firing, and to whom was the order given?

The Deputy Magistrate had been directed to be present with the procession, but had reported his inability to do so, owing to illness, and had directed the Sub-Magistrate to conduct the procession instead of him but the Taluk First-class Magistrate was actually in charge of the procession. In order to obey the District Magistrate’s order, the Deputy Magistrate went in front of the procession in a jutka, but the First-class Taluk Magistrate was actually in charge of the procession and was walking with it, between the Reserve Police and the actual procession. He gave orders to the Deputy Superintendent of Police to clear the mob from the street by firing on them. The Deputy Superintendent sent word accordingly to the Sub-Inspector of Police Station who communicated the order to the Reserve Inspector, who, in turn, issued orders to Sergeant O’Brien who led the party which fired the first shots.

The First-class Taluk Magistrate in his deposition taken by the District Magistrate on 22nd October immediately after the riot says—

“Somewhere near the house of the Deputy Magistrate the procession stopped and the Muhammadans, about 30 or 40, took up a position in the Bazaar street and began to pelt stones and were brandishing their sticks and showing their strength and determination to attack the procession. We did not know how many there were behind them. I waved my revolver at the Muhammadans and asked them to clear out, but they would not do it, and began to approach us. The Hindu procession began to become restive. If we had not, at that stage, taken action, chaos would have ensued and anything would have happened. I gave sufficient time to the Muhammadans to change their mind but they became more defiant. Till we reached this point, there was no pelting of stones to my knowledge. Then I gave the Deputy Superintendent (orders) that he might clear the Muhammadans (away) by fire”.

In the statement recorded by me he says: “I apprehended a collision unless the mob was fired on”.

As explained in paragraphs 25 and 26 of my former report, the proper course would have been for the Taluk Magistrate to go forward and speak to the Muhammadans and warn them that they would be fired on if they did not disperse. The Taluk Magistrate was behind the body of Reserve Police, and in the uproar which was taking place it is unlikely that the Muhammadans heard his voice when he called on them to disperse and warned them that they would be fired on if they did not disperse.

If he had done so, and the Muhammadans had still remained obdurate, he should have dispersed the Hindu procession. In paragraph 27 of my former report I have shown that the procession could have been dispersed, if it had occurred to him to order it to disperse. I have in the same report given my reasons for thinking that the idea of dispersing the procession never occurred to him.

(7) Whether the prescribed procedure relating to orders for firing was strictly observed by the Magistrate and the Police?

The general procedure guiding Magistrates in dealing with unlawful assemblies is laid down in sections 127 and 128, Criminal Procedure Code, which are as follows:—

“127. (1) Any Magistrate or officer in charge of a police station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) This section applies also to the police in the town of Calcutta.

128. If, upon being so commanded any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police station, whether within or without the presidency towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in His Majesty's Army or a volunteer enrolled under the Indian Volunteers Act, 1869, and acting as such, for the purpose of dispersing such assembly, and if necessary, arresting and confining the person who form part of it, in order to disperse such assembly or that they may be punished according to law.”

Although it would have been better had the Magistrate in charge of the procession gone forward in front of the Police and personally warned the rioters at close quarters that they would be fired on if they did not disperse, he did warn them, and several warnings were issued by the Police and there can be no doubt that the Muhammadans had ample notice that they were going to be fired upon.

The mob refused to disperse, and under section 128, Criminal Procedure Code, only such force as was necessary to disperse the mob was used. So far as the Magistrate's procedure is concerned, therefore there was no irregularity. As will be seen below, the rioters were also repeatedly warned by the Police.

The rules regulating the firing on mobs are contained in section 142 of the Drill Manual and are as follows:—

SECTION 142 OF DRILL MANUAL.

Rules regulating the circumstances and manner in which the Police may fire upon crowds during riots or other disturbances of the peace.—(1) When a Police party is formed for dispersing an unlawful assembly, it should be numbered and told off into two or more sections, if the size of the party and the time available admit of it. Bayonets must be fixed as soon as possible.

(2) All commands to the Police are to be given by the officer in command of the party. The Police are not, on any account, to fire excepting by word of command of their officer, who is to exercise a humane discretion respecting the extent of the line of fire.

(3) As soon as he thinks it may be necessary to resort to the use of firearms, the Officer in command will give the order to load, with buckshot or ball according to his discretion, or some files with buckshot and others with ball, and will bring the men to the loading position. This will prevent the party being rushed while the crowd is being warned.

Note.—Blank cartridge is never to be served out to a Police party detailed for the suppression of a riot.

(4) In order to guard against all misunderstanding, officers commanding Police parties are, on every occasion when employed in the suppression of riots or enforcement of the law, to ensure that the fullest warning is given to the mob before any order is given to fire and to take the most effectual means to explain beforehand to the people opposed to them that in the event of the Police party being ordered to fire, their fire will be effective.

(5) If after being warned, the mob refuses to disperse, the order to fire may be given. If the Officer in command of the party is of opinion that it will suffice, he will give the order to fire to one or two specified files only. If, however, he considers that this will be insufficient, he will give the word of command to one of the sections told off as above, the fire of the other sections being held in reserve until necessary. The fire of each section will be given by the regular word of command of the Officer in charge of the party.

(6) Under no circumstances should a warning shot be fired in the air, nor should the fire be directed over the heads of the crowd. The greatest care shall be taken not to fire upon persons separated from the crowd. Firing should cease the instant that it is no longer necessary.

(7) Files or sections ordered to fire shall reload immediately after firing without further word of command until the order to cease firing is finally given."

Section 142 (1).—The District Superintendent of Police reports:—

"The police from which firing parties were formed, viz., 1 Inspector, 7 head constables and 42 constables were formed of in two sections before proceeding to the police station."

Bayonets were also fixed by the Police before advancing towards the mob.

Section 142 (2).—The District Superintendent of Police reports:—

"All commands were given only by officers in charge of the parties, by Reserve Inspector to north of station and Sergeant O'Brien in charge of the party to the south of the station. A humane discretion was exercised as evidenced by the casualties and by the evidence that firing ceased directly the mob started to disperse."

As explained in paragraph 19 of my former report, the first shots were fired before the order to fire was given. A Muhammadan rioter had rushed forward and seized the carbine of one of the Police constables, which went off in the struggle. The constable next to the one whose gun had been seized by the rioter also fired at the rioter before the Sergeant in charge gave the order to fire. These two shots were precipitated by the attack made by the rioters; one was accidental and the other seems to have been fired to rescue the constable from the rioter who was attacking him. This was occasioned by the wanton attack made on the constable by the mob, which had seen the constables load their carbine and know that they were ready to fire. The Muhammadans thereupon became more aggressive and the Sergeant in charge rightly gave orders to fire.

Section 142 (3).—The District Superintendent of Police writes :—

“ This was carried out, viz., (two files buckshot, remainder ball) directly after they had received the Magistrate's orders to fire and had charged down on the mob, and the latter refused to move.”

Section 142 (4).—“ The reserve party which fired were standing in front of the police station for quite ten minutes during the whole of which time they were being pelted with stones and during this time both Inspector and Sergeant warned them (the Muhammadans) and shouted at them (the Muhammadans) to disperse. Again, when this party was split up, their commanding officers, viz., Inspector and Sergeant both again warned the mob to disperse before they actually fired.”

Section 142 (5).—“ This was carried out, the order being first given to fire on files, and this proved ineffective.”

Sections 142 (6) and (7).—Were also carried out.

(8) What were the circumstances that accompanied the actual firing and how many rounds were fired ?

The circumstances that accompanied the actual firing have been described in paragraph 19 of my previous report. In all 25 rounds of buckshot and 15 of ball were expended.

(9) Whether it is a fact that after the firing the Muhammadan houses were looted and their tombs and mosques dishonoured ?

The District Superintendent of Police says that only two cases were reported at the Police station. Of these one was found false after inquiry and one was refused investigation, as the property was largely exaggerated and was unidentifiable. When I visited the Jama Masjid on the occasion of my first inquiry I was shown some slight damage to a few tombs situated inside the compound of the mosque, but no evidence was recorded on this point.

(10) Whether the Police were justified in the circumstances in carrying out the order to fire ?

The District Superintendent of Police reports on this as follows :—

“ The Police, viz., Reserve Inspector and Reserve Sergeants had no option in the matter. They had received an order from the Magistrate to disperse the mob by fire and they were bound to carry out that order subject to the condition of exercising a humane discretion. This latter point is shown as having been obeyed.

7. (b) *It is noted that 118 Police were required to deal with mob of 50.*—The Police force consisted of distinct force, viz., 1 Inspector, 1 Sergeant, 7 head constables, and 42 men A.R. (1), 1 Sergeant, 1 head constable and 20 men A.R. (2), 1 Deputy Superintendent, 3 Inspectors, 6 Sub-Inspectors, 6 head constables and 34 men taluk police.

To deal with Taluk Police.—(a) Two Sub-Inspectors, 2 head constables, 6 men were in advance of procession and when they passed Bashkarla street there were no signs of disturbance. Then the disturbance broke out and they were cut off.

(b) Six constables were at 3 mosques, 1 mosque was away from the scene (= 2 men). Remaining 4 constables were pelted with stones and had to retire at the other two mosques.

(c) In rear was 1 Sub-Inspector, 2 head constables and 10 men. The rear was open to attack from Muhammadan quarters and had already had one attempted attack on it. These men could not be taken from the rear.

(d) Two Sub-Inspectors, 2 head constables and 12 men were on each side of procession (i.e., 1 Sub-Inspector, 1 head constable, 6 men on each side) spread over a distance of some 110 yards, i.e., about 20 yards per man and their presence was necessary in quieting the procession and keeping the members thereof in order and preventing the more unruly elements from breaking out.

This disposes of the 34 taluk men and there was no sufficient force for taking any step but to fall back on the Reserve or Emergency force.

This force then had to be called in and being a semi-military force no action could be taken which would tend to break its ranks or to further split it up, into small bodies which might be overwhelmed.

(a) The force of 1 Sergeant, 1 head constable and 20 men could not fire down the street for fear of injuring innocent persons and was retained further to protect the head of the procession.

(b) The main body was therefore called upon to deal with the mob, i.e., a force of 1 Sergeant, 1 Sub-Inspector, 7 head constables and 42 men.

It would appear that the mob which consisted of two mobs and attacked almost simultaneously both north and south of Police station consisted of more than 50 each. Only some 50 are stated to have come out into the main street but the lanes behind them leading from the Muhammadan quarters were as the trend of the evidence shows also full of men.

The Inspector-General of Police tells me that the Reserve Police cannot arrest rioters. They are only allowed to act as a compact Military force. The suggestion, therefore, made in my original report that the Police could have tried to arrest the rioters was impracticable. For the same reason, the Reserve Police could not have been employed to block up the side lanes as this would have involved breaking them up into small units. The Police were right in carrying out the orders of the Magistrate to fire.

The Inspector-General of Police has seen this reply to question No. 10 of the Government Memorandum. He informs me that it coincides with his own views, but adds "I do not think that the Police were bound to fire because they had been ordered to, but they obviously could not help doing so under the circumstances."

ENCLOSURES.

(i)

Petition—from the Muhammadans of Nellore.

To—the District Magistrate, Nellore.

Dated—the 21st October 1919.

1. That the Hindus of Nellore convened a public meeting on the 19th current and held it in the Nababpet temple wherein they have resolved to take out a procession on Thursday, the 22nd current from the temple in Rayaji street at 2-30 p.m. via Rayaji street, Achari street, round the Barracks mosque into the Bazaar street and turning at the Sikharamvari street again pass into the Achari street and get off. Along this route, there are not less than four mosques and the Hindus have determined to pass the said mosques with music.

2. That there has been to our recollection no such procession ever taken out on the Deepavali day from the Anjenaya temple in Rayaji street, and it has never as yet passed in procession along the route now devised.

3. That the organisers thereof have devised it deliberately with the purpose of causing hurt to the religious feelings of the Muhammadans, your honour's petitioners, and have deliberately chalked out this route with intent to pass along the locality mostly inhabited by Muhammadans so as they may pass as many mosques as they can, with music flagrantly exciting and violating the religious feelings of the Muhammadans.

4. That the Hindus have further taken steps to see that the procession is several thousands strong and that it is also strengthened with the help of hired rowdies from Kappadipalem, Christophalem, etc., and that therefore they are bent upon creating not only a very embarrassing situation for the Muhammadans but also to cause a general attack on them on the slightest pretext whatsoever.

5. That your Honour's humble petitioners are afraid that during the hours 2-30 p.m. to 5 p.m. when the procession is arranged to pass along the abovementioned route when the Muhammadans are engaged in going to and from their mosques and along the roads, they will be attacked and their lives jeopardised and that further they are afraid of a general massacre on them and their families.

6. In the interests of peace and safety of their lives and the lives of their families your Honour's humble petitioners most humbly pray that your Honour may be graciously pleased to take such proceedings as may be necessary to avoid the execution of the mischievous designs contemplated by the Hindus and in view of the fact that the taking of a procession from that particular temple on that particular day and time and along the particular route is novel and specifically designed with deliberately mischievous object. Your Honour will be pleased to direct that the procession shall not pass along that route without stopping music before the mosques along the route and that sufficient police guard might be kept to see that your Honour's orders are carried with effect.

(ii)

IN THE COURT OF THE DISTRICT MUNSIF OF NELLORE.

Wednesday, the 2nd day of October 1918.

Present.—M.R.By. P. VENUGOPAL NAYUDU GARU, B.A., B.L., District Munsif.

Original Suit No. 980 of 1917.

BETWEEN—

Plaintiffs

Defendants

- (1) Chundurur Kami Chetti (died), (2) Prathi Sreeramullu Chetti, (3) Bommi Chetti Lakshminarasimbhulu Chetti, (4) Tangirala Penchalayya, (5) Jaladanke Sreeramulu Chetti, (6) Peduru Varadayya Chetti, (7) Pothuru Subbayya Chetti, (8) Ayinala Parthasarathi Chetti, (9) Konjeti Seshachelam Chetti, (10) Gaddem Venkatasubba Reddi, (11) Soori Chetti Krishnayya, (12) Bomma Chenchu Obulu Chetti, (13) Sivapuram Venkatasubbayya, (14) Duvvuru Krishnama, (15) Mallembaka Narasimbhulu, (16) Pasupuleti Venkata Subbayya, (17) Konjeti Sreeramulu Chetti, (18) Veeri Chetti Seetharamayya, (19) Gunupati Nammalvaru, (20) Mekarasu Subbu Singh, (21) Galla Rangayya, (22) Kanchi Venkata Subbayya, (23) Vinnakota Venkata Subbayya, (24) Arra Brahmayya, (25) Nandavanam Kondayya. Supplemental:— (26) Gunupati Bala Venkata Subbayya, (27) Narayanam Ramayya Chetti, (28) Penubolu Balayya Chetti, (29) Munjuluru Chinna Penchalu, (30) Ijarla Seshayya, (31) Galla Subbayya, (32) Dasari Yanadi Chetti, (33) Natha Namberumallu, (34) Parithala Chinna Narasayya, (35) Bhuma Seshayya, (36) Ishtam Chetti Rangayya, (37) Peram Chetti Venkatasubbayya, (38) Pamuru Sath Gurumurthi, (39) Kalpam Venkayya, (40) Kalpam Siddayya, (41) Thatamki Venkatasubbayya, (42) Pilla Venkayya, (43) Vallam Chinnayya, (44) Yadla Veeraswami, (45) Thatamki Ramaswami, (46) Cherukumoodi Venkayya, (47) Kappuram Raghavulu, (48) Yenumula Subbayya, (49) Kotte Ramachendrayya, (50) Neeli Subbarayudu, (51) Bhodigela Ramayya, (52) Kanchi Ramayya, (53) Pasupuleti Ramaswami, (54) Thandu Subbayya, (55) Kotte Narayanaswami, (56) Balaji Lala and
- (1) Maulvi Muhammad Ziauddin Ahmed Ansari (died), (2) Sultan Mohideen Sahib alias Peeran Sahib, (3) Dadamiyya Sahib alias Ibrahim Sahib, (4) Abul Razao Sahib, (5) Syed Shyralli, (6) Syed Rahimulla Sahib (died). Supplemental:—(7) Syed Shah Nyamathulla Khadiri, (8) Syed Shah Ahmed Abdul Khadir Sahib, (9) Mahomed Fasibuddin Sahib Ansari, (10) Mustafa Ali Beg Sahib; (11) Mahomed Shamsuddin, (12) Mahomed Kalisha, (13) Patwagar Kaleska, (14) Mahomed Ramthula and (15) Mahomed Asadulla.

Final.

This suit coming on for final hearing before me on 15th, 16th, 17th, 23rd, 24th and 27th days of July 1918, on 13th, 14th, 20th and 30th days of August 1918 and on 3rd, 24th and 25th days of September 1918, in the presence of Messrs. Y. Venkatachellam Pantulu, B.A., B.L., and F. T. Ward, Pleaders for the plaintiffs of Mr. M. V. Subba Rao, B.A., B.L., Vakil for the Defendants 1 to 10 and of Mr. N. R. Rajagopala Charlu, B.A., B.L., pleader for the defendants 11 to 15 first plaintiff, first defendant and sixth defendants having died *pendente lite*, and having stood over for consideration till this day, the Court delivered the following judgment.

1. Suit for declaration and permanent injunction.

2. The plaint averments are that all the British subjects irrespective of their caste, color or creed, are entitled to go in procession attended with music in connexion with their religious and other ceremonies in all the public streets of a town or village; that the Hindus of Nellore town, being British subjects, are also entitled to this privilege; that the magisterial orders under section 144 of Criminal Procedure Code, passed with reference to exigencies of the time, cannot affect their rights permanently; that the Muhammadans of Nellore town cannot have congregational worship at all times in their mosques; that as a matter of fact, the congregational worship is not held always; that the Hindus of Nellore are not bound to stop music in their processions at all times in front of mosques, except during the three periods of days prescribed by the High Court; that the Hindus are not bound to stop music in front of Peerghanas at any time as no worship is carried on there; that while the rights of parties are these, the Muhammadans misrepresented to the officers that if the Hindu processions were allowed, there would be murders and that the officers, without examining the rights of parties, passed order under section 144 of Criminal Procedure Code; that the Hindus have been going in processions and assuming disguises for the last 30 years, during Dasara; that as the Muharram and Dasara

synchronised this year, the District Magistrate called a meeting of both the communities and ordered that the processions of both the communities would be allowed to go freely in the streets of Nellore and that people disturbing the processions would be punished; that after this order, the Muhammadans made certain representations about their rights to the District Magistrate through the Headquarter Deputy Magistrate and got the order cancelled; that in consequence the Hindus were not able to carry their processions this year; that on the petition of the Hindus, the District Magistrate ordered on 21st October 1917 that the Hindus must compromise with the Muhammadans or establish their rights in a Civil Court; that this suit has been filed on behalf of all the Hindus of the town of Nellore against the defendants as representing the Muhammadans of the town; that the Hindus therefore pray for a declaration of their rights to go through all the streets of Nellore subject to the limitation that they should stop music in front of mosques, during the three periods stated; and for an injunction restraining Muhammadans from interfering with the exercise of their rights.

3. The defendants contend that the suit as framed, being one for a permanent injunction is not sustainable; that the allegation that congregational worship cannot take at all hours in the mosques is not correct; that the defendants are not aware if any hours of worship in mosques have been fixed by the High Court of Madras; that it is not competent for the High Court of Madras or for the legislature or for any body else to fix the hours of worship in mosque, contrary to the express provisions of the Muhammadan Law; that the Muhammadan Law dictates that religious worship shall be carried in mosques in a particular manner and at all hours except a few moments at sunrise, noon and sunset: that every Muhammadan has a right to worship in mosque at all hours except a few moments at sunrise, noon and sunset and according to Muhammadan Law, no disturbance shall be caused to his worship by anybody: that from time immemorial these Muhammadans of Nellore have acquired and enjoyed the right and privilege of preventing the Hindus of Nellore from carrying the processions attended with music in the Nellore town by the side of their mosques that the Hindus of Nellore have also recognised this right and conducted themselves in a manner not interfering with the exercise of that right; that the Hindus have always from time immemorial carried their processions without music, within 100 yards on either side of every mosque in the town: that the Muhammadans of Nellore have enjoyed the said customary right uninterruptedly for a long time and the plaintiffs' claim is not maintainable at all: that it is not correct to say that it is not necessary for the Hindus to stop their music when passing by the Peerkhanas during Muharram; that from time immemorial the Muhammadans have enjoyed the right of preventing all music being played when a procession is being taken past the said Peerkhanas; that the Hindus have from time immemorial been ceasing the play of all music attending their procession, when passing by the said Peerkhanas; that the plaintiffs' present claim is contrary to law and custom and is not at all sustainable; that the Muhammadans of Nellore have always claimed and enjoyed without interruption the right of worship in the mosques and near Peerkhanas at the time of Muharram, and at all hours without being disturbed by the play of music in the processions carried along the streets, that Muhammadans of Nellore have always claimed and enjoyed the right of worship in Jumma mosque in Sirkharamvari street, Nellore, free from any disturbance whatsoever at all hours and for that purpose have always enjoyed the right of preventing other people from taking their processions attended with music through the said street; that the plaintiffs are estopped from maintaining this suit that the suit is also barred by the Statute of Limitations; that the plaintiffs have not sustained any special damage and consequently cannot maintain this suit: that as the validity of the Magisterial orders, dated 20th October 1917 are being questioned the Government is a necessary party to the suit; that the suit is therefore bad for non-joinder of parties; that this suit is not one of a Civil nature.

4. The following issues were framed:—

- (i) Whether this suit is not one of civil nature and whether this court has no jurisdiction to try it as contended by the defendants?
- (ii) Whether the Hindus of Nellore town are not entitled to go in procession with music in front of mosques at all hours of the day as contended by the defendants?
- (iii) If not, what are the hours during which Hindu processions should stop music in front of mosques?
- (iv) Whether the Hindus of Nellore town are not entitled to go in procession with music in front of Peerkhanas during Muharram?
- (v) Whether the Muhammadans of Nellore town have acquired a valid prescriptive right to prevent Hindu processions with or without music in front of their mosques at all times—their Peerkhanas and in any of the streets of Nellore town during the Muharram?
- (vi) Whether the plaintiffs are estopped from filing this suit?
- (vii) Whether the suit is barred by limitation?
- (viii) Whether the plaintiffs are entitled to the permanent injunction prayed for?
- (ix) To what relief are plaintiffs entitled?

5. This is a representative suit on behalf of the Hindu inhabitants of the town of Nellore against the defendants representing the Muhammadan inhabitants of Nellore for a declaration that the Hindus of the place, like all other British subjects, have a right to go in processions attended with music, in connexion with all ceremonies, in the streets of Nellore,

without let or obstruction by the Muhammadan community subject to the reservation that they are bound to stop music in front of mosques during the hours stated in their plaint. The defendants contend that the plaintiffs have no right whatever to go in procession attended with music, in front of mosques and that further, they have no right to have the music, while passing certain streets and their Peerkhanas during Muharram and that from time immemorial, the Muhammadans have enjoyed the right of preventing all music being played as stated above and that the Hindus have also acquiesced in it and that therefore the present claim of the plaintiffs is contrary to law and custom.

These are the chief contentions of the parties.

Incidentally the defendants have raised various other contentions which appear to have been concluded by a series of well-established authorities in this presidency. It is therefore unnecessary to discuss these minor contentions at length.

6. *Issues, (i), (vi), (vii) and (viii).*—Last year, the Hindu feast of Dasara synchronised with the Muhammadan feast of Muharram. They would occur about the same period this year and the next year. In view of this, it would appear, the District Magistrate called for a meeting of the leading members of both the communities and intimated to them that the processions of both the communities would be allowed freely and that any person or persons disturbing the processions of the other community would be dealt with according to law. So far, there is and there ought to be no cause for grievance. Subsequently the Muhammadan gentlemen seem to have made representations to the District Magistrate, through the Headquarters Deputy Collector or Magistrate, that there would be murders if processions of the Hindus were allowed freely. This is the plaint averment. It is however admitted by defence witness No. 1, Sultan Mohideen Sahib, Vice-President of the local Anjumani and leading member of the Muhammadan community that he made representations to the Collector to stop all music and processions other than Muhammadan music in the Bazaar street and some other places. Several orders restricting the processions of the parties to particular localities were passed by the Deputy Magistrate (vide Exhibit A, dated 14th October 1917 and Exhibit E, dated 20th October 1917). In consequence, the Hindus complain that they could not celebrate Dasara. Eventually on representations made by the Hindus, an order dated 21st October 1917 was passed "that the petitioners should either come to an understanding with their Muhammadan citizens in time, which is the most prudent course or establish their rights in the civil courts." It is not denied that these orders give rise to a cause of action for this suit. A good deal of criticism was directed towards these orders which are said to be more helpful to Muhammadans, because they happen to be powerful and threatened to disturb public peace. It would be wholly unnecessary to answer them even if they are true. The principles which ought to guide a Magistrate in matter of processions, were laid down by Sir Charles Turner, Chief Justice, in 11-Mad., 140 (Muthialu Chetti v. Bapun Sahib): 6 Mad., 203, and have been approved to be the guiding principles in the later decisions. Those principles bear reiteration as the complaint is that the Magistrates disregard the civil rights of parties. "His first duty is to secure to every person, the enjoyment of his rights under the law, and, by measures of precaution, to deter those who seek to invade the rights of others but if he apprehends that the lawful exercise of a right, may lead to civil tumult and he doubts whether he has available a sufficient force to repress such tumult or to render it innocuous, regard for the public welfare is allowed to override temporarily the private right." "It needs no argument to prove that the authority of the Magistrate should be exerted in the defence of rights rather than in their suspension, in the repression of illegal rather than in interference with lawful acts. If the Magistrate is satisfied that the exercise of a right is likely to create a riot, he can hardly be ignorant of the persons from whom disturbance is to be apprehended and it is his duty to take from them security to keep the peace." The wonder, according to the learned pleader for plaintiffs, is that any sect should be denied its inherent rights of citizenship at this age and be asked to establish them in a civil court. It is well established by a series of decisions beginning from 2 Mad., 140 that the right of every citizen to pass through public streets in processions is a civil right and that civil courts have jurisdiction to entertain the suit where such rights are infringed. If an express authority is required, I would invite attention to the case quoted in volume 29 Mad., Law Journal Reports 91. (Andi Moopan and Muthu Veera Reddi). This case is also an authority for the position that it is not necessary to allege or prove any special damages and that it is eminently a fit one for the grant of injunction. (Vide also 32 Mad., 478.)

