

2. Bill to consolidate and amend
the law relating to Lunacy.

KOLHAPUR, MONDAY, 16TH DECEMBER 1896.

MR. V. Y. MANJREKAR'S DEFENCE.

IN

THE BENHATTI CASE.



To

W. T. MORISON, ESQ., I. C. S.,

POLITICAL AGENT,

KOLHAPUR & S. M. COUNTRY.

YOUR HONOUR,

In accordance with your order, I beg to submit to you my defence in writing with regard to the Benhatti Market case.

THE CHARGE in this case is as follows:—

1. "That on or about 20th May 1894 the sum of Rs. 500 was paid by Malapa Gurshidappa, Vartyapa Gurapa and other traders of Benhatti to your brother Wamanrao at Belgaum, *by your direction and with your consent*, as a bribe for your procuring a decision of the Political Agent in their favour in connection with the dispute as to the market day in Benhatti.
2. "That on or about 7th July 1894, the sum of Rs. 400 was paid by the same traders to your brother Wamanrao at Belgaum *under exactly the same circumstances.*"

This charge or rather the two charges relate to two transactions, which are said to have taken place at different times in the course of the same proceeding. The gist of the charges, which are alike in all respects except the dates and the amount of the bribe, consists in the words italicized above, for it is quite obvious that even if all the circumstances deposed to by witnesses are literally true, the charges *must fall down*, unless the negotiations were carried on *under my cognizance and with my consent*. It must also be noted at the outset that there is no direct evidence of the actual payment of money to me or with my cognizance or consent except the oral testimony of witnesses; nor has any evidence been brought forward to show that the decisions of the Political Agent were *procured* by me or were such as could not have been given under ordinary circumstances. No attempt has been made to show that those decisions are wrong or indefensible or in any way such as to look like being procured by underhand means. This is a very material circumstance, for it raises a strong presumption that the orders were given solely upon the merits of the case and without any improper khatpat on the part of the persons interested. It has not even been suggested throughout this in-

quiry, that I had so preponderating an influence upon successive Political Agents under whom I served, as to prevail upon them to give always a decision in accordance with the wishes of my alleged clients. It is inconceivable that conscientious Officers like Col. Hunter and Col. Salmon would blindly follow the advice of their Native Agent, and yet the theory of bribe pre-supposes that either they did so actually, or that there was at least a popular impression outside that they did so. The latter kind of impression can only arise from a long course of systematic deception on the part of the subordinates in the Political Agent's Office, a deception which would require the strongest testimony to prove. It will be seen later on that absolutely no proof has been given either in the Benhatti or in any other case included in this inquiry, of such a deception being practised upon the public either by me or with my cognizance. It is a mere assumption, and nothing more than an assumption, that, because there is some evidence or rather talk of a bribe having been paid to me, I must have obtained that bribe by a false representation that I could influence the decision of the Political Agent in any way I liked. It is highly improbable that people would be fools enough to believe in such false representations for a long time, as has been assumed in these cases. I shall have to touch this point again when examining the evidence in the Benhatti case, but I notice it here for the purpose of emphasizing the point that the fact of the Political Agent's decision in the Benhatti case being twice favourable to the parties who are said to have paid the bribes is a mere accident and cannot give the least support to the story of the bribe. The truth or falsehood of that story must be judged solely upon the evidence brought forward to support it, and the circumstance that the Political Agent's decision was favourable to the parties must be left entirely out of account as being immaterial. This is an important point, because it will enable us later on to test the strength of some of the evidence given in the Benhatti case.

The story as told by several witnesses before the Police Officers is briefly this. There are two factions of weavers in Benhatti, a village in the Jamkhindi State, one of which wanted the market to be held on Wednesday in their own locality. The Chief refused their prayer and the leaders of the faction decided to appeal to the Political Agent to have the Chief's order reversed. Accordingly a deputation of four men named Vartyapa, Mahalingapa, Malapa and Malaya, went to the Assistant Political Agent's camp at Sangli, and presented to him a petition on the 5th February 1894, through a Pleader named Mr. Anandrao Patkar. They now allege that they also began a khatpat with Bavdekar, the Shirastedar of the Assistant Political Agent, who, on receiving Rs. 100, is said to have given them a packet to the Jamkhindi Karbhari containing an order of *interim* stay. Nothing, however, came out of it, and the people returned to Sangli and thence to Belgaum to get a favourable recommendation of the Assistant Political Agent whose camp was then at Belgaum. At Belgaum they say they saw Bavdekar and Vamanrao, my brother, who promised to get the Political Agent's advice for them if they would pay Rs. 200 to Bavdekar and Rs. 500 to my brother for me. The bargain is said to have been struck, and two of them Malapa and Vartyapa came, it is alleged, to see me at Kolhapur with an introductory letter given to them by Vamanrao.

They saw me, were assured of getting a favourable decision in 3 or 4 days, and returned to Belgaum. There Bavdekar and Vamanrao told them that the Political Agent's report had arrived and demanded the money. They at first refused to pay until they got the final order, but were forced to pay it by threats. The Political Agent's advice was forwarded to the Chief of Jamkhindi who refused to comply with it, and so the matter again came back to the Assistant Political Agent. The Benhatti people saw Vamanrao and Bavdekar a second time, who demanded further payment on the pretext that the opposite party were willing to pay double their sum. So, they again agreed to pay Rs. 400 more to me and Rs. 100 to Bavdekar. A second report of the Political Agent containing the same favourable advice was, it is said, accordingly forwarded to the Chief who, however, treated it in the same manner as before. The matter thus came back a third time, and the Political Agent this time withdrew his advice and left the matter entirely to the discretion of the Chief. This last letter of the Political Agent was forwarded to the Chief on the 18th September 1894, and so the whole proceeding lasted for about 7 months and a half.

Such is the story as told by the Benhatti people to Mr. Guider. It is clear that the only occasion on which I am represented as playing any direct part in it, is when Vartyapa and Malapa came to see me at Kolhapur and I assured them of a favorable decision. Again the only evidence for this part of the story is the testimony of Malapa and Vartyapa and Alapa, who have been conclusively proved to be arrant liars, and whose statements ought, if at all, to be accepted with the greatest caution. It is, therefore, clear that even if the rest of the story be true, my complicity in the affair rests upon a very slender basis. For aught I know, the Benhatti people may or may not have made khatpat at Belgaum, and yet I, who was all the while at Kolhapur, remained ignorant of their doings. No Court of law will ever convict me of bribery simply because, to take the worst view of the case, a khatpat, possibly under the cloak of my name, was made at Belgaum, unless it is proved by the strongest possible evidence that that khatpat was made with my consent or under my cognizance. The rules of proof and evidence are always the ordinary rules of common sense; and they do not certainly differ whether the inquiry be judicial or departmental only. If, therefore, the evidence now brought forward to prove my complicity in this affair is such that it cannot stand the ordinary test of truth in a Court of law, it is not to be given any more weight here, simply because the present inquiry happens to be more informal. I shall, however, show that the whole story from the beginning to the end, is a tissue of falsehood and improbabilities.

The evidence to substantiate this story is mainly oral, although a few documents have been produced to corroborate the oral statements. These statements were made before Mr. Guider, Assistant Superintendent of Police, who was specially deputed to inquire into the cases against me. Eleven witnesses were examined, of whom seven, Alapa Hadimony, Shivalingapa Galgalli, Rudrapa Abdulpur, Mallaya, Vartyapa, Mahalingapa and Malapa, came from Benhatti. Of these, the last four formed the deputation that set out from Benhatti

to achieve the object, while Rudrapa assisted them by drawing the first pair of Hundis on 20th May 1894. Alapa and Shivalingapa Galgali were the drawees of those, as well as the subsequent two Hundis. In addition to these, Shivalingapa Itgi of Belgaum, Holibasapa Hoolaghalli of Hossur and the two clerks of the firms of Bollmal of Shahapur and Gokuldas of Rabkavi, were also examined by Mr. Guider. The two clerks and Itgi know nothing of the bribe transactions and are only called in to prove the issue of the Hundis. Their testimony can, therefore, be relevant or useful only if those Hundis are denied to be real transactions; but the chief question in the case is not whether the Hundis represented real transactions, but whether they were connected with the alleged bribes, and so long as this is not proved, the testimony of all these persons is not only irrelevant, but perfectly useless. As to Holibasappa, he also is ignorant of the bribes, and is brought in simply to connect the *Daiyakhata* in Mahalingapa's accounts with the redemption of the Hundis. The moment, therefore, the Hundis are shown to be independent transactions, having nothing to do with any bribe affair, the testimony of these witnesses falls away. It is also worth noticing that the two clerks and Itgi are apparently disinterested parties and are the only persons who gave their evidence in a straightforward and consistent manner, whether before Mr. Guider or before Your Honour. It is not a little significant therefore that the only reliable testimony in this case is silent on the bribe transactions.

We now come to the seven weavers of Benhatti above referred to. It must be noticed at the outset that all of them flatly deny before Your Honour the main part of the accusation. They not only deny that they made any khatpat or paid any bribe to any officer, but even deny that they said anything to that effect before Mr. Guider. They say that they gave their evidence before Mr. Guider in Kanarese and that one Sangappa who is now dead and Yeswantrao, the Shirastadar of Major Wray the Assistant Political Agent, interpreted their words to Mr. Guider in Marathi, and that they were possibly misinterpreted as their depositions were never re-read to them. How far this explanation is true it cannot now be ascertained, especially as Sangappa is dead; but it is not quite improbable since Sangappa, a man of a very dubious character and a stranger to Mr. Guider. He not only accompanies them from Benhatti to Kolhapur and back, but is present during the greater part of the inquiry and is even allowed to interpret although he had no business to do so. Mr. Guider's knowledge of Kanarese cannot be much if we may judge from the figure he cut before Your Honour while being cross-examined by me. Again several witnesses say that Sangappa promised to do their Bazar business at the hands of the new *Sabs*, when they were summoned to depose before the Police, while Vartyapa says that Sangappa handed him the letter of the 30th August 1894 to be produced before Mr. Guider. If these statements made before Your Honour are true, Sangappa took a very active part in inducing the people to depose as they did before Mr. Guider. Evidence collected in such a manner and with such promises is entirely unreliable; and it is much more so when as is the case here, it is not given on oath or in the presence of the person

charged, or is not again checked by being re-read to each witness. The statements made by these witnesses before Your Honor fully absolve me. There is no reason why these people should calumniate Sangapa, who belonged to their caste and who is now dead, in order to save an utter stranger like me, with whom they could possibly have no sympathy. Even supposing, however, that their present statements are false, the very fact that they directly contradict themselves on the most material issues is enough to stamp them as liars, and absolve me from any accusation that is to be proved by testimony such as theirs. A Court of law will require no further proof of my innocence, but as this is a departmental inquiry and as I am required to establish not only my legal innocence but also a moral conviction about it, I must go into the merits of the evidence which, weak as it is, was, in Mr. Guider's opinion, sufficient to make a *prima facie* case against me.

It has been suggested that the later denials of these people might have been made at my instigation, but in the first place I ask why should it not be considered equally probable that the statements before Mr. Guider (supposing that they were made as they appear in the written proceedings) were made at the instigation of my enemies, who might have put up Sangappa or these people to damn me just in the same way as they put up other witnesses in other cases. My enemies, who could do so much, may very well be credited with a little more energy to get up another case against me. It is, therefore, quite unfair to make any presumption against me from the fact of the denials of these witnesses to own the statements they are said to have made before Mr. Guider. On the contrary, the failure of the previous cases entitles me to claim a presumption in my favour. But I do not even ask for this indulgence. I simply request Your Honor to keep your judgment in suspense, or, in other words, not to start with a presumption against me; and if this is done, Your Honor will perceive that it is impossible to suppose that I or any one on my behalf or with my cognizance could have possibly instigated these men to make the denials. On the 10th of October at about 8-30 P. M. I received an intimation to see Your Honor the next day between 12 midday and 1 P. M. and it was at that interview on Sunday the 11th that Your Honor gave me permission to cross-examine the witnesses, whose examination was to commence the next day, and handed over to me copies of their depositions before Mr. Guider. Before Sunday the 11th, therefore, I did not know even the names of the witnesses in this case, much less what they had stated before Mr. Guider, and I had barely 24 hours' time to go over the former depositions and prepare for cross-examination. Only two witnesses, namely the clerks of the two firms, were present on Monday, the rest not having arrived till Wednesday evening following. They were brought to Kolhapur in the custody of a Jamkhindi peon and two of them, who lagged behind and arrived later on were brought by a special peon belonging to the Political Agent's staff sent from Kolhapur. All of them were kept under strict surveillance until they were examined at Panhala on Friday. Where was then, the opportunity for me to tamper with them? I did not even know their names before Sunday for neither in the inquiry before Your Honor nor in the one held by Major Wray was I ever before supplied with the names of the witnesses or copies of

their depositions as may be seen from the record of the proceedings in the case, and afterwards it was absolutely impossible for me to approach them while in custody. Besides Your Honor will remember that on Wednesday, that is, before the witnesses arrived at Kolhapur, I actually offered to waive my right of cross-examination and was ready and willing to prove the weakness of the case set up against me from the very evidence taken down by Mr. Guider. Now I request Your Honor to calmly consider if this could be the conduct of a man who was tampering with the witnesses at the same time. Tampering with the witness, supposing it was possible, would be necessary only if their previous statements are believed to be damaging and not otherwise, and no one who believes such statements to be damaging, would venture to stake the result of his case simply and solely upon such statements. My conduct in offering to prove my innocence solely from the depositions taken before Mr. Guider, therefore, is incompatible with the assumption (and it must be here pointed out that it is no better than a gratuitous assumption—i.e., one without an iota of evidence to support it) that I or any one else on my behalf tampered with these witnesses. I may further point out that those denials do not at all look like being instigated by me, for some of them are against my interest, while the additional information volunteered by these witnesses is often of a sort, which I could never have taught them to give. The statements about Sangapa, for instance, could not have been suggested by me for I knew nothing of Sangapa till his name was given out before Your Honor, nor can they be without some foundation as even Mr. Guider admits that Sangapa was present and acted as interpreter during the former inquiry. It is said that there is no motive for these witnesses to deny the making of the statement before the Police Officer. A little consideration will however show that a plausible motive for such conduct is not so difficult to detect. As I shall show later on, the story of the bribe is a myth, and in that case it is quite probable that the witnesses, when they became alive to the chance of being exposed and perhaps criminally prosecuted, especially as their leader was dead, they adopted what they thought to be the safest course, of denying everything—even the fact of having made the statements before the Police. It may be that they have perhaps gone too far in acting in this way; but it clearly shows that they could not have been instigated in this behalf by any intelligent person. It will also appear later on that many of their statements before Your Honor are more probable and more consistent with the other indubitable facts appearing in this case than their testimony before the Police. The fact, therefore, appears to be that either they were misinterpreted on the former occasion, or that they were then induced to depose falsely by some threat, inducement, or promise, and that now they are blurt- ing out the truth when actually confronted with me. The case stands thus. One of the two sets of depositions must be false and, therefore, instigated, if not actually tutored. On the one hand, there is the Police armed with all powers and aided by unprincipled agents like Sangapa and others, collecting evidence *in camera* and for a special purpose; on the other hand, I, suspended from office with no friends to help me, no authority to terrorize the people and no opportunity even to approach them while they are in custody, have to make my defence as best as

I can. In which case, then, instigation is more probable? What inducement can I, a fallen man, hold out to these people to make them contradict their own previous statements? On the contrary, if these statements had been true, they had every reason to stick to them. They could have gained the favour of those who have conspired against me, and gain the credit of truthfulness in the bargain, which they have now irretrievably lost. By apparently siding with me they have forfeited the good will of all parties, and besides stamped themselves as liars. All the people are shrewd business men, and it is not possible that they made fools of themselves simply to please me, whom they denounced formerly. The supposition, therefore, that I might have tampered with these witnesses is utterly absurd, and the tutoring, if there was any at all, must have been more probably brought into play with regard to the previous depositions. I shall presently show that such must have been the case.