7. It is not shown how the plaintiffs are estopped from filing this suit and how their claim is barred by limitation. It has been held by all the decisions of the Madras High Court that every citizen has an inherent right to conduct processions through public streets except in particular circumstances. It is a natural right vouchsafed to every British subject and can be asserted whenever it is infringed. There can be no limitation to the assertion of such a right in a court of law. At the worst, every infringement gives rise to a cause of action. It is a recurring cause of action. The cause of action for this suit arose on 22nd October 1917. At any rate, my attention is not drawn to any authority under which this suit can be said to be barred. There is no question of estoppel in this case. The District Magistrate of Nellore passed certain orders regulating processions in 1886 and 1887—vide Exhibits II and II-a. Exhibit III is the proceedings of the Madras Government, dated 9th May 1874. It is not clear

from these orders, in what circumstances and under what provision of law they were passed, and whether the Muhammadans or Hindus were parties to the order. They have been over and over again held to be illegal and ultra vires (vide 2 Mad., 140; 6 Mad., 203). A Magistrate of the Government cannot interfere with the inherent civil rights of people except in the very special circumstances mentioned in the cases quoted above. (Vide also 5 Mad., 304 and 26 Mad., 376). These orders cannot have any force beyond the period for which they were passed and after the exigencies of public safety, requiring them, were over. Plaintiffs are not estopped from filing this suit. After all, the documents in question Exhibits II and II-a do not purport to affect the right of procession with music. They appear only to regulate the processions and confine them to particular streets. They do not affect the question raised in the suit. It is also contended that the Government is a necessary party to this suit. It is not clear how the Government should be a party. No question of ownership of the streets is raised as it was done in the various decisions quoted in this case. Even in such cases, the Government was not made a party. The streets of Nellore are admittedly public streets in which all people have a right to go. The plaintiffs do not seek to set aside the order of the Magistrate; nor has this court jurisdiction to set it aside. The Magistrate's order only gave rise to the causes of action in this suit. It has no other connexion with the suit. In these circumstances the Government is not a necessary party to the suit.

8. *Issues (ii), (iii), (iv) and (v).*—The Muhammadan citizens of Nellore claim that from time immemorial, they enjoyed the right of preventing all music being played in processions in front of their mosques at all times and in front of their Peerkhanas and in certain streets during Mubarram. The Hindus deny the customary right. The oral evidence on both sides should be received with great caution as both the parties are actuated by sectarian prejudices, though some of them appear to be respectable. So far as I can see, no specific instances in which such a custom was asserted by one party and acquiesced in by the other party have been proved. Proof of such instances would be necessary before a custom can be recognised and acted upon by a court of law. The District Magistrate in Exhibits II and II-a state that the arrangements therein were made according to custom or mamul. The orders do not show on what material the District Magistrate came to their conclusions about custom. In the first place it is not clear under what provision of law, the District Magistrate is entitled to pass any decision with regard to custom. These orders are not conclusive proof of custom nor do they purport to decide any question of custom. The only instance where permission is said to have been obtained by a Hindu from a Muhammadan is given by D.W. No. 6, Syed Khaja Mea, an attender in the Sub-Magistrate's Court. He states that on a marriage occasion, one Jaladanki Sreeramulu obtained permission from one Chingi Sha and the prayer in the mosque opposite to his house was stopped, whenever there was music in the house. Neither Chingi Sha nor Sriramulu were examined on the point. It has nothing whatever to do with processions in the street. On the other hand there have been admittedly instances where music was not stopped in front of mosques during processions of parties other than Muhammadans. The Khaji as D.W. No. 3 volunteers that the Collector of Nellore requested him to have the evening prayers in mosques done earlier so that the processions in connexion with His Majesty's Coronation and Delhi Darbar might pass the mosques without stopping music and that he did so. There is no proof that any such request was made but there is the admission that processions passed on certain occasions in front of mosques without stopping music. There is also evidence that some other processions passed by the mosques without stopping music. I must find that the custom set up has not been proved.

9. Even if the custom set up, is true, there can be no doubt that it is invalid and unreasonable and is not binding. In the case quoted in I.L.R., 26 Mad., 376, which was subsequently confirmed by the Privy Council (vide 30 Mad., 185), the plaintiffs therein based their suit on an alleged immemorial custom whereby they had the right to prevent Bengali processions, their Lordships quote the principles laid down in 5 Mad., 304 (309) and 6 Mad., 203 (217 and 218), with approval and state "With regard to privileges claimed on the ground of caste or creed, I may observe that they had their origin in times when a State religion influences the public and private law of the country, and are hardly compatible with the principles which regulate British administration, the equal rights of all citizens and the complete neutrality of the State in matters of religion. The members of one caste have not been allowed to restrict members of other castes from the free use of public thoroughfares. The Pariah in Malabar is no longer excluded from courts of justice. These are innovations, but the superseded usages are obviously condemned by the spirit of our laws. When anarchy or absolutism yield place to well-ordered liberty, change there must be, but change in a direction which should command the assent of the intelligence of the country. With regard to processions, if they are of a religious character, and the religious sentiment is to be considered, it is not less a hardship on the adherents of a creed that they should be compelled to intermit their worship at a particular point, than it is on the adherents of another creed, that they should be compelled to allow the passage of such a procession past the temples they revere. But the prejudices of particular sects ought not to influence the law. A man may have just ground of complaint if he is compelled to recognize the sanctity claimed for a place as the seat of a worship he believes to be false. He has no just ground or complaint if he is compelled to recognize the civil right of his fellow citizens to be protected from disturbance when they are assembled for public worship, unless indeed all recognition of public worship is repugnant to him. Again, assuming that the courts were satisfied

that a privilege had been duly acquired and that it was competent to them to recognise it, it must be remembered that it is based on custom and that custom is sound only when and in so far as it is reasonable. It would have then to be considered whether it was reasonable to require persons exercising a natural right to abstain from its exercise when passing a place where no public worship was proceeding." We think that these observations are appropriate to the present case. We do not think that the custom which the plaintiffs plead is a reasonable one or such as the courts should recognise any more than the courts would now recognise the practice widely prevalent in Malabar by which men of the Cheruman caste are obliged to leave the public road if they meet a man of the Nayar caste on it. We have not been referred to a single reported case in which such a right of one sect to interdict a rival sect from the use of the public streets has been recognised by the superior courts in India. (Vide principles discussed in 32 Mad., 478 (page 483) and 29 Mad., Law Journal 467.) In all these cases, such a custom as pleaded by the defendants in this case, was set up and found to be unreasonable and not binding on other communities.

10. It is admitted on all hands that the object of stopping music in front of mosques, is to avoid disturbance to prayer held in the mosques. It is also admitted that no prayers are held in the Peerkhanas, i.e., the places where punjas are kept during Muharram and that these Peerkhanas are not referred to in the religious books of the Muhammadans and the custom of keeping punjas there, has not received sanction from any religious authority. It is also admitted and it is clear from the evidence on record that music is played during Muharram in the Peerkhanas. There is therefore no meaning in asking other communities to stop music in front of the Peerkhanas.

11. This case illustrates in a peculiar way, the difficulties anticipated in the earlier decisions of this presidency. The Jumma masjid of the Muhammadans is situated in Sikharamvari street, Nellore, an apology for a street where almost all the inhabitants are Hindus. There are only one or two Muhammadan houses in the vicinity of the mosques. Muhammadans claim absolute freedom from disturbances at all times of the day. Every sect, it is true, has a mode of worship of its own. To the Hindu, there is such a thing as "Silence in Noise" or devotion amidst din. He is quite accustomed to carry on his worship, amidst noise and has no particular anxiety to prevent processions with music passing by his temple. The Muhammadans and Christians have a mode of worship of their own. They require seclusion and freedom from disturbance while their prayers are conducted. It would therefore be inequitable for communities requiring freedom from disturbance to build their places of worship, in a locality occupied by people of different sects. It is as much the duty of a citizen requiring such seclusion to build his place of worship in a secluded spot as it is the duty of the resident members of the other community, not to disturb the prayers of such a citizen. Is it possible and equitable to expect the Hindu residents of this street, not to have music in their houses during ceremonial occasions because the Muhammadans chose to build their mosques in that street? It will be seen that in paragraph 8 of their written statement, the Muhammadans claim right of worship in the mosque in this street, "free from any disturbance whatsoever." If the contention of the defendants is to be upheld, either the Muhammadans should cease praying in the Jumma masjid or the Hindus should cease to perform ceremonies with music in their houses. It is in view of this difficulty, their Lordships in 6 Mad., 203 held that "in affording special protection to persons assembled for religious worship or religious ceremonies, the Law points to congregational rather than private worship and it may fairly be required of congregation that they should inform the Magistrate or Police at what hours they customarily assemble for worship, in order that the rights of other persons may not be unduly curtailed. No sect is entitled to deprive others for ever of the right to use the public streets for processions on the plea of the sanctity of their places of worship or on the plea that worship is carried on therein day and night." These principles have been consistently upheld in all the other decisions of the High Court.

12. In view of the above decisions curtailing the conflicting rights of these two communities, it becomes necessary to consider when the Muhammadans ought to perform their prayers and when the Hindus ought to stop music in front of the mosques. The decisions quoted in I.L.R., 6 Mad., 203, and 21 Madras Law Journal, page 71, are clear that such rights ought to be curtailed in the interests of both the communities and in the interests of public peace. It has been held in the above cases that the Muhammadans for the reasons stated above, ought to notify to the Magistrate, the hours of their congregational prayer. In this case the defendants have not notified any specific hours during which they should have their congregational prayer. The oral evidence adduced on the point is extremely discrepant and unreliable. It seems to be affected a good deal by sectarian prejudices. The Kaji's prejudice seems to be in proportion to his high rank in the community. According to him, prayer is held in mosques throughout the day and night with a few minutes interval. It is true that according to all religions, life is one long prayer. What is indicated in this is prayerful conduct in life rather than the mere act of praying in a place of worship. The Kaji evidently asserts what ought to be rather than what is the prevailing practice in the mosques. It is hardly to be expected that in the ordinary work-a-day-life, the members of any community sit praying in their places of worship throughout the day and night. Even if it were so, it was been held that such a right ought to be curtailed in the interests of other communities in the legitimate exercise of their rights. The hours of prayer mentioned by one witness do not appear to tally with the hours mentioned by

the other. No text-book was filed which clearly fixes the hours of prayer. Indeed the Kaji Sahib refused to have a copy of the Koran filed in this case. His evidence is in great confusion. But all the witnesses for the defendants admit five periods of worship in a day. Defence witness Sultan Mohideen Sahib, admits the correctness of the five periods mentioned by plaintiffs' vakil. These five periods have been approved in 21, Madras Law Journal, 71. In O.S. No. 578 of 1908, the District Munsif of Ongole held that the Hindus are entitled to go in procession attended with music past by mosques, except during the hours of 5 a.m. and 7-30 a.m., 12 noon and 2-30 p.m., and 5 p.m. and 8-30 p.m.—vide the public copy of judgment Exhibit D. This judgment was upheld by the first Appellate Court—vide Exhibit D-1. The High Court in Second appeal No. 1100 of 1911 (Exhibit D-2) confirmed the decisions of the lower courts and held that the decision of the lower courts was in accordance with the rulings of the High Court and that they were not satisfied that they should interfere with the hours fixed by the lower courts, as hours for worship during which the Muhammadans are not to be disturbed. An erudite Muhammadan Judge was a party to this decision. The judgments of the lower courts were necessary to show what hours were fixed by them and approved by the High Court. The three periods fixed by these courts appear to cover the five periods claimed by the Muhammadans. I would therefore fix the same three periods.

13. It is contended that the right of people to go in procession with music is not a natural and proper user of the public street, and my attention is drawn, the decision quoted in 26, Bombay Law Reporter, 667. It has been established by a series of decisions of the High Court of Madras extending over a long period, that every citizen has an inherent right to go in procession attended with music in public streets and that such a user has been held to be a proper user. In almost every case, the right to have music was claimed and appeared to have been the bone of contention between the parties and in every case such a right was recognised and upheld. If authorities are wanted, I would quote 35, Mad., 28. Such a right was claimed in the case quoted in I.L.R., 26, Mad., 376, and was upheld in the Privy Council decision quoted in I.L.R., 30 Mad., 185. Even where the Learned Judges expressed doubts as to the user of the roads in 26 Mad., 554, the later decisions dissented from their views and upheld the right to go in processions with music—vide 32 Mad., 478, and also 527. In the face of a long series of decisions in which the right to go in procession with music held to be proper user of the road, I am constrained to state, with great respect to their Lordships of the Bombay High Court, that I feel bound by the decisions of this Presidency. Moreover, such a right appears to be natural. Music forms a part and parcel of a procession. Without it, the idea of a procession appears to be strange, except of course, funeral procession of certain classes. If a person is entitled to go in a street, he is entitled to go in any manner he pleases, provided he does not infringe the rights of others. If he is entitled to walk, he is entitled to go in a carriage. It would be repugnant to the feelings of a high caste Hindu to see a low caste man walk in the streets with shoes on. This is evident in the village parts. Yet, can it be said that the low caste man has no right to use the shoes if he chooses to wear them as a part of his dress, because he can afford to walk without shoes and that walking with shoes on, is not a proper user of the road, because the shoes might well be avoided as unnecessary? It is possible to say that music is not necessary in religious processions where idols are taken in the streets when the Agamas require 'mangala vadiam' (except in certain cases) or during marriage processions. Music is a necessary part of the procession and can be stopped only in the very special circumstances mentioned in the cases quoted above. I therefore find that the Hindus of Nellore town are entitled to go in procession with music in all the streets of the town and in front of mosques at all hours of the day except during 5 a.m. to 7-30 a.m., 12 noon to 2-30 p.m., and 5 p.m. to 8-30 p.m., and that they are entitled to go in procession with music in front of 'Peerkhanas' at all hours of the day and at all times and that Muhammadans of Nellore town have not acquired a valid prescriptive right to prevent Hindu processions with or without music in front of their mosques at all times except during the periods stated above in front of their 'Peerkhanas' and in any of the streets of Nellore during the Muharram. It would be sufficient to stop the music about 50 yards on either side of the mosques.

14. In the result, there will be a decree in favour of plaintiffs declaring their right as stated above and restraining the Muhammadans of Nellore town from interfering with the right of Hindus as prayed for. The plaintiffs will recover the costs of the suit from the defendants.

Pronounced in open Court this 2nd day of October 1918.

P. VENUGOPAL,
District Munsif.

Witnesses examined for plaintiffs.—(1) Nandanavanam Kondiah, (2) Nandigam Subbiah, (3) Ratoru Bhagat Rao, (4) Poojari Kalappa, (5) Nellore Gopal Singh.

For defendants.—(1) Sultan Mihoddin Sahib, (2) Maulavi Syed Ali Muse Raza Sahib, (3) Maulavi Muhammad Geouddin Ahmed Ansari, (4) Muhammad Hussein, (5) Zehuriddin Sahib, (6) Syed Khaja Mia, (7) Muhammad Sheriff, Pesh Imam, (8) Muhammad Gayas Sahib, (9) Gunupati Bangadu.

Documents filed for plaintiffs—

Exhibit A/14-10-1917, Proceedings of the Deputy Magistrate of Nellore, Ref. No. 636 of 1917/H. Magl.

Exhibit B/21-10-1917, Order of [the District Magistrate communicated to Bomma Chenchu Obulu and others.

Exhibit C/1-11-1913, Certified copy of the judgment in O.S. No. 194 of 1913, on the file of the Additional District Munsif's Court, Nellore.

Exhibit D/13-10-1909, Certified copy of the judgment in O.S. No. 578 of -1908, on the file of the Ongole District Munsif's Court.

Exhibit D1/20-1-1911, Certified copy of the judgment in A.S. Nos. 299 and 300 on the file of the Sub-Court of Guntur.

Exhibit D2/3-2-1913, Certified copy of the judgment in Second Appeal No. 1100 of 1911, on the file of the High Court of Judicature at Madras.

Exhibit E/20-10-1917, Proceedings of the Headquarter Deputy Magistrate of Nellore Ref. No. 636 of 17.

For defendants—

Exhibit I/16-9-1886, Printed Proclamation of the District Magistrate regarding the passings of processions through the various streets of Nellore.

Exhibit II/10-9-1887, Printed Order No. 289 of 1917/Magl. of the District Magistrate of Nellore.

Exhibit III/9-5-1874, Certified copy of the Proceedings of the Madras Government (Judicial Department) G.O. No. 861.

P. VENUGOPAL,
District Munsif.

(iii)

IN THE COURT OF THE DISTRICT JUDGE OF NELLORE.

Appeal Suit No. 32 of 1919.

Sultan Mohideen Sahib alias Peeran Sahib and 10 others	<i>Appellants.</i>
Prathi Sriramulu Setti and 54 others	<i>Respondents.</i>

The appellants are Muhammadans and landholders residing in Nellore. The address for service of processes and notices on them is that of their vakil Mr. Yahya Ali, M.A., B.L., Subedarpet, Nellore.

Grounds of appeal.

1. The judgment of the learned District Munsif is contrary to law, the weight of evidence and the probabilities of the case.
2. The learned District Munsif failed to note the distinction that exists in law between the right of every citizen to pass through public streets in procession and to so pass attended with music before institutions where a community has a recognised right to free and undisturbed worship and consequently the District Munsif did not pay sufficient regard to the principle that the exercise of the right to use the road is always subject to non-interference with the right of others to free and undisturbed worship.
3. The learned District Munsif erred in finding that there is no estoppel or limitation in the suit that there was an infringement of a public right giving rise to a cause of action for the suit, in spite of the acquiescence of the pre-deceased representatives of the Hindu community and that Exhibits II and II (a) only regulate processions confining them to particular streets but do not purport to affect the right of the Hindus to go along all streets of Nellore in procession with music.
4. The District Munsif should have found that the suit was bad for the nonjoinder of the Government as a party especially when an order of the Government is alleged to have given rise to the cause of action for the suit when the District Munsif has pronounced against its legality and when it was necessary to have impleaded the Government to ascertain the circumstances and provisions of law under which the orders furnishing the cause of action were passed.
5. The learned District Munsif erred in finding against the existence of a right to immunity from disturbance in worship in the mosque acquired by the Muhammadans of Nellore town both by virtue of the provisions of the Muhammadan religion, non-interference with which is vouchsafed to them by the Royal Charter of 1857 and by virtue of longstanding enjoyment without protest or objection by the other communities.
6. The District Munsif should have found in view of the expert and credible evidence let in by the defendants that under the rules of the Muhammadan religion public worship can proceed in the mosques during all hours day and night except few moments at sunrise, noon and sunset.

7. To long as the learned District Munsif agreed, in partial deference to the right of the Muhammadans to free and undisturbed worship in the mosques to impose limitation on the alleged right to go in procession with music along the streets he should have legitimately extended the limitation to the time specified in the sacred texts of the Muhammadan religion spoken to by Defence Witness 3 who was an expert on the Muhammadan religion.

8. The learned District Munsif's fixing of the hours when the Muhammadans ought to perform their prayers in mosques is arbitrary and not warranted either by the evidence or by the spiritual laws and practice of the Muhammadans in Nellore and it is not competent on the part of any mundane power to appoint or fix hours of prayer for the Muhammadans in contravention of the provisions of the Muhammadan religion; and the decision of the lower court as to the hours of worship in mosques is incapable of being executed without causing disturbance to public peace and is likely to lead to vexatious litigation in the future.

9. The learned District Munsif's statement that 'it is hardly to be expected that in the ordinary work-a-day life the members of any community sit praying in their places of worship throughout day and night' is incorrect and inopportune and does not correctly express the true principle and should guide the decision.

10. The District Munsif erred in thinking that every text-book showing the hours of prayer should have been filed in court and even if no text-book is filed the court should have taken judicial notice of the same.

11. The lower court's comments on the evidence of Defence Witness 3 are not correct and show that it has not been properly appreciated.

12. The lower court erred in thinking that the questions in issue should be decided according to the prevailing practice in mosques and not according to the law and sentiment of the Muhammadan community.

13. The learned District Munsif's finding as to the right of the Hindu residents of Sikharamvari street in the vicinity of the Jumma masjid to have music in their houses was absolutely unnecessary and uncalled for the right of processions alone having been in issue and not the right of individuals to have music in their houses.

14. The learned District Munsif's fixing of the distance of 50 yards on either side of the mosque for music to be stopped within is contrary to custom.

15. The learned District Munsif misapprehended the evidence for the existence of a custom to stop music before the 'Peerkhanas' in Nellore during the first 10 days of Muharram.

16. The lower court fails to properly appreciate the decision in 16 Bombay Law Reports, 667.

17. The appellants pray—

- (i) That the decree be set aside;
- (ii) That this Honourable Court will be pleased to direct the taking fresh evidence, if necessary;
- (iii) That the suit may be dismissed with costs; and
- (iv) That such other orders may be passed as may seem fit and proper to this Honourable Court.

	RS.	A.	P.
Value of the appeal
Stamp duty paid is
		50	0 0
		3	12 0

Y. ALLI,
Vakil for appellants.

V

Letter—from P. B. THOMAS, Esq., Inspector-General of Police.

To—the Secretary to Government, Home (Judicial) Department.

Dated—Madras, the 3rd March 1920.

No.—305 R.C.

In reply to Confidential Memorandum Home Department No. 4266/B-1, dated the 19th January 1920, I have the honour to state that I have delayed my report in consequence of an order directing Mr. Couchman to consult me in the matter.

2. No report of any departmental inquiry was forwarded by the Deputy Inspector-General, no special inquiry being considered necessary.

3. The Deputy Inspector-General reached Nellore soon after the riots and wrote two or three demi-official letters on the progress of events which I have not kept.

4. The affair is not difficult to understand. The procession was proceeding along the main Bazaar street. It was headed by a party consisting of two Sub-Inspectors and two head constables followed by Sergeant Jackson, one head constable and 20 constables of the reserve.

In the rear there was a party of one Sub-Inspector, two head constables and ten constables. On either flank there was a party of one Sub-Inspector, one head constable and six constables. The Deputy Superintendent Mr. Subrahmanya Ayyar with the two Magistrates, the Prosecuting Inspector and a Special Duty Inspector were in front of the procession apparently on the eastern side.

The procession went on without any very serious molestation until it got to within some 100 paces of Bhaskarla street on the western side of the Bazaar street. At this point progress became impossible and the Deputy Superintendent halted. The procession also halted with Sergeant Jackson and his party in front of them. Before the firing began this officer also shouted warnings to the crowd to disperse from a distance of 30 or 40 paces.

In my opinion the Deputy Superintendent as the senior Police officer present should have gone right up to the mob leaving the procession behind him and should at least have been at Sergeant O'Brien's side when he had to fire. He is a weak and slack officer and I have already recommended his supersession in grade promotion. His transfer from Nellore is also pending. The Deputy Superintendent's action requires no further discussion and I go back to the moment when he halted the procession. The mob was in Bhaskarla street and a lot of people not belonging to the mob or the procession were about the mouth of Bhaskarla street and the Bazaar street. The Taluk Magistrate gave orders to the Personal Assistant to open fire and he apparently ordered Sergeant Jackson to do so. The latter was unable to because the rioters were not in clear view and to shoot would have risked wounding innocent persons. This party was not opposite Bhaskarla street but 60 paces south of it. Sergeant Jackson could only have fired straight up the Bazaar street right at the reserve who were drawn up further up the street. He ordered his men to unload.

5. The order to shoot had meanwhile been communicated to the Reserve Inspector who was with the remainder of the reserve in front of the Police station. It was drawn up here before the procession was halted and when the procession was halted a mob came out of Bhaskarla street to within a few paces and stoned the reserve for about 10 minutes. A mob from the north also stoned the reserve at the moment orders to fire were communicated to the Reserve Inspector. He sent Sergeant O'Brien towards the procession to the mouth of Bhaskarla street where O'Brien opened fire down the Bhaskarla street on the mob.

The Reserve Inspector halted his party diagonally across the Bazaar street so as to block both Janda street and the Bazaar to the north.

There was never any firing in the rear. The firing from Sergeant O'Brien's party cleared Bhaskarla street. His party remained there whilst the processions went on. Sergeant Jackson's party then taking up position in rear of it and leaving Sergeant O'Brien's party behind.

The Reserve Inspector fired down Janda street and the mob there retired. Thenceforward the procession went on with the Reserve Inspector's party in front of it, and the Police had again to fire to the north after the procession had passed Janda street the mob being uncontrollable.

6. The procession then went on. The details of the part taken by other Police officers are not important. The Town Inspector was moving about from one place to another and appears to me to have done his duty of general supervision very well. He is a Nellore man and I have thought it advisable to remove him. Even if his local sympathies are not objectionable his position in Nellore must be difficult.

Excluding the Reserve Police the remaining force of Police were more than occupied in looking after the procession and its members. It must be noted that the procession was a large one and a number of its members were very excited and liable to get out of hand. The street was also full of people and it was the duty of all these Police to keep the procession together, and see that they passed along in a

body. They were not concerned with the Muhammadans and were not in sufficient force to be able to detach men to deal with the side streets.

They could not possibly be expected to leave their posts and attend to anything except the actual progress of the procession.

7. The firing was done solely by the Reserve Police after several warnings had been given. The fire was properly controlled and the proper drill formalities for mob firing were observed.

I consider that the firing was absolutely necessary to prevent the procession being attacked in force both from the side streets and the front. This would have caused a free fight between large mobs of Hindus and Muhammadans on the spot.

I think that the fact that the firing was properly controlled is evident from the following facts:—

- (1) the small number of rounds fired and the small casualty list,
- (2) none of the Inspectors or Sergeants used their revolvers during the firing though heavily stoned at close quarters,
- (3) Sergeant Jackson called his party to unload when in face of the mob; because his party could not fire without the risk of killing innocent persons.

8. It is stated that the mobs in Janda street and Baskarla street only consisted of some 30 to 50 persons each.

I take the strongest exception to this statement. There may have been only 50 persons visible at the mouth of each street but the lanes at the back, on both sides of the bazaar were probably full of people. I know Nellore well and have been confronted by a mob there and I am certain that more than 2 or 3 hundred of the 4 or 5 thousand Muhammadans in Nellore were out—not to speak of probable outsiders.

9. The episode of the bayonet charge took place in Bhaskarla street after the firing in Janda street. The Reserve Inspector ordered his party to charge bayonets after firing but no charge was necessary.

Sergeant O'Brien who charged with his men only had 8 files of men. He charged a very short distance with the intention of intimidating the mob. They were not intimidated and it would have been the height of folly for a small party like this to risk a charge down a lane. They would probably have got mixed up with a crowd in which they were unable to use bayonets effectively and would probably have been overwhelmed. Sergeant O'Brien acted very intelligently and did his duty in not pushing his charge any further and his action is to be commended. The fact that he did try a charge is only evidence of his desire to avoid bloodshed if possible.

10. Another matter on which there appears to be considerable misunderstanding is the rôle of armed reserves on such occasions.

It is absurd to suppose that an armed man encumbered with a heavy rifle, a bayonet and ammunition should rush about arresting individuals in a crowd or separate from the rest of his party and get mixed up in it. It is practically a physical impossibility for men so encumbered and in a mass to arrest persons with one hand.

If it is intended that reserve police shall be so used they should be paraded armed only with batons and used as ordinary police.

We cannot afford to do this, because our armed reserves are very small, and the only men we have for use in emergencies. When used they must be kept together and used as armed men in emergencies only—a fact which is or should be universally understood and accepted.

11. As for the larger question whether armed police should be employed at all in cases like this I do not think I am called upon to express any opinion. All I can say is that the reserve constables' services would not have been available except as armed police; because it is absolutely necessary to keep an armed force in reserve at all times, and that if the Superintendent had kept them in reserve and forbidden their presence altogether the rioting would have been very much more serious than it was.

ENCLOSURES

(1)

Letter—from E. L. SKINNER, Esq., Superintendent of Police, Nellore district.
 To—the Inspector-General of Police (through the Deputy Inspector-General of Police,
 Northern Range and the District Magistrate, Nellore).
 Dated—the 23rd October 1919.

With reference to my telegram, dated 22nd October 1919, reporting that the police had had to use fire arms to disperse a mob in Nellore town, I have the honour to report as follows:—

“Since 1917 when for the first time for some 30 years the Muharram and Dasara synchronised, there has been trouble between Hindus and Muhammadans, because the former wished to take Dasara processions through the main Bazaar street of Nellore and this was not allowed as it was very evident that considering the state of feelings of the Muhammadans during the Muharram festival a breach of peace was very likely to occur. The Hindus immediately went to the civil court and in each succeeding period of 1918 and 1919 they have agitated for this right to take the procession into the main bazaar and on each occasion it was refused. Finally they succeeded in getting a decree in their favour from the civil court allowing them the right to all streets and to play music in front of mosques except during stated prayer hours.

In spite of this decree during the recent Muharram-Dasara of this year it was clearly not expedient in the interests of public safety to enforce it and thus again this year the Hindus were denied the privilege.

On 19th October, the Hindus under the presidentship of Mr. A. Krishna Rao Pantulu and a number of pleaders of whom Annaswami Ayyar and Venkatachalam Pantulu were prominent called a meeting and decided that in order to enforce the civil decree obtained by the Hindus a procession should be organised from the Anjanayulu temple on 22nd October. On receipt of this information the District Magistrate was asked to authorize that the procession should only proceed under the issue of a police licence under section 30 of the Police Act, so that its movement should be controlled. The District Magistrate was of opinion that inasmuch as there was no Muhammadan festival synchronizing with this date it was the duty of the authorities to protect the Hindus in enforcing their rights as laid down by the civil court decree. I accordingly issued a licence from 2-30 p.m. to 5 p.m., i.e. in non-prayer hours for Muhammadans, and the route was laid down as desired by the Hindus. In accompanying sketch it will be seen that this route led past (1) the mosque in the Barrack Square and Khazi's house, (2) mosque in main Bazaar street, south of police station, (3) mosque in the same street north of police station. I considered it probable that a demonstration if any might take place in the Barrack Square or from either of the mosques 2 and 3. I therefore issued the attached orders flag B for police bundobust, viz., a reserve force of 1 sergeant and 20 men would accompany the head of the procession from the commencement, while the main body under Reserve Inspector (with 40 men) would be drawn up in the Barrack Square and on the procession leaving the same would proceed by a short cut to the police station so as to command the two mosques 2 and 3. The Deputy Superintendent of Police accompanied the procession and the Deputy Magistrate, Nellore, a Muhammadan gentleman, who has much influence over the Muhammadan community, was ordered by the District Magistrate to be present with the procession. As events turned out no trouble of any sort was experienced until the procession reached a point in the main Bazaar street opposite the Deputy Magistrate's house some 50 yards to the south of mosque 2. By this time Reserve Inspector with his 40 men had taken up his position opposite the police station. Then from the Bhaskarla street rushed a Muhammadan mob of some 50 persons brandishing sticks and swords and throwing stones at before the head of the procession. In spite of warnings they refused to desist and the Taluk Magistrate, Nellore, a First-class Magistrate who was present gave orders to the Deputy Superintendent and Town Inspector that fire should be opened to disperse the mob. And it must be mentioned that the Deputy Magistrate, Nellore, was nowhere to be seen. Inasmuch as the reserve police were stationed on the other side of the mob and there were also some Hindus and others in the street close to the mob, the Deputy Superintendent considered it would not be safe for the reserve party with him at the head of the procession to fire. So a head constable was sent through bye-lanes on the east side to the police station to convey the Magistrate's order to the reserve police there. On receipt of this order Reserve Inspector detailed Sergeant O'Brien and 15 men to march on the mob and fire if they would not disperse. The Sergeant forced the mob to collect near the entrance of the Bhaskarla lane and as a portion was also in the main Bazaar road and the whole continued throwing stones and would not disperse, he ordered his men to fire with the result that two men at least appear to have been wounded and the mob dispersed. It must be mentioned that members of this mob tried to snatch the carbines from two of Sergeant O'Brien's men. On this mob dispersing, the procession proceeded but in the meantime Reserve Inspector found it necessary to deal with another Muhammadan mob that had emerged from Janda street. This second mob became aggressive and was dispersed just before the procession actually reached on a level with the Janda street. It appears that one man was killed by the firing party. The procession then proceeded along its route and was subject at intervals to stone-throwing but not to actual assault.

At 4-35 p.m. the District Magistrate informed me that the Deputy Magistrate had come to him and said that stones, etc., were being thrown on the procession and I proceeded with the District Magistrate to the Police station. An inquiry was immediately opened into the circumstance of the riot and the District Magistrate was satisfied that the police were justified in opening fire and that the Muhammadans had been extremely aggressive and inasmuch as it is seen that they continued to show violence though finding a body of armed police on either side of them their determination to prevent this procession from passing the mosque may be gauged. It is ascertained this morning, 23rd, that two Muhammadans were killed and two Muhammadan boys were wounded by police fire. It must be mentioned that it is in evidence that some Muhammadan youngsters were also with this mob.

I posted the armed reserve at important points throughout the night and no further disturbance occurred.

(2)

Letter—from E. L. SKINNER, Esq., Superintendent of Police, Nellore district.

To—the Deputy Inspector-General of Police, Northern Range (through the District Magistrate, Nellore).

Dated—the 25th October 1919.

In continuation of my report of 23rd, I have the honour to state that on 23rd the dead bodies of the two Muhammadans killed by police fire in the riot were duly handed over to their relatives and as it was rumoured that the burial was to be made the occasion of a big demonstration, I requested the District Magistrate to pass orders under 144, Criminal Procedure Code, to the effect that all processions of any sort should be conducted under a police licence. This was accordingly done and the District Magistrate and myself were present from 3-30 p.m. to 7-30 p.m. while procession and funeral ceremonies were conducted and all passed off safely. No more deaths have been reported and the two boys wounded are going on satisfactorily.

The town is at present in a state of nerves, each party apprehending attack from the other but no organized attempt is likely to be made by either side and such rumours are largely exaggerated. Reserve remain posted at important points of the town and with road patrols every precaution is taken.

VI

IN THE COURT OF THE SUBDIVISIONAL AND FIRST-CLASS MAGISTRATE,
GUDUR, NELLORE DISTRICT.

JUDGMENT IN CALENDAR CASE NO. 91 OF 1919 ON THE FILE OF THE SUBDIVISIONAL AND
FIRST-CLASS MAGISTRATE OF GUDUR.

Complainant ..	Rex by Station-house officer, Nellore.
Accused ..	Yaqub Shariff alias Gata Gulam and forty others.
Offence ..	Joining in an unlawful assembly, rioting armed with deadly weapons and grievous hurt by dangerous weapons, sections 145, 147, 148 and 326, Indian Penal Code.
Finding ..	Accused Nos. 1, 2, 3, 6, 10, 12, 16, 17, 18, 22 and 24 guilty. Accused No. 7 not guilty. Case against accused Nos. 4, 5, 8, 9, 11, 13, 14, 15, 19, 20, 21, 23, 25 to 37 not proved. Case against accused Nos. 38, 39 and 40 withdrawn. Accused No. 41 absconding.
Sentence ..	Accused Nos. 1, 2, 3, 6, 10, 12, 16, 17, 18, 22 and 24 sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs. (200) two hundred only, in default to suffer rigorous imprisonment for six months. Accused No. 7 acquitted under section 258, Criminal Procedure Code. Accused Nos. 4, 5, 8, 9, 11, 13, 14, 15, 19, 20, 21, 23, 25 to 37 discharged under section 253, Criminal Procedure Code. Accused Nos. 38, 39 and 40 discharged under section 494, Criminal Procedure Code.

Serial number.	Description of the accused.						Date.				
	Name.	Father's or uncle's name.	Caste or race.	Occupation.	Residence.	Age.	Occurrence.	Complaint.	Apprehension or appearance.	Commencement of trial.	Close of trial.
1	Yaqub Sharif	Pir Sahib	Muhammadian ..	Jutka driver	Nellore	Yrs. 37	22nd October 1919, Nellore.	24th November 1919 (taken on file).	2nd December 1919.	2nd December 1919.	31st May 1920.
2	Shaikh Dastagiri	Shaikh Ibrahim Sahib	Do.	Trade	Do.	35					
3	Makku Sahib	Qasim Sahib	Do.	Shoeing horses and bulls	Do.	24					
4	Saiyid Kheja Mian, attender			Not examined.							
5	Shaikh Qasim Sahib										
6	Abdul Sattar	Bakhsu Mian	Muhammadian ..	Blacksmith	Nellore	25					
7	Saiyid Madar	Saiyid Makhdum	Do.	Retail shop	Do.	43					
8	Saiyid Badsha Sahib										
9	Dastagir Sahib Hamid Chota Sahib			Not examined.							
10	Muhammad Mian	Qadir Sahib	Muhammadian ..	Butcher	Nellore	23					
11	Yaqub Sahib			Not examined.							
12	Farid Sahib	Qasim Sahib	Muhammadian ..	Goldsmith	Nellore	25					
13	Abdul Aziz										
14	Yenagadhala Kalesha			Not examined.							
15	Pathan Qasim Khan										
16	Saiyid Hussain	Saiyid Muhi-ud-din Sahib	Mohammadian ..	Clerk under a butcher	Nellore	30					
17	Shaikh Madar Sahib	Shaikh Umar Sahib	Do.	Jutka driver	Do.	18					
18	Shaikh Miran Sahib	Shaikh Bahutmiah	Do.	Lending electric lights for rent.	Do.	22					
19	Shaikh Mastan Sahib										
20	Shaikh Chingisha			Not examined.							
21	Muhammad Usman alias Dada Mian										
22	Muhammad Abdul Ghafur	Chingisha	Muhammadian ..	Tailor	Nellore	24					
23	Muhammad Ghouse Sahib			Not examined.							
24	Kala Babu	Qadir Sahib	Muhammadian ..	Physician	Nellore	30					
25	Yusuf Khan										
26	Saiyid Asadulla										
27	Gudu Khan										
28	Palwagar Kalesha										
29	Shaikh Abdul Rasak										
30	Muhammad Usam										
31	Pathan Kale Khan			Not examined.							
32	Shaikh Chingisha (process-server)										
33	Shaikh Qadir Muhi-ud-din										
34	Shaikh Bapu										
35	Shaikh Ahmad										
36	Saiyid Kalesha										
37	Shaikh Qadir Sahib										
38	Saiyid Ghouse Muhi-ud-din										
39	Abdul Rahiman			Not examined, case withdrawn.							
40	Pathan Sobyan										
41	Goradgola			Absconded.							

EVIDENCE LIST.

Prosecution witnesses examined.

- | | |
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| <ol style="list-style-type: none"> 1. M.R.Ry. K. Brahmaya Pantulu, Circle Inspector of Police, Nellore. 2. M.R.Ry. R. Subbaramayya, Tahsildar, Nellore. 3. M.R.Ry. N. Seshagiri Rao Garu, Stationary Sub-Magistrate, Nellore. 4. Jaya Ram Singh, P.C. No. 255. 5. Subbaya, P.C. No. 266. 6. Muhammad Ghouse, H.C., Nellore. 7. Anam Butchi Reddi. 8. M.R.Ry. T. V. Sivaramayya, Pleader, Nellore. 9. M.R.Ry. B. Subbarayudu Garu, Pleader, Nellore. 10. Duvvur Balarami Reddi. 11. Narayanam Ramiseti. 12. M.R.Ry. V. Viswanatha Rao. 13. N. Ramakrishnayya. 14. Subbarayulu Chetti. 15. Jagannatham Nayudu. 16. Chevur Penchulu Reddi. 17. Gunupudi Somayya Chetti. 18. Pasupuleti Venkatasubbayya. 19. Bandikattu Seshayya. 20. Tadanki Krishnayya. 21. Teppala Venkayya. 22. Revur Seshayya. 23. Sunku Sriramulu Chetti. 24. Vallam Pichobayya. 25. Talluri Krishnayya. 26. Yetur Nasta. 27. Krishnam Chetti Rangayya. 28. Uddandi Subbarayulu Chetti. 29. Yetur Venkataswami. 30. Bhogadapati Venkatasubbayya. 31. Chingleput Venkatasubbayya. 32. Pillella Venkatasubbayya. 33. Poluri Penchelu. 34. Kuppu Singh, Reserve H.C. No. 751. 35. Krishnan Nambiyar, P.C. No. 260. 36. Parvatha Reddi Venkatasubbayya, P.C. No. 902. 37. P. Kotayya, P.C. No. 926. 38. M. Mallayya, P.C. No. 258. 39. A. Rayappan, P.C. No. 798. 40. Kumara Nambiyar, P.C. No. 814. 41. Achyutam Nayar, P.C. No. 923. 42. Sankara Kurup, P.C. No. 1013. 43. Krishnan Kurup, P.C. No. 759. 44. Udagan Marar, P.C. No. 130. 45. Krishnan Nambiyar, P.C. No. 920. | <ol style="list-style-type: none"> 46. Ashayya, P.C. No. 342. 47. Bahadur Singh, P.C. No. 619. 48. V. Raghavulu, P.C. No. 397. 49. Muhammad Hanif, P.C. No. 327. 50. Sobasubrahmanyam, P.C. No. 31. 51. Taluru Subbarayudu, P.C. No. 714. 52. N. S. Chenchayya. 53. M. Lakshmana Perumal Chetti. 54. K. Krishnayya. 55. Y. Adayya. 56. B. Ramayya. 57. M. Dharmayya. 58. M. Narasimhayya. 59. G. Adiseshayya. 60. M. Varadayya. 61. P. Venkatasubbayya. 62. A. Seshayya. 63. V. Babul Nayudu. 64. Lakshminarasu. 65. Chittamur Kumaraswami. 66. Ponuru Ramanayya. 67. Katakam Subbayya. 68. Kanchi Venkatasubbayya. 69. Gooty Ramanayya. 70. Sivapuram Venkatasubbayya. 71. Ponnur Subbayya. 72. Bomma Chenchu Obulu. 73. Madanambeti Krishnachari. 74. Dabhagunta Ramayya. 75. Sitaramayya, H.C. No. 851. 76. Mr. Hobourne, Reserve Inspector. 77. B. Varadayya. 78. R. Chenchu Reddi, Sub-Assistant Surgeon, Nellore. 79. Annappa Nayakar, Sub-Assistant Surgeon, Nellore. 80. S. Ananta Narayanayya. 81. R. Viswanatha Ayyar, Civil Assistant Surgeon, General Hospital, Madras. 82. C. R. Krishnaaswami, Civil Assistant Surgeon, General Hospital, Madras. 83. A. R. Mahadeva Ayyar, Nellore. 84. M. Seshadri Reddi, Nellore. 85. Kadanuthala Narasimham. 86. Mr. E. O'Brien, Acting Reserve Inspector. 87. Garamurtayya Garu, Sub-Inspector of Police. 88. M.R.Ry. S. Subrahmanya Ayyar, Deputy Superintendent of Police, Nellore. |
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Defence witnesses examined.

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| <ol style="list-style-type: none"> 1. Abdul Rahiman Sahib. 2. Abdul Aziz Sahib. 3. Rauf Khan. 4. Ibrahim Khan. 5. Sabhapati. 6. Pilli Rosayya. 7. Muhammad Falah-nd-din. 8. Gauravaram Purushottama Rao. 9. Sresala Sriramulu Chetti. 10. Vallala Venkataramayya. 11. Vallala Kodandaramayya. | <ol style="list-style-type: none"> 12. Ismail Khan. 13. Abd-ur-rahim Khan. 14. Saiyid Mustafa Sahib. 15. Gorla Chinna Reddi. 16. Peyyala Lakshmayya. 17. Sowdagar Mahbub Khan. 18. Muhammad Abdul Sattar Sahib. 19. Jagapati Chengalrazu. 20. Muhammad Kalesha. 21. Muhammad Ghouse Muhi-nd-din. 22. Sowdagar Murat Khan Sahib. |
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| 23. Rahat Mian Sahib. | 39. Muhammad Kalesha. |
| 24. Muhammad Burhan Sahib. | 40. Sulurpet Mariamma. |
| 25. Muhammad Rah-mat-ul-lah Sahib. | 41. Ali Husain Sahib |
| 26. Saiyid Karim-ul-lah Husain Sahib. | 42. Ghulam Dastagir Sahib. |
| 27. Saiyid Mir Sahib. | 43. Shaikh Ali Sahib. |
| 28. Saiyid Qadir Sahib. | 44. Muhammad Khaja Sahib Faroki, retired
Inspector of Police. |
| 29. Pottireddi Pichchayya. | 45. Mr. R. Paranjoti. |
| 30. Muhammad Makhdum Muhi-ud-din Sahib. | 46. Mr. R. L. Ward. |
| 31. Sowdagar Muhammad Ghouse Muhi-ud-din
Sahib. | 47. Muhammad Yaqub. |
| 32. Pushpagiri Narayanayya. | 48. K. Sundara Rao, copyist, Stationary Sub-
Magistrate's office, Nellore. |
| 33. Chilakala Venkatarayudu. | 49. M. G. Krishnaswami Ayyar, clerk, Deputy
Collector's office, Nellore. |
| 34. Saiyid Ibadulla Sahib. | 50. Kaja-ud-din Sahib. |
| 35. Abdul Jabbar Sahib. | 51. Syetla Ramayya. |
| 36. Hassan Khan. | 52. Munamala Subba Reddi. |
| 37. Muhammad Ghouse Sahib. | 53. T. M. Usman Sahib. |
| 38. Shaikh Chingisha, head peon, Deputy
Collector's office, Nellore. | |

Court witnesses.

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| 1. M.R.Ry. T. Hanumaji Rao Garu, Prose-
cuting Inspector of Police, Nellore. | 3. A. Vaidyanatha Ayyar, Sub-Inspector of
Police, Tiruvottiyur. |
| 2. C. Muhi-ud-din Khan Sahib Bahadur. | 4. Khaja Muhi-ud-din, H.C. No. 768. |

Material objects.

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| 1. One sword, No. 1. | 3. Revolver, No. 3. |
| 2. One stick, No. 2. | |

Exhibits filed in C.O. No. 91 of 1919.

For prosecution—

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| (1) Licence | A |
| (2) Public copy of the decree in the suit | B |
| (3) Order under section 144, Criminal Procedure Code, of Subdivisional
Magistrate, Nellore | C |
| (4) Plan | D |
| (5) Notes made and statements taken by prosecution witness No. 6 at the
identification parades held on 29th October to 1st November 1919 | E |
| (6) Notes made and statements taken by prosecution witness No. 6 at the
identification parades held on 14th November to 15th November
1919 | E-1 |
| (7) List of accused made and the statements recorded by Stationary Sub-
Magistrate, Nellore | F |
| (8) Order under section 144, Criminal Procedure Code, in Telugu | G |
| (9) Copy of order under. do. do. | G-1 |
| (10) Medical certificate granted to prosecution witness No. 13 | H |
| (11) Do. granted to N. Ramayya Chetti (prosecution witness
No. 11) | H-1 |
| (12) Medical certificate granted to Kanohi Venkatasubbayya (prosecution
witness No. 68) | H-2 |
| (13) Medical certificate granted to Yaqub Sharif alias Gata Ghulam (1st
accused) | H-3 |
| (14) Medical certificate granted to Vella Babu Nayudu (prosecution witness
No. 63) | H-4 |
| (15) Medical certificate granted to Kuppu Singh (Head constable No. 751) | H-5 |
| (16) Do. Shaikh Miran Sahib | H-6 |
| (17) Do. Yusuf Khan | H-7 |
| (18) Do. Ghudu Khan | H-8 |
| (19) Do. Yaqub Beg | H-9 |
| (20) Do. Kalu Khan | H-10 |
| (21) Do. Farid Sahib | H-11 |
| (22) Do. Shaikh Babu | H-12 |
| (23) Do. Qadir Muhi-ud-din | H-13 |
| (24) Do. Shaikh Ahmad | H-14 |
| (25) Do. Usman Sahib | H-15 |
| (26) Medical certificate granted to Shaikh Makku Sahib | H-16 |
| (27) Do. Muhammad Usman alias Dada | H-17 |
| (28) Do. Kalu Babu | H-18 |

(29) Letter from Mr. K. Annappa Nayak, Sub-Assistant Surgeon, Police Hospital, Nellore, to Station-house officer, Nellore, giving details about certain injuries	H-19
(30) Certificate of post mortem made on the body of Ghulam Dastagir	H-20
(31) Wound certificate granted to Muhammad Mian	H-21
(32) Letter of C. R. Krishnamurti, Civil Assistant Surgeon, General Hospital, Madras (Reference No. 3419-G1., dated 20th November 1919)	H-22
(33) Medical certificate granted to Duvvur Balarami Reddi (prosecution witness No. 10)	H-23
(34) Wound certificate granted to Chevur Panchulu Reddi (prosecution witness No. 16)	H-24
(35) Proceedings of Subdivisional Magistrate, Nellore, sanctioning the prosecution of forty Muhammadans of Nellore town under section 188, Indian Penal Code	J
(36) Proceedings of Subdivisional Magistrate, Nellore, sanctioning the prosecution of Shaikh Qadir residing in Dudekula street of Nellore	J-1
(37) Complaint given by the tenth accused Muhammad Mian to Court witness No. 3, Sub-Inspector of Police, Tiruvottiyur	K
(38) Account book of ammunition kept by prosecution witness No. 76, Reserve Inspector	L
For defence—	
(1) Deposition of Mr. K. Brahmayya, Circle Inspector, made on 2nd December 1919	I
(2) Deposition of Mr. N. Seshagiri Rao, Stationary Sub-Magistrate, Nellore, made on 3rd December 1919	II
(3) Deposition of Mr. Subbarayudu, Pleader, made on 3rd December 1919	III
(4) Deposition of V. Babul Nayudu, made on 5th December 1919	IV
(5) Letter from the Station-house officer, Nellore, dated 29th October 1919, to the Sub-Assistant Surgeon, Police Hospital, Nellore, requesting to be informed about the details of injuries and also the eye of each injury	V
(6) Special report of prosecution witness No. 87, to the Deputy Magistrate about the meeting of the Hindus at Stonehousepet to consult about the rights of Hindus to go with processions of all kinds with music, etc.	VI
(7) Arrest cards	VII
(8) F.S.R. in Crime No. 229 of 1919, Nellore town	VIII
(9) Chit given to the 16th accused in the Ayurvedic medical hall, Nellore	IX
(10) F.S.R. in Crime No. 229 of 1919 of Nellore station	X
(11) Records in C.C. No. 1276 of 1919 on the file of Stationary Sub-Magistrate, Nellore	X-1
(12) Records in C.C. No. 1278 of 1919 on the file of Stationary Sub-Magistrate, Nellore	X-2
(13) Records in C.C. No. 20 of 1902 on the file of Headquarter Deputy Magistrate, Nellore	XI

JUDGMENT.

The District Superintendent of Police, Nellore, acting under Act V of 1861 gave to nine persons of Nellore town a licence for taking a Hindu Deity in procession accompanied with ordinary music and tom-tom along certain specified streets of Nellore town between 2-30 p.m. and 5 p.m. on 22nd October 1919. That was the Dipavali day, but no connexion has been shown to exist between the observance of that festival and the procession in question. The day was, however, a public holiday and this gave to the various pleaders, clerks in public offices and others who attended the procession the opportunity to do so. The procession was peculiar in that it attracted the interest of this class of people. It was peculiar in other respects also. Early hours of the forenoon or later hours of the afternoon and more generally the nights are the usual period of procession of Hindu Deities. Starting the procession at 2-30 p.m. is quite an unusual occurrence. The temple from which this procession started, it is stated, never started any procession before. The temple had received a fresh set of images, but that was not the main cause of starting this procession and on the scale on which it was actually conducted. The explanation of this specially arranged and attended procession is to be found in the proceedings of a meeting of Hindus held on the 19th idem, i.e., the fourth day previous to the day of the procession. Prosecution witness No. 8, a pleader, who was present and took part in the meeting states as follows: "I was present all through the meeting. That meeting was held to organize a procession on the 22nd idem. There was an exhibition of feeling against the deprivation of the rights of the Hindus to take their procession but not against the community (Muhammadan community). The idea of the meeting was that the procession should be taken through unless

prohibited by authorities and that if prohibited, it was not to be taken. No obstruction was anticipated by the meeting. One speaker said to the effect that a procession should be taken at all costs, even if prohibited by the authorities. He said that he was prepared to undergo a sentence of transportation, if that was the result of taking the procession. The meeting was attended by two to three hundred persons." Both the speakers above referred to and the President of the meeting are known residents of Nellore town. In describing the feelings of Hindus this witness states: "The Hindus had an idea that their procession was being unnecessarily put a stop to in spite of their having obtained a decree. Excepting this there was no animosity to my knowledge between the Hindus and Muhammadans in Nellore town." The decree referred to above is the decree of the District Munsif, Nellore, in Original Suit No. 987 of 1917 on his file. That was a suit for a declaration of the rights of the Hindus in the matter of taking processions along public streets in Nellore town. The cause of action of this suit has been stated to be an order of the District Magistrate, Nellore, dated 21st October 1917; that the Hindus must compromise with the Muhammadans or establish their rights in a civil court. The judgment in this suit was delivered on 2nd October 1918. The finding in the judgment is as follows: "I therefore find that the Hindus in Nellore town are entitled to go in procession with music in all the streets of Nellore town and in front of mosques at all hours of the day except during 5 a.m. to 7-30 a.m., 12 noon to 2-30 p.m. and 5 p.m. to 8-30 p.m. . . ." Prosecution witness No. 1, who was Inspector of Police in Nellore town from July 1917 states: "The feelings between Hindus and Muhammadans were considerably strained during the period I have been in Nellore." The dispute had thus commenced to grow acute from 1917, the decree of 1918 had failed to bring about any settlement and the procession of 22nd October 1919 was thus an organized attempt to conduct a special procession in order to test how far the decree was really efficient.