I am, therefore, fully entitled to take advantage of these denials and claim to be declared innocent on their strength. A Court of law would assuredly give me the benefit of them but as my purpose here is to produce a moral conviction of my innocence, I proceed to examine the evidence in detail. I shall assume for argument's sake that those denials are false; and I shall even go so far as to set aside the whole set of depositions before the Political Agent as worthless in proving my innocence. I shall ignore them altogether, for the present and rest my case entirely, as I in fact offered to do in the beginning, on an examination of the evidence produced before Mr. Guider. All references henceforward to the statements of the witnesses should, unless otherwise specified, be understood to their depositions made before the Police.

The evidence collected by the Police is mostly oral, although a few documents have also been produced to corroborate it. It will be better to examine the oral evidence first, because the documentary evidence produced in the case is only useful as corroborative of the oral testimony and proves nothing by itself while most of it is so general and colourless that it is quite inexplicable without the statements of witnesses explaining its relevancy. It is on the oral testimony of witnesses like Malapa, Vartyapa and Mahalingapa that the charge against me mainly depends, and if that testimony can be shown to be inconsistent, improbable, or absolutely false, the accusation must fall to the ground irrespective of the documents produced, however numerous. Bolmal might have issued several Hundis on any particular day and yet no one would dream of suggesting that so many bribes were paid to me or to any body else on or about that day. The mere fact, therefore, that a Hundi of Rs. 500 was issued on the 20th May does not prove that that sum was paid to me or to any one else on my behalf as a bribe. The so-called documentary evidence is, therefore, so in name only and will not substantiate the charge, if the oral testimony, which is the copula as it were to connect it with the alleged bribery transaction, is essentially weak. Let us now see what value is to be attached to this oral evidence.

The story begins with the arrival of the deputation at Sangli and their engaging the services of Anantarao with a fee of Rs. 200 and a bond of Rs. 400

as bakshis. After incurring this expense of Rs. 600, is it possible that they would enter into a khatpat with Bavdekar which could easily be expected to cost them a good deal more. If they meant to make khatpat, why did they waste Rs. 600 on a Pleader, and if they had already engaged him before the idea of the khatpat occurred to them, they would have certainly dispensed with his services before the Assistant Political Agent afterwards, so as to save at least the bakshis of Rs. 400. Anantrao's deposition before the Political Agent, which there is no reason to suspect, heightens this improbability. Anantrao is ignorant of any khatpat, and says that on both the occasions on which he argued the case before the Assistant Political Agent, Mr. Walsh, the latter declared his favourable opinion immediately afterwards and in open Court while the Benhatti people were present. It is clear, therefore, that Mr. Walsh's opinion was formed on the merits of the case and not by any intercession of Bavdekar. It is possible of course that Bavdekar extorted money from them on the first occasion by exaggerating his influence over Mr. Walsh, but is it probable that these people, shrewd business men as they appear to be, would, after such ocular proof of Mr. Walsh's impartiality resort again to Bavdekar at Belgaum, not once, but thrice. Either Mr. Walsh must have already imbibed his opinion from Bavdekar before he heard the Pleaders, or the Benhatti people must have been so stupid as to be cheated by Bavdekar, even when they knew that he exercised no influence over the Assistant Political Agent. Both these suppositions are highly improbable, and the story of the khatpat must therefore be initially false. Then we come to the order of stay which is mentioned by several witnesses but no record of which is forthcoming. Even the date of the order is not known, and the fact that it cannot be found anywhere makes it almost certain that no such order was ever issued. Nor was it competent for Bavdekar or even for his superior, the Assistant Political Agent, to issue such an order without the previous sanction of the Political Agent, which was, of course, never obtained. Nor could it have been a private note by Bavdekar to the Jamkhindi Karbhari, because all the witnesses speak of it as an order and not a mere letter. It is not possible that the people could be satisfied with a letter only, when they had paid Rs. 100 for it. Add to this the plain contradictions in the depositions of these witnesses. Malaya says that the order was given at Belgaum, while Vartyapa and Malapa say that it was given at Sangli. Again as to the sum of Rs. 100, Mahalingapa and Alapa differ as to from whom it was obtained, while Vartyapa, Malaya and Malapa know nothing about the subscription at all. When members of the deputation differ and differ so materially as to where the order was obtained and whence the money was got, can we not say that the order is probably a myth and that it is introduced into the story simply to make it more realistic? But as it is not material to my case, we may pass it over.

Then we come to the arrangement with Bavdekar and Vamanrao about the middle of May. The Benhatti people see Bavdekar, who stipulates for 200 Rs. for himself, and introduces them to Vamanrao who demands Rs. 500 more for him. The next day they go to Vamanrao's house, obtain a letter from him to me at Kolhapur and then proceed to Kolhapur to see me. The witnesses

are woefully at variance with one another on this point. Vartyapa says we (apparently meaning "all") went to Vamanrao's house, while Malapa says that only he and Vartyapa went. Mahalingapa and Mallaya know nothing about the matter, as they were at Benhatti at the time and not at Belgaum, while Shivlingapa Galgalli, though he is then at Belgaum, is quite ignorant of the affair!! Similar *contradictions* appear as to who were present at Bavdekar's house when Vamanrao was first called, but that Galgalli, although present, knows nothing of what passed there. He, however, adds that the settlement was to be made *after consulting the people at Benhatti* and that he, along with Malapa, Vartyapa and others, started for Benhatti immediately. He thus directly contradicts Malapa and Vartyapa, who depose that both of them obtained a letter from Vamanrao the next day, and proceeded at once to Kolhapur to see the Native Agent. The interview with the Native Agent is, perhaps, even more imaginary than the stay order. What was the necessity for it? Nothing whatever. Vamanrao could have as well sent the letter to me by post as with these men; nay, that course would have been safer and much more prudential than sending a letter with two strangers who may betray them at any moment. Could Vamanrao have acted so foolishly as to place the neck of his brother and his own into the hands of utter strangers? No doubt the episode of Vartyapa and Malapa going down to Kolhapur seeing me at my house and being told to pay the money to Vamanrao is very ingeniously conceived, as it brings the accusation directly home to me; but the authors have over-shot their mark and have been too ingenious to be believed. Even if the bribe transaction was real, Vartyapa's and Malapa's visit to Kolhapur was, to say the least, quite superfluous, and it is not, therefore, probable that Vamanrao could have advised them to undertake the trouble. The evidence for this episode is the testimony of Vartyapa and Malapa. Alapa also mentions the incident, but his knowledge is second-hand and may, therefore, be ignored. It is noteworthy that when Vartyapa was examined on the 30th March he was not asked a single question about this very important fact or about the bribe affair generally, while he gives a circumstantial account of it on the 7th April, when he is recalled along with Malapa. Vartyapa's second deposition, therefore, looks very suspicious, being neither completed nor signed by Mr. Guider, who, when questioned on the point, was unable to account for the irregularity or explain why Vartyapa was not asked anything about the bribe when he was examined the first time. Alapa had mentioned the incident so long ago as 11th March, but he did not mention any names then. It is not, therefore, improbable that the idea of connecting Vartyapa and Malapa with the journey to Kolhapur had not occurred till after the 30th March. That is the only explanation that I can at present suggest for the above irregularities. And what is the outcome after all? It is witnesses like Vartyapa, Malapa and Alapa, whose word is to prove the most material part of the story, namely the visit to Kolhapur. The value of that word may be judged from the barefaced lies they told before the Police. Malapa for instance says that Bavdekar informed him of the favourable recommendation of the Assistant Political Agent two days after the parties were heard, while Anantrao distinctly says that he himself informed them of it in open Court on that very day, that is, the 9th May. Then according to both Malapa and Vartyapa, the bargain with Vamanrao was struck after the Assistant Political Agent's recommendation had been forwarded to the

Political Agent, that is, not earlier than the 12th May. They could have therefore gone to Kolhapur on the 13th and returned to Belgaum on the 14th *at the earliest*. Five or six days according to Malapa and 8 or 10 days according to Vartyapa passed before Vamanrao and Bavdekar informed them that the papers had been received and would not be forwarded *until the money was paid*. This could not have, therefore, happened till the 23rd or 24th. According to Itgi's statement before the Political Agent, which there is no reason to disbelieve, and which looks very like truth, two days at least must have again passed before the money could be procured, which brings us to the 25th or 26th. So, if the story about threats, absurd as it is, is at all true, money must have been paid about the 26th at the earliest and the papers forwarded to the Chief after that. And yet we know *as a fact* that the papers were sent on the 22nd May and that the Hundi from Bolmall's shop was issued *on the 20th*. How are we to reconcile the story as told by the witnesses with these dates? If, on the other hand, we are to suppose that the Hundi of the 20th May was *procured to pay Vamanrao*, the information about the Political Agent's advice must have been communicated to them about the 16th or 17th, while they say that they learnt it about the 22nd. Besides that advice was sanctioned on the 17th so that they could not, under any circumstances, have learnt of it on the same date at Belgaum. Either the Hundi had, therefore, nothing to do with this transaction, or the witnesses must be telling lies. And if they tell one lie, where is the guarantee that they would not tell many others or that they would not invent a whole story, if it might serve their object? The story about threats is an utter nonsense, for it not only conflicts with the fact that the Political Agent's advice was forwarded to the Chief the next day after it was received in the Assistant's office, but it is impossible that intelligent men like Rudrapa and Vartyapa could believe that a mere Shirastedar like Bavdekar or a stranger like Vamanrao had the power to return the papers or reverse the order once made by the *Political Agent*. What is most singular is that the same farce of threats and yielding under compulsion is enacted thrice, without these people seeing through its hollowness. The more we analyse the evidence of these witnesses the more we shall find that it is full of improbabilities and inconsistent with other more trustworthy evidence in the case. Both stories, therefore, about the visit to Kolhapur and the threats administered by Vamanrao must have been invented to give a realistic colouring to the account. The very fact that Alapa, who never moved out of Benhatti and who was the first to volunteer his evidence in this case is careful to mention these two incidents only out of the many that happened at Belgaum, raises a suspicion that they formed important items of the tutoring administered to these witnesses. At any rate they cannot be believed on such oral testimony without a strong and clear corroborative evidence. Has any such evidence been produced? None that I know of. As to the documentary evidence, I shall presently show that instead of corroborating, it contradicts these stories and proves their falsehood.

Then we move on to the second bribe transaction, which is said to have taken place about the 7th July. The Chief had, in the meantime, refused to accept the advice of the Political Agent, and the papers had been, consequently, returned to the Assistant Political Agent, and by him were forwarded to the Political Agent on 25th June. The old khatpat is said to have been revived; the old farce of threats and demands and bargains gone through, and the people

eventually agreed to pay a second time Rs. 400 to Vamanrao and Rs. 100 to Bavdekar. The hero in this affair is Mahalingapa, but his statements are at variance with those of others. He says that he, Malapa and Mallaya went to Vamanrao's house; Mallayaya says he did not go. Mahalinga says that money was paid to Vamanrao by himself and Malapa. Mallaya discards Mahalinga and claims the honour to himself and Malapa. Again, Mallaya says the money was paid to Vamanrao on the same day, on which the Hundis were obtained, that is the 7th July; but Mallaya's statement must be false for the entry in Bolmall's khata show that Rs. 400 were paid on the 8th. If the money was paid some days before the 7th instant, it could certainly not have been obtained by the Hundi procured on that day. There are other discrepancies with respect to this and the former Hundi, which will be shown later on. It is, therefore, clear that the money was obtained from somewhere else, or that the witnesses who testify to this transaction, are hopelessly confused. Are we to believe in a story told by men like these? Mahalinga's veracity is more than doubtful. He and his colleagues had flatly denied in a kaifiyat filed in a suit brought by Anantrao Patkar, that the latter, their Pleader, had appeared before the Assistant Political Agent, and yet when confronted with that gentleman on Monday last, he admitted that he told a lie. Similarly, in their application for review to the same Court in the same matter, they asserted that no advice had been recommended by the Assistant Political Agent and that, therefore, Anantrao was not entitled to his reward!! Malapa and Mallaya have been proved to be no better. Can a serious charge like the present be sustained upon such worthless testimony? Thus even in this case as in the former transaction, the documents produced to corroborate the witness' statements disprove rather than support them.

The end of this affair is rather disappointing, for the Chief refused to accept the Political Agent's advice a second time. The advice was then withdrawn; but even at this stage, some evidence has been produced to prove my complicity, such as the letter of 30th August and the statements of Mallapa and Mahalingapa that I was to go to Belgaum about the Ganesh Chaturthi? But of this, later on. The whole khatpat thus ended in smoke and the people of Benhatti got nothing in return for their trouble and alleged expense in bribing Bavdekar and me. Is it possible that if I had really taken Rs. 900 from these people, I would have left any stone unturned to bring the affair favourably to a close, or that those people would have left me unmolested for about two years. For my own safety, if not for their sake, I would have tried my best to secure a favourable decision for them in order that they may never babble out. And yet, where has it been shown that at any time during this period I was over-zealous about their affair or that I exceeded my legitimate duties. The whole correspondence from 5th February till the last letter of 18th September has proceeded in the usual way and exactly like any other routine matter. The various orders and opinions are the most natural and appear to be given on the merits. They are written in English by the Political Agent and his Assistant themselves with full reasons. Where is there any room for a bribe? Are we to presume a bribe wherever there happens to be a decision favourable to either party? And if not, were not my prosecutors bound to show that the decision in this case was in some way extraordinary or

inexplicable except upon the theory of bribe? If, on the other hand, I had no control over the actual decision, how was it that I could promise to Vartyapa and Malappa a favourable decision on the 14th May, that is, 3 days before the order was sanctioned and 2 days before even the papers were received in the Political Agent's Office? These are important links in the chain of evidence produced to prove the charge against me, and the *onus* of supplying them clearly lies on my prosecutors.

I shall now take up the documentary evidence in the case. It consists of two Hundis of 20th May and 6th July, or rather entries corresponding to them in Bolmall's and Gokuldas' khatas, the accounts of Mahalingapa, a Hundi of Mahalingapa of 15th May, an entry in Gokuldas' khata of a Hundi being given to *some* Mahalingapa on the 18th July; two unstamped bonds produced by Holibasapa, and two letters dated 22nd May and 30th August purporting to be written from Belgaum to Benhatti. As already remarked, these documents prove nothing by themselves. Let us now see whether they corroborate the oral statements or fit in with the story. Take the May transaction first. The Hundi of 20th May is not forthcoming, but an entry of that date in Bolmall's khata shows that two Hundis of Rs. 250 each were drawn by Rudrapa Baslingapa Abdulpur, with Shivalingapa Itgi as security on Shivalingapa Galgalli and Alapa Hadimony, respectively, of Benhatti. The Hundis were sent to Gokuldas Bhagwandas of Rabkavi by Bolmall for being redeemed and an entry in Gokuldas' khata on 20th May shows that they were duly paid. These facts are undeniable. Rudrapa, Vartyapa and Malapa agree in saying that the Rs. 500 taken from Bolmall's shop were paid by the latter two to Vamanrao. Rudrapa has no hand in the affair beyond drawing the Hundis in his own name, and he immediately returned to Benhatti. The Hundi may, to all appearance, be a real commercial transaction of Rudrapa's, for there is nothing in the entry except the *supposed* accidental coincidence of its date with that of the Political Agent's order to connect it with any bribe transaction. I say 'supposed' because on closer examination it will be found to be illusory. The papers came to Belgaum on the 21st and were forwarded to the Chief on the 22nd May. If the witnesses are to be believed, and they are Allapa, Mahalingapa, Mallapa and Vartyapa, it was *after the papers were received and after they were threatened by Vamanrao that they set about procuring money*; and yet the Hundi was drawn on 20th, one day previous to the arrival of the papers in Belgaum!! It is not possible that they could have provided themselves with money beforehand to pay it as soon as wanted, for, the fact that they were forced to pay by threats shows that they had no intention of paying it until the whole business was concluded and the advice enforced as settled. Nor can it be said that they had received a private intimation before the papers actually arrived and that the threats also took place before 20th, for Bavdekar is said to have distinctly told them that the papers *had arrived*. Again, Itgi says to the Political Agent that he cashed the Hundi at Bolmall's shop *two days after Durdundapa introduced Rudrapa*; and this looks very probable. It is not possible, that a perfect stranger as Rudrapa was, Itgi could have given him a credit of Rs. 500 at a moment's notice. He would naturally take two days to make inquiries about Rudrapa's means before becoming his security. Durdundapa also is said to have taken *two*

or *three* days before he introduced Rudrapa to Itgi, but even omitting them from our calculation, Rudrapa must have resorted to Durdundapa on the 17th at the latest. But Colonel Hunter's advice was sanctioned on the 17th. Where was then the time for a private intimation being sent from Kolhapur to Belgaum, Vamanrao intimating it to these people, threats being administered to them, and then for them to set about the town to procure the sum of Rs. 500?

It was absolutely impossible for any letter sent from Kolhapur on the 17th to reach Belgaum on the same day. Then, again, it should be further borne in mind that had there been a previous private communication about the Political Agent's orders to Vamanrao, then the witnesses would have been informed accordingly and they could not have forgotten so material a circumstance in the story. Malappa indeed speaks of a private communication, but he says in the same breath, that official orders *were also* received at the time; so that, in any case, the witnesses commenced making arrangements for payment *after*, the receipt of the Political Agent's official orders in Belgaum. This receipt is dated 21st May, and, therefore, the drawing of the Hundi of the 20th May cannot be connected with it. The Hundi of 20th is thus quite irreconcilable with the story told by the witnesses, and if that story is false, where is the evidence to show that the Hundi had anything to do with the bribe? But this is not all. The Hundi is drawn by Rudrapa who intervenes in this affair for the first and the last time on this occasion. His story before the Police that he was sent from Benhatti specially to arrange for money is not credible, for no other witness supports him. Why then Rudrapa is selected to draw the Hundi, when any other person could have done equally well! There was Mahalingapa, for instance, who was a party to the deputation. He was certainly a better man to draw the Hundi, for besides being an active party to the khatpat, he was personally known to Bolmall, while Rudrapa required two intermediaries to secure the Hundi. Mahalingapa's Hundi of 15th May for Rs. 200 which is now produced in the case, proves beyond doubt that he had personal dealings with Bolmall's firm, and is it not probable that if any money had been required to pay to Vamanrao, he would have been chosen to draw the Hundi at Bolmall's rather than Rudrapa, who was an utter stranger to this affair upto this time. It is true that Mahalingapa and Mallaya stated before the Police that both of them returned to Benhatti from Sangli and were not present in Belgaum when the first transaction took place; but that statement is clearly false. For the Hundi of 15th May proves beyond doubt that Mahalinga was in Belgaum on that day, while the letter of 22nd May, purporting to be written by Rudrappa and Mahalinga jointly and found in a search of Mahalinga Hulagballi's house, shows, if genuine, that he was at Belgaum on the 22nd. If he was in Belgaum on the 15th and 22nd, he could not have left the place and returned in the interval of 7 days. It is not too much, therefore, to conclude that he was at Belgaum on the 20th and if he was, he was certainly the most proper man to draw the Hundi and not Rudrappa. Does it not then follow that Rudrappa's hundi of 20th has been availed of to strengthen the bribe theory, because no Hundi of that date could be found in the name of Mahalinga or any other member of the deputation. The connection of the Hundi of 20th May with the alleged bribe transaction is thus highly suspicious, and the Hundi is entirely useless to prove the charge. The fact appears to be that Rudrappa was in Belgaum at that time on his own private business and drew the Hundi of the 20th for his own use. As this date nearly coincided with the despatch of the Political Agent's advice, it was taken as a basis to build a whole bribe story upon. Now let us see how many absurdities have been committed in the attempt to make the story look

plausible. The Hundi was for Rs. 500, but what about Rs. 200 more said to have been paid to Bavdekar? The witnesses simply tell us that the sum was paid, but have not a word to say as to whence the money came. Again, one of the two Hundis was drawn on Shivalingapa Galgalli, whose presence at Benhatti was therefore necessary. He had, however, accompanied the deputation and remained in Belgaum till at least the 12th; so he is abruptly despatched to his village before the Khatpat, for which he had specially come, was even half done. The presence of Mahalingapa too would have been inconvenient for reasons stated above; so he too, along with Mallappa is transferred to Benhatti in face of the documentary proof that he was at Belgaum on the 15th and the 22nd. Mahalinga's presence in Belgaum being thus indubitably proved, is it possible that he could be ignorant of the alleged visit to Kolhapur as he appears to be? That visit must therefore be a pure myth. The discrepancies between the accounts of Allappa and Mahalinga, both professing to stay at Benhatti, are numerous. Mahalingappa says that they were informed of the bribe transaction by Mallappa after 15 or 30 days; Allappa says that the deputation had not only informed them of it previously, but even obtained their sanction to draw any Hundis they liked. Either one or both of them therefore must be telling falsehoods. As to redemption of the Hundis, Galgalli says he paid his moiety, Allappa says he paid the whole, while Rudrapa says that neither paid, but the amount was collected by subscription. It will be difficult to find another set of thorough rogues and liars like this. What conclusion follows from these contradictions? Nothing but that in their anxiety to make their story fit in with Rudrapa's Hundi of 20th May, they have fallen into hopeless confusion.

Let us now pass on to the hundi of July. It must be observed that this hundi has been spoken of as drawn on the 7th of July whereas its real date is the 6th of July as will appear from the second entry in Bolmull's Khata, which gives the date of the hundi as Ashadha Sudha 4th or 6th July. (*Vide App.*) The entry itself is dated Ashadha Sudha 5th or 7th July and Rs. 400 were paid on the next day *i. e.*, 8th July. This hundi is drawn by Mahalingapa in favour of Shivalingapa Itgi who endorsed it to Bolmall, and it was then sent by him to Gokuldass of Rabkavi for being redeemed. The two hundis of Rs. 250 each were redeemed on 18th and 23rd July respectively as will appear from the entries in Gokuldass' Khata. These facts being established, it is now to be seen how the bribe story agrees with them. Mahalingapa, Malapa and Mallaya negotiated the business, while Vartyapa retires behind the curtain and Rudrapa is dispensed with as being obviously useless. The above trio of M's proceed to Belgaum to demand their money back, and after the ceremony of threats and yielding to compulsion is gone through, as on the former occasion, they agree to pay another sum of Rs. 400 to Vamonrao and Rs. 100 to Bavdekar for a second advice of the Political Agent. On this occasion the Assistant Political Agents' recommendation was sent from Belgaum on 25th June and received in Political Agent's office on 2nd July. Col. Salmon's advice was sent on the 3rd and received at Belgaum on the 7th. Malapa says that after Bavdekar informed them that the papers were sent to the Political Agent they remained at Belgaum 8 or 10 days until they were apprised of the return of the papers. This must be at least 10th July. Bavdekar demanded the money, which they after some protestations paid by procuring from Bolmul. So the money is clearly procured after the 10th; and how could a hundi have been drawn for on the 6th? Again, even assuming that Malapa's calculation of days is wrong, Mallaya says that they paid the money to Vamonrao and Bavdekar on the same day, on which they drew the two hundis, which is again impossible, for, the entry in Bolmull's khata on Ashadha Sudha 6th shows that the sum of Rs. 400

was paid by Bolmull's clerk on the 8th of July. Moreover the Political Agent's sanction to the advice was received at Belgaum on the 7th. The hundi of 6th could not, therefore, have been drawn for the money that was, according to the witnesses themselves demanded, procured and paid *after* the papers had returned. The theory of a previous intimation is also untenable, for, in that case the whole story about demands and threats must be abandoned as false; and then the question might be legitimately asked that if a part of the witnesses' statements is false why should the rest be accepted as true? The whole must be discarded as suspicious and thus the bribe story falls to the ground. Even on this occasion Itgi deposed before the Political Agent to have taken 2 or 3 days before he cashed Mahalinga's hundis. The latter, therefore, must have resorted to him about the 4th and the demand for money must have been before that day, which is not possible, if Col. Salmon's advice was despatched on the 3rd. Any way the hundi transaction does not, as in the first case, agree with the oral evidence and, if it does not so agree, its connection with the bribe transaction there is nothing else to establish, as the Hundi by itself is perfectly silent on the point.

The redemption of these hundis is brought about in a round about way. Mahalingapa and Malapa returned to Benhatti soon after, and it was Holibasapa, who for some unaccountable reason, was entrusted with the task of paying the hundis, although he was neither the drawee nor the drawer nor in any way connected with it. The sum of Rs. 500 is made up in an extraordinary manner. Rudrapa and Vartapa borrow Rs. 50 and Rs. 100 respectively from Holibasapa, and then again hand over the money for repayment of the hundi. Mahalingapa pays Rs. 200, which he enters into his accounts as the entry under देवखतें of 18th July. The remaining Rs. 150 were to be paid by Holibasapa, on Mahalingapa's account. Unfortunately Holibasapa's private accounts are not called on; and so we have no means of checking the above explanation. The entry of 18th in Mahalingapa's देवखतें and the two unstamped bonds of Rudrapa and Vartyapa are produced. These bonds are very suspicious and may have been forged for this case, especially as they bear no stamp and as it is not probable that shrewd men of business, as the witnesses in question undoubtedly are, who think that a bond is necessary, would not take the ordinary precaution of using, at least, one anna stamp so as to make the bond a promissory note. Holibasapa and Rudrapa both repudiate the explanation before the Political Agent by saying that the money of the bonds was taken by Rudrapa for private business. Alapa, however, contradicted Holibasapa before the Police by saying that Mahalingapa himself paid the hundis. Who is to be believed? Alapa seems to be in the right, for, apart from the improbability of Mahalingapa's asking Holibasapa to redeem the hundis, when he himself was on the spot, an account of the Rs. 500, if collected by subscription, ought to have appeared in his देवखतें. But we have nothing of the kind, which shows that Holibasapa's first explanation must be false. Besides the two entries in Gokuldas' khata of the two hundis being redeemed on 18th and 23rd, respectively, are inexplicable, if Holibasapa's statement that he collected Rs. 500 by contribution and paid them in a lump sum is to be believed. Mahalingapa's later explanation is far more probable. Both he and Malapa say that the hundis of 6th July were obtained because they wanted to make purchases, but as the bargains failed they sought to recall the hundis, which however had been already sent to Rabkavi. They, therefore, repaired to Benhatti and Mahalinga paid the hundis himself by the same money. The whole transaction having thus proved abortive, no entry of it was made in his khata. This appears to be a very natural course and Alapa supports it.

The entry of Rs. 200 हस्ते होळीवसापा in the *Daivakhata* of 18th July is also explained. Mahalingapa connects it with the payment of Rs. 200 to Anantrao Patkur three months ago. That payment was entered by his clerk by mistake in his private khata, and when he discovered the mistake on his return to Benhatti after 7th July he adjusted the balance by debiting a tobacco transaction of his of the same value in the *Daivakhata*. This tobacco was purchased with the sum, which Mahalingapa had obtained by his hundi of 15th May, drawn on Holibasapa, and hence the entry contains the word हस्ते होळीवसापा (thru Holibasapa) to indicate the nature of the transaction. There is nothing impossible in this; on the contrary, the fact that the payment to Anantrao does not appear elsewhere in the *Daivakhata* makes it highly probable that the entry of 18th July represents that payment and not a portion of the redemption money of the hundis of 6th July as Holibasapa would have us believe.

From a consideration of all these facts the conclusion is irresistible that Mahalingapa obtained the hundis of 6th July for a commercial bargain of his own or of his friend Malapa or of both, and not for procuring money to pay to Vamanrao and Bavdekar. Mahalingapa, although personally known to Bolmull might have resorted to Itgi, as a payee, simply because his own credit was at that time perhaps exceeded. There is ample evidence to prove that Mahalingapa engaged in a commercial bargain. He must be a man of means since he was appointed the sole treasurer of देवसत्ते of Benhatti. He obtained a Hundi on 15th May from Bolmall for purchasing tobacco. Is it then impossible that he should have engaged in a similar bargain for purchasing tobacco about 7th July, as he admits in his deposition before the Political Agent to have done about 15th May? He actually mentions the name of Madvalapa of Konnur, with whom he bargained, a circumstance which proves that he is telling the truth. I beg to draw your Honor's special attention to this fact, for it at once removes the suspicion, caused by near coincidence of dates, that the hundi of 6th July is connected with the alleged bribe. The cue given by Mahalingapa was valuable and by following it up I am happily now in a position to convince your Honor that about 8th July, 16 loads of tobacco were actually sent by Madvalapa to the Agent of Mahalingapa at Kudchi, by rail. An extract of an entry in the Kudchi Agent's account in his own handwriting, and a certified copy of the Railway invoice which were applied for and obtained only during the last week are appended herewith. There can, therefore, be no doubt that Mahalingapa was substantially right when he told the Political Agent that he was trying to make purchases, though not of tobacco, about 7th July. His and Malapa's statements that their bargains broke are therefore only partially true for the tobacco appears to be worth only about Rs. 250. It is impossible to go into further details unless complete accounts of all the parties concerned are available and produced for inspection. Nor is it necessary for me to do so. Once the fact is established (and that is the chief thing) that Mahalingapa made commercial bargains about 7th July, it becomes obvious that he must have wanted money at the time and drew hundis at Belgaum or Shahapur like those of 6th July.