2. The police guard provided to have this procession conducted safely consisted of (i) a party of forty reserve police constables under the Reserve Inspector Mr. Habourn assisted by a sergeant Mr. O'Brien and two or three head constables, (ii) a party of twenty reserve police constables under a sergeant Mr. Jackson going in front of the procession, (iii) a party consisting of a Sub-Inspector Mr. Gurumurti Ayyar, prosecution witness No. 87, a head constable, and six constables going in advance of the procession, (iv) a party of ten constables under a Sub-Inspector Mr. Subba Rao in rear of the procession, (v) a party of about thirty constables, ten on either side of the procession under an Inspector of Police and ten under the Inspector of Police, Nellore town, Mr. Brahmayya. The Town Inspector and his party were just behind Mr. Jackson's party of twenty reserve constables. There were also about six sub-inspectors and four or five head constables besides the men mentioned above. The Deputy Superintendent of Police Mr. Subrahmanya Ayyar was also in the procession. He says that the whole police force including the reserve police was in his command. The reserve police constables had carbines and been provided each with a dozen cartridges, ten ball cartridges and two buckshot cartridges. The other constables had lathis.

3. The Taluk Magistrate Mr. Subbaramayya, the Sub-Magistrate Mr. Seshagiri Rao were in the procession along with the Deputy Superintendent of Police and Town Inspector. The Subdivisional Magistrate in charge of the Headquarter division was on the day of this occurrence Mr. Muhi-ud-din Khan. He had been directed by the District Magistrate to be present and conduct the procession. He wrote to the Taluk Magistrate a letter which reached him at 11 a.m. on the day of the occurrence a few minutes after the latter returned from camp. He stated in the letter that he would not be able to attend on account of illness and that the Taluk Magistrate should attend. The Subdivisional Magistrate had also written to the Sub-Magistrate instructing him to be present at the procession. The Sub-Magistrate acknowledged this letter, said that he would be present and stated it as his opinion that the District Magistrate or the District Superintendent of Police should be present with sufficient force. The Sub-Magistrate was apparently unaware of the police arrangements made. The Subdivisional Magistrate did, however, actually attend. According to his evidence, which I accept, he met the procession, went along with it but with the advance police party and when the actual disturbance took place he was separated from the procession by an intervening crowd.

4. The procession left the temple at about the appointed time. No event occurred till the procession got into the bazaar street and proceeded some distance northward. We are not concerned with the other parts of the route taken by the procession. The Bazaar street runs north to south at this part. The procession entered the Bazaar street from what is known as the Barracks square, an open space situated east of the Bazaar street and more than 500 feet from it. The Bazaar street can be entered from the Barracks square by two ways. One goes almost direct west and this is the way taken by the procession. The other way goes northwest and passes by what is called a langarkhana and reaches the Bazaar street further north. I note in the margin* a rough sketch of the scene of the offence. Exhibit D is the plan filed in the case. The first party of forty armed reserve constables was stationed at the Barracks square. There is a mosque there. The procession had to pass by this mosque before it turned west to get into the Bazaar street. As soon as the procession passed the mosque safely without any event, this party,

which is referred to as the emergency force, was instructed to go by the langarkhana way and station itself at the police station marked P in the marginal sketch. This was done without any hitch. By the time the emergency force got to the station, the procession was entering the Bazaar street.

5. The procession entered the Bazaar street in the following order. The advance party of Mr. Gurumurti Ayyar and his constables first proceeded. The party was about 100 yards in advance of the main procession. Next came the party of Mr. Jackson with 20 reserve constables. His party actually led the procession proper. Just behind Mr. Jackson's party came the Deputy Superintendent, the Inspector of Police, Nellore town, the Magistrates, sub-inspectors and head constables. Behind them came a part of the body of the procession; then the pipers and those that beat tom-tom; then the Deity, then again another part of the procession and lastly Sub-Inspector Mr. Subba Rao and his party. This is the main order. Between Mr. Subba Rao's position and the reserve police under Mr. Jackson the distance is stated to have been half a furlong and this distance was closely packed with those who had come to attend the procession. The strength of this body of the procession is stated by prosecution witness No. 1 to have been 3,000. An estimate of the same made by defence witness No. 1, a municipal councillor and a Muhammadan, whose estimate may be taken to represent the version of the accused puts it at 8,000 or 10,000 strong. I think this estimate is clearly exaggerated. The Bazaar street at this place may be taken to be of an average width of 30 feet. Assuming 20 men on the average in each line (Mr. Jackson's party was moving 10 in each line) and two rows per yard, a distance of about 75 yards will be required to accommodate 3,000 men with just enough space for moving in one direction. The distance between streets 1 and 2 shown in the sketch is 311 feet as shown in the plan. The reserve party of Mr. Jackson was about 30 yards south of street No. 2, when the procession came to a halt and the extremity of the procession had then passed street No. 1. The length of the procession was thus nearly 75 yards and the estimate of 3,000 is apparently correct, while the estimate of 8,000 to 10,000 is a clear exaggeration. The estimate of 3,000 does not, however, include the people that went in front of Mr. Jackson's party. This number appears to have been considerable and it is necessary in order to understand the evidence correctly, to grasp the fact that there was a large body of people in front of Mr. Jackson's party. When the Subdivisional Magistrate met the procession he first met Mr. Gurumurti Ayyar's party. This was before the procession reached the Barracks square. Even then there was a continuous crowd between Mr. Gurumurti Ayyar's party and Mr. Jackson's party. The Deputy Magistrate says that Mr. Gurumurti Ayyar wanted him to turn back his jutka because the crowd behind him was thick. The Deputy Magistrate did not attempt to pass this crowd and put himself in touch with the Taluk Magistrate to whom he had written previously that he would not come and to whom he had not sent any subsequent intimation of his arrival. This continuous crowd must have if anything grown by the time the procession proceeded northward along the Bazaar street. Mr. Jackson's party was perhaps scarcely visible to a person looking at the crowd from the front. It is these men in front of Mr. Jackson's party that were first attacked and dispersed till the attacking mob was face to face with Mr. Jackson's party and a clear intervening space. The men so dispersed appear to have been considerable. Some came behind Mr. Jackson's party, some succeeded in escaping northward and many took shelter in the verandas of houses and shops on either side of the Bazaar street lying between the openings into it of the streets 2 and 3. These persons are not included in the estimate of 3,000.

6. It will be seen from the sketch that there are three streets entering the Bazaar street from the west, I have marked these as 1, 2 and 3. No. 1 is known as Dativari street. No. 2 is known as Bhashyakarlu street. It is also known as Abdul Khadar street and Gazu Beg street. No. 3 is known as the Janda street. Between No. 1 and No. 2 is the house of the Deputy Magistrate marked D. It is 106 feet north of No. 1 and 163 feet south of No. 2 and itself occupies a frontage of 42 feet along the Bazaar street. Between the Bhashyakarlu street and the Janda street are two mosques and the town police station; one mosque lies immediately north of the Bhashyakarlu street and the other south of the Janda street opening. The police station is between the two mosques. It is 121 feet north of Bhashyakarlu street and 185 feet south of Janda street and itself occupies a frontage of 41 feet.

7. All these buildings lie on the western row of the Bazaar street. The western row is occupied by shops as well as residential quarters. There are many streets of the town to the west of this western row. According to defence witness No. 1 who is the municipal councillor of this ward, about two-fifths of the Muhammadans in Nellore live in these streets. It has been put forth with emphasis, on behalf of the accused, that the streets numbered 1, 2 and 3, the streets west of the Bazaar street which connect these three streets and the Bazaar street itself both in its eastern and western rows are predominantly occupied by the Hindus. The object with which this point has been pressed is to show that such a large multitude of Muhammadans as the prosecution witnesses alleged they saw cannot possibly be gathered so suddenly at the entrances of the streets 2 and 3 as stated by them. There must have been previous assembling and preparation on the part of the Muhammadans for marching on the procession. There is no evidence of this. Therefore the statements of the number of Muhammadans should not be accepted or must be treated as grossly exaggerated. I think there is some force in this contention. I do

not, however, consider that it is impossible for Muhammadans to have arranged for collecting here and there without letting the general public know their movements. The evidence for the defence itself suggests some of the ways in which this could have been done. The 20th defence witness owns a house close to the police station. There was a feast in his house and he had invited his relations that day. Fifteen male relations attended. Again there are other defence witnesses who say they witnessed the events of the day from their shops. There, certainly, are sufficient shops owned by Muhammadans along the Bazaar street in which it was possible for Muhammadans to have gathered. It would have been better if the investigating officers had attempted to find out and explain how the mob came on a sudden. It does not appear that any such attempt was made after the event. In fact the police inspector (prosecution witness No. 1) states that, in the previous part of the day, he had made inquiries to find out whether either party collected any mob and his information was that there was no attempt to collect any such mob. There is no doubt the element of unexplained suddenness of the attack in the version of the prosecution story. The suddenness of the attack has also, I think, led to the committing of some mistake in handling the situation, and I am afraid also to perjury and some exaggeration in the attempt to cover up those mistakes. Previous preparation for an attack is however clear from the fact of the large quantities of the stones thrown, which I consider have been thrown by the members of the mob that attacked the procession. Even taking into account, the failure to explain the assembling and preparation for the attack, I think there is not much in the fact of the neighbourhood, of the scene of the offence being mainly inhabited by the Hindus, that need by itself take away from the value to be attached to the prosecution evidence regarding the attack on the procession, especially as I shall show that the defence version by inferences that follow from their accounts materially supports the prosecution.

8. Briefly stated, the prosecution version is as follows:—The Deity went up northward along the Bazaar street. It came very near the house of the Deputy Magistrate. Stones fell in large numbers on the procession. Majority came from the western side of the Bazaar street. There were also however stones from other sides. The Sub-Magistrate was hit by a stone. The stones so called are mostly brickpieces. A mob of fifty Muhammadans issued eastward into the Bazaar street coming from the Bhashyakarlu street. They had sticks and swords. They stood across the road. They threw stone at the procession which was south of them and also at the men who were north of them. Those that were armed with sticks beat some of the Hindus, who were near them. The people in front of Mr. Jackson's party as far as the police station, where the emergency force was stationed, cleared away from the Bazaar road. By this time a Muhammadan mob had also appeared into the Bazaar street from Janda street. They had also swords and sticks. They also threw stones. They had also assaulted the Hindus that came near and cleared the space between themselves and the emergency force of the station. There were thus Mr. Jackson's party of twenty armed reserve constables, a clear space of 30 yards along the Bazaar street which was about 30 feet broad, a mob of Muhammadans about fifty strong, a clear space again between them and the emergency force at the station which stood drawn up in two ranks north to south close to the police station and facing east, clear space again between this force and the entrance of the Janda street and a mob again of about fifty Muhammadans facing the emergency force. The mobs would not clear, notwithstanding repeated warnings. The Taluk Magistrate who was in the procession behind Mr. Jackson's party gave the order that the mob should be dispersed by firing. The Deputy Superintendent of Police thought it best to get the emergency force to move against the mob at the Bhashyakarlu street. A section of that force came and as it came near the mob, one of them caught hold of a bayonet and attempted to wrest it. He was shot. The mob grew more furious. A general fire was then opened and the mob in front of the Bhashyakarlu street dispersed. While this was going on, there was a report of an attack on the procession from behind and call for help from the police officer there. After the dispersal of the mob at the Bhashyakarlu street, the procession moved up, but the Deity had to be halted in front of the police station, as it took some time to disperse the mob at the Janda street. The mob was fired at there also before it was dispersed. The procession then went on without any serious disturbance and reached its destination.

9. As against this, the version on behalf of the accused is according to the first defence witness as follows:—

"I saw two or three Muhammadans and some more about eight or ten Muhammadans in all, standing in front of the Bhashyakarlu street. They were saying something which I could not hear. They were talking to the Deputy Superintendent, Town Inspector and Sub-Magistrate who were in front of them. About this time stones came falling into the procession from all sides, I cannot say from where. As stones commenced to fall, some of the men in front of the reserve police under Mr. Jackson came behind it, some went in advance to the station and some took shelter in the sides. These persons that ran away like this cried out 'Fire', 'Fire', 'The Muhammadans are come and are throwing stones'. Many persons cried accordingly, I cannot say how many. After this some ten or fifteen police constables came from the town police station at charge bayonet to the Bhashyakarlu lane. There was a sepoy in khaki dress; a short Muhammadan. He came with the sword held vertically in his hand and was moving round at the place where he was. When he was about to be bayoneted, he caught hold of the gun with both

his hands. I then heard the sound of a gun fired at the sepoy from the side. He then sat down. He was shot again and he fell down. The Muhammadans who then stood, two, three or four went into the Bhashyakarlu lane. . . . Some of the police that came from the police station, then fired into the Bhashyakarlu lane. Some fired at the houses north of the Bhashyakarlu lane. After I came a short distance, and heard the firing of the guns again at Janda lane. . . . About 100 or 150 stones fell. The Muhammadan that came with the sword held it vertically in his right hand which he stretched horizontally. The Muhammadan that came at the Bhashyakarlu street did not go back into the lane when the police officers came at charge bayonet. The God stopped in front of the Deputy Collector's house for about 4 or 5 minutes. The God stopped on account of the disturbances caused by the falling of the stones. I saw only eight or ten Muhammadans that came at the Bhashyakarlu street and not more. At no time did the number of Muhammadans exceed ten. One of them had a sword. None of them had sticks. The ten thousand of the procession stopped on account of the ten Muhammadans."

10. The Subdivisional Magistrate Mr. Muhi-ud-din Khan was examined as a court witness. The imputation of partiality which has been made against the prosecution witnesses who are Hindus cannot possibly apply in his case. His statements are as follows: "I told the jatkawalla to move my jutka. It would have gone a few steps when there was falling of stones. Stones were falling and somehow the jutka began to run. . . . A short distance after this the carriage was stopped. I told my daffadar to get some paper and pencil. . . . I wrote to the Collector 'stones are falling like anything. Better to stop the procession or what shall I do'. . . . I found some Muhammadans running towards the station with sticks, i.e., running southward, on the road there was some confusion. The Hindus were moving from one veranda to another".

11. The common ground between these two versions is that the Deity was brought to a halt in front of the Deputy Magistrate's house, that some Muhammadans had assembled at the Bhashyakarlu street, that one of them had a sword that he was demonstrating with it, that a section of the emergency force went at charge bayonet against these Muhammadans that these Muhammadans stood their ground when the charging party came close, that one of the Muhammadans who was armed with a sword had been demonstrating with it, seized the bayonet of one of the charging party, that he was shot, that there was firing at the Bhashyakarlu lane, that there was a body of Muhammadans at the Janda street armed with sticks and running forward to use them, that there was firing at the Janda street and that at both the places stones were thrown sufficient to disperse the crowd.

12. When once this common ground is perceived, I think it is impossible to accept the view put forward on behalf of the accused that the Muhammadans, if any that had assembled, had gathered together only for the peaceable purpose of representing to the officers in the procession that music should be stopped in front of the mosques. Nor am I able to accept as any way representing a genuine estimate, the estimate made by the defence witnesses of the number of Muhammadans that assembled at the place. 'Two or three Muhammadans and some more about eight or ten' which is the expression used by defence witness No. 1 betrays a conflict in the mind of defence witness No. 1 between attempt to put the estimate as low as possible and an attempt to secure just an air of probability. This again dwindles into 'two, three, or four' after one has been shot. The court witness, the Subdivisional Magistrate, who speaks now of his view having been obstructed by his peon and two constables (I am surprised he expected this to be believed), spoke before the Deputy Superintendent of Police of a 'crowd which he thought of cutting through'. He speaks now of six or seven Muhammadans with sticks (with permission to add one or two more) while he spoke before the Deputy Superintendent of 'Muhammadans attacking on all sides'. There is also I am afraid deliberate exaggeration by prosecution witness No. 1 and prosecution witness No. 88 regarding the number of the mobs. What in these circumstances I have to do is to examine closely the prosecution evidence, to see what case has been made out against the accused and then the defence evidence on behalf of each of the accused as to how far the case has been rebutted.

13. Before examining the evidence in detail, I think, I must deal with two or three general grounds on which the prosecution evidence has been impeached, (1) the ground of partiality on behalf of the official witnesses, (2) the ground of hasty and illegal action on account of the panic of the officers and consequent attempts to cover up the same, and (3) the ground of liability to sectarian and religious animosities on behalf of most of the non-official witnesses who are Hindus.

14. The ground of partiality rests upon the basis that the procession was at all licensed. It was contrary to all mamul. It was specially arranged. These propositions are true. It is argued therefrom that the motive was to insult and humiliate the Muhammadans and that in this the officers shared. This inference is, I think, due only to a failure to appreciate the other point of view. The mamul has been declared to be unreasonable in a court of law. The law as so declared is no doubt a law not deriving its support from the past traditions of the country. The general observations of their Lordships of the Privy Council quoted in paragraph 9 of the judgment (Exhibit B) have a direct application to this case. "With regard to privileges claimed on the ground of caste or creed, I may observe that they had their origin in times when a State religion influences the public and private law of the country and are hardly compatible with

the principles which regulate British Administration, the equal rights of all citizens and the complete neutrality of States in matter of religion. . . . They are innovations but the superseded usages are obviously condemned by the spirit of our laws. When anarchy or absolutism yield place to well-ordered liberty change there must be." The question before the authorities at Nellore was when that change was to be. It may have been wiser to have waited for the change till the judgment of the District Munsif had been confirmed in appeal. It may have been wiser to have brought about the change in connexion with a usual and ordinary procession. Perhaps, if there had been a more correct estimate of the strength of the feeling in favour of mamul, the procession would not have been started with the force that was available or the demand on the part of the Hindus for their rights would have been less insistent. On the other hand, it has to be remembered that the judgment of the District Munsif did not lay down any new principles of Law and there is no guarantee that the opposition would have been less strong in the case of an ordinary procession. The officers had also to reckon with the growing feeling of dissatisfaction with the apparent variance between the practice and the principles enunciated by the Law Courts. I am not concerned with the question of the wisdom or otherwise of having licensed the procession, but have to consider whether there is any reason to suppose that the official witnesses have been actuated by any animus against the accused and how far their evidence should be discredited on that account. I have not been able to discover any basis for such a supposition unless it is to be presumed that the officers of a particular sect or creed should when they support the claim of a community belonging to that sect or creed, be necessarily presumed to do so on account of an animus against the members of the opposing sect, a presumption which to say the least of it is obviously illegal. [Section 144 (c) of the Evidence Act—Official Acts have been regularly performed.]

15. The second ground of hasty and illegal action requires more detailed examination. Sections 128 and 129 of the Code of Criminal Procedure have to be borne in view. Under the former section, any Magistrate or officer in charge of a police station may proceed to disperse an unlawful assembly by force if the assembly does not disperse when commanded to do so or if it conducts itself in such a manner as to show a determination not to disperse. Section 129 says that if the assembly cannot be dispersed otherwise than by military force, the Magistrate of the highest rank who is present may cause it to be dispersed by the military force. The following questions arise:—

- (1) Was there an unlawful assembly?
- (2) Did it continue even after being commanded to disperse or did it conduct itself in a manner to show a determination not to disperse?
- (3) Could it have been dispersed otherwise than by the use of military force and was it necessary for the public safety that it should be dispersed?
- (4) Did the Magistrate of the highest rank who was present cause it to be so dispersed?

16. I will take up the last question first. The Magistrate of the highest rank was no doubt the Subdivisional Magistrate and he gave no orders to disperse the mob by military force, but the question is 'Was he present' within the meaning of section 129, Criminal Procedure Code. It is necessary to quote at some length from the evidence of the Subdivisional Magistrate: "As there was rush of people I told the jatkawalla to move the jatka. It would have gone a few steps when there was falling of stones—stones were falling and the jatka began to run. . . . Hurriedly I wrote to the Collector 'Stones are falling like anything—better to stop the procession or what shall I do. . . .' After writing the chit, I was looking about for a constable. (Note.—He had two with him and armed) to send it on to the Collector. I could not find any near there. I then got down the carriage and had a thought of going to the station, to send it from there by some messenger. Then I found some Muhammadans running towards the station with sticks. On the road there was some confusion. The Hindus were running from one veranda to another. Two or three minutes after this, I saw one or two constables shooting towards the north. I had heard the discharge of one or two shots previously. I thought the discharge of guns was to prevent stones being thrown. At the moment I heard and saw the discharge of the guns, there were no stones falling between my carriage and the police station. When I saw these discharges I got somewhat vexed that I was ignored. So I got into the jutka and went off to the District Magistrate's bungalow. . . . I saw about six or seven Muhammadans running south. There may be one or two more. I stayed three or four minutes at the place after I saw the six or seven Muhammadans. I could not properly see as my men, namely, the orderlies and the daffadar were frequently coming across my view. After stonefall commenced the road between my jatka and the police station was clear for four or five minutes. I did not think of going to the police station at all then. It was only after writing the chit that the idea of going to the police station occurred to me. I see the portion marked A in Mr. Hobourn's deposition [A 'the mob that gathered north of the police station were just the other side of the mosque opposite to a lane there (Janda street). The mob that gathered on either sides threw stones and brandished swords and sticks.'] From the place where I was, I did not see any man with a sword. I did not see any Muhammadans standing in a mob at a certain place. I see the portion marked B in Mr. Hobourn's deposition [B 'the mob was about fifty or sixty. They were altogether']. I would remark that I did not see fifty or sixty men together. This is the only remark I have

to offer as to B. I see the portion marked C [C 'my party that went north, went at charge bayonet. I believe it would have been useless going up to the crowd charging them because it was a case of small armed party dealing with a large unruly mob'.] I would remark that this might be after I left the place. I felt my orders would not be carried out and that it is why I thought of writing to the Collector. I had in forwarding the letter of the Sub-Magistrate made the remark that if necessary I would send for him. That is why I first thought of writing to the Collector before I took any action myself (*Note*.—No action but getting vexed was actually taken). My information about the police arrangements was what I got orally from the Police Inspector. . . . The District Superintendent did not communicate to me officially the police arrangements made for the procession."

17. According to this evidence, the events that took place as far as he was concerned were in the following order:—(1) His orders to his jatkawalla to move on from the police station, because there was a rush of the people, (2) commencing of stonefall, (3) the jutka horse taking fright and running and being brought to a stop with an incident in the middle of the witness's turban having been knocked down by a stone and picked up, (4) his instructions to his daffadar to get paper and pencil, (5) his hurried exit, (6) his looking out for a constable, (7) his getting down from the jutka to go to the station, (8) his seeing Muhammadans going with sticks and confusion in the road, (9) his hearing a discharge of one or two gun shots and his seeing one or two constables firing, (10) his getting vexed and going to the Collector's bungalow. The interval between (8) and (9) is stated to be two or three minutes. The interval between (8) and (10) is stated to be three or four minutes so that he just had one minute to get vexed, which is the only action he took himself. He speaks of an interval of four or five minutes when the road was clear between his jutka and the police station. This must come apparently between (2) and (8). The Deputy Magistrate was thus near the scene of offence between seven and nine minutes during four or five minutes of which he could have come back to the place where he ought to have been in order to direct the police. During the remaining three or four minutes he was separated by a crowd which has been variously estimated by him from two orderlies and a peon of his moving and running to and fro (for what reasons not stated) to 'seven or six Muhammadans and one or two more'. 'The Hindus running to the sides' must have been before the road was cleared between his jutka and the police station. It must be remembered that he had with him his daffadar and two constables, a double barrellled gun, a police gun and a revolver though not paper and pencil. Even if the Muhammadan crowd was such as has been described by Mr. Hobourn to be and even if we assume that it would have been violently hostile to him, their co-religionist and one who had been Subdivisional Magistrate of the place for a long time, he had the means to cut his way. Not only did he utilize otherwise the splendid opportunity that he had of coming to his post of duty when the intervening space was clear, but he also failed to come back later, when he could have done. The four or five minutes of clear space that he had in the earlier part, he apparently utilized in writing a chit to the District Magistrate. What is the advice given in the chit? 'Better stop the procession.' Stopping the procession was out of question. Turning it back or diverting it were the only courses open. Let us assume that the opposition of the Muhammadan crowd was too great to be overcome even by the use of firearms. The advice offered would then have been worth considering. Even then the opposition of the Hindu crowd would have to be gauged. It is the case for the Muhammadans that there were Malas and Madigas armed with sticks in the Hindu procession at that time. I will leave out of account the contempt into which the district administration would have fallen, whose reputation it was his duty to uphold. I will leave out of account the subsequent consequences of the outrage to the feelings of Hindus. Riots that occurred in Northern India on account of cow-killing or in Sivakasi between one section of Hindus and another may well have been the consequence of yielding to mob force on this occasion. There is nothing to show that the Deputy Magistrate considered these questions. He may have had the time to do so, but he certainly had not at the place where he was, the data to do so. He had as a matter of fact not even seen the whole of the Hindu procession. His knowledge of police arrangements appears to have been very defective though that may not be entirely his fault. He attempted to move away the emergency force in which, if he had succeeded, the consequence may have been far more serious. It seems to me that only three conclusions are possible regarding the advice: (1) It was dishonest or (2) the opposition of the Muhammadan crowd had been grossly understated in the evidence of the Subdivisional Magistrate before me or (3) he had lost his mind completely when writing the chit and had only enough understanding left to get vexed. His own account of why he got vexed is quite unintelligible. He says he thought that the discharge of the gun was to prevent stones being thrown. If so, the firing was demonstrative and there was no basis for the inference that the mob was being fired at without his orders and that he was being ignored. His understanding of the discharge of guns was if anything a clear indication of that the situation was becoming critical at a place distant from where he was. He still made no attempt to go to that place, which he had left previous to the arising of any necessity for his being consulted by the police. I cannot in these circumstances consider that it was part of the duty of the police officers or the subordinate magistrates to have made any attempts to find him. I am not concerned with the question of the propriety or otherwise of the Deputy Magistrate's behaviour. Accepting the most charitable view, which is the third of the alternatives I have mentioned above and which

in fact is what was urged on his behalf by the Counsel for the accused, I must find on the question, whether the Deputy Magistrate was present within the meaning of section 129, Criminal Procedure Code, that he had made himself absent.

18. The Magistrate next highest in rank was the Taluk Magistrate. He was also a first-class Magistrate. He was present at the scene of the trouble. Can it be said that he caused the assembly to be dispersed by military force?