Where is then room to suppose that those hundis were for the bribe? Is it not more probable that Mahalingapa wanted the money for his bargain with Madvalapa which took place exactly at the same time? It is clear, therefore, that as Rudrapa's hundis were utilized to build the story of the first bribe, Mahalingapa's own hundis must have been availed off to account for the second bribe. The vague and shadowy presumptions of bribe found convenient pegs to hang upon, when these two sets of hundis were discovered to coincide as nearly as possible with the dispatch of the Political Agent's orders and when

this basis was thus made the detailed stories could easily be invented by stuffing them with dramatic incidents. I have already shown how the dates of these hundis are themselves enough to prove the falsity of the oral evidence.

But if any further proof is wanted it is supplied by Mahalingapa's दैवखतें. If the bribe transactions are real the Benhatti people must have spent Rs. 1500 on this khatpat, excluding the minor expenses entered in the दैवखतें and the ornaments that are still under attachment for the pleaders' bakshis; viz. Rs. 200 fee of Anantrao, Rs. 100 to Bavdekar for stay order, Rs. 500 to Wamonrao and Rs. 200 to Bavdekar in May and again Rs. 400 to Wamonrao and Rs. 100 to Bavdekar in July. All these expenses were to be defrayed from subscriptions and must, therefore, be found in the दैवखतें. Of these Anantrao's may be represented by the entry of 18th July, while the sum of 100 Rs. for stay order being paid by two or three persons as Alapa says may be ignored for the present. But where is the account of the remaining Rs. 1200. If they were spent they must have come from somewhere; and must be accounted for somewhere; but nowhere are they to be found! The दैवखतें shows a credit of Rs. 360-3-9 and a debit of Rs. 503-6-9, leaving a balance yet to be recovered from subscribers to the amount of Rs. 143-3-0. This is the total account, and the fact that the ornaments of the four leaders, who signed Anantrao's Vakalatnama had been attached for his bakshis proves that no more subscription has ever since been collected to make up the deficit. If this is the case with the दैवखतें, as we have it, where are we to look for the debit and credit of Rs. 1200? Men whose ornaments had to be attached for Rs. 400 could not have certainly afforded to spend Rs. 1200 out of their own pockets, nor has it been shown that the money might have come from any other source. Are we not then entitled to assume that this expense of Rs. 1200 is entirely fictitious? This simple fact is enough to smash the whole bribe theory. It may be urged that being bribe amounts they are not entered in the दैवखतें. But I beg to point out that the fact of a subscription of Rs. 1500 raised in the village of Benhatti cannot be concealed. It cannot be concealed or suppressed in a town like Kolhapore, and *a fortiori* in a village like Benhatti; and hence if the Police has not discovered any evidence of it beyond Mahalingappa's दैवखतें, the only conclusion possible is that the bribe story is a myth and that not more than about Rs. 500 were spent in all for the purpose as stated in the दैवखतें. By the bye I may here also refer to the improbability of spending of Rs. 1500 simply for having the day of the bazar altered. The debit and credit entries in the दैवखतें, as they are, therefore, more likely represent the correct state of things than the fictitious stories told by these witnesses before the Police.

There now remain the two letters and the entry in Gokuldas's khata on 18th July of a hundi of Rs. 200 being issued to Mahalingapa. It is difficult to see why this item is brought forward at all, unless it is sought in some way or other to connect it with the entry of 18th July in Mahalinga's दैवखतें. But all doubt on the point may at once be cleared by pointing out that the Mahalingapa to whom Gokuldas issued a hundi on 18th July was a different personage altogether being named Mahalingapa Basaparapa Nasi while ours is Mahalingapa Virsangapa Bundi (*Vide* copy of the entry in App.). That entry, therefore, is quite irrelevant.

The two letters also prove very little. That of 22nd May written by Rudrapa and Mahalingapa jointly to two men at Wasur contains nothing that in any way helps the charge of bribery and is probably produced simply to prove that Rudrapa was in the secret of this market affair and thus to support his hundi of 20th May indirectly. As a matter of fact, as has been

already shown, the letter, if genuine, strikes at the very root of the first bribe story by proving that Mahalingapa was in Belgaum at that time as he could have drawn a hundi himself if any was needed at all.

The second letter of 30th August contains the only statement in writing, which may, perhaps, be construed to incriminate me. It shews I was expected by the writers to arrive at Belgaum on Saturday night, that is, on the 1st of September. Taken by itself, it proves nothing, for it does not imply that I actually went to Belgaum, or that even I really intended to go there, or that, even after going, I had any interview with these people or that such interview had any criminal object. It simply means that the writers expected or rather conjectured that I would be at Belgaum during the Ganpati holidays. This letter derives importance only if taken in connection with the whole oral evidence; but as that evidence has been shown to be quite untrustworthy the letter loses its significance altogether. I shall now show that this letter, too, is baseless, if not, perhaps, actually fabricated. It is produced under very suspicious circumstances. The envelope, no doubt, bears the post-marks of Belgaum and Benhatti, but there is nothing to show that the envelop was not used to sanctify a fraud, *viz.*, of putting a new letter into it afterwards. Vartapa produced this letter twice, on the 30th March and 7th April. It is a mystery how after being produced once on the 30th March, it again went into the hands of Vartapa, so that he could produce it a second time on the 7th April, a mystery which Mr. Guider, when questioned by me, could not explain and which heightens the suspicion about the genuineness of the letter. For is it not possible that the letter, produced on the 30th March was different and was withdrawn for the purpose of being replaced with the present one, because it could not suit the story? What other explanation can be given of the extraordinary procedure of allowing a witness to produce the same letter twice at an interval? No Police officer will, I dare say, ever think of allowing a witness to take back such important documentary evidence, once it is produced before him by the witness. This shows that if the present letter was not already fabricated before 30th March it was certainly possible to do so between that day and 7th April. Its history before the 30th of March is stranger still. If we are to believe the statements before the Political agent, it was with Alapa, who gave it to Sangapa, who kept it in his pocket and handed it over to Vartapa to be produced. The mere circumstance that it came from the custody of a man like Sangapa is enough to taint its genuineness. The letter is therefore a fabrication made to bolster up false story. There are however still more cogent reasons for holding that the letter is, to say the least, suspicious. The statement made therein that I was to be at Belgaum on Saturday the 1st can be shown to be false. It is in the first place contradicted by Mahalingapa, who says that I was expected on Sunday; and by Mallapa, who says that I was to be at Belgaum on Monday the 3rd. Mallapa goes a step further and says that he actually saw me at my house at Belgaum on the Ganesh Chaturthi; but he is careful to add that nobody witnessed our interview, the secret being thus kept between us two, to be divulged whenever either of us pleased, and not otherwise. Mallapa, however, in making the reckless statement, did not know that he was liable to be falsified by incontrovertible proof. I append a memo from the Political Agent's Travelling allowance bill from 1st to 5th September and from the muster roll for the whole month of September from which it will be seen that I could never have gone to Belgaum at any time between the 1st and the 5th. This memo shows that I was present at Kolhapur on the 1st, started by train to Sangli *via* Shirol with Col. Salmon's camp on Sunday the 2nd, halted at Sangli on the 3rd and the 4th and left Sangli for Kolhapur *via* Shirol on the 5th. Now to reach Belgaum

on Saturday night I must have started by the train, which then left Kolhapur at 10 A. M., reached Miraj at 12-9 P. M. and reached Belgaum at 8-19 P. M. ; but I attended office on Saturday after 11 P. M. ; and did work which can be easily ascertained from office record. Again I started from Kolhapur for Sangli *via* Shirol on Sunday the 2nd, a fact which is quite incompatible with the theory that I was at Belgaum on the 1st or the 2nd or on the 3rd. On the 3rd, which is the Ganesh Chaturthi day, I halted at Sangli and could not, therefore, be conferring with Malappa at Belgaum. With the train arrangements of that time I could not by any possibility have gone to Belgaum and returned to Sangli or Kolhapur on the same day, so as to be marked present. It cannot be supposed that the allowance bill and the muster roll have been forged, for the former was prepared in the English office and under the supervision of Mr. Datar, the Head Clerk, who himself was present on the tour and must have, therefore, prepared the roll from his personal knowledge. Mr. Datar's ill-feeling towards me since long before that time is an open secret and can be proved by documentary evidence. He could not, therefore, have assisted me by making false entries. On the contrary I am pretty sure that if I had really gone to Belgaum in that interval the fact would not have failed to appear on official record. There is no room, therefore, for suspecting the bill and the roll, and if they are true, what becomes of the letter of 30th August and Malappa's and Mahalinga's statements that I was to be at Belgaum about the Ganesh Chaturthi, as well as Malappa's additional refinement that I actually conferred with him on that day? They must be held to be downright lies. This is another reason to suppose that the letter of 30th August must have been fabricated by some one, who did not know my movements from 1st to 5th September. It may possibly be said that although I did not actually go I might have intended to do so and the fact might have been communicated to those people by Vamanrao : but how does that prove my complicity in any bribe transaction? And then what becomes of Malappa's alleged interview with me at Belgaum? As a matter of fact I never intended nor did I, as a matter of fact, go, nor could have gone to Belgaum for the Ganesh Chaturthi and the witnesses have simply told gross lies before the Police. Out of the two statements of Malappa—the one before the Police and the other before your Honor, the latter *viz.*, that he was at Benhatti on the Ganesh Chaturthi day is, therefore, more trustworthy. But I do not care to ascertain where he was at the time. Once the fact is established that I did not go to Belgaum, at the time, it follows that I never conferred with Malappa or any body else, and it is quite immaterial to me whether the letter of 30th August is genuine or a fabrication though, for reasons given above, Your Honor, I am sure, will hold it to be suspicious ; and indeed, your honor expressed that you would not believe it was the same letter that was originally in the envelope.

Such is the evidence on which Your Honor is asked to convict me of a serious offence. Fortunately for me it is admitted that the oral testimony is useless, and Your Honor has justly observed that the case for the prosecution mainly depends on the documentary evidence. But it will be at once seen that the latter has hardly any direct connection with the case, and the only point that was supposed to require any explanation was the coincidence of the dates of the Hundis with the dates of the alleged bribery transactions. I have, I think, succeeded in shewing first that not only there is no coincidence of dates, but as a matter of fact the Hundis are drawn a day or two earlier than when they could have been possibly required for the bribe transactions. This, by itself, is enough to smash the case against me. But happily, by the clue given by Mahalingapa in his evidence before Your

Honor I have been enabled to shew conclusively that the second Hundis records a real tobacco transaction of the subsequent day. Here is proof positive, if any were needed, to prove that these Hundis, which were drawn in ordinary commercial course, have been cleverly utilised by my enemies to build a bribe story upon. The discovery of this real commercial transaction therefore knocks the bottom out of the case. It is also further shewn that the story about the redemption of these Hundis by subscription &c is equally incredible. The entry of Rs. 200 in Mahalingappa's Daivakhata again represents a separate Hundi transaction—the Hundi itself being produced before Your Honor; and if so the same entry cannot be utilised again, for the alleged bribe transaction. From all these facts—facts proved by independent documentary evidence—the only conclusion that can be drawn is that the Hundis are independent transactions intended for commercial purposes; the Daivakhata represents the whole debit and credit with regard to this market affair; the unstamped bonds produced by Holibasapa are either fictitious or meant for private use, as he and Rudrapa subsequently say; the several entries in Mahalingappa's, Gokuldas' and Bolmall's khatas are as they have been explained by them; and the letter of 22nd May is colourless; and that of 30th August is most probably fabricated. As to the story which supplies the back-ground as it were to these documents, I have already shown how the most important portions of it are highly improbable and contradicted by the witnesses themselves. And I have proved all this, as promised at the outset, from the evidence collected by the Police themselves and without taking advantage of the denials in the depositions before the Political Agent. Those denials were in fact wholly unnecessary, for the former statements of witnesses were so palpably false that no man with a grain of common sense could have believed in them. Had I not been sure of this, I would not have certainly offered to prove my innocence on the 14th of October before the witnesses were examined before Your Honor.

That the whole case is concocted against me will, I hope, be clear from the above. The fact that evidence was fabricated in other cases set up, at least one case against me *i. e.* the Mantri case, makes it highly probable that the present case too is of the same nature. Those who can fabricate evidence once, as Your Honor has held it proved in the Mantri case, are certainly capable of doing so a second time.

The probability of guilt, which is generally inferred from a number of complaints against the same man is just the other way, when most of the complaints have been proved to be groundless, or at least highly suspicious. If suspicions of guilt in several cases amount to the total of a real offence, the certainty of fabrication in one together with its probability in the other case ought surely to go far to prove the absolute innocence of the man. The very fact that so many cases have been set up against me and have failed ought to lead anybody to the moral conviction that I am really innocent.

But it may be asked why should cases be concocted against me at all? The explanation is simple. Your Honor held in the Mantri case that a conspiracy was rife against me and that the abstraction of a document from the Political Agent's official record, which constituted the charge in that case was purposely done by others to injure me. That such a conspiracy exists against me is, therefore, proved, and Your Honor told me several times that Your Honor would presume it in my favour. It is not improbable, therefore, that evidence in a case like this should be concocted by those who have all along been trying to ruin me. This conspiracy is of a

long standing, dating as it does, from 1892 at least. Mr. Walsh in his letter to the Political Agent, which Your Honour has perused and a copy of which was forwarded to Government by Col. Hunter, has noted the existence of such a conspiracy as having been mentioned to him by Col. Wodehouse when the latter handed over to him the temporary charge of the Political Agent's Office in 1893. Col. Hunter, the late Political Agent, wrote on 28th May 1894, that is, about the very time when the Benha ti case was going on:— "He (*i. e.* Mr. Manjrekar) has been at eumity with the Head Clerk, which has made his position very *uncomfortable*, but he has *always* been reasonable and trustworthy, as far as I have discovered." Is it possible that I could have ventured to take bribes in May and July of 1894 with so many enemies ready to expose me at any moment? I may also refer to the secret inquiry held by Lt. Pottinger about the end of last year, in the course of which he discovered nocturnal meetings at a Mr. Critchell's house where Mr. Datar and Mr. Yashwantrao used to attend. The abstraction of the document in the Mantri case has been strongly suspected to be connected with these meetings. Col. Hunter in his letter to the Government of Bombay (dated 9-1-96) reporting the results of an inquiry held before my suspension distinctly says that a clique in Kolhapur and S. M. Country was then trying to annoy me and that even Major Wray was siding with them. Col. Hunter believed the petition then sent against me to be Mr. Critchell's work. (*Vide App.*) There can be no doubt, therefore, that ever since my suspension the clique must have been working hard to bring me into trouble, and must have therefore concocted the cases against me. The presence of Yashwantrao and other Officers during Mr. Guider's inquiry, is, therefore, significant, and depositions interpreted by him ought to be accepted with the greatest caution.

It may not be out of place here to refer to the record of my past services and the testimonies to my honesty and zeal which successive superiors of mine have been pleased to place on record. Col. Hunter, for instance, writes on 28th May 1894: "He has always done his work well, and as far as I know, is trustworthy. He seems to know law well. He is hard-working and efficient." The same officer in his letter No. 469 dated 22-11-95, to Government submitting a proposal to create a post of Native Deputy Assistant Political Agent was pleased to recommend me for the post and referred in very flattering terms to my qualifications. Mr. J. F. Muir, Mr. Wiltshire, Mr. Walsh, Colonel Salmon, Colonel Wodehouse and all Officers under whom I had the honor to serve have spoken in the same high terms about me. (*Vide App.*) Considering my {past record of services therefore it is not likely that I could so far abuse the confidence placed in me by my superiors as to resort to illegal practices. Your Honour will, I hope, take this circumstance into consideration before presuming everything against me simply because misfortune or the machinations of my enemies have for the present brought me into difficulties. My position as Native Agent was a very delicate one. Although I had very little real power in my hands all persons, who failed in achieving their object in the Political Agent's Office or who were in any way affected by his orders, looked upon me, rightly or wrongly, as the cause of their ruin. I have thus unwillingly created a number of enemies, who will be simply over-joyed to see my fall. The more I have tried to discharge my duties fairly and independently the more jealousy and unpopularity seem to have increased. Is it not natural, therefore, that when I was prosecuted so many should come forward to depose falsely against me? I mention these things here not to palliate anything that may really go against me, but to point out that if any presumptions were to be drawn in my case they should be drawn in my favour and not against me. Any honest

man can be convicted guilty if everything is to be presumed against him unless and until he proves the contrary absolutely. The presumption of law is always in favour of the innocence of the accused and I do not suppose that the rule is different in a departmental inquiry. Again the charges against me are such as can never be disproved by positive evidence. What proof for instance can I give that I never took a bribe? Or how can I shew the real nature of the transactions of other people now fathered on me as bribery transactions? It is impossible for me or any one else in my position to ransack and bring to light the dealings of various different persons, which have been placed before Your Honour in a perverted form. It should also be noticed that while my accusers had more than six months to get up the cases against me and to prepare the evidence after my suspension from office, I am asked to meet these charges almost at a moment's notice. Under these circumstances I can only show that the evidence brought forward to substantiate the charge is inconsistent or self-contradictory or improbable or false; and I think I have done it fully in the present case. It is by looking to the probabilities of the facts alleged that such cases are generally decided; and Your Honor, I hope, will be convinced by a perusal of what I have written that the probabilities in this Benhatti case are all in favour of me. It may be said that bribe-takers are always careful to leave no trace of their actions behind, but is that a reason to convict a man, where evidence is palpably false, fabricated and impossible? On the contrary, the very fact that evidence is unprocurable in such cases should make one look with suspicion and distrust every piece of oral and documentary evidence, that is too striking or circumstantial or coinciding. The circumstantial accounts given by the witnesses in the Benhatti case and the supposed near-coincidence of the dates of Hundis with those of the Political Agent's orders, therefore, *prima facie* stamp them as either false or manufactured or misapplied; while, from what I have said above, it will be, I think, evident that the really innocent Hundis have been falsely used for a false purpose, and that the coincidence between the tobacco transaction of 8th July and the dates of the Hundis is far more remarkable and real, being established by unimpeachable document, than the alleged coincidence in the case based as it is on admittedly doubtful oral testimony. I refer to this point here because Your Honor alluded twice or thrice to the striking coincidence of the dates in this case.

I may before concluding be permitted to refer to the sound dicta, which the Government have laid down for being observed in the trial of departmental cases. In para 2 of their circular No. 3376 of 1842 (Territorial Dept. Revenue) it is distinctly said. "I am further instructed on this occasion to impress upon you the necessity of observing the greatest caution in inflicting the punishment of dismissal, confining it to cases resting *on the surest grounds*." In para 8 of Resolution No. 7170 of 1883 (Judicial Department) the Government of Bombay observe "There is a distinction between judicial inquiries and departmental inquiries as regards the admissibility of evidence, but there should be no distinction as regards the decision being based solely on the evidence admitted." And in para 11 they remark; "The Governor in Council considers that in proportion as evidence falls short of full proof, consideration should be given to the previous character of the subordinate concerned and especially to any specific instances of good or bad service, that may have been officially noted in his case."

It will be clear from the foregoing that the rules for determining the innocence of a Government official subjected to a

as are usually observed in a Court of law and as are sanctioned by the dictates of common sense. Applying these tests to the charges against me, Your Honour, I am confident, can arrive at no other conclusion than that those charges are false and that evidence produced to prove them is fabricated. I have been under suspension for the last 10 months and I have already suffered too much during this period by way of expense, trouble and anxiety. I beg Your Honour, therefore, to bring this protracted inquiry to a close by pronouncing your final decision at an early date. I cannot allow this opportunity to pass without expressing my deep obligations to Your Honour for the facilities afforded to me to make my defence and the consideration Your Honour has always shown me in my present position. My path has been comparatively smooth since Your Honour's arrival at Kolhapur and I owe my best thanks to Your Honour for it. I also beg to be excused for any harsh or ungenerous expressions that may have unknowingly escaped me during the course of this inquiry. The draw-backs under which I laboured were very great, and, besides, very little time was available to me for collecting materials in my favour or writing out this defence. I have, I think, however, dealt with all the important points in the case and shewn the falsity of the allegations against me. But if any points still require explanation for—it is impossible to anticipate all doubtful points and explain them in a written defence—Your Honour will, I trust, not attribute it to intentional omission, but kindly again allow me an opportunity to explain the same either orally or in writing. Your Honour has already been pleased to pronounce me not guilty in the Mantry case and I am confident that Your Honour's opinion in the Benhatti case also will not be different.

Begging to be excused for the length of this statement,

GOVERNMENT OF MADRAS.

PUBLIC DEPARTMENT.

No. 111.

From

THE HON'BLE SIR HAROLD STUART, K.C.V.O., C.S.I., I.C.S.,
Acting Chief Secretary to the Government of Madras,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
LEGISLATIVE DEPARTMENT.

Dated Fort St. George, the 29th January 1912.

SIR,

I am directed to reply to your letter No. 2780, dated 20th September 1911, asking this Government to favour the Government of India with an expression of opinion on the provisions of a "Bill to consolidate and amend the law relating to Lunacy."

2. The Governor in Council agrees that it is desirable to consolidate the law relating to the custody of lunatics in India, but he is not inclined to go quite so far as the Government of India in the direction of amendment and assimilation to the English Law on the subject. In particular a very considerable change in the law is made as regards the confinement of lunatics in asylums on the application of relatives and friends. In the opinion of this Government the necessity for a reception order issued by a Magistrate has not been established in Madras. Regarded as an additional protection from the risk of improper confinement, the new procedure has no clear advantage over that embodied in the existing law, for the Magistrate is very unlikely to refuse to act upon the two medical certificates; and from the point of view of the lunatic's relatives, there is the objection that the provisions of the Bill will unnecessarily complicate procedure and, even though the inquiries are held *in camera*, will increase very largely the probability of publicity. Experience shows that, under the system of monthly official visitations to public asylums, the danger of improper detentions is believed to be small, and the only alteration in the law which the Governor in Council recommends is an addition to section 18 (1) of the Bill to disqualify absolutely the Superintendent or any medical officer attached to an asylum from granting a certificate for admission. If, however, the Government of India determine to retain the new provisions for the grant of reception orders, I am to suggest that the Magistrate should be required to see the alleged lunatic in every case before passing an order, and that he should be held responsible under section 11 for obtaining an engagement from the petitioning relative or friend for the maintenance of the lunatic in the asylum and for this purpose the Civil Medical forms 75 and 77 may very conveniently be combined in one document.

3. This Government do not consider the definition of a lunatic in the draft Bill satisfactory and suggest for consideration the following:—

“Lunatic” means and includes a person so diseased or affected in mind that he is dangerous to himself or others or is incapable of looking after himself or his property.

The Government further consider that advantage may be taken of the present opportunity to incorporate the provisions of the Scotch Law (Section 15 of 29 and 30 Vict., Chap. 51) which allows admission of uncertified cases as voluntary boarders in asylums. The Governor in Council believes that such provisions will be taken advantage of occasionally even now, and that they will eventually be of considerable value.

4. The following criticisms of specific clauses are for consideration:—

(i) *Clause 2* should be amended so as to save the powers of District Courts also from the effects of orders of the Magistracy passed under Part II, and the clause might be expanded so as to make it clear that if a civil court has already refused to declare a person a lunatic and subsequent lunacy is alleged, the Magistrate should be obliged to refer the petitioner to the civil court.

(ii) *Clause 5*.—If the procedure of Part II of the Bill is retained, discretion may be given to the Magistrate to dispense with the second medical certificate if for reasons to be recorded in writing he thinks it desirable to do so.

(iii) *Clause 11*.—The expression “friends of the said lunatic” is indefinite and the words “persons chargeable under any law for his maintenance” might be suitably substituted.

(iv) In the letter from this Government to the Government of India, No. 215, Public, dated 25th March 1909, it was suggested that the words “any lunatic who is believed to be dangerous” occurring in the first proviso to clause 14 should be replaced by the words “any lunatic produced before a Magistrate under the provisions of this section”, as the proviso as it stands seems to imply that only a dangerous lunatic may be handed over to his friends and a lunatic not dangerous must be sent to an asylum. I am to ask that this amendment may be further considered. For the words “the public asylum of the province”, “any public asylum” may be adopted.

(v) *Clause 15 (2)*.—The question of providing an alternative sentence of fine for minor cases of neglect or ill-treatment might be considered.

(vi) In clause 16 (1) the words “at the request of the medical officer who has been called in” and in clause 16 (2) “at the request of the medical officer” may be omitted.

(vii) *Clause 17*.—I am to suggest the omission of the second part of the clause, so that an officer in charge of a police station may possess the same powers and responsibilities in a Presidency town as elsewhere. If this is not acceptable, I am to renew the suggestion made in this Government’s letter No. 215, Public, dated 25th March 1909, that the words “not below the rank of a Sub-Inspector” should be substituted in this clause for “not below the rank of an Inspector.”

(viii) Regarding clause 20, I am to point out that the list of relatives ineligible to grant a medical certificate is not complete. For those very considerable sections of the community in Malabar and South Canara who follow Marumakkattayam and Aliya Santana Laws of Inheritance it is important that uncles and nephews, aunts and nieces should be specifically disqualified under this clause, and I am to suggest the addition of these words.

(ix) *Clause 21.*—There should be provision that one copy of the reception order should be sent direct to the Superintendent of the Asylum, and in order to guard against the possibility of a reception order being held *in terrorem* over the head of an alleged lunatic, the currency of an order might perhaps be restricted to seven days.

(x) *Clause 24.*—Provision should be made for cases in which the person legally bound to maintain the lunatic, though without sufficient means for the payment of the whole cost, may be able to bear part of it.

(xi) *Clause 25.*—Under section 34 of the English Lunacy Act the consent of the Judicial authority is necessary to all alterations in documents relating to private patients. This provision should be extended to the Indian Law if a Magistrate is required to be a party to every reception order and should be made applicable also to orders issued on inquisition.

(xii) *Clause 28 (1)* of the Bill seems to presuppose that criminal lunatics are confined under the orders of Magistrates or Courts, whereas under the existing law such lunatics are confined under the orders of the local Government. It is presumed that this alteration in wording is intentional and that the Government of India propose to amend the Code of Criminal Procedure so as to delegate to Magistrates and Courts the powers which are now inherent in the local Government under sections 466 and 471, Criminal Procedure Code.

(xiii) *Clause 30* of the Bill as drafted seems to be open to objection and the word “directs” adopted from the English Law liable to create misapprehension. Release should be ordered by the authority which granted the reception order or by co-ordinate or higher authority and not simply at the request of a petitioner. It seems desirable to assimilate so far as may be the procedure in clause 30 to that laid down in clause 31.

(xiv) In clause 35 the words “jurisdiction of the High Court” should be altered to “ordinary original Civil Jurisdiction of the High Court.”

(xv) As regards clauses 42 and 43, Mr. Justice Bakewell suggests the procedure of the application for a new trial might be amended and brought into consonance with the practice of the High Court and a provision inserted that if the application has been heard by a single Judge an appeal shall lie from his order to a Bench as in civil cases.

(xvi) *Clause 52.*—For the indeterminate word “family” might perhaps be substituted “such members of the family as are dependent upon him for maintenance,” which appears to be the intention of the draft.

(xvii) *Clause 58.*—It is desirable that this clause of the Bill should not conflict with the tenor of sections 24 and 32 of the Madras Court of Wards Act, 1902, and the Governor in Council desires that the powers of the Court of Wards under that Act may be saved by an express proviso to that effect. He knows of no reason why the discretion of the Court should be fettered in the way proposed in provisos (1) and (2) to clause 58.

(xviii) *Clauses 70 & 72.*—The provisions in the English Act relating to correspondence and to visits of friends and to absence on trial might be usefully adopted in India, but this can perhaps more conveniently be provided for in the rules to be framed by the local Government after the Act has become law. This Government concurs with the Board of Revenue in thinking that the Collector should be empowered

to decline the management and also to claim his discharge in the manner provided by section 40 of the Guardian and Wards Act of 1890. The Bill should also state explicitly what action is to be taken by the Collector in respect of the estate when the lunatic dies.

5. The Bill and Statement of Objects and Reasons were published in the *Fort St. George Gazette* in English and the vernaculars on the dates shown below—

English	10th October 1911.
Hindustani	7th November 1911.
Tamil, Telugu, Canarese and Malayalam	5th December 1911.

6. In conclusion I am to express the regret of the Governor in Council for the delay in replying to your letter which is due in great measure to the late receipt of replies from gentlemen consulted.

A selection from the criticisms which have been received forms an annexure to this letter.

I have the honour to be,

Sir,

Your most obedient servant,

H. A. STUART,
Ag. Chief Secretary.

ANNEXURE.

I

Letter—from H. D. C. REILLY, Esq., I.C.S., Registrar, High Court, Madras.
To—the Chief Secretary to Government.
Dated—the 8th November 1911.
No.—Dis. 1392.

In reply to your letter No. 6016-3, Public, dated 12th October 1911, forwarding for opinion a copy of a Bill to consolidate and amend the law relating to Lunacy, I am directed to forward copies of minutes recorded by the Hon'ble Mr. Justice Benson and the Hon'ble Mr. Justice Bakewell and to state that the Honourable the Chief Justice and the other Judges do not wish to make any observations on the Bill.

ENCLOSURE.

The Hon'ble Mr. Justice Benson.

I consider that the Bill embodies a useful measure of consolidation and amendment. I do not propose to make any detailed observations.

The Hon'ble Mr. Justice Bakewell.

Sections 42 and 43.—The procedure of application for a new trial is not the practice of the High Court, and it may therefore be provided that, if the application has been heard by a single Judge, an appeal from his order shall lie in the same manner as in civil cases.

Section 43 appears unnecessary, since the clauses under the heading "Judicial powers over person and estate of lunatics" deal with the jurisdiction and procedure after inquisition. In lieu thereof the words "and appoint committees of their persons and estates" may be added to section 44 (1). The Court may be authorised to appoint the Official Trustee to be committee of the estate of a lunatic, and this officer may be appointed Public Curator of the estates of lunatics.