19. I think that the exact requirements of section 129, Criminal Procedure Code, must be kept in view. The dispersing by the use of military force, which I take would include any force provided with firearms, would be lawful, if it could be said that the Magistrate present caused the dispersal by military force. This is a question of fact which has to be decided with regard to the evidence in each case. From an ordinary and I should say an unreflecting point of view, the evidence in such a case would be support to start with an order to open fire. A little reflection will, however, show that this is absolutely unnecessary. Nay in many cases of serious rioting, it may often be impossible. In all cases where the dispersing force comes into a close contact with a riotous mob, there must be an attack and a murderous attack on individual members of the dispersing force. Are the other members of the force to wait till an order is received from the Magistrate to open fire. This would be impossible even if the Magistrate should be forty or fifty yards away and the view obstructed. Are the other members of the force confined in their power to use firearms to the conditions under which Right of Private Defence arises? Even if that be so, would not such shooting be part of the process of dispersal of the assembly by military force? If the Magistrate came subsequently to the actual place of shooting and accepted the responsibility for the shooting, could it not be contended that he caused the dispersion by military force, so far as those shots are concerned? I think such a contention would be sound. The question is what was the nature of the Magistrate's conduct. Was he instrumental in the use of military force? If a Magistrate that is present accepts the responsibility for the first shots that were fired without his previous concurrence, under stress of circumstances, his subsequent concurrence and acceptance of responsibility for the same will, it appears to me, bring the previous acts within the scope of section 129, Criminal Procedure Code. In this view an order to fire is not a necessary forerunner of the first shots.

20. An order to fire will no doubt precede all firing, if the issues suggested for consideration by sections 128 and 129, Criminal Procedure Code, are carefully kept in view and if the circumstances permitted at the outset the finding of definite answers to the issues. The issues are, can the assembly be dispersed by the use of ordinary force or is it the case that it cannot be dispersed otherwise than by the use of military force. In the former case ordinary force alone should be used and in the latter case only is the use of military force justifiable.

21. The evidence starts with an order to open fire. The Taluk Magistrate is stated to have given this order. In his examination-in-chief, dated 5th January 1920, prosecution first witness, the Inspector of Police, described the order as follows:—"The Taluk Magistrate ordered to open fire at them". "Them" refers to the mob at the Bhashyakarlu street. In his cross-examination on 6th January 1920 the witness described the same order as follows: "The Taluk Magistrate gave the order in English and he said to me and the Deputy Superintendent: 'You must disperse the mob by opening fire'. The latter form of the order is it will be noted more general. It could be contended also to apply to the mob at the Janda street and the mob at Janda street had also been fired at. It could hardly be contended that the Taluk Magistrate was aware of the mob at the Janda street when he issued the order. This variation is the Inspector's attempt to justify the firing at two places with only one order. The Taluk Magistrate's way of dealing with the matter is different. He also says that he gave the order to fire and that after some time, the emergency force at the police station came towards the Bhashyakarlu street. He thus justifies the opening of the fire at the Bhashyakarlu street by his order. The firing at the Janda street, he leaves severely alone. He speaks of no obstruction at the Janda street, does not know of any firing there, a fact which is spoken to by almost all the other witnesses and attested by the discovery of a dead body. He would have it ignored altogether. The Deputy Superintendent has his own way of dealing with the difficulty. He stated on 3rd February 1920 "the Taluk Magistrate's order was approximately 'I give you the order to open fire'. The order relates to the mob that came from the Bhashyakarlu street". On 8th March 1920 the Deputy Superintendent said: "The Taluk Magistrate had given the order to open fire south of the Bhashyakarlu street. The order given south of the Bhashyakarlu street was intended to apply throughout. I understood the order so. I did not understand it to apply throughout the day, nor throughout the bazaar street. I understood it to apply only to mobs at the two mosques. I did not know when the first order was given, that there was a mob at the northern mosque, but when I saw the second mob being dealt with by the Reserve Inspector I took it that the order of the Taluk Magistrate covered that also." Later on in the same day he said: "When the Taluk Magistrate gave the order to open fire. I understood it applied only to the mob that came from Bhashyakarlu street, but when the Reserve Inspector got the order, he appears to have understood it to apply to the mob at the Janda street as well." I have underlined above the portions which are obvious contradictions. The Deputy Superintendent has been unable to present a consistent view of how he understood the orders which he says he set about executing and it is obvious that in his second statement he has been shifting his position. Leaving out

of account the second of the three statements of the Deputy Superintendent, above quoted, his position appears to be that the Taluk Magistrate gave an order to open fire which he understood to apply to one locality, but when it was extended by the Reserve Inspector and apply to another, he took no further notice of it. He was the officer who was responsible for advising the Taluk Magistrate whether ordinary force would be sufficient or the use of firearms would be necessary. He is I am afraid willing to incur the risk of charge of failure to realize this responsibility in preference to the risk of leaving the acts of shooting unsupported by a magisterial order. He made an attempt to support both the shootings, but left the latter finally as hopeless.

22. The difficulty in explaining the application of the order is supplemented by the difficulty of explaining how the order was actually communicated to the emergency force at the police station. There was the mob of Muhammadans between the Taluk Magistrate and the emergency force. It is explained that head constable No. 838, prosecution witness No. 6, was the bearer of the message. The message was oral. He went by lanes and streets behind the eastern row of the bazaar street, got into the bazaar street north of the police station by the Sikharamvari street (see sketch), got to the police station and communicated the message to the Sub-Inspector there. That Sub-Inspector communicated the message to the Reserve Inspector of Police. He divided his force into two sections and sent Sergeant O'Brien with fifteen constables southward towards the Bhashyakarlu street. The Inspector went later on himself towards the north. The cause of these two movements is this head constable No. 838. The choice of this messenger was made by the Inspector of Police prosecution witness No. 1. The Deputy Superintendent and Taluk Magistrate say that they do not know who conveyed the message. According to both of them the situation had become critical. I am unable to understand how both these officers could have failed to satisfy themselves that a reliable and prompt messenger was chosen and if so how they could be unaware of the person chosen. The head constable says that he encountered no difficulty at all in the way. He passed along the whole length of the procession southwards and got out of the bazaar street by what I have referred to as Langurkhana way. We have evidence that before this time assaults on the procession from behind were repeated. This head constable saw no such assaults and was not himself molested. Again when he came back to the bazaar street, he passed by the Janda street. He saw a crowd of ten Muhammadans there, but it is clear from the evidence of other witnesses that if this head constable had really left the procession at the time he is stated to have done, the attack at the Janda street had developed and he would have had to cut his way through. It seems to me that if the messenger came at all to the police station, it must have been much earlier. The ignorance of the choice of the messenger which the Superintendent acknowledges does not seem to me to be consistent with the importance of the message he is stated to have carried.

23. Again, what was the message actually sent? Prosecution witness No. 1, the Inspector of Police, says that he instructed prosecution witness No. 6 to say 'that the Taluk Magistrate had given the order to fire, and that it was not possible to fire from his position.' As deposed to by prosecution witness No. 6, neither his version of the Inspector's instruction, nor his version of the message he communicated to the Sub-Inspector contain a mention of the Taluk Magistrate or of any other Magistrate or of the difficulty of firing by Mr. Jackson's party. The Inspector Mr. Hobourn says that he understood the order to have apparently been the Deputy Magistrate's order, but that he was not certain. The intermediary between Mr. Hobourn and the head constable was the Sub-Inspector Mr. Krishna Rao. This officer was present throughout the proceedings of the case in Court and I cannot understand the failure of the prosecution to examine him as a witness.

24. Again, was there necessity at all for such a message? If firing had been determined upon as stated by the Taluk Magistrate, why should not Mr. Jackson's party have opened fire? The Taluk Magistrate says it appeared to him that the officer's inactivity was being misunderstood, that mob was making progress towards them and that he thought further waiting would lead to disaster. The proper course would have been for Mr. Jackson's party to have opened fire. The Taluk Magistrate says that further waiting would have led to disaster and yet he did nothing else than wait for four minutes trusting to the chance of the messenger, in whose choice he had no share and whom he did not know, reaching the police station. The Taluk Magistrate says: 'It was thought best to send to the police station and ask a party of the police to march against the mob and open fire.' He does not explain the reason for this conclusion. He does not say that he took part in the decision of this step. The Deputy Superintendent makes it clear by stating that it was a matter discussed only between himself and the Inspector of Police. He says: "I could not ask the men who were with me to open fire. I did not think it advisable to take the reserve force in front of me to march at an angle and open fire at the mob because I was afraid the Muhammadan mob might flank the force and attack the procession. I could not fire with my men straight because I would be injuring the reserve party at the station and a few Hindus who were running hither and thither in the street between the mob and Mr. Jackson's party. Further, I thought it would be advantageous to use the reserve which had been specifically stationed in front of the station." There was no doubt danger in Mr. Jackson's reserve firing directly north. There was greater danger in the station reserve firing directly south, the side on which there was the thick assembly of the procession. Mr. O'Brien's party

from the station is stated to have inclined itself facing south-west and then fired. So could Mr. Jackson's party have inclined itself northward and fired. The Deputy Superintendent says that he was afraid of the party being flanked and the procession attacked. This explanation betrays I think what really happened. The explanation, it will be seen, is valid only if Mr. Jackson's party was to make a charge on the mob with bayonets and without the use of firearms. If it was to use firearms, it would not go near the mob. It would fire from a distance and there would be no chance of outflanking. If the question was whether Mr. Jackson's party was to make the direct attack on the mob without using firearms, or whether the party from the station was to be used for this purpose, there are obvious advantages in the latter course. Mr. Jackson's party was only twenty strong. They were just sufficient to disperse an assembly of forty to fifty Muhammadans by the use of firearms, but it was doubtful if it was adequate to disperse the mob by a mere bayonet charge, if the mob was determined. The personal safety of the officers behind the force and of the persons in the procession was involved. It was a wise thing to have moved a party from the police station, but when it is stated that at that time the dispersal of the mob by the use of firearms had been decided upon, I am unable to accept it. 'Hindus going to and fro' referred to by the Deputy Superintendent as going from one side to another between Mr. Jackson's party and the mob is given as another reason for Mr. Jackson's party not firing. That feature belonged, however, to an earlier stage of the rioting, the stage which was succeeded by a clear open space between Mr. Jackson's party and the mob, when warnings are stated to have been given and after which firing is stated to have been decided upon.

25. The behaviour of Mr. O'Brien's party is again inconsistent with any order to fire having reached the police station before he left it. He says he took his party up till six paces from the mob, that he then halted, and warned the crowd. What was the result? One of the Muhammadans who had seen military service promptly came forward and seized the bayonet of one of the police constable. The consequence could well have been foreseen as the consequence of such near approach. If Mr. O'Brien had orders to fire, why did he seek to nullify all the advantages of the possession of firearms by going so near? Mr. Hobourn behaved differently. He stood at 25 paces from the mob at the Janda street. Mr. O'Brien may be presumed to have been aware of the futility of going so near and his conduct is explicable, if we assume that he then had no order to fire and that he was then leading only a bayonet charge. The mob was not frightened by the threat of the bayonet charge and the Muhammadan who is referred to in the evidence generally as the sepoy seized the gun of a constable, prosecution witness No. 46. He was shot. The post mortem certificate shows that he had two gun shot injuries. No explanation has been offered as to how there happened to be two injuries. Two versions have been given as to who shot the sepoy. The Taluk Magistrate says that his impression is that the constable next to constable No. 342, whose gun it was that was seized, shot the sepoy. Mr. O'Brien's version is that the gun of constable No. 342 went off in the course of the struggle and shot the sepoy. He could not account for the second gun shot injury. Constable No. 342 has it that his gun went off, and shot the sepoy and that also his neighbour shot him. This no doubt accounts for the two injuries. This constable, however, stated that he fired a second time along with others but there was no second order to load. So he made it that his gun could hold two cartridges and that he had to start with two loaded cartridges. The Reserve Inspector says that no police carbine can be loaded with more than one cartridge at a time. But constable No. 342 has it that his gun was peculiar. Prosecution witness No. 34 who was the head constable that went with Sergeant O'Brien says that after this (the sepoy's falling down shot) the sergeant gave orders to load. The sergeant's statement, however, is that the order to load had been given before the sepoy seized the gun. The Deputy Superintendent of Police says that he was not aware of this incident at all. He says he was looking to procession bundobusts at this time—a statement far too vague to be convincing. My view is that this statement is a deliberate falsehood. It seems to me obvious that Mr. O'Brien's party came with no intention to use firearms, that it was forced to do so by the determined attitude of the mob, that the first shot having been forced, there was indiscriminate firing.

26. That the firing was indiscriminate and under no discipline is obvious. The total number of shots fired is stated to have been forty. This number is not reached by the estimates given by prosecution witness No. 1, the Inspector of Police, the Sub-Magistrate, defence witness No. 3 and other witnesses. According to the orders given there should have been spent eight buckshot cartridges and thirty-two ball cartridges. The account book shows an expenditure of twenty-five buckshot cartridges and fifteen ball cartridges. The account book contains a bad erasure. The explanation for the erasure was that the entries had been made in wrong columns. An ordinary correction would have sufficed. The Reserve Inspector says that he first wrote on a slip of paper an account of the cartridges spent and then transferred it to the book. All the more reason that the entry should be neat and without any correction. Again Sergeant O'Brien's party was within six paces of the mob and firing at a close mob with four buckshot cartridges and eleven ball cartridges. Yet he says there was no casualty. This can only be if the orders had been disobeyed and firing was made more as a demonstration than with any proper aim. A great part of the firing was, I think, demonstration. It is impossible to account otherwise for so few casualties. There is also prosecution evidence that firing was into the Bhashyakarlu street and not in the direction indicated by the police.

27. I must touch upon one other piece of evidence regarding firing and this, I think, has an important bearing. It is the evidence of the Sub-Magistrate. He says 'the firing commenced about three or four seconds after the Taluk Magistrate gave the order to fire or a minute'. 'I cannot say which reserve party started the firing.' Every other official witness has given the interval between the order and actual firing as three to four or more. This would give time for the head constable No. 838 to go and bring down the party from the station. The Sub-Magistrate's interval, which is a matter of seconds, not exceeding in any case one minute, cannot admit of this. Then how did the party from this station come and fire. The Sub-Magistrate gets over this difficulty by saying that he does not know which reserve party fired. I think the Sub-Magistrate is right in the interval he had given. That interval is the time between the sepoy's seizure and the recognition of the necessity for firing. The sepoy's seizure of the gun forced the hands of the police. The firing was approved by all concerned as the proper course to take.

28. I have stated that in my view Mr. O'Brien's party was forced to use the firearm. That is only an inference I have drawn from the evidence before me and the probabilities. If the prosecution case had been that after the attack by the sepoy, the necessity for the use of firearms was clearly perceived and that they were used with the approval of the Taluk Magistrate, I think that could have been perfectly consistent and legal as I have stated in paragraph 19. It would also have shown that the officers did their best to avoid firing. That, however, is not the case for the prosecution. They seem to have felt an imperious necessity of a magisterial order to fire being formally issued before any fire commenced and have, I am afraid, set about inventing it and a messenger to carry. I do not say that the messenger itself is an invention, for there is no doubt that the police force at the station was divided into sections and sent against the mobs, but the inclusion of the order to fire in the message is an absolute invention. Whether that is an absolute invention or not, I have no hesitation in regarding as unsatisfactory the evidence regarding the issue of order to fire and must hold that it has not been proved that the Magistrate caused the dispersion by military force.

29. I now take up the other three questions raised in paragraph 15. The detailed discussion of the evidence on the question of the issue of the order to fire brings out, I think, the worst that could be said against the prosecution evidence and indicates in what direction it should be viewed with caution. If some of the official witnesses felt bound to invent, they may have felt bound to exaggerate. Both the Inspector of Police and the Deputy Superintendent estimate the crowd at the Bhashykarlu street in hundreds at one time or other. The Taluk Magistrate puts it at forty or fifty. Save with regard to the incident of firing, the deposition of this witness is, I think, particularly reliable. As Tahsildar, he had no connexion with any of the disputes between Hindus and Muhammadans. He had no part in or connexion with the licensing of this particular procession. Even with regard to the incident of firing he was I consider right except in having lent his support to a false timing of the order to fire. His estimate is supported by a large number of witnesses. I accept this estimate. I accept also the evidence that they were armed with sticks mostly and a few also with swords. This mob was across the way of the procession. They obstructed the procession in a narrow street less than 30 feet broad. Most of the men in the procession had come without sticks or other weapons enjoying tamasha. The officer had no apprehension of any attack. The inquiries of the morning which if not a myth must have been perfunctory had shown no preparation for any attack. They were confident in the possession of firearms. They almost fully believed that there would be no opposition. They trusted to the show of force which they had. But they got a rude awakening. The trust would, I believe, have been justified if the Subdivisional Magistrate had been at his post of duty. The Subdivisional Magistrate had, however, been reporting sick. If he was loyal to his duty he was pre-eminently fitted. If he had stood at the head of the procession and said to the crowd 'I shall have to disperse you by the use of firearms unless you go off quietly' the crowd would, I believe, have been convinced of the seriousness of the warning. From their behaviour, it is clear that if they knew that firearms would be used, they would have dispersed. They did not believe that firearms would be used. In a hand-to-hand struggle, they were sure of breaking the procession even at personal injuries. The unarmed crowd in the procession hemmed in between continuous rows of houses did not count in that narrow passage which the mob was holding. The place was well chosen. The mamul of what is contended to have been a period of a millenium would have been preserved. That is a sufficiently strong and inspiring motive in the attainment of which a few personal injuries might be risked. They were prepared for the risk as is clear from their standing up to the bayonet charge. They were not prepared for being shot dead as is apparent from their clearing away with so few casualties. In that mental state they appear to have had the support of a belief that firearms would not be used against them. The absence of the Deputy Magistrate from his post of duty, the uncertainty of his whereabouts, may well have given rise to the belief. That the failure to consult the Deputy Magistrate before firing argued an animus against the accused on the part of the officers who conducted the procession was one of two unreasonable arguments urged on behalf of the accused. That their belief in the necessity of consulting the Deputy Magistrate was found baseless, was apparently the grievance from which this argument proceeded. Their behaviour amounted, I think, to conduct showing determination not to disperse except by the use of force and in the circumstances of this case, I consider that the

assembly could not have been dispersed otherwise than by use of firearms and it was necessary for the public security to do so. On the question whether there was an unlawful assembly or not there can be no doubt whatever. Allowing for all deductions that should be made for the value to be attached to the prosecution official witnesses, their evidence clearly establishes that there were at both the streets determined mobs come armed with sticks and a few swords with the common object of compelling by use of force and show of force the persons who came in procession to give it up. There are non-official witnesses of good status and there is no reason whatever to discredit them. Mr Hobourn joined the district only about ten days previous to the occurrence. Neither he nor Mr. O'Brien is any way a partial witness and unless they had gone crazy, there was no reason for them to lead two different bodies of police officers against two different insignificant groups of Muhammadans come out only to make a request for the cessation of music. The evidence of these two witnesses alone is adequate to establish the finding that there was an unlawful assembly. I should in this connexion note the second of the two unreasonable arguments used on behalf of the accused. While admitting that stones fell, it was argued that it was just within the zone of probability that the Hindus may have thrown the stones. Within the same zone would also, I think, be discovered some other similar causes (1) poltergeists, (2) birds of the air who took a violent dislike to the large crowd, carried stones in their beaks and dropped them at the crowd, (3) perhaps the Christians of Nellore town who wanted to create bad blood between the Hindus and Muhammadans. Confining, however, our research and domain of belief to what, in the language of the Evidence Act, a prudent man under the circumstances of this case should act upon, we must say that those that had motives to disperse the procession threw the stones that caused that effect and when there is evidence that the mob that stood across the Bhashyakarlu and Janda streets threw stones at the procession and used force to various persons believed to be interested in the procession, the only inference is they are all acts of an assembly whose object was to disperse the procession by use of force.

30. Eighty-eight witnesses were examined for the prosecution and fifty-three witnesses for the defence. We have to consider also twelve statements of the accused. The accused to start with were thirty-seven in number, but twenty-five of them were discharged during the course of the trial. In discharging these twenty-five accused, I was mainly influenced by the necessity of giving the utmost consideration to the third ground mentioned in paragraph 13.

31. It is a peculiar feature of this case that the officers who faced the mob, the pleaders or other respectable witnesses who testify to other events in connexion with this case and many of the men (some of good status) who were hurt have not been able to identify any of the persons in the crowd that they saw. The difficulties of accurately noticing persons not previously known are no doubt great. Yet it is rather a large number that of the eighty-eight witnesses, twenty-six of them do not testify to having seen any of the accused in the assembly. Prosecution witnesses Nos. 8, 9 and 10 are pleaders. They witnessed the crowd. Prosecution witness No. 9 stood in the same place in the procession for about ten minutes. His view he says was obstructed by two lines of Mr. Jackson's reserve and the officers before him. He had time nevertheless to discover whether there were in the crowd any persons whom he knew. He identifies none. Prosecution witnesses Nos. 13, 14 and 15, a schoolmaster, a sanitary inspector of the municipality and an accountant in the District Forest Officer's office do not identify any person though they were assaulted by Muhammadans. Prosecution witness No. 11, who appears to be a man of good status and who was badly beaten, cannot identify his assailants. Their case is not merely that the assailants were not in court. They do not also hope to identify or trace them. Prosecution witness No. 16 got a severe cut in his left palm. The Assistant Surgeon, prosecution witness No. 84, says that this witness (prosecution witness No. 16) would not have been able to follow his ordinary pursuits for a period of more than twenty days and that the hyper extension and complete flexion of both the ring and the small finger usually found in normal joints has been greatly impaired and that the impairment will exist for a long time. Prosecution witness No. 16 was pursued from a tailor's shop in the Janda street from which he sought to escape and received the injury in the Sikbaramvari street. The tailor is a Muhammadan and was called as defence witness. He corroborated prosecution witness No. 16 in the statement that prosecution witness No. 16 had come to his shop and that prosecution witness No. 16 requested to be allowed to take shelter in his shop and that he refused shelter. Prosecution witness No. 16 was also the village headman of Nellore, for some time. He says he saw his assailant some time later, but that the assailant ran away as soon as he caused it to be known that he had recognized him as the assailant. That assailant is therefore clearly not among the accused. Having been a village headman he may be expected to have recognized some of the men in the crowd. He does not, however, say that he saw any of the accused in the crowd. Prosecution witness No. 6, prosecution witnesses Nos. 18 to 75, prosecution witnesses Nos. 77, 80 and 85 are the witnesses who identify the accused before the court as having been present in the crowds that gathered at the Bhashyakarlu and Janda street entrances. Of the witnesses Nos. 18 to 75 (i.e.), fifty-eight witnesses, prosecution witness No. 34 is the head constable of Mr. O'Brien's party that led the assault on the mob at the Bhashyakarlu street. He identifies the first, second and sixth accused as having been recognized by him in the crowd. Prosecution witness No. 36 is another reserve constable. He followed Mr. Hobourn's party to the Janda street. Mr. Hobourn's party, it must be noted, was for some time at the

station and had ample opportunities for noting the crowd at the Bhashyakarlu street. He identified first and second accused. Prosecution witnesses Nos. 37, 38, 39, 43, 44, 45 and 46 are similarly police constables of the reserve party. They identify the first, second, sixth, twelfth, twenty-second and twenty-fourth accused. Prosecution witness No. 48 is a Town police constable stationed at the mosque just north of the Bhashyakarlu street. He identifies second, seventeenth and twenty-fourth accused. Prosecution witness No. 49 is another constable stationed at the mosque. He identifies the first and second accused. Prosecution witness No. 73 is a person who happened to pass the scene of offence. He had no part in the procession. He passed the Janda street, just as the attack was developing. He has lands on which he pays an assessment of Rs. 100 and struck me as a disinterested witness. He was beaten but when he turned round, his assailants could not be recognized. He saw then the sixteenth accused, whom he had known before. Prosecution witness No. 80, a Municipal office clerk, says he saw and recognized the second and seventh accused. The seventh accused had been known to him previously as a kerosene oil seller. Prosecution witness No. 63 had a cut on his lip. His assailant was the third accused. He identifies many of the accused among whom is the tenth. Prosecution witness No. 6 has been police head constable in Nellore town for a long time. He identifies first, second, seventeenth, eighteenth and twenty-fourth accused as having been seen by him at the Bhashyakarlu street. He is the head constable that is stated to have taken the message of order to fire. As I have said there is no reason to doubt that a message was sent to the police station and there is no reason to doubt that this head constable was the bearer of the message. His failure to identify any of the persons in the Janda street is only another circumstance in corroboration of the inference that he passed the Janda street on his way to the station earlier than the order to fire could have been thought of. These are the witnesses on whom I have relied mainly for charging the accused. Excepting prosecution witness No. 23, who is of some status, others who identify are not of much status. Most of the witnesses are drawn from streets not near the scene of offence, but a distance from it. Their case is that they had come as part of the procession and recognized the various accused. They assign to themselves positions near Mr. Jackson's reserve party, or on the verandas of the police station and the buildings opposite to it. None of them except prosecution witness No. 63 has been hurt or assaulted and none of them describe any particular acts of the accused. As I have said before it is necessary, in order to understand the evidence, to realize that there was a crowd in front of Mr. Jackson's party who were first attacked by the mob. If these witnesses were in that part of the crowd as they mostly appear to have been, it is rather strange that so few of them speak of any personal assaults on themselves or others. Only two, namely, prosecution witness No. 63 and prosecution witness No. 80, give any evidence of that kind among these identifying witnesses. Many of these witnesses have taken part in previous quarrels between Hindus and Muhammadans or are obviously partisans of or men under the influence of such persons. Against them the ground of objection of sectarian animosity applies, I think, with some force. The story of a revolver having been pointed by the 4th accused from the Janda street at a crowd which consisted mostly of the reserve police of forty armed men, a story unsupported by any of the officers and a story introduced at a much later stage of the investigation is testified to by most of these witnesses. The fourth accused appears to have taken interest in the civil suit between Hindus and Muhammadans on behalf of the latter and that apparently in the cause of the special role assigned to him. The story varies from something in the hand which looked like a revolver, to a revolver sometimes black and sometimes white, to a small gun about a cubit in length. I am unable to accept the evidence of witnesses who in this incident have I consider shown an actual bias. Almost all the witnesses have taken care to disclaim any common observation common to themselves, and other witnesses from places near them, so that their evidence hardly afforded scope for cross-examination and testing with the evidence of other witnesses. I have relied mainly on the evidence of the police constables of the reserve parties stationed at the police station and a few others. These constables had opportunity to notice the accused at close quarters and being men not connected with the ordinary civil life may be expected to be free from any general bias. I have thus acted upon the evidence of prosecution witnesses Nos. 6, 34, 36, 37, 38, 39, 42, 43, 44, 45, 46, 48, 49, 63, 73, 80. As regards prosecution witness No. 63, I see no reason whatever to distrust his identification of accused 10 who bears evidence of a gun shot injury. This in fact is the only accused who has such a distinctive evidence. The fact of the gun shot injury and the attempts of the accused to explain it will be discussed later. On this evidence and on that of prosecution witness No. 16, a charge was framed under sections 145, 147, 148 and 326, Indian Penal Code, the last offence being put in by virtue of section 149, Indian Penal Code, against accused Nos. 1, 2, 3, 6, 7, 10, 12, 16, 17, 18, 22 and 24 and the rest were discharged.