Sections 48 to 50.—The Madras High Court does not possess a Master in Lunacy, and it will be more convenient to omit the references to a Master in these sections and section 64, and to amend section 63 by enabling certain powers to be delegated by rule to the Master.

II

Letter—from F. H. HAMNETT, Esq., I.C.S., District and Sessions Judge, Coimbatore.
To—the Chief Secretary to Government.
Dated—the 2nd November 1911.
No.—3042.

In compliance with Memorandum No. 6016-2, dated 12th October 1911, in the Public department, requesting me to submit to Government an expression of my opinion on the provisions of the Bill to consolidate and amend the law relating to lunacy, I have the honour to report as follows.

2. The consolidation of the law in the manner proposed appears to me to be desirable. I have nothing to urge against the proposals made in the Bill for bringing the law and procedure in India more in accordance with modern English Lunacy Law, except with regard to clause 94. This new provision might in certain cases cause hardship, if the only institutions which are to be licensed as asylums are those managed by a medical officer or medical practitioner as defined in the Bill. I wish to bring to notice a case within my personal knowledge, in which the District Medical officer of a district in this Presidency refused to recommend a grant from the funds of the Taluk Board to a private lunatic asylum on the sole ground that the native medical practitioner who worked the institution was a mere quack. I

was informed by educated Indian gentlemen that some of their relatives had been cured or had derived considerable benefit by being sent to this institution, which was under the management of a Brahmin who treated his patients in accordance with the modes of treatment prescribed in some old Sanskrit works which he had studied. He was a quack, as that word is understood by European qualified medical practitioners, but the patients in his institution seem to have been well cared for and treated kindly and seem to have derived benefit from the mode of treatment adopted. In my opinion, if clause 94 is to be strictly enforced, it is desirable that the grant of a license to a private asylum should not be based on a report of a single medical officer but should be made the subject of an enquiry by a committee appointed by Government, who should be required to enquire into the working of the institution and ascertain whether the patients are kindly treated and well looked after and whether favourable results are obtained, in the way of cures. I am of opinion that if licenses are refused where these conditions are fulfilled, merely on the ground that the practitioner in charge of the institution is a quack in the English sense, such a procedure would be opposed to the sentiments of many educated natives of India.

3. I am not aware of the existence of any private institution for the treatment of lunatics in this country, which is wholly supported by private endowment or subscriptions and where patients are not received for payment, but it is possible that such institutions may exist or may be founded. Clause 94 of the proposed Bill would not apply to them, though I am unable to see that any good reason exists for not bringing such charitable institutions under the complete control of Government, if private institutions of the same class, where a fee is paid for the admission of patients, are brought under control. It would be possible for all private institutions, where lunatics were received for treatment, to evade the law, if no fees were charged for individual patients but contributions were obtained for their upkeep from those who sympathised with them, among whom would doubtless be found many of the relations and friends of patients who derived benefit by treatment in them.

4. I now proceed to offer my remarks on special clauses of the proposed Bill.

Clause 11.—Clause 11 and other clauses in the Bill, which provide for the friends or the relatives of the lunatic being required to pay his cost of maintenance, are so worded that they can only be required to meet this cost if they have sufficient means to meet the entire cost. Now the cost of maintenance of a lunatic is defined in clause 3 (2) as including the cost of lodging, maintenance, clothing, medicine, and care of the lunatic, and though the total sum required for all these purposes may be beyond the means of a lunatic's friends or relations, they may be quite able to afford to pay a contribution towards the whole cost. It seems to me that they should be required to pay such reasonable contribution even when they have not sufficient means to pay the whole cost. I would suggest, therefore, that clause 11 and other clauses in the Bill, which provide that friends or relations should pay the cost of maintenance of a lunatic, should be amended so as to require them to contribute such reasonable sum as they can afford towards the cost, even when they are unable to meet the whole cost of such maintenance.

Clauses 89 and 90 provide the procedure by which any authority which has made a reception order under clauses 14, 15 or 17 may order the cost of maintenance of the lunatic to be met, and clause 87 provides that when a lunatic is admitted under a reception order and no agreement has been taken from his friends or his relations and no order has been made by the court for the payment of his maintenance, then the cost of maintenance shall be paid by Government to the person in charge of the asylum. It follows then, in the case of every lunatic with regard to whom a reception order has been made, that either the cost for his maintenance can be recovered by proper application under clause 89 by the authority making the order of reception, or that the expenses of maintenance must under clause 87 be met by Government, where such order cannot be obtained and his friends and relatives have not undertaken voluntarily in writing to pay the cost of his maintenance. It seems, therefore, to be quite unnecessary to give power to the person in charge of the lunatic asylum under clause 11 of the Bill to refuse to admit a lunatic, for whom a reception order has been obtained, unless his friends engage to pay the cost of his maintenance, where they appear to such officer to have sufficient means to do so.

In my opinion, clause 11 of the Bill is unnecessary, and a sub-clause should, I think, be added to clause 10 directing the magistrate to enquire whether the friends or the relatives of the lunatic are prepared to enter into an engagement to pay the cost of his maintenance, and, if not, to make an application under clause 89, where that clause is applicable, or to take the necessary steps to ensure the payment of the expenses of the lunatic by Government to the person in charge of the asylum.

Clause 13 (1).—Clause 13 (1) of the Bill reproduces the present law, but I would suggest that it seems hardly necessary to make it imperative that officers in charge of police stations should apprehend or cause to be apprehended and taken to the magistrate all persons wandering at large who are deemed to be lunatics. This provision of law is not, I think, at present strictly enforced, and it seems hardly necessary that it should be, having regard to the fact that many wandering lunatics are quite harmless to themselves and others and that many persons in this country deem it a pious duty to feed and clothe such persons. I would therefore suggest that the power given to officers in charge of the police station in regard to the apprehension of harmless lunatics under this clause might be permissive and that its exercise should not be imperative.

Clause 14.—Clause 14, which is also a reproduction of the present law, leaves it purely to the discretion of the magistrate to decide whether a lunatic is a proper person to be detained, and the provisos to this clause do not lay down, as I think they ought to, that a magistrate should not order the detention of a harmless lunatic, solely on the ground that he is found wandering, if a friend or relative engages in writing to see that he is properly cared for, or if it is found that persons in the locality where he resides do in fact feed him and attend to his material wants. If all harmless wandering lunatics were sent to asylums, it seems to me that a number of new asylums would have to be opened.

Clause 16.—Clause 16 does not provide where the lunatic should be detained pending examination by the medical officer, and I would suggest that a sentence should be added that such detention should only be in places prescribed by rules framed by Government under clause 92 (b). Sub-jails, in my opinion, are not proper places for such detention, as no proper arrangements exist for the custody of the lunatics in them pending medical examination. I remember a case in which a medical officer was unable to make up his mind about the lunacy of a person detained in a sub-jail for some considerable time where the person in question one day ran amuck and murdered the warder and other persons before he was secured.

Clause 21.—The provision in clause 21 that a reception order, provided it appears to be in conformity with the Act, shall be sufficient authority for the petitioner, or any person authorised by him in the case of an order made on petition, to take a lunatic and convey him to the place mentioned in the order and for his reception and detention therein, and that the order may be acted on without further evidence of the signature or jurisdiction of the person making it, may be open to abuse in this country where such orders may easily be forged, and it seems to me to be desirable to insert a clause in the Bill directing the visitors of an asylum or the officer in charge of an asylum to inquire into the validity of such reception order under which an alleged lunatic is being detained. A clause seems to be desirable making it penal to procure the detention of a lunatic under a forged order. At any rate it seems to me desirable that a copy of the reception order should be sent direct to the officer in charge of the asylum.

Clause 23.—The words “committee of the person of the lunatic” in clause 23 (a) are not defined. The committee is no doubt that referred to in section 13 of Act XXXIV of 1858, which is reproduced in clause 47, but I think it would be well to define the phrase in the new Bill, as the word occurs in several clauses, *e.g.*, clauses 2, 23, 47, 53 and 57.

Clause 24.—The remarks made above with regard to the recovery of the cost of maintenance under clause 11 apply also to the provisos to clause 24.

Clause 28 (2).—Clause 28 (2) embodies in the Bill the provisions of section 471 (4) of the Criminal Procedure Code, under which Government may empower an officer in charge of a jail to discharge all or any of the functions of the Inspector-General

under section 472, Criminal Procedure Code. It is therefore necessary that in the table of enactments repealed the words "section 471 (4), Criminal Procedure Code, except in so far as it relates to sections 473 and 474 of that Code", should be entered under heading V.

Clause 30.—The word "directs" in this clause appears to me to be inappropriate and I would substitute for it the word "applies".

Clause 39.—Instead of the words "rules in force for the examination of such person in other cases", I would substitute "rules in force for the examination of such persons when cited as witnesses in civil suits".

Clause 52 (4).—The word "family" is used in this clause instead of "such members of his family as are dependent on him for maintenance" which seems to be what is intended and which are the words used in clauses 62 and 82 of the Bill. In the notes on clauses, printed at the end of the Bill, I find a note under clause 82 to the effect that the phrase "such members of the family as are dependent on him for their maintenance" has been substituted for the word "family" in view of the decision in I.L.R., XXIII Cal., 512. But this has not been done in clause 52 (4) or clauses 59 and 89 of the Bill.

Clause 94.—I have already commented on this clause in my general remarks.

Clause 98.—Provision might be made in this clause that no criminal complaint shall be entertained against any person for anything purporting to be done under the Act without the sanction of Government or such other authority as may be appointed to grant such sanction under rules framed under clause 92.

5. I would recommend that rules should be framed under clause 92 fixing the fees which medical officers can claim for granting the certificates required under certain clauses of the Bill.

III

Letter—from H. D. C. REILLY, Esq., I.C.S., Registrar, High Court, Madras.

To—the Chief Secretary to Government.

Dated—the 8th November 1911.

No.—R.O.C. 2968.

I am directed to forward a letter, D. No. 2768, dated 30th October 1911, from the District Judge of Tinnevely, in which he submits his opinion regarding the Lunacy Bill in compliance with your Memorandum No. 6016-2, Judicial, dated 12th October 1911.

ENCLOSURE.

Letter—from F. D. P. OLDFIELD, Esq., District Judge, Tinnevely.

To—the Chief Secretary to Government (through the Registrar of the High Court, Madras).

Dated—the 30th October 1911.

No.—D. 2768.

I have the honour to submit the following with reference to the Lunacy Bill in compliance with your Memorandum No. 6016-2, dated 12th October 1911. I restrict comment to two points. (1) the number of the medical certificates to be required, (2) the machinery proposed for recovery from the lunatic's estate or relatives of expenses incurred on his behalf.

2. In the case of a reception order made by a magistrate on petition two medical certificates are required under section 5 (1); in the case of such an order made otherwise than on petition only one is required under section 14. Inquisitions regarding lunacy under Chapter IV can be initiated in accordance with existing practice without the production by the applicant for them of any medical certificate and on his verified petition alone. I take exception to the requirement of two medical certificates in connection with reception orders under section 5 (1) on the ground that (1) insistence on a second certificate will be difficult in the mufassal, (2) it will tend to defeat what I presume to be the object of the provisions in question. I note that under section 5 (3) the procedure of reception on petition is at present to be confined to Presidency towns. But it is advisable that it should not include requirements, which may make its extension to the mufassal impracticable, in case such extension should be thought advisable in the future.

Firstly, it is at present, and in my opinion will for some time be, impossible for a mafassal petitioner to comply with the requirements of sections 18 and 19. Even if the powers of notification conferred on the Local Government by section 2 (7) (8) are used to the largest reasonable extent, the only persons entitled to give certificates will in most districts and probably for many years be the District Medical and Sanitary Officer and his subordinates. There are even in head-quarter stations practically no medical men with definite qualifications in private practice, except missionaries and pensioned civil apothecaries and hospital assistants. The former are not likely to care to take work of a *quasi-contentious* or forensic character. The latter would command little confidence. The second certificate would therefore almost invariably be that of a subordinate of the District Medical and Sanitary Officer, and would (apart from the qualifications of its author) be of little independent value. The result of requiring it would in fact be merely additional expense to the petitioner.

Secondly, the procedure of reception on petition is, it is to be presumed, intended to provide a cheap, speedy and summary method in cases in which the lunatic's estate is insignificant, but in which his detention in an asylum is desirable in his own and his neighbours' interest; and it is no doubt advisable that such a method should be provided. But it will be useless in practice, if it is made, as the requirement of a second certificate will tend to make it as expensive as the more cumbrous procedure by inquisition. An additional occasion for expense, not clearly necessary, should therefore be avoided. It will no doubt be advisable for the Magistrate to have a second opinion before him, when that is possible. But it would be a pity if the necessity for one ever stood in the way of the extension of these provisions. I submit that the interest of the lunatic will be sufficiently safeguarded, jurisdiction being already confined to the Superior Magistrates enumerated in section 2 (6), if it is laid down that in areas, to which this part of the Act may be extended in future, the Magistrate will, if the Local Government so directs, be at liberty to dispense with the production of a second certificate for reasons to be recorded by him. He would then be enabled to act in cases in which the condition of the lunatic is clear and inadvisable delay or unreasonable expense would be entailed, if a second certificate had to be produced.

3. I turn to the provisions for recovery of the cost of the lunatic's detention. It is most advisable that they should be clear, obligatory and effective, if the interests of Government are to be protected. When the lunatic is detained under a reception order, section 11 imposes on the person in charge of the asylum the duty of requiring the friends of the lunatic to engage to pay the cost of his maintenance, unless it appears to him that they have not means to do so. This may work satisfactorily in the Presidency towns, where the Superintendent of the Lunatic Asylum is within the areas from which the lunatic has come though even then he has not (so far as I know) the knowledge or staff necessary to enable him to prosecute enquiries and will eventually be dependent on the Presidency Magistrate for information. It will, however, be absolutely ineffective, should these provisions eventually be extended to the mafassal, since the Superintendents of the Central Asylums concerned will be in most cases remote from the lunatics' homes. They will then be dependent on the Magistrate for information, and it will be as well to impose the duty of deciding as to the liability of the lunatic's estate or relations on him in the first instance. He could naturally and conveniently do so, when the parties are before him, in continuation of his enquiry into the merits of the petition.

I observe next that the section should contain a reference to the liability of the estates of the lunatic (if any) and that the expression in it "friends of the lunatic" is indefinite, and might advantageously be replaced by "persons chargeable under any law with his maintenance."

It is a further defect in the section that it empowers the Superintendent of the Asylum only to require the persons responsible to engage to pay the cost of the lunatic's maintenance and provides no summary method of recovery. A suit on the engagement thus taken would be expensive, protracted and troublesome to the Superintendent. It might also not prove remunerative, when the stage of execution was reached. Section 87 no doubt provides that in cases in which no engagement has been taken, Government must pay the cost of the lunatic's maintenance and sections 89 and 90 provide a procedure for summary recovery, if the lunatic has an estate or if any person is legally bound to maintain him. But, firstly, the obligation of Government should be stated as arising only if the two last-mentioned conditions also are not fulfilled. And next the machinery proposed is cumbrous. It will be grotesque for the High Court and futile for the District Court to occupy themselves over the imposition of so petty a liability. It will be far better that, as proposed above, the whole matter should be disposed of by the Magistrate, when he makes the reception order. He should be empowered to direct that payments be made direct to the Superintendent of the Asylum, and to recover them from the lunatic's estate or (if he has none) from the persons legally responsible, a procedure similar to that prescribed in Chapter XXXVI, Criminal Procedure Code, being provided. A procedure of that kind is no doubt proposed in section 15; but it would not appear applicable to cases of reception on petition.