32. The plea of the accused is one of alibi in the case of all, the 1st and 2nd accused say, however, that they were near the scene of offence, but on a different business and had no connexion with any mob. All the rest plead presence elsewhere at the time of the occurrence. I will take up the plea of each of the accused separately. Though I consider the plea of the 7th accused now set up, not established, I shall not, however, discuss it. I included him in the charge relying mainly on the evidence of prosecution witness No. 80. In his recross-examination after the charge, this witness has, however, contradicted himself. The contradictions, I think, are due to the failure of his memory, but that makes me also doubt whether his original statement

that he recognized the 7th accused may not be a mistake. I gave the 7th accused the benefit of the doubt and he will be acquitted.

33. The first accused is the only person seized on the day of the occurrence. He was not seized, so much as rescued from assault, taken to the police station and sent to the hospital for treatment. In his statement he stated: "I remonstrated against their playing music contrary to immemorial usage in front of the mosques". His witnesses have attempted now to do better for him. Defence witness No. 1, the municipal councillor, puts it that this accused would appear by his position to have been one of the small crowd that gathered at the Bhashyakarlu street, but that as a matter of fact he was not. According to this witness, therefore, this accused was not even one of those few that gathered to represent, though the accused himself says he went to remonstrate. If he was not at the scene either for representation or remonstrating, what was he there for. He had come it is said to get a coat stitched, only one coat. Defence witness No. 28, the Muhammadan tailor, was to stitch it. The tailor, however does not seem to be quite sure on the point whether the cloth given to him was actually cut by him that day or not. He first said, it was not and then said it was. He took measurements, however, as stated in chief examination a fact which appears to have come to his memory after making the first answer. The cloth purchased is said to have been of definite length purchased previously to consulting the tailor and on the advice of the clothes-dealer. It is rather difficult to say which would be the more appropriate answers and hence the indecision. I think this evidence is obviously made up. Even if the defence evidence regarding the purchase of cloth is true, it does not take away from the value of the prosecution evidence which attributes to the first accused a prominent part, one in fact assumed by the accused himself in a way in his statement.

34. The second accused is also admitted to have been present at the scene of the offence at the time. In his statement he explains that he was going to a blacksmith's shop to ascertain whether a job given by him had been executed. The evidence of his witnesses is now different. Defence witness No. 13, a blacksmith, was approached by this accused and asked to repair the axle-rod of a cart. He asked for a wage of Rs. 1-8-0. The accused declined to pay this and took his work elsewhere. This witness says, he saw the disturbance, but did not know who caused it, nor why, nor did he inquire. This seems to me a most unnatural conduct in the circumstances and apparently this witness is unreliable. From this witness, the second accused went on to defence witness No. 42 who had his forge very near the Bhashyakarlu street entrance. Defence witness No. 42 accepted the work for Rs. 1-4-0 and put the rod in the forge. He and the accused were watching the rod when the disturbance took place. Refusal by defence witness No. 13 and acceptance by defence witness No. 42 have the advantage of providing two witnesses but the story is against the plea of the accused—that he had gone to a shop to ascertain whether the job already given had been executed, defence witness No. 42 says that the second accused staged at the forge till 5 p.m., but the accused's statement is that he ran away on police aiming their guns which, I think, is true with the only difference that he was then in the mob at which the guns were pointed. He is described by many present witnesses as having been in the mob with a sword, and has a fairness of complexion and cut of hair such as to attract notice.

35. The plea of the third accused is that he was at the time of the occurrence in a different village. He shoes bulls. In his statement he said that he gone to Ogampadu on the Dipavali day having been taken by Gorla Chinna Reddi and Peyyula Lakshmayya (defence witnesses Nos. 15 and 16) for shoeing their bulls. Defence witnesses Nos. 15 and 16 are Hindu witnesses. Could they be expected to shoe their bulls on the Dipavali day. There seems to have been some doubt about this. The story altered a bit. They did not take him on the Dipavali day, but the accused went in answer to their call made previously. The accused did not know that the bulls would not be shod that day and so went, but had to return without having done anything. He went not only to the village of the witnesses, defence witness No. 15 and defence witness No. 16, but also to other villages in search of work according to the statement that he is said to have made to these witnesses. This statement was made at 4 p.m. according to defence witness No. 15 (time not being definitely specified by the other) on the day of occurrence at a place near the municipal toll-gate and the place of meeting of the accused and the two witnesses being about 4 miles from Nellore. In the first place this plea of absence at the village of defence witnesses Nos. 15 and 16 has only the support of the statement of accused; an admission in his favour. It is inadmissible. Secondly the story is absurdly improbable. Shoeing bulls has nothing to do with the Dipavali and the story of a fruitless wandering for work in many villages by this accused is, I think, a fiction. Defence witness No. 47, the toll-gate gamasta, who did not know this accused before, and had no interest in him before, also testifies to the inadmissible statement. Prosecution witness No. 53 is positive that this accused cut him on the lip with a sword. No personal enmity between the accused and this witness has been shown and the witness mentioned the name of the accused as early as possible.

36. The case for the 6th accused is twofold. In his statement he said that he had given evidence against prosecution witness No. 39, the reserve police constable. That constable therefore now implicates him falsely. Defence witnesses Nos. 40 and 41 were cited to speak to this point. Defence witness No. 40 is the person on whose behalf this accused should if he had done so, had given evidence. Defence witness No. 40 is a woman. Her brother had

married prosecution witness No. 39's wife's sister. Her brother's wife, however, came to the house of prosecution witness No. 39 without the knowledge of her brother. In her view prosecution witness No. 39's conduct in having countenanced such a breach of decorum was improper. She asked prosecution witness No. 39 about it. He, his wife and that wife's sister came to quarrel with her on that account. The sixth accused was present then; so were also the neighbours of defence witness No. 40. The neighbours took no notice of the quarrel, but the 6th accused who is a Muhammadan interfered in this family quarrel of a Christian family. This is stated to be on account of the acquaintance that the 5th accused had with the husband of defence witness No. 40. The husband was not then present. The nature of the acquaintance as described by defence witness No. 40 is exceedingly casual. The result of the interference was an exchange of words between the 6th accused and prosecution witness No. 39 but it did not go to blows. This exchange of words which does not appear to have developed even into use of abusive language was followed by a similar parley at the market at which also defence witness No. 40 was present; all the parties having gone to the market for buying curries. Defence witness No. 41 is also a witness to the second parley. He is an old man of sixty and says that he separated these two young men. If he is speaking truth, the young men seem to have been in a reasonable mood and not in a mood to falsely implicate each other in a criminal case. There probably was some quarrel on account of the meddlesomeness of the 6th accused, but it has clearly been exaggerated. Defence witness No. 40 did take the quarrel between herself and prosecution witness No. 39 to a criminal court. She, however, did not cite the 6th accused as her witness. So the statement that the 6th accused had given evidence against prosecution witness No. 39 is false. I see no reason in these facts to distrust the evidence of prosecution witness No. 39 as against the 6th accused. There is also other evidence against the 6th accused, the evidence of prosecution witnesses Nos. 34, 38, 43 and 45. None of these witnesses has been impeached.

37. The other plea of the 6th accused is alibi. He was on the Dipavali day in Sydapuram, a village far away from Nellore. The evidence in support of this plea consists of the testimony of two employees of very ordinary status in a mine in Sydapuram, owned by a Muhammadan firm. Both these witnesses are Hindus, and they say they saw the 6th accused at Sydapuram at about 4 p.m. on 22nd October 1919, 2 miles away from their place of residence. One of them says he went to Sydapuram to buy salt and chillies, necessaries which a Hindu may be expected to supply himself before the Dipavali festival and not reverse the natural order. The accused told them that he had come to the village headman's house on business. The village headman was brought into court, but was not examined. So also the postmaster of Sydapuram got after some trouble. The plea of alibi is clearly one for which evidence was gathered and I think also created.

38. The case for the 10th accused is rather interesting. He was taken from Nellore to Madras on the morning of 23rd October 1919 with a gun shot injury and was admitted in the General Hospital, Madras. A statement was taken by the Sub-Inspector of Tiruvottiyur on 24th October 1919. Both in this statement as well as in the representations made to the authorities General Hospital, Madras, during admission, the case was that the gun shot injury was received at Kathiwakam near Madras. It is now explained that the injury was received not at Kathiwakam, but in Nellore on the day of the occurrence and near the locality of gun fire. The accused, however, was not in any of the crowd there. He was in the upper story of the house of defence witness No. 20. He was there in connexion with a feast in that house. He was looking through the window at the crowd and the police came and fired. They fired at the window and a shot reached the 10th accused. He fell down and bled copiously. He got unconscious and did not recover consciousness till midnight. He was taken next morning to the Railway station. That this accused was in the house of defence witness No. 20 immediately after the shot may well be a fact. He was related to defence witness No. 20. The question is whether he was there before the riotous mob was dispersed or whether he was one of the mob so dispersed taking his shelter in the nearest house of his relation. There is nothing in the evidence of the witnesses Nos. 22, 25 and 35 for the defence which is inconsistent with the latter suggestion. Their evidence does not help the accused. It is admitted that the 10th accused was considered to be in a serious state. His brother got the attendance of defence witness No. 35, a compounder from a hospital, in the Cuddapah district on leave and staying at Nellore. According to one witness he came and advised that the accused should be taken to the Nellore hospital immediately. He was, however, not so taken. The reason assigned is that the assistants of the District Medical and Sanitary Officer were Hindus and that the relations of the accused had no confidence in them. I think it is absurd to suppose that they imagined that proper medical help would not be rendered. They may well have been afraid of the police officers connecting the gun shot injury with the offence of rioting. That apprehension is not inconsistent with the accused having been actually shot at when in the house of defence witness No. 20; but want of faith in the efficiency of the medical relief of the Hindu Assistant Surgeons is what is now stated to me. I do not accept as disinterested the evidence on which the allegation of this accused having been shot at in the house when the rioting was going on elsewhere. One of the witnesses, defence witness No. 20, is a relation of the accused. Defence witness No. 1 has, it appears to me, got out of his house and taken up positions, at different

places in the procession merely to enable him to witness events at Dadivari street, Bhashyakarla street and the house of defence witness No. 20. Prosecution witness No. 63 identifies this accused. There is no doubt that prosecution witness No. 63 was in the crowd being one of the persons who was hurt and no animosity between him and the 10th accused has been shown.

39. The case of the 12th accused is also a plea of alibi. He was, he says, in his house making jewels. He is a goldsmith by profession. Defence witness No. 5 is a fellow witness. He is a Hindu. Both defence witness No. 5 and this accused were working together that day. He worked with the accused from 7 a.m. till 7 or 8 p.m. and went home only at 9 p.m. having had no meals at all in the interval. This witness had his festival that day, but did the work assigned to him because of the urgency, working the whole day without meals. The reason assigned for the urgency is I consider quite inadequate. A small incident has been added to the statement given by the accused. That statement contains mention only of making jewels. The incident added is that about the time of firing defence witness No. 17, a rich Muhammadan merchant, son of defence witness No. 22, came to the house of the 12th accused to remove a ring from the finger of his child. The child had a boil in the finger and the ring had to be removed to ease the child. Now this witness is a rich merchant owning property himself to the extent of 15,000 and is the son of a person (defence witness No. 22) who owns a lack of rupees property. He does not send for the goldsmith to remove the ring and goes to the house of the goldsmith himself taking his child. He goes there and waits for one hour apparently because the goldsmith was busy with another jewel. He got the ring removed just as the gun-fire was heard. He stayed for a short while and came away. I do not believe this story at all. When it is remembered that the ring incident which it must have been known would be vouched for by this witness of good status is not mentioned in the accused's statement and this witness comes afterwards and given an improbable story, we find, I think, an indication of some of the men of good status among Muhammadans trying to help particular accused if need be by perjury. The presence of the 12th accused at the riotous assembly has been testified to by prosecution witness No. 39 and I see no reason to discredit it. The evidence on behalf of the accused is rejected by me as interested.

40. The case of the 16th accused is that he was sick at the time in question. This is different from the statement he made to the Deputy Superintendent of Police during investigation, that he was at the house of his master Konjeti Sriramulu. The evidence of sickness is not satisfactory. He had been somewhat sick previously but there is nothing to show that he was so sick as not to have taken part in the rioting.

41. The case for the 17th accused is again another weak plea of alibi. The defence witness No. 29 and defence witness No. 50 are no men of particular credit. They say that they drove that day in the jatka of the accused to Indukurpet, 7 miles from Nellore, and came back only at 5 p.m. They do not appear to be men that would require to engage a jatka for the distance referred to and when it is noted that the accused in his statement stated that his jatka was hired by one Challavenkata Munuswami Chetti who has not been examined, I do not hesitate to reject as unreliable the defence testimony.

42. The case of the 18th accused is another case of fever at the time of occurrence. The evidence of the witnesses, defence witness No. 24 and defence witness No. 26, is inconclusive. I do not consider the evidence of defence witness No. 14 as of any particular value or disinterested.

43. The case of the 22nd accused is the case of attendance on a very sick person at the time of the occurrence. He was attending on the sick person uninterruptedly day and night and at the time of the gun-fire he was asked what the gun-fire was due to and he replied he did not know. This no doubt clearly establishes the alibi of the accused but it is quite inexplicable why the question should have been put by defence witness No. 37 who had been out the whole day in the forenoon and who contemplated going again in search of a doctor for his son-in-law, to a servant who had no time to go out, who had not left the sick son-in-law, defence witness No. 21, on any account. This, I think, is another instance of perjury of the philanthropic kind in which there is the added consolation that when it is in the interest of a co-religionist and of religion itself, that circumstance will excuse the departure from moral rectitude. Defence witnesses Nos. 23, 51 and 52 were cited to prove the story of a quarrel between the accused and the reserve constable No. 342. This evidence is full of discrepancies and I see no reason to discredit the testimony of prosecution witness No. 46 which is thus sought to be impeached.

44. Accused No. 24 is stated to have been suffering from a boil and sought the treatment of defence witness No. 11. Defence witness No. 11 lives opposite to the Bhashyakarla street. The accused was sheltered by him all the time that the rioting took place in front of his house. This witness has such an absurd account of the occurrence that it is clear that he can hardly have witnessed the events of the day. The accused came to him unable to walk singly and helped by a friend. The friend, however, left the accused and went away. The witness says he sent the accused back without any help so soon as he recovered from the feeling of giddiness. I am unable to understand this hurry. I do not believe this variant of the plea of alibi.

45. My finding thus is that none of the accused has rebutted the case against him. The case against the 7th accused has, however, been weakened by the further cross-examination of prosecution witness No. 80.

46. The 7th accused is acquitted. All but the 1st, 2nd, 3rd, 6th, 10th, 12th, 16th, 17th, 18th, 22nd and 24th accused were previously discharged.

47. These accused, (i.e. 1st, 2nd, 3rd, 6th, 10th, 12th, 16th, 17th, 18th, 22nd and 24th) are now convicted of the offences with which they are charged, i.e., offences under sections 145, 147, 148 and 326, Indian Penal Code.

48. I do not aim at giving any deterrent sentence. Severe sentences in such cases excite sympathy and even those that would not otherwise sympathise with unruly conduct are provoked to do so. The sentence has, however, to be adequate. The eleven accused specified in paragraph 47 are sentenced to suffer rigorous imprisonment for six months each and to pay a fine of rupees two hundred each. In default of payment of fine each accused will have to undergo rigorous imprisonment for six months.

31st May 1920.

K. V. SRINIVASAN,
Subdivisional Magistrate, First class.

VII

IN THE COURT OF THE SESSIONS JUDGE OF NELLORE.

THURSDAY, THE 9TH DAY OF SEPTEMBER 1920.

Present: V. VENUGOPAL CHETTI, Esq., B.A., I.C.S., *Sessions Judge.*

Criminal Appeal No. 19 of 1920.

From what Court the appeal is preferred .. Subdivisional Magistrate, Gudur.
Number of the case in that Court C.C. 91 of 1919.
Number of the appeal 19 of 1920.

Names and descriptions of the appellants.—(1) Yakub Sheriff alias Gata Gulam (1st accused), son of Peer Sahib, (2) Sheik Dastagiri (2nd accused), son of Sheik Ibrahim, (3) Makku Sahib (3rd accused), son of Khasim Sahib, (4) Abdul Sattar (6th accused), son of Bakshu Miah, (5) Mahomed Miah (10th accused), son of Khadir Sahib, (6) Farried Sahib (12th accused), son of Khasim Sahib, (7) Sayyed Hussain (16th accused), son of Sayed Mohidin Sahib, (8) Sheik Madar Sahib (17th accused), son of Sheik Unmar Sahib, (9) Sheik Meeran Sahib (18th accused), son of Sheik Rahmtumiah, (10) Mahomed Abdul Gaifar (22nd accused), son of Ohingisha, (11) Kale Babu (24th accused), son of Khadir Sahib; (1) and (8) jatka drivers, (2) trader, (3) shoeing horses and bulls, (4) blacksmith, (5) butcher, (6) goldsmith, (7) clerk under a merchant, (9) lending lights for rent, (10) tailor, (11) physician, all Muhammadans of Nellore.

The sentence and law under which it was imposed in the Lower Court.—Six months' rigorous imprisonment and a fine of Rs. 200 each and in default of payment of fine to further rigorous imprisonment for six months each under sections 145, 147 and 326, Indian Penal Code.

Whether confirmed, modified or reversed and, if modified, the modification.—The conviction and sentence passed on appellants Nos. (3) (3rd accused), (5) (10th accused), (7) (16th accused), (8) (17th accused) and (10) (22nd accused) reversed. As regards appellants (1), (2), (4), (6), (9) and (11) [accused Nos. (1), (2), (6), (12), (18) and 24 respectively] their convictions under sections 148 and 326, Indian Penal Code, set aside and those under sections 145 and 147, Indian Penal Code, confirmed; and their sentences reduced to four months' rigorous imprisonment each and a fine of Rs. 100 each, and in default to four months' rigorous imprisonment each.

Date of or on which—

Presentation, 4th June 1920.

Filing, 12th June 1920.

Notice issued by court to appear, 12th June 1920.

Appellants ordered to appear, 20th July 1920.

Hearing, 30th and 31st July, 7th and 14th August 1920.

Order, 9th September 1920.

This appeal coming on for hearing before me, upon hearing the petition of appeal and the record of the evidence and proceedings, and upon duly considering the same after hearing the arguments of Mr. M. H. Hakim, Counsel for appellants, and of the Public Prosecutor in support of the conviction, I do adjudge and pass the following :

Judgment.—The 11 appellants who were the 1st, 2nd, 3rd, 6th, 10th, 12th, 16th, 17th, 18th, 22nd and 24th accused respectively in C.O. No. 91 of 1919 on the file of the Sub-divisional Magistrate of Gudur were convicted under sections 145, 147, 148 and 326, Indian Penal Code, and sentenced to six months' rigorous imprisonment each and a fine of Rs. 200 each and in default of payment of fine to further rigorous imprisonment for six months each.

2. The Hindus of Nellore filed Original Suit No. 987 of 1917 in the Court of the Principal District Munsif of Nellore for a declaration that they are entitled to march in procession along public streets in Nellore town with music past Muhammadan mosques without obstruction from Muhammadans. A decree was passed in their favour on the 2nd of October 1918 and an appeal was preferred by the Muhammadans. While the appeal was pending in the District Court, certain Hindus obtained a licence for a procession in connexion with the temple of Anjaneyaswami to be conducted between 2-30 p.m. and 5 p.m. on the 22nd of October 1919. It was the Dipavali day, a festival day for Hindus. It does not appear that processions were ever before conducted in connexion with this deity. It seems therefore clear that the procession was an innovation and that the object of its organizers was simply to test the efficacy of the abovesaid decree. It is in evidence that there was a proclamation regarding the grant of the licence for the procession. It does not appear that the Muhammadan residents of Nellore made any representations to the Superintendent of Police against the grant of the licence, nor did they take steps to move the District Court to restrain the Hindus from conducting the proposed procession. The case for the prosecution is that after the procession emerged from the Barracks square into the Bazaar street of Nellore, a riot was committed by the Muhammadans with the object of preventing its further progress.

3. In the Barracks square there is a mosque and on either side of the Town Police station in the Bazaar street, there is a mosque. A reserve force consisting of 40 constables under the Reserve Inspector, Mr. Hobourn, and a Sergeant, Mr. O'Brien, was first stationed in the Barracks square but after the procession got into the Bazaar street it took its position at the Town Police station. A party of 20 Reserve constables under Sergeant, Mr. Jackson, immediately preceded the procession; and another party of 10 constables under Sub-Inspector, Mr. Subba Rao, went in rear of it. A small party under Sub-Inspector, Mr. G. Gurumurthiah, went in advance to clear any crowds that might be collected there. Besides these, there was a party of constables on either side of the procession. The Deputy Magistrate of the Division who had received orders from the District Magistrate to be present, wrote back to say that he could not attend owing to illness, and directed the Taluk Magistrate (prosecution witness 2) and Sub-Magistrate (prosecution witness 3) to be present. It, however, appears that he did attend, but took no active part in the conduct of the procession and that when the situation became grave, he left the spot. Thus the Magistrate of the highest rank who was on the spot was the Taluk Magistrate (first-class), and as regards the Police, the Deputy Superintendent of Police was present throughout. Both these officers say that they had returned from camp only that morning and had not received full instructions and that they were not aware of the state of feeling between the Hindus and the Muhammadans. This circumstance was certainly unfortunate as it must have led them to look to the subordinate police for all help and supply of information during the disturbance.

4. Exhibit D is a plan showing the scene of the disturbance and its surroundings. To the west of the Bazaar street lies Dadivari street, to the north of it the Deputy Collector's house, to the north of it Bhashyakarlu street, then there is a mosque, then there is the police station, to the north of it there is another mosque and beyond it lies Janda street. Further north on the eastern side there is the Sikharamvari street. The case for the prosecution is that when the procession came near to the Deputy Collector's house it had to stop there owing to the obstruction and disturbance caused by Muhammadan mobs. It is said that armed mobs appeared at Bhashyakarlu street, Janda street, and at Dadivari street, and that Hindus were beaten at these places, and also at the extreme north near Sikharamvari street. Most of the witnesses speak to the disturbances at Bhashyakarlu and Janda streets while only a few refer to the disturbances at the other places. The main disturbances which had to be quelled, according to the prosecution, by opening fire were at the Bhashyakarlu street and the Janda street. Leaving out exaggerated estimates of the mobs at these two places the majority of the witnesses say that a mob of about 50 Muhammadans appeared at each of these two places. Most of the witnesses say that they were armed with sticks and stones and that a few had swords. The Taluk Magistrate (prosecution witness 2) says that the mob at Bhashyakarlu street threw stones at the procession, waved sticks, did gymnastic feats and adopted a most defiant attitude. According to him almost all were armed with sticks. He says he did not notice any one with a sword, though he was told that some had swords. The Sub-Magistrate of Nellore (prosecution witness 3) gives a similar description of what took place and adds that a stone hit him on the leg. While the Taluk Magistrate does not refer to the disturbance at the Janda street, the Sub-Magistrate speaks to it. Prosecution witness 1, the Inspector of Nellore taluk, says that stones came from the mob both north and south and that stones were thrown even from behind houses. He says he saw half a dozen swords and several sticks. Prosecution witness 76, Mr. Hobourn, speaks to both the mobs and says that they threw stones and brandished swords and sticks. He did not see any member in the northern mob actually hit any one, but he says he saw them throw stones. Some of his men were hurt by stones, but

he cannot give their names or number. Mr. O'Brien, his sergeant, speaks only to the disturbance at the Bhashyakarlu street. According to him the mob there was turbulent and attacked the police with sticks and swords. Prosecution witness 87, Sub-Inspector, Mr. Gurumurthiah of the advance party, reached the police station before the disturbance began. His evidence is that stones fell and that there were mobs at both the Bhashyakarlu and Janda streets. According to him as he marched to the police station he did not find any crowds of Muhammadans. The prosecution has examined in addition to these witnesses members of the police force belonging to Mr. O'Brien's party, constables attached to Mr. Hobourn's party, constables who were stationed at the mosques near the police station, constables belonging to Gurumurthiah's party, and one constable attached to Subba Rao's party; also certain persons who say they received injuries, and others who happened to be in the procession but did not receive any injuries. It is abundantly clear from the evidence of these witnesses that owing to stone-throwing and the waving of sticks and swords and the general behaviour of the men in the mobs, the procession had to be stopped near the Deputy Collector's house. It is then said that warning was given to the mobs to disperse, but as they did not, the Taluk Magistrate gave orders for dispersing the mob by opening fire. Prosecution witness 6, a constable, was sent to the Reserve Police stationed at the police station to convey the Taluk Magistrate's order. Thereupon that Reserve force was split into two parties; one went south to Bhashyakarlu lane under Mr. O'Brien and other went north under Mr. Hobourn to Janda street. The case for the prosecution is that the mobs at these places dispersed only after the police fired at them. All the officers referred to above say that the mobs did not disperse in spite of repeated warnings that fire would be opened and that it was found necessary to resort to the use of firearms. The Deputy Magistrate has come to the conclusion that the attitude of the Muhammadans showed that they were determined not to disperse and that it was necessary to open fire. I have no doubt that in this conclusion he is right. He, however, thinks that the theory of the Taluk Magistrate's giving a formal order to the police to disperse the mob by opening fire is a fiction. Whether he is right in this view I do not now pause to discuss, but shall make a few remarks on the point later on.

5. Prosecution witness 8, a vakil having considerable practice, who was in the procession says that about 30 Muhammadans issued from Bhashyakarlu street, that stones fell from the west, that one of the Muhammadans brandished a sword, that the officers waved their hands to the mob to go away, and that it made counter-signals. He then says that the Police opened fire under the orders of the Taluk Magistrate. Except that he happened to be present at the meeting at which the procession was proposed, nothing has been elicited against him. Prosecution witness 9, another vakil, gives similar evidence. Against him also nothing has been elicited. Prosecution witness 12, another vakil, was not actually in the procession. He was standing in the western row opposite to Sikharamvari street. He then saw 20 or 30 Muhammadans pursue Hindus to verandahs on either side of the street and beat them. He says he saw about 12 Hindus beaten and he himself had to run into a coffee-hotel for shelter. It is said that he is interested because he is related to prosecution witness 2, the Taluk Magistrate; but having regard to the fact that he does not speak to the disturbance at Bhashyakarlu street or to anything connected with the firing that took place there, it is difficult to see how he is actuated by any desire to shield the Taluk Magistrate.