Section 24 deals with chargeability for lunatics so found on inquisition. It calls only for the remark that the proviso takes no account of cases in which the lunatic or his relatives have means to pay part, but not the whole, of the cost of his maintenance. The words "or any part thereof" may be added after the word "cost" in both places in which the latter occurs.

Section 87 is the remaining section on the subject. It requires amendments corresponding with those proposed in others with reference to the ability of relatives to pay a part, but not the whole, of the charge and the liability of the lunatic's estate. I observe that the Act contains no provision for recovery of the expenses of the lunatic's funeral in case of his death in the Asylum. It is advisable that such provision should be inserted.

IV

Letter—from M.R.Ry. T. SADASIVA Aiyar Avargal, B.A., M.L., District and Sessions Judge, Ganjám.

To—the Chief Secretary to Government.

Dated—Berhampur, the 1st November 1911.

No.—4322.

With reference to the memorandum of the Government, dated 12th October 1911 (No. 6016-2), inviting my opinion on the Indian Lunacy Bill of 1911, I have the honour to state as follows.

Part II of the Act relates to "Reception of Lunatics," orders for such reception to be made by magistrates. Though section 5 (3) ordinarily confines "Reception orders" to Presidency towns, the Local Government can extend the power of passing orders to magistrates in areas outside Presidency towns. Section 2 of the Act saves the powers of the High Courts (Part III, Chapter IV) from the effects of the orders of the magistrates. But it does not save the powers of the District Courts (Part III, Chapter V) from the effects of the orders of the magistrates passed under Part II. Section 2 has to be modified by saving the powers of District Courts also and by adding a clear explanation that all orders passed by the High Court or the Registrar of the High Court or the District Court under Part III shall be carried out by magistrates and shall supersede the orders of magistrates if inconsistent with such orders of the District Court or the High Court or the Registrar of the High Court.

2. In section 6, clause (1), after the word "relative" the words "by blood or marriage" might be added (see clauses 77 to 79).

3. In section 12, reference is made to "Administrative Medical officer". This has not been defined in the Bill or in the Act II of 1877. Section 3 of Act II of 1877 refers to certain high medical officers, namely, the Principal Medical Officer of His Majesty's Forces in India and so on. It is better that the phrase "Administrative Medical officer" is clearly defined.

4. Section 14 refers to "the public asylum of the Province." It is better to make this clear by using the expression "the public asylum or one of the public asylums established by the Government of the Province" (see definition of asylum in section 3 (1); see also section 85 which contemplates the establishment of more than one asylum by the Government).

5. In section 23, reference is made to "the Master of the Court". There is no officer of the High Court at Madras now known to the public as "Master", that is, after the Supreme Court was transformed to "the High Court on its Original Side". It is better that in this section and in sections 48, 49, 50, 63 and 64, the word "Master" be substituted by the words "The Registrar of the High Court on its Original Side".

6. In section 35, the phrase "a person subject to the jurisdiction of the Court", that is, the High Court, is very ambiguous. Every person in the Madras Presidency is subject either to the original or appellate jurisdiction of the High Court at Madras. A comparison of the old Acts 34 and 35 of 1858 shows that the Supreme Court had jurisdiction over cases of lunacy in Presidency towns and the District Courts over "the estates of lunatics not subject to the jurisdiction of the Supreme

Courts of Judicature". Hence, in section 35, the words "jurisdiction of the High Court" should be altered into "ordinary original civil jurisdiction of the High Court". Again, it must be made clear whether the jurisdiction depends on the *residence* of the lunatic or on his being the owner of property within the limits of the ordinary original civil jurisdiction of the High Court. The wording of section 65 (which gives jurisdiction to the District Court) seems to make jurisdiction depend on residence; for, the wording in that section is "the District Court within whose jurisdiction such person is residing". In I.L.R. 8 Cal., 263, also, the application was made to the District Judge of Patna within whose jurisdiction the lunatic was then residing. If the High Court's jurisdiction also depends on the residence of the lunatic, the provisions in section 40 (1) (following section 8 of Act 34 of 1858) as to the inquisition in cases where "the alleged lunatic is not within the local limits of the jurisdiction of the Court" become meaningless unless, after the institution of proceedings, the lunatic has changed his residence. (In section 40 (1) also "the ordinary original civil jurisdiction" should be substituted for the words "the jurisdiction".) In order that the jurisdiction of the District Courts and the High Court may not clash, clear provisions as to the conditions of the respective jurisdictions should be laid down. If the jurisdiction depends on the existence of the lunatic's property within the limits, cases in which the properties lie in the limits of different jurisdictions should be provided for. If courts get concurrent jurisdiction, provision should be made for stay of proceedings in the inferior court or in the court which took cognizance later in point of time.

7. In section 42, the words "or reviews" may be added between the words "new trials" and "in civil cases" at the end of the section. The phrase "new trials" is usually connected with trials in the Presidency Small Cause Courts alone.

8. In section 44, clause (2), the word "commitment" occurs in two places. That word is not of use in Indian enactments in the sense in which it is used in English enactments and it is better to add the words "of the charge" after the word "commitment" to make the meaning clear.

9. In section 58, proviso (2), it is enacted that the Court of Wards assuming and managing a lunatic's property should get the High Court's orders as to the disposal of the surplus income of the lunatic's estate. I do not see sufficient reason to fetter the discretion of the Court of Wards and I would omit that proviso.

10. Section 84 of the Act (following section 22 of Act 35 of 1858) is very vague as to appeals. The phrase "Rules in force for appeals in miscellaneous cases" is not reasonably clear. Are second appeals to the High Court allowed from orders of courts subordinate to the District Court? A clearer enunciation of the rule as to appeals (that orders under such and such sections shall have the force of decrees and shall be subject to appeals and second appeals as if they were orders having the force of decrees passed under the Civil Procedure Code) seems desirable.

V

Letter—from Surgeon-General W. B. BANNERMAN, M.D., I.M.S., Surgeon-General with the Government of Madras.

To—the Chief Secretary to Government.

Dated—the 2nd November 1911.

No.—97/715.

With reference to Public department Memorandum No. 6016-2, dated the 12th October 1911, forwarding for remarks copy of a Bill to consolidate and amend the law relating to lunacy, etc., I have the honour to forward herewith letter from the Superintendent, Lunatic Asylum, Madras, and to say that I am in entire agreement with the views expressed therein.

2. The proposed rules regarding reception orders appear to place obstacles in the way of easy and private admission to asylums. Their only obvious advantage is the prevention of criminal and false incarceration, but as pointed out by the Superintendent, Lunatic Asylum, the precautions against this are amply sufficient. Firstly the

wholesome dread of the law entertained by the Superintendent of the Asylum and secondly the monthly inspection by the official visitors afford assurance that no person can be unlawfully detained.

3. Volunteer boarders should be encouraged and no obstacles such as appearance before a magistrate should be enforced.

4. I agree that the terms "Lunatic" and "Asylum" should be abolished and some such appellation as "Mental Infirmary" be substituted.

The term "Lunatic" may be changed to "Mental patient."

5. If section VII of the old Act XXXVI (page 84 of code containing the laws relating to lunatics) be retained, the present Indian procedure would be improved by incorporating the present bond (Civil Medical Form No. 77) with Form B (Civil Medical Form No. 75) (copies attached for reference).

ENCLOSURE.

Letter—from Captain P. HEFFERNAN, I.M.S., Superintendent, Madras Lunatic Asylum.

To—the Personal Assistant to the Surgeon-General with the Government of Madras.

Dated—Madras, the October 1911.

No.—114.

I have the honour to return copy of proposed Bill to consolidate and amend the law relating to lunacy, forwarded to me with your No. 1241/1, dated 18th October 1911, for remarks; and to submit the following remarks with reasons therefor:—

I. In my opinion the whole of the proposed legislation regarding reception orders on petition (viz., Part II, section 4 to section 10, both inclusive) is unnecessary, is a retrograde and a reactionary step, and is in no sense an improvement on the present legislation regarding the admission of private insanes to asylums. In this matter, the present Indian procedure is superior to the English one, but, would, however, be considerably improved by incorporating the present bond (*vide* G.Os. No. 325 and 35 of the 9th and 29th May 1882) with the present admission order (Form B) in one document, so that the person effecting the admission of a private patient would, *ipso facto* be liable for his maintenance and subsequent removal. A slight alteration would also be required in section 30, if this suggestion should be adopted.

There is no necessity whatever for a magisterial enquiry—the English law in this matter is distinctly not to be imitated—and I am convinced that this proposed legislation will interfere considerably with the utility of Indian lunatic asylums. My reasons are fully given below.

II. A most useful provision in the English Lunacy Law has been omitted, viz., the provision for the admission of uncertified cases, as voluntary boarders. A similar provision ought to be included in the Indian Bill.

III. The expressions "Lunatic" and "Lunacy" are obsolete, and ought to be dropped. The term "Asylum" has also acquired an undesirable significance and "Hospital" ought to be substituted. The English Royal Commission on the care of the feeble-minded has recommended that the expression "Lunatic" and "Asylum" should be dropped and "Mental defective" and "Hospital" substituted.

IV. With these exceptions, the Bill appears to me to be an admirable one in all respects.

Reasons for these remarks.

Lunatic asylums in India have got two distinct functions to perform:—

- (a) To serve as hospitals for the treatment and cure of acute cases of mental disease;
- (b) To serve as homes in which chronic and congenital mental defectives may spend their lives with the maximum comfort and safety for themselves and the general community.

The proposed Bill entirely loses sight of or ignores the first function (a) and by introducing such an obstacle as a magisterial enquiry into the way of admitting private patients for treatment, it deals a paralysing blow to the great object we all have so much at heart, viz., the "Hospitalisation" of the lunatic asylums. This blow is followed up by another, viz., the omission of a provision for the admission of voluntary paying boarders, which provision is in force in England, and to which there cannot be any possible objection in India.

On the Continent of Europe and in America, every effort is now made to treat acute cases of mental disease in institutions without any certification whatever. As an example, I would instance the conditions which obtain in the kingdom of Bavaria.

There is a State Lunatic Asylum at Egling, worked on the villa system and accommodating 1,100 patients. There is also a State supported mental infirmary or clinic in Munich into which between 1,500 and 2,000 patients suffering from the different forms of mental disease are admitted annually, without any form of judicial certification whatever. There is attached to this institution an out-patient department which treats an average of about 50 patients per week. The clinic is under the management of Professor Kraepelin, one of the greatest living authorities on mental disease. About 500 cases are transferred annually from the Munich clinic to the State asylum.

Similar institutions and practices are met with in other German States, in France and in Italy. Unfortunately the time and means for verifying the facts concerning the institutions in these countries are not now at my disposal; but I am aware that "Observation hospitals" for mental disease have been and are being established by law in Italy; and French mental clinics such as the Salpêtrière in Paris and a similar institution at Lyons have a world-wide reputation.

In England too, a similar movement is making itself felt and out-patient departments are being established in connexion with certain lunatic asylums, *e.g.*, Wakefield.

I am glad to be able to state that my predecessor in charge of the Madras asylum is in complete agreement with me, as to the undesirability of making a judicial inquiry by a magistrate necessary for the admission of private patients, and has left his opinion on record in the following terms* :—

* *Vide* this office letter No. 610, dated 8th September 1908.

"I entirely disagree with this. It is much too severe on the whole class of private patients. The one thing that a patient's friends beg is that there may be as little publicity as possible in connection with the patient and for very obvious reasons. As it is, great difficulty is experienced by many of them, as they have to take the lunatic to two medical men, each of whom demands a certain amount of time for observation before he will sign form A; and now it is proposed to cart him to the Presidency Magistrate who may be in the midst of a case or unable to attend to him at once."

"Again considering that all papers of every admission must be placed before the official visitors once a month and that these visitors must see and examine him (section 3 of Act 36 of 1858), it seems to me that the public are very well protected, as it is, apart from the fact that medical officers must get into serious trouble in case of error—a fact which they are only too well aware of."

"From my experience, I have no hesitation in saying that many more paying patients would reap the benefit of the asylum as a hospital, were it not that the difficulties and publicity which attend admission at present, are such as they are."

Since January 1909, there have been 66 private admissions into the Madras lunatic asylum. Of these, twenty were discharged recovered after periods of treatment lasting from 14 days to nearly 2 years; ten were handed over to their relatives much improved, and of these three are now completely recovered to my own personal knowledge; five were handed over to their friends without improvement; seven died; and twenty four still remain in the institution. I feel certain that, if a magisterial enquiry was required before admission of these cases, many of them would not have sought admission to the institution.

The idea that a sane individual, could under present conditions be incarcerated by unscrupulous relatives in a Government lunatic asylum, is a chimera. No doubt, in the silly season, when sensational "copy" is scarce, a gutter press will still dish up tales of such occurrences. Bunyan's "Man with the muck Rake" will exist until the end of time, and on this account, the life of an Asylum Superintendent, like that of Gilbert's police man, will never be quite a *happy one*. With specially trained officers in charge of the institutions and medical officers on the boards of visitors, such a risk is about as great as the danger of being buried alive! One can, however, only sit and marvel at the omniscience of the magistrate,—able to tell at a glance whether the medical officer and medical practitioner who certified the patient are right or wrong!!

As regards my third objection, the term "Lunatic" is a relic of a barbarous age, when all human beings were under the influence of some heavenly body or other; but the unfortunate mental sufferer alone was under that of the moon!! The Government of New Zealand, and of the State of New York, to mention two examples, have expunged the terms "Lunatic" and "Asylum" from their codes. I have already quoted the recommendation of the Royal Commission on the care of the feeble-minded.

A gentleman who was treated in this institution in the present year, and made a good recovery, a clergyman, wrote to me a short time ago and suggested that I should petition Government to change the name of the institution to that of the "MADRAS MENTAL INFIRMARY". I cordially agreed with him, and seize the present occasion to carry his suggestion into effect.

FORM B.

ORDER FOR THE RECEPTION OF A PRIVATE PATIENT (SEE SECTION VII).

I, the undersigned, hereby request you to receive _____
 a lunatic (or an idiot, or a person of unsound mind) as a patient into your asylum. Subjoined
 is a statement respecting the said _____
 (Signed) Name _____
 Occupation (if any) _____
 Place of abode _____
 Degree of relationship (if any), or other circumstances of connexion with the patient _____

Dated this _____ day of 190 .

To

THE SUPERINTENDENT, LUNATIC ASYLUM AT MADRAS.

STATEMENT.

[If any of the particulars in this statement be not known, the fact to be so stated.]