6. Regarding the riot of Janda street, the evidence of some of the more important witnesses may be referred to. The Muhammadan Deputy Magistrate, who was examined as Court witness 2, says that when he was near the Town Police station stones fell, that one fell on the pony of his jutka and that he saw 10 or 12 Muhammadans go with sticks towards the police station. Prosecution witness 10, the village munsif of a village 6 miles from Nellore, says that stones hit him and that he went to the hospital that very day and obtained a certificate. He is a man of good status and there are no reasons to disbelieve his evidence. The evidence of Prosecution witness 12, a vakil, has been already referred to. Prosecution witness 16 is the only person who may be said to have received a severe injury. He went to a tailor's shop in front of Janda street, 50 or 60 Muhammadans came armed with sticks, swords and stones and proceeded to beat the Hindus. The tailor asked him to leave the shop and he had to leave it. Then Muhammadans pursued him and he got to the entrance of Sikharamvari street and fell down. After he got up and went 20 yards, he says, he saw a Brahman boy being stabbed by a Muhammadan and when he questioned the latter as to why he did so he received a cut on the left palm with a sword. The tailor, Defence witness 28, says he saw this witness before he was wounded. Defence witness 9 saw him after he got wounded. Prosecution witness 84, the Assistant Surgeon, at the hospital, Nellore, examined him at 4 p.m. that very day and granted the certificate, Exhibit H-24. There can thus be no doubt that he received his injuries during the disturbance of the 22nd of October 1919. Prosecution witness 17, a Komati, says that 20 or 30 Muhammadans came from Janda lane with sticks and stones, that they threw stones and that two of them hit him. One Muhammadan hit him with a stick on his left arm and an old Muhammadan who happened to be there rescued him. He went to the hospital next day. The certificate obtained by him is said to be on the record, but has not been filed; apparently because the injury received by him was slight. Some of the defence witnesses admit there was a disturbance at Janda street. Defence witness 28, who says he saw prosecution witness 16 at his shop, says that he had to close his shop on account of the disturbance, and that people were running north including females and children. He, however, wants to make out that only 5 or

6 Muhammadan boys came from the Janda street. Defence witness 9, who keeps a goldsmith shop north of Janda street, says that he found it and the adjacent shops and houses closed at 4 or 4-30 p.m. and that he knew that there had been a disturbance.

7. Prosecution witness 23, a Municipal Councillor and the proprietor of a press at Nellore, gives evidence regarding the whole disturbance. He speaks to throwing of stones. A stone fell on a tree and broke into pieces, one of which fell on him. Prosecution witness 34, a head constable, says that a stone hit him. He obtained the certificate Exhibit H-4. It is pointed out on behalf of the defence that the certificate only shows that there were five dark spots on his person. The Medical officer who was examined (Prosecution witness 79) should have been questioned as to how these dark spots were caused. Prosecution witness 63 received a sword cut. His evidence is that it was inflicted by the 3rd accused. Prosecution witness 73 speaks to the disturbances at Janda lane. He says a Muhammadan beat him from behind. He cannot identify him, but says that when he turned west he recognised the 16th accused.

8. One of the contentions raised at the argument by the learned counsel for the appellants is that the evidence regarding the disturbance at Dadivari street is meagre and that even if there was any disturbance there it took place after the procession had passed that locality and the prosecution does not show that the main rioters had anything to do with it. It is not correct to say that the evidence is meagre. Prosecution witness 7 was going south from the police station. He says that 4 or 5 Muhammadans came from Dadivari street and that one of them bit him with a stick. Prosecution witness 11, a Komati, says that 20 or 30 Muhammadans came from the Dadivari street, that some Muhammadans pursued and beat him, and that he received a bleeding wound. This witness got a certificate that very day. Prosecution witnesses 23, 48 and 87 speak to having seen him with injuries in the police station that day and Prosecution witness 78 gives evidence that he examined his injuries and granted the wound certificate, Exhibit H-1. There can be no question that the injuries sustained by him were received during the disturbance. Prosecution witness 13 is a teacher who speaks to the mob at Dadivari street. He says that several Muhammadans beat him with sticks and that he lost his umbrella and watch. Exhibit H is the certificate granted to him, but it has to be observed that he got it only six days after the occurrence. He says he was treated by a private practitioner on the very day he received these injuries. The medical practitioner, prosecution witness 83, says he found injuries on him that night and granted the certificate, Exhibit H, on the following day, i.e., 23rd October 1919. There are no reasons to disbelieve him. Prosecution witness 14 received no injury, but says that a stone fell on his turban. Prosecution witness 15 also speaks to the mob at Dadivari lane and to his having been struck by 7 or 8 Muhammadans. There is no certificate in his case. He is a clerk of the District Forest Officer and there are no grounds for doubting his veracity. According to these witnesses, no doubt the procession had passed the locality where they were hurt, but it had not yet reached its destination being still in the Bazaar street. It may be noted that Prosecution witness 11 distinctly says that he was assaulted at 3 or 3-30 p.m. Having regard therefore to the proximity of time and place it cannot be seriously urged that the disturbance at Dadivari street was unconnected with the main rioters whose common object was to stop the procession.

9. Besides the witnesses whose evidence has been specifically dealt with above, almost all the other Prosecution witnesses say that there was stone throwing, and that owing to the obstruction caused by the mobs the procession had to come to a halt. And it is clear from the whole evidence for the prosecution that as the rioters did not disperse in spite of repeated commands and warnings it was found necessary to resort to the use of firearms.

10. According to the prosecution a Muhammadan sepoy in Khaki dress seized the gun of one of the Reserve constables at Bhashykarlu street and was shot. The general effect of the prosecution evidence is that by that time the order to load had been given but that the order to fire was not yet given. The man received two gun-shot wounds. The evidence is discrepant as to by whom he was shot. Some of the witnesses say that the gun seized by him went off in the course of the struggle. Other witnesses however say that another constable shot him. The fact that there were two gun-shot wounds shows that two constables should have shot him.

11. According to the defence version which is given by Defence witness 1 only about 10 Muhammadans came from Bhashykarlu street and remonstrated with the police and they had no sticks. He states that the sepoy was demonstrating with his sword and that when he tried to seize the gun of a constable he was shot and the police opened fire. Defence witness 31 says there was stone-throwing at his shop and on the road at Janda lane. He says that the Muhammadans of the Janda lane said "don't play music near the mosque." Defence witness 28 also says that there was stone-throwing at Janda lane. Defence witness 36, a Muhammadan dalayat of the Collector of Nellore, says there was throwing of stones and disturbance was caused by Muhammadans at Bhashykarlu street. He adds that stones fell heavily on the Reserve police at the police station and that the Deputy Superintendent of Police and the Inspector asked the mob to disperse. From his evidence it would appear that many persons took shelter in the police station.

Defence witness 38, the peon of the Muhammadan Deputy Magistrate, says that stones fell in all directions and that many Hindus got up the shops for shelter. Defence witness 43 also speaks to the throwing of stones and says that one fell on the Deputy Magistrate's pony,

Thus even according to some of the defence witnesses there was a serious disturbance, and the procession had to be stopped. It is impossible to believe that at the sight of 7 or 8 or even 10 Muhammadans who were not armed with any weapons the procession came to a halt. As regards the throwing of stones it is suggested on behalf of the defence that they might have been thrown by Hindus who occupy most of the shops and houses in the Bazaar street. This is against the whole tenor of the prosecution evidence which is to the effect that after the Muhammadan mobs appeared there were showers of stones; and even the defence witnesses who say that there was stone throwing do not say that they were thrown by Hindus. According to the defence only one Muhammadan, viz., the sepoy who was shot, was armed with sword. On behalf of the appellants much stress is laid on the evidence of the Taluk Magistrate who says that he did not notice any one in the mob having a sword, but almost all other witnesses say that some of the persons in the mob were armed with swords. It is clear that some persons besides the sepoy were armed with swords as there can be no doubt that Prosecution witnesses 16 and 63 received incised injuries. Another argument urged on behalf of the appellants is that many of the police witnesses say that none of the persons who were in the mobs beat any Hindus and that this shows that there was no intention on the part of the Muhammadans to use any force. Some of the witnesses do depose that members of the mob beat Hindus passing on the road and as regards the third accused a specific act of violence is ascribed to him. Next with regard to the disturbances at Sikharamvari street and Dadivari street the argument is advanced that many of the police witnesses say that after the procession passed these places they saw no throwing of stones or beating of the Hindus, but this statement clearly refers to the period of time after the procession had finally left the Bazaar street and not while it was still in the Bazaar street. That the object of the unlawful assembly was doubtless to stop the procession is made clear by the evidence of Prosecution witnesses 39, 49 and 73 who say that the mobs shouted "Din, din" and "Ali, Ali" and it is in evidence that they at the time shouted objecting to the passing of the procession.

12. Another argument advanced on behalf of the appellants is that there is no evidence of a conspiracy on the part of the Muhammadans. It is pointed out that Sub-Inspector Gurumurthiah and his men who went in advance of the procession say that they did not see crowds collected at any lane and that Prosecution witness 1 says that he did not expect there would be any trouble. It is urged therefore that the story for the prosecution that mobs suddenly appeared at Bhashyakarlu street and Janda street is incredible. No doubt the police witnesses say that they did not come to know that any disturbance was to take place and did not see crowds collected, but it is quite possible that they did not make sufficient inquiries nor is there anything improbable or impossible in the Muhammadans having organised the mobs to obstruct the procession without the knowledge of the authorities. Indeed the defence witnesses as pointed out already admit that some Muhammadans issued from both Bhashyakarlu and Janda streets. As regards the general facts of the case it is argued on behalf of the defence that the witnesses for the prosecution have grossly exaggerated what actually transpired in order to make out a case justifying the opening of fire on the crowd. There can be no doubt that some of the witnesses have exaggerated some of the facts, viz., the number constituting the various mobs, the number of persons armed with swords, and possibly also some of the acts assigned to them, but making due allowance for all exaggeration there is no reason to doubt that a serious disturbance did take place as stated by the prosecution witnesses. With regard to the incident of firing the Subdivisional Magistrate has held that the Taluk Magistrate gave no formal order to fire, and the police had to resort to the fire because they were forced to do so by the fact that the sepoy attempted to seize one of their guns. It is argued that as the Magistrate holds that the issue of a formal order to fire is a falsehood, the rest of the prosecution story must also be condemned as false. I cannot accept this view. It is no doubt true that most of the witnesses for the prosecution are Hindus but to hold that they are therefore biassed in favour of the prosecution seems to be an illegitimate inference. No doubt as the Magistrate has remarked in his judgment a few of the witnesses are clearly partisans and are not well disposed towards the Muhammadans. As regards the Taluk Magistrate it is not shown that he is ill-disposed towards the Muhammadans. In fact, he was suddenly called upon to be in charge of the procession. Mr. Hobourn had joined the district only a few days before. Against him and Mr. O'Brien it cannot be alleged that they are in any way biassed in favour of the Hindus; and the only suggestion made is that as they had to justify their conduct in opening the fire they gave false evidence. I think this is too far fetched. It is next pointed out that there is a serious defect in the prosecution as neither Mr. Jackson nor any of his party has been examined. This is no doubt a fact, but as to whether their examination would have advanced the prosecution further is open to considerable doubt. The counsel for the defence also points out that no body in Mr. Subba Rao's party was examined; this is not correct for Prosecution witness 64 belongs to that party.

13. According to the prosecution the Taluk Magistrate gave the order to the police to disperse the mob by opening fire, and his order was communicated to the Reserve police stationed at the police station by Prosecution witness 6. Thereupon that force was divided into two parties—one under Sergeant O'Brien and the other under Inspector Hobourn. As a matter of fact these two parties fired at the mobs at Bhashyakarlu street and Janda street, respectively. The Deputy Magistrate is of opinion that no order was given by the Taluk Magistrate to open fire,

and that if any order was given at all, it was to move the Reserve force from the police station to the places of disturbance merely for the purpose of demonstration. He has given a number of reasons for coming to this conclusion. Strictly speaking the discussion of this point is not relevant for the purpose of this appeal, and the counsel for the defence has not advanced any arguments in connexion with it, except suggesting that a large portion of the evidence for the prosecution has been given with the object of justifying the hasty and illegal action of the police in opening fire. The Public Prosecutor has, however, attempted to show that the Lower Court's observations are not correct. One of the reasons assigned by the Lower Court for its conclusion is that Prosecution witness 6 says that as he was going to the police station to communicate the message he saw no beating nor was he assaulted himself. The Lower Court concludes from this that he must have gone at an earlier stage before the situation became grave enough to necessitate the opening of fire. It is not accurate to say that Prosecution witness 6 found everything quiet as he went to the police station to communicate the message; for he says that there was stone-throwing and Court witness 2, the Deputy Collector, speaks to stone-throwing and other signs of disturbance near the police station. Again the fact that some of the officers cannot name the constable who conveyed the message is hardly sufficient to lead to the inference that no order was given by the Taluk Magistrate to open fire. According to Mr. O'Brien and some of the constables attached to his party who have been examined for the prosecution it was after his party halted in the Bazaar street in front of Bhashyakarlu street that the order to load was given. Next according to them, from the police station the party marched with their bayonets in charging position. The Lower Court infers from this circumstance that the instructions given to this party were merely to charge the mob with bayonets and not to open fire. No doubt, according to the rules, when the Taluk Magistrate's order to open fire was communicated to the force at the police station, the police should immediately have loaded their fire-arms before proceeding to the scene of disturbance. The object of the rule is to avoid hurried loading while the mob is being warned. But this failure on the part of the police to load immediately does not, in my opinion, falsify the allegation for the prosecution that a formal order to open fire was communicated by the Taluk Magistrate. No doubt there is some haziness in the evidence as to the exact terms of the message communicated by Prosecution witness 6, and Sub-Inspector Krishna Rao, to whom it was in the first place conveyed, has not been examined for the prosecution; but this is hardly sufficient to condemn the evidence given by the Taluk Magistrate and a number of other witnesses as false. The lower court next observes that there was indiscriminate shooting and that this indicates that no order was given by the Magistrate to open fire, but that the police were forced to do it by the attitude taken up by the mobs. In the first place it must be observed that for any defective shooting by the police, the Taluk Magistrate cannot be held responsible. Again, it is said that if the firing was under the orders of the Taluk Magistrate there should have been more casualties, and as a matter of fact there was only two—the sepoy already referred to and a Muhammadan at the Janda street. It is difficult to see how this necessarily indicates that the firing was indiscriminate. According to the police officers, the firing was at the feet of the mob. This may account for the few casualties. Another argument advanced by the lower court is based on the incident connected with the shooting of the sepoy. The Deputy Magistrate's view is that the police were driven to open fire when the sepoy attempted to snatch the gun of one of the constables, Prosecution witness 46. The evidence for the prosecution does not disclose by whose shot the sepoy was killed. The matter is shrouded in mystery. One version is that Prosecution witness 46's gun went off in the struggle; another version is that another constable who was close to him shot the sepoy; and the third version is that both shot him. As a matter of fact he had two gun-shot wounds. The Deputy Magistrate seems to think that till the sepoy was shot no order to load had been given. This view is based upon the evidence of Prosecution witness 34, but it has to be remarked that this witness at a later stage deposed that the sepoy seized the gun after it had been loaded and when it was held in a position to present fire. The Taluk Magistrate also says that the sepoy incident took place after the order to load was given. Thus the Deputy Magistrate's conclusion cannot be said to be well-founded. One other argument of his is that it is not shown why Mr. Jackson's party was not ordered to open fire and why it was considered necessary to get the reserve police from the police station to disperse the mob by opening fire. An explanation has been offered on behalf of the prosecution: It is explained that it was considered unsafe for the people in the procession if Mr. Jackson's party should open fire. It may also be observed that there were two scenes of disturbance and it cannot be said that Mr. Jackson's small party could have opened fire at both those places. The evidence of Defence witness 36 may be considered in this connexion. According to him there was a disturbance at Bhashyakarlu lane and every body said 'fire, fire'. Then the Police Emergency Force came to Bhashyakarlu lane. After that the sepoy caught the gun and he was shot by two constables. From this it would appear that the proposal to open fire was made before Mr. O'Brien's party came to Bhashyakarlu lane, and that the sepoy incident was not the immediate cause for the opening of fire. The Deputy Magistrate refers to Exhibit L, the account prepared of the ammunition spent in firing on that day. There is an erasure in the account, but Mr. Hobourn explains it. That some of the constables used ball cartridges instead of buckshot is perfectly clear from their own evidence. This would only show want of discipline on the part of the police who fired. No inference can be drawn from it as regards the truth or otherwise of the allegations that the Taluk Magistrate gave orders to fire. It must be remarked

however that the Deputy Superintendent of Police professes amazing ignorance of the sepoy incident and that the Taluk Magistrate equally ignores the firing at the mob at Janda street. It is possible that full evidence has not been let in regarding the sepoy incident and the firing at the mobs. In my opinion, though the Deputy Magistrate's view appears plausible, it is opposed to the positive evidence given on behalf of the prosecution; and many of the arguments advanced in support of it are quite consistent with the theory for the prosecution that the Taluk Magistrate gave orders to the police to open fire.

14. The appellants have all been convicted under sections 145, 147, 148 and 326, Indian Penal Code. In the charge framed against them it was merely stated that some of the members of the assembly were armed with swords. The Magistrate has not found which of the appellants were armed with swords. Only the persons armed with deadly weapons can be charged under section 148, Indian Penal Code (vide 22, Calcutta 226). The Public Prosecutor concedes this, but says that it must be held that the Magistrate has found that the 2nd, 3rd and 6th accused were armed with swords, and therefore they are liable to be convicted under section 148, Indian Penal Code. It is no doubt true that a large number of witnesses depose that the 2nd accused was armed with a sword; but Prosecution witness 69 cannot say what weapon he had and Prosecution witness 85 says that he beat persons on the road with a stick. Similarly Prosecution witness 50 says that he had only a stick. As regards the 3rd accused most of the witnesses who depose against him say that he had a sword, but it has to be observed that Prosecution witness 33 says he had only a stone. As regards the 6th accused all the witnesses who identified him say he had a sword. Having regard to the fact that the charge did not specify the accused who were said to be armed with deadly weapons I hold that none of the accused can be convicted under section 148. As regards the conviction under section 326, Indian Penal Code, the only grievous hurt which can support it is that caused to Prosecution witness 16. In the certificate, Exhibit H-24, granted to him by the Medical officer, Prosecution witness 64, it was not stated that any of the injuries was grievous. The Medical officer reserved his opinion with reference to injury No. 1. When he was examined as a witness he stated that he regarded that injury as grievous. He has, however, admitted that Prosecution witness 16 attended the hospital for only the first two or three days as an out-patient and that he did not see him afterwards. In re-examination which took place some months afterwards he stated that he considered the injury to be grievous because puss was formed and he was of opinion that he would not have been able to use his limb for 21 days. According to the 8th clause of section 320 only hurt which endangers life, or which causes the sufferer to be, during the space of 20 days, in severe bodily pain or unable to follow his ordinary pursuits, comes under the category of grievous hurt. The Medical officer does not say that the injury endangered life or caused the sufferer to be in severe bodily pain during the space of 20 days. He only believes that he would not have been able to follow his usual avocation for 21 days. In my opinion this is not sufficient evidence to hold that the injury comes under the definition of grievous hurt. The conviction therefore under section 326 cannot be supported.

15. Before proceeding to discuss the evidence against the appellants certain general features of the prosecution evidence may be referred to. The most important is that none of the higher officers except Mr. Gurumurthiah identified any of the appellants. Another is that no arrests were made till 27th October 1919. It has next to be observed that according to the prosecution identification parades were held at two places—the Sub-jail and the Collector's office and that at the latter place no outsiders were mixed with the accused persons. All these circumstances undoubtedly tend to weaken the evidence against the appellants and it is necessary to scrutinize it with great care.

16. I now proceed to examine the evidence against each of the appellants.

17. *First appellant (1st accused).*—The evidence shows that as he was badly assaulted, he was taken to the police station by constables and sent to the hospital for treatment. As many as 25 witnesses for the prosecution say that they identified him amongst the Bhashyarkaru mob. They assign a very prominent part to him. According to them he was armed with a stick and threw stones. In his statement he says that he merely represented to the police that the playing of music in front of mosques was against custom. It is in evidence that he is a suspect and that Defence witnesses 1 to 4 who are respectable Muhammadans happened to be present. It is rather strange that the latter did not represent to the authorities the feeling of the Muhammadan community, but that a person like the 1st accused was entrusted with that duty. Defence witnesses 1 and 28 want to make out that this accused happened to be there to get a coat stitched by Defence witness 28. According to them he was not there for the purpose of remonstrating to the authorities against the procession. Thus their evidence is against the accused's own statement. The Magistrate has rightly disbelieved their evidence. There is ample evidence to show that this appellant took a very prominent part in the disturbance and I hold that he was rightly convicted.

18. *Second appellant (2nd accused).*—Against this accused also a very large number of prosecution witnesses give evidence. They say that he was in the Bhashyarkaru mob armed with a sword. It may be observed that one of the witnesses who identified him is Prosecution witness 67, Sub-Inspector Gurumurthiah. He admits he was present at the scene of offence, but explains that he was there on his way to a blacksmith's shop and adds that he ran away

when the procession came up. Now the defence evidence is to the effect that he stayed in the blacksmith's shop the whole time and did not run away when the procession came up. In his statement he says he went to ascertain whether some work which he had given for being done was finished. But the evidence given by his witnesses is that he went in order to get some work done there and then. Defence witness 13, to whom he went first, did not accept his work. Then Defence witness 42 accepted it. As already stated he states that the accused was in his shop when the disturbance took place and stayed there till 5p.m. Defence witnesses 1 and 2 merely say that they saw him at a blacksmith's shop. I have no doubt the Magistrate was right in disbelieving the defence evidence advanced on behalf of this appellant.

19. *Third appellant (3rd accused).*—The evidence for the prosecution is that he was in the Janda street mob armed with a sword. The witnesses who identified him are Prosecution witnesses 6, 21, 24, 26, 33, 58, 60, 61 and 63. Prosecution witness 63 gives evidence that it was this appellant who struck him with a sword and the Magistrate relies mainly on his evidence. He says that as he went past Janda lane, this appellant cut him with a sword and that not being able to go home he went south to a house opposite to the police station and stayed there for 10 or 15 minutes. Then he says he identified about 12 other Muhammadans a good many of whom have been let off by the Lower Court. It seems to me very unlikely that after receiving a sword out he would have been watching what was going on. He says he recognised this appellant before he received the sword out. He admits that he did not mention his name to the Inspector who sent him to the hospital and that only on the following day he gave out his name. The whole story given by him as regards his identification is most unlikely. Prosecution witness 60 is only a coolie whose evidence, in my opinion, is not entitled to weight. Prosecution witness 61 speaks to having identified a very large number of accused persons. He is only a bricklayer. He admits he did not mention the names of any persons or details of weapons when he was examined by the Deputy Superintendent of Police on the third day after the occurrence. I consider Prosecution witnesses 24 and 26 to be unreliable witnesses. The former is only a bricklayer. He incriminated the 8th, 9th and 11th accused, against some of whom he had a grudge. He admits he told the Deputy Superintendent of Police on the day after the occurrence that he could identify some persons and that he mentioned the names of only the 9th and 11th accused. Prosecution witness 26 is a washerman. He says that the 3rd accused had a white sword. One of the persons whom he identified, the 9th accused, he admits, gave evidence against his brother. I consider his evidence unreliable. Prosecution witness 32 says that this appellant had a stone and nothing else. His whole evidence is vague. I think therefore it is unsafe to act upon his identification. Prosecution witness 21 is also a coolie. I consider his evidence unreliable. As to Prosecution witness 6, he admits, he did not mention his name to the Inspector till the third day after the occurrence and I think it is unsafe to act on his sole testimony. For these reasons I hold that the evidence against this appellant is untrustworthy. He is therefore entitled to an acquittal. It is unnecessary to discuss the evidence adduced on his behalf.

20. *Fourth appellant (6th accused).*—The witnesses who give evidence against him are Prosecution witnesses 6, 31, 34, 38, 39, 42, 43 and 45. The Magistrate mainly relies on the evidence of Prosecution witness 39. Except perhaps Prosecution witness 31, who says he identified a very large number of accused persons, all these witnesses have given, in my opinion, trustworthy evidence. His plea is one of *alibi*. He also sets up ill-feeling between himself and Prosecution witness 39. The witnesses who give evidence on his behalf with regard to the plea of *alibi* are Defence witnesses 32 and 33. All that they say is that they saw him at Saidapuram at about 4p.m. on the day of disturbance and that he told them that he had come to the village headman's house on business. The village headman has not been examined. The Magistrate has in my opinion rightly disbelieved their evidence. As regards the ill-feeling with Prosecution witness 39, the appellant's case is that he gave evidence against Prosecution witness 39. Defence witness 40 who has been cited to speak to this point says he did not cite this appellant as a witness. After all, the evidence only shows that there was a petty quarrel between Defence witness 40 and Prosecution witness 39 in which this appellant interfered. I agree with the Deputy Magistrate in his view that it is not shown that Prosecution witness 39 had an adequate motive for giving false evidence against this appellant.

21. *Fifth appellant (10th accused).*—The only prosecution witness who says he identified him is Prosecution witness 63. I have already discussed his evidence in connexion with the third appellant. It is most unlikely that he would have continued watching the disturbance after he received a sword out. Further all that he says against the 10th accused is that he saw him in the crowd. He does not say what weapon he had. It may be observed that many of the accused persons whom he identified have been discharged. Now this appellant received a gun-shot injury and there can be no doubt that he got it during the disturbance. He was packed off to Madras the very next day for treatment at the General Hospital. There it was represented both by him and the people who were with him that he had received the injury at Kathivakam, a place near Madras. He now admits the gun-shot injury was received at Nellore on the day of disturbance, but he says that he received it when he was in the upper storey of the house of Defence witness 20. A number of witnesses support his case and say that the police purposely fired at the upper storey and that this appellant happened to be shot. Defence witness 3 however says he did not see any one hurt. Defence witness 22 merely says

he saw him wounded after the procession had passed. Defence witness 25 who is a brother of this appellant says that he was at his own house and went to Defence witness 20's house after hearing that his brother had been shot. Now the evidence is that he was not taken to the Nellore hospital at once, but that Defence witness 35, a compounder, was sent for. Defence witness 35 says he gave instructions that the appellant should be taken at once to the Nellore hospital. Defence witness 53, a man who travelled in the same train, says that he suggested that it should be represented to the authorities at the General hospital that the injury had been caused at Kathivakam. His explanation is that otherwise they would not properly look after him. There can hardly be any doubt that the real reason for packing off this appellant at once to Madras was to conceal the fact that he had been injured at the firing on the day of disturbance. The question now arises—Whether on this circumstance alone he can be convicted of rioting. In my opinion the evidence of Prosecution witness 63 is unreliable. Having regard to the confused nature of the prosecution evidence as regards the firing, it is possible that this appellant was not actually in the mob, but only happened to be present close by like some of the defence witnesses. He is therefore entitled to the benefit of the doubt. I find therefore that he is not guilty of the offences with which he has been charged.

22. *Sixth appellant (12th accused).*—The witnesses who speak against him are Prosecution witnesses 39, 54, 55, 63 and 85. All of them say that they saw him in the Janda street mob. Prosecution witness 39 is a constable attached to Mr. Hobourn's party which fired at the Janda street mob. He says that he saw this appellant in the Janda street mob throwing stones, and that he was then only 72 feet from him. Prosecution witness 55 gives similar evidence. I find no grounds to distrust the evidence of these two witnesses. The evidence of Prosecution witness 54 who identified a very large number of accused persons, and that of Prosecution witness 85 who is only a bricklayer may be left out of account. As to Prosecution witness 63 I consider his evidence unreliable, as already remarked in connexion with the other accused. The evidence of Prosecution witnesses 39 and 55 is, in my opinion, quite sufficient to prove that this appellant was in the riotous mob at Janda street. His plea is that he was in his house doing his usual work of a goldsmith. Defence witness 5 is a fellow-workman of his. He, no doubt, supports him, but it is difficult to believe that this man who is a Hindu worked the whole day without taking food on a Dipavali day. Defence witness 9, the master of these men, found his shop closed at the time of the disturbance. His evidence does not materially help this appellant. Defence witness 17, who is not referred to in his statement, says that he went to his house to get a ring removed from the finger of his child on account of a boil on it. Admittedly he is a rich man and the son of a rich man, Defence witness 22. As the Magistrate observes it is rather strange that this man should have gone to the house of this appellant instead of sending for him. There can be no doubt that the story given by this witness is a later invention. I consider the case against this appellant amply proved. It may also be observed that his house is in Janda street—one of the scenes of disturbance.

23. *Seventh appellant (16th accused).*—Prosecution witnesses 22, 31, 63 and 73 say that they saw him in the Janda street mob. The Magistrate mainly relies on the evidence of Prosecution witness 73. Prosecution witness 22, who is a petty cultivator, says that this appellant was in the Janda street mob throwing stones. He admits he did not know his name before. He admits that in the Moharram disturbance of 1902, he was an accused. I consider his evidence untrustworthy. The same remark applies to Prosecution witness 31 who also says he did not know the name of this appellant before. Though he professes to have identified about eleven accused persons, he admits he told the Deputy Superintendent of Police on the second day after occurrence that he saw seven persons whose names he knew. He next says he did not tell him he could identify four more, and in the same breath adds that he did say so. It is unsafe to act on the evidence of a witness who makes such conflicting statements. I have already found Prosecution witness 63 to be an unreliable witness. Prosecution witness 73 speaks to the Janda street disturbance. He says that a Muhammadan beat him from behind, that he then turned towards the west and recognised this appellant. He admits he did not see the man who actually beat him. If so, it is difficult to believe that he recognized a man who did not beat him. He admits that when he was examined by the Deputy Superintendent of Police on the third day after the occurrence, he did not give a description of this accused. In these circumstances I consider his identification most untrustworthy. The plea of this appellant is that he was bed-ridden on the day of occurrence. He has examined a number of witnesses to prove that he was too ill to go out. Defence witness 19 says he saw him between 2 and 4 p.m. on that day and that he was then laid up with fever. Defence witness 27, who is an Honorary Magistrate says he saw him bed-ridden with a venereal disease. The evidence of Defence witness 8 is not of much importance as he saw him some days earlier. Defence witness 46, Mr. Ward, one of the Panchayatdars at the Identification Parades held in this case says that this appellant had to be carried to the place of the parade on one or two occasions as he was ill. In my opinion there is ample evidence to show that he was bed-ridden on the day of occurrence. He is, therefore, entitled to an acquittal.

24. *Eighth appellant (17th accused).*—Prosecution witnesses 6, 48 and 75 speak to having identified him in the riotous mob. Prosecution witness 6 says that this appellant threw stones. On the evening of the day of occurrence he says he noted down his name along with the names of others in his note-book. He admits, however, that he was examined for the first

time on the third day after the occurrence and that then only he gave the names of the persons identified by him. He also admits that the brother of this appellant who was his subordinate bought a house from him and that he has been since demanding the price of it. For these reasons I consider his evidence against this appellant untrustworthy. Prosecution witness 75, a head constable says that this appellant had a stick. He admits he once gave evidence against this appellant and that he was discharged. He does not appear to me to be a quite disinterested witness. There thus remains only the evidence of Prosecution witness 48 who says that this appellant threw one stone, being in the Bhashyakarlu street mob. In my opinion it is unsafe to act upon the evidence of a single witness in the circumstances of this case and hold that this appellant is entitled to an acquittal. His plea is one of *alibi*. Defence witnesses 29 and 50 say that they drove in his jutka from Nellore to Indukurpet. As the prosecution evidence is very meagre against this appellant, it is unnecessary to discuss the defence evidence at length.

25. *Ninth appellant (18th accused)*.—The witnesses who give evidence against him are Prosecution witnesses 6, 47, 54 and 64. Nothing has been elicited in the evidence of Prosecution witness 6 to show that he is ill-disposed towards this appellant. He says he saw him throw stones. Prosecution witness 47, a constable attached to Gurumurthiah's party, says he recognised him from the police station and that he was throwing stones. Nothing has been elicited in his cross-examination to show ill-feeling. Prosecution witness 54 who is a resident of Nellore identified a large number of accused persons. He appears to be a man of low status. Prosecution witness 64 is a constable attached to Subba Rao's party which went in rear of the procession. I find no reason to distrust his evidence. Leaving out the unreliable witnesses there is thus adequate evidence against this appellant. His plea is that he was laid up with fever at the time of occurrence. He also alleges enmity with Prosecution witness 47. There is nothing to show that Prosecution witness 47 is his enemy. Defence witness 14, who says he saw this appellant at 2 p.m. and treated him for fever, gives vague evidence. Defence witnesses 24 and 26 say that they went from Ongole to this appellant's house at noon to get Washington lights for a marriage to be performed at Tangutur, and that he said he had fever. They admit that they did not try to get the lights from any other place in Nellore. Why they should have come down to Nellore from a distant place like Ongole has not been satisfactorily explained by them. I agree with the Deputy Magistrate in his view that the defence evidence is not entitled to any weight.

26. *Tenth appellant (22nd accused)*.—The witnesses who give evidence against him are Prosecution witnesses 30, 46 and 85. According to them he was in the Janda street mob. Prosecution witness 30 is a man of low status. He merely says that he saw him in the Janda lane standing quiet. Prosecution witness 46 is a constable, who according to his own evidence, was in Mr. O'Brien's party which fired at the riotous mob at Bhashyakarlu street. His evidence with regard to the firing, to say the least, is contradictory. In this connexion it must be observed that he says he saw this accused on the road near Bhashyakarlu lane and not at the Janda lane as stated by Prosecution witness 30. He admits he did not know his name and did not see him at any of the identification parades. I consider his evidence untrustworthy. The Magistrate mainly relies on the evidence of this witness. The evidence of prosecution witness 85 who is only a bricklayer is not entitled to any weight. For these reasons I hold that there is no satisfactory evidence to prove that this appellant was in the riotous mob. He is therefore entitled to an acquittal. His plea is that on that day he was attending on his master Defence witness 21 who was ill. Defence witness 21 and his father-in-law Defence witness 37 give evidence in his favour. This appellant also alleges enmity with Prosecution witness 46. On this point Defence witnesses 23, 51 and 52 give evidence. According to them this appellant who is a tailor demanded one rupee of Prosecution witness 46 as wages for some work done for him, but Prosecution witness 46 offered only 12 annas and in consequence there was a quarrel. As I consider there is no reliable evidence for the prosecution, this appellant should be acquitted.

27. *Eleventh appellant (24th accused)*.—The witnesses who give evidence against him are Prosecution witnesses 6, 44, 48, 63 and 64. Prosecution witness 6 says that he threw stones. Once this appellant interfered when he had a dispute with a tailor. This is not sufficient to discredit his evidence. Against Prosecution witness 44 who is also a constable nothing has been elicited. Prosecution witness 48 was one of the constables stationed at the mosque south of the Police station. He says he identified this appellant in the Bhashyakarlu street mob. There are no grounds for holding that he is an untrustworthy witness. Prosecution witness 63 need not be considered, as in my opinion his evidence regarding identification of any of the accused persons is unreliable. Prosecution witness 64 was in Subba Rao's party. He speaks to having seen this appellant in the riotous mob. There are no grounds for disbelieving his evidence. The plea of this appellant is that he was suffering from a boil and was under the treatment of Defence witness 11. It does not appear from the evidence of defence witnesses 10 and 11 that this appellant was unable to walk. Their evidence, therefore, does not help him.

28. In the result I acquit appellants Nos. 3 (3rd accused), 5 (10th accused), 7 (16th accused), 8 (17th accused) and 10 (22nd accused) and direct that they be set at liberty. As regards appellants Nos. 1 (1st accused), 2 (2nd accused), 4 (6th accused), 6 (12th accused), 9 (18th accused) and 11 (24th accused), I set aside their convictions under sections 148 and 326, I.P.C.,

confirm their convictions under sections 145 and 147, I.P.C., and reduce their sentences to four months' rigorous imprisonment each and a fine of Rs. 100 each and in default of payment of fine to further rigorous imprisonment for four months each.

V. VENUGOPAL CHETTI,
Sessions Judge.

VIII

Official Memorandum No. 4088 B-1, Home (Judicial), dated
18th October 1920.

A copy of the correspondence on the subject of the riot which occurred at Nellore on the 22nd October 1919, together with copies of the judgments of the Subdivisional Magistrate, Gudur, in C.C. No. 91 of 1919 on his file and of the Sessions Judge, Nellore, in C.A. No. 19 of 1920 on his file is forwarded to Mr. Couchman, I.C.S. the Inspector-General of Police for an early expression of opinion on the question whether the remarks of the Subdivisional Magistrate and the findings of the Sessions Judge in the appellate judgment indicate the need for any material revision of the conclusions arrived at by him and the Inspector-General of Police in their official reports to Government. him and Mr. Couchman

R. RAMACHANDRA RAO,
Secretary to Government.

To Mr. M. E. Couchman, I.C.S.
,, the Inspector-General of Police.

IX

Letter—from M. E. COUCHMAN, Esq., I.C.S., Second Member, Board of Revenue and Commissioner of Land Revenue.

To—the Secretary to Government, Home (Judicial) Department.

Dated—Madras, the 2nd November 1920.

I have the honour to submit my reply to Memorandum No. 4088 B-1 of 18th October.

The points which seem to call for remarks are the Magistrate's observations regarding the action and the behaviour of the Police, and the Deputy Magistrate.

2. In paragraph 7 the Magistrate speaks of "some mistake in handling the situation, and I am afraid also to perjury and some exaggeration to cover up those mistakes." Again, in paragraph 13, he speaks of "hasty and illegal action on account of the panic of the officers and consequent attempts to cover up the same."

3. The judgment is far from clear, and I have had a good deal of difficulty in making out what the 'mistake in handling the situation' was. So far as I can follow the line of argument it seems to be as follows.

4. Under section 128, Criminal Procedure Code, entitled "*Use of civil force to disperse assemblies*" any Magistrate or officer in charge of a Police Station may disperse any unlawful assembly by force, and may require any male person not in the Army or a volunteer to assist him.

Section 129 entitled *use of military force* states that if an unlawful assembly cannot be otherwise dispersed . . . the Magistrate of the highest rank present may cause it to be dispersed by Military force.

5. In paragraph 19 the Magistrate falls into the error of supposing that the use of firearms converts a civil force into a Military force. "The use of Military force, which I take would include any force provided with firearms."

6. Reasoning upon this premise, the absurdity of which is so self-evident from the very wording of sections 128 and 129, Criminal Procedure Code, that I need not enlarge upon it, the Magistrate finds in face of the clearest evidence to the contrary that "the Magistrate present" gave no order to fire. The whole of the argument in paragraphs 15 to 28 inclusive is vitiated by this error.

7. I will only make the following remarks:—

(a) The section applicable is section 128. Under this section any Police officer in charge of a Police Station can use force, i.e., including fire-arms if necessary, to disperse an unlawful assembly. There is no need for any magisterial order at all.

(b) In paragraph 29 the Magistrate comes to the conclusion that the behaviour of the mob was such that it "could not have been dispersed otherwise than by fire-arms and it was necessary in the public security to do so."

This was, therefore, a clear case in which an officer in charge of a Police station was justified in using such force.

(c) Although no order of any Magistrate is necessary for the officer in charge of a Police Station to take action to disperse an unlawful assembly, as a matter of fact the First-class Taluk Magistrate, the Magistrate of highest rank actually present with the procession, had issued such orders. The reasons given by the Magistrate for disbelieving this and the story of the message are far-fetched, and have rightly been rejected by the Sessions Judge. This part of the evidence cannot be a subsequent concoction. The First-class Magistrate made this same statement on October 23rd, the very day after the riot, when the District Magistrate held his enquiry. All the official witnesses made the same statement to me, and absolutely no reason exists why the official authorities other than the Police should commit wilful perjury on this point.

In any case, the point is of no importance inasmuch as the Police were within their legal powers in using fire-arms to disperse the assembly.

8. The Magistrate says in paragraph 26 "That the firing was indiscriminate and under no discipline is obvious."

In paragraph 13 of his judgment the Sessions Judge has given his reasons for not accepting this finding. I agree with him and would add that the firing was by two parties each of 15 men. Only 40 cartridges in all were fired, which gives less than 2 cartridges per man.

9. As explained in paragraph 19 of my report, the first shots were precipitated by an attack from a retired sepoy who seized hold of the carbine of one of the Police. The Police account of the matter seems to me perfectly clear. They have not suppressed any evidence. There was no reason why they should do so, as their action was perfectly regular and proper throughout.

10. The only other part of the Magistrate's order which calls for any remarks from me is the attack on the Deputy Magistrate (a Muhammadan) contained in paragraphs 16 and 17.

The Magistrate himself remarks: "I am not concerned with the question of the propriety or otherwise, of the Deputy Magistrate's behaviour".

It would have perhaps been better if he had acted on this view. In fact, paragraphs 16 and 17 contain a very elaborate and one-sided attack on the Deputy Magistrate, which is wholly irrelevant to the proper decision of the case. It would only have been relevant if section 129, Criminal Procedure Code, were applied. Inasmuch as the Police were acting under section 128, no order of a Magistrate was necessary, and therefore there was no need to enquire if the Deputy Magistrate was present, nor if the alleged message sent by the first-class Taluk Magistrate was really sent or not, or if it covered the firing at both places.

11. After carefully perusing paragraph 17 of the Magistrate's judgment I see no reason to reconsider my finding in regard to the Deputy Magistrate. The fact that no allusion whatever is made in paragraph 17 to the fact that the Deputy Magistrate was very ill and unable to walk, although paragraph 3 proves that the Magistrate was aware of it, shows that the Magistrate dealt with the question in the spirit of a partizan rather than of a Judge.

12. The Magistrate lays stress on the fact that when the Deputy Magistrate's jutka was standing in the street to the south of the Police station, the street between his jutka and the Police station was clear and therefore argues that the Deputy Magistrate should have gone to the Police station and assumed control of the situation.

I have not been supplied with copies of the evidence recorded by the Magistrate, but I find on again reading the evidence of the witnesses recorded by myself that this is not at all certain. A careful perusal of paragraph 17 of the judgment leads to the same conclusion. If the street was clear, what is the meaning of the remark that the Deputy Magistrate "had the means to cut his way?" There are

also allusions to "six or seven Muhammadans and Hindus running to and fro." The Police station was certainly being stoned during this interval. I believe that the street was far from clear, and that the Deputy Magistrate in his feeble state of health could not reasonably have been expected to force his way through the street to the Police station or to the place where the first firing took place. I consider that the account of the incident given in my report is a more correct description of the real state of affairs, and fairer to the Deputy Magistrate.

X

Letter—from P. B. THOMAS, Esq., Inspector-General of Police.
To—the Secretary to Government, Home (Judicial) Department.
Dated—the 8th November 1920.
No.—R.C. 305-Statl.

With reference to Home (Judicial) Memorandum No. 4088 B-1, dated the 18th October 1920, I have the honour to state that I have nothing to reply and that in consultation with Mr. Couchman it was agreed that he should reply for both of us.

Order—No. 2949, Home (Judicial), dated 25th November 1920.

The Government in a press communiqué, dated the 1st November 1919, made a brief statement on the subject of the Hindu-Muhammadan riot at Nellore on the 22nd October so far as the facts were then known to them and promised a special investigation by Mr. M. E. Couchman, I.C.S., into the circumstances of that regrettable occurrence. The publication of any findings on the incidents which culminated in firing by the police has had to be delayed until after the disposal of the criminal case against the rioters. The Government now wish to make a statement as to what actually happened and to place on record some of the conclusions arrived at by them after considering all the circumstances.

2. There has been a longstanding dispute between the Hindu and the Muhammadan communities in Nellore regarding the right of the former to conduct processions with music through the public streets. In 1917, when for the first time for thirty years Muharram and Dasara synchronized, the Hindus claimed the privilege, but were refused the exercise of it on grounds of public safety. They then filed a representative civil suit in the Court of the District Munsif, Nellore, and obtained a decree on 2nd October 1918 entitling them to go in procession with music in all the streets of the town and in front of the mosques at all hours of the day except 5 a.m. to 7-30 a.m., 12 noon to 2-30 p.m. and 5 p.m. to 8-30 p.m. This decree is the first important fact in the history of the occurrence. For the purposes of the present statement it is unnecessary to discuss the efforts made in October 1918 by the Hindus to exercise the rights given by the decree. Temporary orders were passed under section 144, Criminal Procedure Code, suspending the rights of the Hindus under the decree, and it was held in G.O. No. 857, Home (Judicial), dated the 12th April 1919, that these orders were justified in the circumstances then existing. In paragraph 2 of that order however the Government declared that all practicable assistance would be given towards the enforcement of rights conferred by the civil courts, provided that the enforcement did not endanger the public peace. This is the second important fact which has a bearing on the incident.

3. With Muharram and Dasara again impending, attempts at a compromise were made in September 1919 by the District Magistrate but failed. As in 1918, temporary orders under section 144, Criminal Procedure Code, were passed and Muharram and Dasara passed off quietly. The Hindus were, however, determined to assert their rights and at a meeting held on 17th October resolved to take a procession of Anjaneyaswami through the streets with music on 22nd October. The District Magistrate of Nellore decided after careful consideration that the procession should be allowed, due precautions being taken to prevent a disturbance. He was mainly guided by the fact that there was no Muhammadan festival on the 22nd and prima facie there appeared no reason why the Muhammadans

should resent the procession passing their mosques with music at an hour when, according to the District Munsif's finding, there was no prayer or worship. He had at his disposal a force which seemed sufficient to overawe opposition. He also considered that, in view of paragraph 2 of the Government Order already referred to, he would not be justified in withholding assistance when the Hindus wished to enforce the rights conferred on them by the civil court decree. A minor circumstance which seems to have influenced him was the joint Hindu-Muhammadan meeting on the 17th October under the presidency of Mr. A. S. Krishna Rao to ventilate the Khilafat question. This meeting had clearly nothing more than a political significance, and the District Magistrate was probably mistaken in thinking that it indicated any real *rapprochement* between the two communities. In view of all the facts he decided to allow the procession, but directed that a licence under the Police Act should be taken out. The hours 2-30 p.m. to 5 p.m. were prescribed for the procession and as a further precaution an order under section 144 of the Criminal Procedure Code was passed prohibiting gatherings of more than five Muhammadans along the route of the procession. The closure of toddy and arrack shops after 12 noon was also ordered and police arrangements were made:

4. The procession started at about 2-30 p.m. from the temple. It seems to have numbered more than 1,000 and possibly 2,000 or 3,000 persons. It was accompanied by an adequate escort of taluk police, armed only with batons, in front, behind and on the flanks. Six constables were also posted in front of the mosques and at the entrance of the side streets. In addition a European sergeant, one head constable and twenty constables of the reserve armed with carbines were ordered to accompany the procession throughout. A European Inspector with a European sergeant, seven head constables and forty-two men also belonging to the reserve and armed with carbines were posted in Barrack square, with orders to move on by a by-street after the procession had passed Barrack square and take up their position in front of the police station in the Bazaar street. The Deputy Superintendent, the Town Inspector, the First-class Taluk Magistrate and the Sub-Magistrate were also with the procession in front of it. The Deputy Magistrate, who had been ordered by the District Magistrate to accompany the procession, was some distance ahead of it, travelling in a jutka as he was still weak after an attack of influenza. He joined the procession some distance before Barrack square.

5. All went well till the procession reached the Bazaar street. It had passed one mosque before reaching Bazaar street, and no disturbance had occurred. When the procession was about 50 yards distant from Bhaskarla street (a side street running into Bazaar street), stones began to be thrown at it, and a body of Muhammadans, estimated at between thirty and fifty men, ran out of Bhaskarla street. About six of them were armed with swords, some more had sticks, and the rest were throwing stones. The procession stopped. The Muhammadans assumed a defiant attitude, brandishing their swords and sticks, challenging the Hindus to fight, and throwing stones. Some lay down on the ground and made signs that they defied the procession to pass over their bodies. The Magistrates, the Deputy Superintendent and other officers accompanying the procession shouted out to them to desist, and told them to go away, without result. Stone-throwing continued, the Muhammadans made insulting gestures, and advanced a few yards nearer to the procession. This went on for 10 or 20 minutes, when, finding persuasion useless, the First-class Taluk Magistrate and the Sub-Magistrate asked the Deputy Superintendent to direct the reserve to fire on the Muhammadans. The Police at the head of the procession could not have fired without risk of hurting the other people in the street, who did not belong to the rioters' party. The Deputy Superintendent despatched a constable via the Langarkhana street to tell the Reserve Inspector, who was by that time drawn up with his men in front of the police station, about 75 to 100 yards from the head of the procession, to fire upon the Muhammadans in order to clear them out of the way. The Muhammadans had intervened between the Deputy Magistrate who was about 75 to 100 yards in front of the procession in his jutka and the Deputy Superintendent.

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and other officers present with the procession who assumed (incorrectly as it turned out) that he was not there at all. This explains why they did not take his orders before ordering the reserve to fire and why the constable had no orders to consult the Deputy Magistrate, whose jutka was still near the police station. He delivered the message direct to the Sub-Inspector in charge of the station, who communicated it to the Inspector.

6. The Inspector thereupon detached a sergeant and twenty men to clear the Muhammadans away from the street by firing on them. The twenty men were formed into two lines of ten men in each, and were directed to fix bayonets and charge. They did so, with the result that some of the Muhammadans were frightened into retiring up the street from which they had come, but others remained in the Bazaar street and one of them, a retired sepoy in uniform, rushed forward and seized hold of the carbine of one of the reserve constables and tried to wrest it from him. Another constable then fired at him, and the rifle of the constable with whom the sepoy was wrestling also went off. This only infuriated the Muhammadans, who became more aggressive, whereupon the sergeant in charge of the party ordered some more men to fire, and the Muhammadans fled up the Bhaskarla street. The fire of the Police was directed diagonally across the Bazaar street. The Deputy Magistrate alighted from his jutka, and waved his arms and seems to have tried to pacify the mob, without avail. He drove off to the District Magistrate's house, which is about two miles away. In the meantime a similar disorderly crowd of Muhammadans had come out of Janda street just beyond the police station, and the Inspector had fired on them to disperse them, carrying out the orders sent to him to clear the Muhammadans from the street by fire. One Muhammadan was killed here. A few Muhammadans seem to have also attacked the rear of the procession from Dadivari street, but they were few in number, there was no firing and no serious casualties occurred at this point. The procession then moved up the Bazaar street and followed the route arranged without further interruption beyond occasional stone throwing. Two Muhammadans were killed and one was seriously wounded. No serious injuries were received by any of the Hindus or police officers. Allegations were made by the Muhammadans that their shops were looted and their mosques dishonoured after the firing. Their statements were obviously exaggerated and inquiry shows there was no real evidence to bear out the allegation.

7. The Government have carefully considered the whole circumstances of the case and find that the District Magistrate was justified in not prohibiting the procession. The authorities had no information that any offence was intended and the police force present, consisting as it did of one inspector, seven sub-inspectors, fourteen head constables and ninety-six constables, of whom about seventy were armed, might well have been thought sufficient to overawe any opposition. There was no ground for supposing that serious danger was involved to the public peace. The Government are bound to adhere to the position taken up in G.O. No. 857, Home (Judicial), dated the 12th April 1919, that all practicable assistance will be given towards the enforcement of rights conferred by the civil courts, provided that the enforcement does not endanger the public peace. The local officers must have discretion to deal with exceptional conditions to the best of their judgment. The District Munsif's decree is not one to which the Government can take exception and it has in fact recently been confirmed by the District Judge of Nellore. The Government consider that the Hindus were entirely within their rights and that the Muhammadans were responsible for the rioting and have themselves to blame for the regrettable loss of life among their own community which followed. The Muhammadans were defiant of law and utterly out of hand. However provocative they might consider the action of the Hindus, they were aware that the Hindus were acting within rights conferred by a decree of a competent civil court and it was obvious that the procession had the protection of the authorities. Though the number that actually debouched from the side streets was comparatively small, the inquiry shows that the Muhammadans were present in greater numbers behind and it must be remembered that the Muhammadan population in Nellore town amounts to some 6,000 and that in all probability Muhammadans from outlying villages were also present.

8. The Government are satisfied that but for the action of the Taluk Magistrate and the police there might have been a very serious riot. They consider that the authorities had no alternative but to use force in removing the opposition and that the actual conduct of the police in regard to firing was properly regulated and correct. Before actually opening fire the rioters were repeatedly warned by the police as well as by the magistracy. A humane discretion was exercised as is proved by the slight casualties and by the fact that firing ceased directly the mob started to disperse. The Government do not find that in the circumstances more force was used than was necessary to remove the obstruction to the forces of law and order.

9. The Government cannot assent to the views expressed by Mr. Couchman regarding the propriety of breaking up the procession when it was found that it could not proceed without the use of force on the part of the police.

10. The Government have already taken, or are taking, suitable disciplinary action in the case of those officers whose conduct appeared to them to call for such action.

(True extract)

R. RAMACHANDRA RAO,
Secretary to Government.