Name of the Patient, with Christian name at length _____
 Sex and age _____
 Married, single, or widowed _____
 Condition of life, and previous occupation (if any) _____
 The religious persuasion, as far as known _____
 Previous place of abode _____
 Whether first attack _____
 Age (if known) on first attack _____
 When and where previously under care and treatment _____
 Duration of existing attack _____
 Supposed cause _____
 Whether subject to epilepsy _____
 Whether suicidal _____
 Whether dangerous to others _____
 Whether found lunatic by inquisition or enquiry under order of Court, and date of Commission
 or order for inquisition or enquiry _____
 Whether any member of patient's family has been or is affected with insanity _____
 (Signed) Name _____

(Where the person signing the statement is not the person, who signs the order, the following particulars
 concerning the person signing the statement are to be added, namely.)

Occupation (if any) _____
 Place of abode _____
 Degree of relationship (if any), or other circumstances of connexion with the patient _____

KNOW ALL MEN by these presents that we

of
of
and
of

are held and firmly bound unto the Right Honourable the Secretary of State for India in Council in the sum of _____ rupees of lawful money of British India to be paid to the said Secretary of State or to his certain attorney successors or assigns for which payment to be well and truly made we bind ourselves and each of us and any two of us and the executors administrators and legal representatives of us and each of us and of any two of us jointly and severally and respectively firmly by these presents sealed with our respective seals dated this _____ day of _____ 19 .

WHEREAS

_____ of _____ was on the _____ day of _____ 19 , duly admitted into the Lunatic Asylum at Madras, and whereas before the said

_____ was so admitted in the said Asylum the Superintendent thereof required the above bounden _____ and _____ to engage to pay the expenses which might be incurred by the said Secretary of State through the Government of Madras for the lodging maintenance clothing medicine and care of the said _____ not exceeding in the whole the sum of _____ rupees per month while the said _____ shall be in the said Asylum which the above bounden _____ and _____

agreed and consented to do. Now the condition of the above-written bond or obligation is such that if the above bounden _____ and _____ or any one or more of them or the executors administrators or legal representatives of them or any one or more of them do and shall from time to time and all times hereafter well and effectually save defend keep harmless and indemnified the said Secretary of State his successors and assigns and his and their lands tenements goods chattles and effects of from and against all expenses which may be incurred for the lodging maintenance clothing medicine and care of the said _____ not exceeding in the whole the sum of _____ rupees per month so long as the said _____ shall be in the said Asylum. Then the above-written bond or obligation shall be void and of no effect, but otherwise the same shall be and remain in full force and virtue

Signed sealed and delivered by the abovenamed }
in the presence of }

Signed sealed and delivered by the abovenamed }
in the presence of }

Signed sealed and delivered by the abovenamed }
in the presence of }

VI

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 4175,
dated 8th November 1911.

Read—the following paper :—

Memorandum—from Government, Public Department.
Dated—the 12th October 1911.
No.—6016-2.

Resolution—Mis. No. 4175, dated 8th November 1911.

The Board submits its remarks on the Lunacy Bill called for in Government Memorandum No. 6016-2, Public, dated 12th October 1911.

2. It has not been possible in the time at the Board's disposal to take the opinion of Collectors on the provisions of the Bill.

(i) Clause 70 (3) of the Bill which reproduces section 9 of Act 35 of 1858 authorises the Court of Wards to take up the management of the estate of a lunatic without reference to Government. But, under sections 9 and 15 of the Madras Court of Wards Act of 1902, the sanction of Government should be obtained before the Court of Wards can take charge of a lunatic's estate and the Board considers that a similar provision should be made in this Bill.

(ii) Under clause 72 (1) of the Bill the District Court may direct the Collector to take charge of a lunatic's estate if it consists of land not subject to the jurisdiction of the Court of Wards. The Board would impose the further condition that the estate should consist of land paying revenue to Government. It accordingly recommends that clauses 70 (3) and 72 (1) of the Bill be revised so as to provide that if the estate of a lunatic falls within the scope of the Court of Wards Act and Government sanction the assumption of its management by the Court of Wards, the Court of Wards should take charge of it and that otherwise the District Court should appoint a manager or, if the property of the lunatic consists of land paying revenue to Government, may direct the Collector to take charge of it.

(iii) The Bill leaves no option to the Collector to refuse to take charge of the estate of a lunatic when directed by the District Court to do so. This is a defect both in the existing law and in the Bill and should in the opinion of the Board be remedied. A case has recently come to the notice of the Board from Malabar where the Collector has been charged with the control of a lunatic's estate which he would have refused had the law allowed him the option of doing so. The Board considers that the Collector should be empowered to refuse the management or to claim his discharge in the manner provided by section 40 of the Guardian and Wards Act, 1890.

(iv) Under clause 77 of the Bill, District Courts can entertain petitions impugning the accuracy of the inventory furnished by managers who have been appointed by Collectors and pass orders thereon, and it is left to their discretion to refer such petitions to Collectors. The Board considers that there is no necessity for any interference on the part of the District Courts with managers appointed by Collectors and that such interference is liable to produce friction between the Collector and the District Judge.

(v) The term "Master of the Court" is a term which requires definition to make its meaning plain.

VII

Letter—from J. P. BEDFORD, Esq., I.C.S., District Magistrate of Salem.
To—the Chief Secretary to Government.
Dated—the 19th October 1911.
No.—1146-M.W.

With reference to Memorandum No. 6016/2, Public, dated 12th October 1911, I have the honour to submit the following observations. I will take the portions of the Bill dealt with in order of sections and chapters.

2. *Section 3 (5).*—The words “idiot or” might, I think, be omitted, an idiot being only one example of a person of unsound mind. Again, to the ordinary person, the phrase “person of unsound mind” conveys no more meaning than the word “lunatic” which it is intended to define. In these circumstances, the definition seems superfluous.

3. Whether any real definition of the word “lunatic” is desirable is doubtful. The definition of a lunatic as a person who is unable to look after himself and his affairs is quoted with approval by Mercier, but any definition which could be devised might have the effect of hampering a judge, rather than helping him. On the other hand, some assistance, by definition or otherwise, should, I submit, be afforded to the Court which has to pass a reception order under section 10. The language of section 30 (1) suggests that the reason for detention is that the lunatic has been found to be “dangerous and unfit to be at large.” Perhaps a note under section 10 would be the best means of making that point clear.

4. The expression “dangerous and unfit to be at large” could not be appropriately inserted in the general definition. It is not essential that a lunatic dealt with under section 13 (1) should be dangerous (his being dangerous is given as an *alternative* ground for action under that section), and action under section 13 (2) has nothing to do with the question of danger to the community.

5. On the whole, I would respectfully suggest that the definition of lunatic be amended on the lines of Mercier’s definition or (better still) omitted.

6. *General remarks on chapter II.*—It is impossible to overestimate the gravity of an enquiry, which may result in a man’s confinement for the rest of his natural life, not merely for 15 or 20 years, as in the case of a Sessions Judge. In the statement of objects and reasons, it is claimed that “every care has been taken to prevent the improper confinement of any person in an asylum on a false charge of lunacy.” Safeguards are provided in the Bill in the form of two medical opinions and a judicial pronouncement. A *tribunal* consisting of a magistrate and two doctors would, I think, provide a sufficient means of protecting the interests of the alleged lunatic: doctors sitting on such a tribunal would approach the subject with impartiality as well as authority. An unfortunate feature of the Bill, as it stands, is that, from the very initiation of the proceedings, the medical experts appear as *advocates* (presumably, well-paid advocates) of the petitioner and are committed by their expressed opinions as to the state of mind of the alleged lunatic. The magistrate is apparently *expected* to accept their opinion in most cases [section 7 (2)], may, in no circumstances, reject it at once [section 7 (3)], is hampered materially in regard to the scope and publicity of his enquiry (section 9) and must give his reasons, if he finally opposes the doctors, not if he agrees with them [section 10 (2)].

7. I venture to submit that, in these circumstances, the protection afforded to the alleged lunatic by the magisterial enquiry is illusory. Practically, the Magistrate has no option but to accept the view of the medical experts. It remains to see what protection is afforded by their certificates.

8. The doctors, it will be observed, are not bound down by any really searching definition of lunacy [*vide* my comment on section 3 (5) above]. The provisions of the Evidence Act are overridden on their behalf, and the usual safeguards of cross-examination, open enquiry and statement on oath are denied to the alleged lunatic [sections 9 and 18 (3)]: It is, doubtless, laid down that each doctor should say that he has seen the patient once [section 18 (2)], but, even if he has not seen the patient, the omission is apparently no ground for dismissing the petition, but only for adjourning the case in order to enable the doctor to supply the omission [compare section 18 (2) with section 7 (3)].

9. It is a matter for serious consideration whether doctors can safely be treated as a class apart, when lunacy is in question, and all the ordinary formalities of trials and the rules of evidence dispensed with in their case. It cannot, I submit, be assumed that doctors are wholly exempt from the frailties and follies of other men: further, no expert can safely be made witness and judge in the same case. I have a great respect for the *general* character of the medical profession, but it is impossible, in the face of a century of English experience in the matter of lunacy, to ignore the possibility (nay, the high probability) of occasional unscrupulousness,

even in practitioners of high repute. What is commoner is a slight warping of the conscience which will permit a doctor to lean more or less in the direction which will further his pecuniary interests. These interests may take the comparatively crude form of a high fee or they may take a much more insidious shape in the doctor's knowledge that he will largely increase his practice, if he is not too inquisitorial with persons who want certificates. I submit that to recognise such motives as determining (frequently unconsciously, no doubt) the action of many medical practitioners is not to put them on a lower level than other people. It amounts to saying that a proportion of doctors do what a proportion of the rest of us would do if we were in their place.

10. Apart from bad faith, there is a strong *personal* element in the views of doctors, especially in regard to a subject like lunacy, which is by no means exclusively a medical question. One celebrated alienist sincerely believed (and officially pronounced) a young lady to be mad, because she had run away with a groom. Eccentricities of opinion, which are comparatively harmless in the ordinary man, are peculiarly dangerous in the expert, because he can clothe them in obscure and learned language and because he has a command of facts and principles bearing on the question, which tends to overawe a non-professional (*e.g.*, a Magistrate holding an enquiry under the conditions laid down in chapter II of the Bill).

11. The advantage to be expected from the personal examination insisted on in section 18 (2) is largely discounted by the fact that designing relatives have the opportunity of putting their case forward first. By a cunning mis-statement of material facts, they can frequently mislead a doctor, so that the patient's talk may seem wildly extravagant, when it is really plain common sense. There is a classical instance of this in the first Act of Molière's "Medecin malgré lui."

12. If the Bill became law, any designing person who wished to incarcerate an eccentric relative for unworthy motives would only have to canvass the group of medical practitioners, until he found one doctor prepared to certify: professional etiquette would then make it much easier for him to find a second: the Magistrate would, as I have suggested above, be practically powerless in the face of two certificates, and the false charge of lunacy would thereby be successfully carried through and (perhaps, worst of all) the magistracy would be compromised. This last consideration seems to me to be so important that I would suggest that the doctors' certificates be made sufficient in themselves to justify admission into an asylum, as a preferable alternative to the provisions laid down in the present Bill. I now proceed to the detailed criticism of sections in the light of the remarks made above.

13. *Section 3 (6)*.—I would restrict the definition to "Chief Presidency Magistrate and District Magistrate."

14. *Section 5 (1)*.—I would make the tribunal consist of a magistrate sitting with two medical *officers*. All medical officers should be liable to be called upon from time to time to serve on this tribunal. No medical officer should be allowed to grant a certificate of lunacy.

15. If the enquiry were held before such a tribunal, a certificate by *one medical practitioner* would suffice for the initiation of proceedings. The fact that such a certificate would be subject to the adjudication of a tribunal including the first medical authorities in the locality would be the best guarantee against its being granted fraudulently or carelessly. I put these suggestions forward very tentatively. They may be found impracticable, but, having regard to the criticisms which I have felt compelled to offer in paragraph 12 above, I thought it incumbent on me not to shirk the duty of suggesting an alternative.

16. *Section 5 (3)*.—The Act need not be extended to any district in which there is a difficulty in forming a tribunal such as that just indicated.

17. *Section 8*.—The words "at the place where such lunatic may happen to be" seem superfluous.

18. *Section 9*.—With deference, I am opposed to this clause. I consider that the enquiry should be public and that the alleged lunatic should be allowed all the elements of a fair trial.

19. *Section 10*.—I have commented on this section, when discussing sections 3 (5) and 5 (1) above. I would suggest that the following sentence be added to section 10 (1):—"A reception order should include a finding that the patient is dangerous and unfit to be at large."

20. *Section 10 (2)*.—I would omit this section. I submit that it is not the petitioner, but the alleged lunatic on the one hand and the public on the other hand, whose interests have to be primarily considered. The petitioner can get a copy of the order on stamped paper, if so advised.

21. *Section 18 (1)*.—I would restrict the power of signing certificates to medical practitioners: medical officers would form a reserve from which to draw the tribunal which I have suggested above.

22. *Section 18 (2)*.—It seems desirable that the exact result which will follow from the receipt of a certificate based entirely on hearsay should be explained. Apparently the court cannot dismiss the petition at once, but must call on the doctor to supply the deficiency—*vide* section 7 (3),—but I am not certain whether this is the intention of the Bill.

23. *Section 18 (3)*.—I am respectfully of opinion that no special privileges should be given to a medical practitioner signing a lunacy certificate. He should, I submit, be compelled to depose to his certificate on oath, and his evidence should be subject to the test of cross-examination like that of any other expert.

24. *Section 19 (2)*.—I submit that this provision seems of no great value as a safeguard. Nothing can prevent the doctors from *discussing* the case together. A joint examination might be useful occasionally from a professional point of view. I would omit the section.

25. *Section 25*.—I submit that no certificate should be altered, except with the knowledge and consent of the court which acted on it. An alteration in a certificate might stultify that court's decision.

26. *General remarks on chapter III*.—I submit, with deference, that, whilst the procedure in chapter II seemed to afford too little protection to the patient, the procedure in chapter III seems to afford too little protection to the public and also seems calculated to undermine the authority and sense of responsibility of the officer in charge of the asylum. I now proceed to detailed comment.

27. *Section 29 (1)*.—It seems strange that a patient committed to an asylum as the result of two medical certificates and a Judicial finding should be released on the "*ipse dixit*" of a medical officer and of two other persons of no special qualification, and this without the need for enquiry or for assignment of reasons, and with no opportunity given to the Superintendent of the Asylum for protest or even for reference to any higher authority.

28. I would give visitors the power of comment and would make it incumbent on the officer in charge of the asylum to communicate such comments to some higher authority (say, the Surgeon-General), but I would not give visitors any administrative power whatever. I would omit this section from the draft Bill.

29. *Section 30 (1)*.—Doubtless, there is a safe-guard in this section, which is absent from section 29, namely, a right of veto by the officer in charge of the asylum, but I submit that the section seems to proceed on two false assumptions (*a*) that lunatics are detained in the interests of petitioners (the word "*directs*" seems to put the officer in charge of the asylum in the position of a mere agent of the petitioner), (*b*) that the lunatic's fitness for release or otherwise will not *ordinarily* be a matter of concern to the asylum authorities.

30. I submit that the whole sub-section may with advantage be omitted. As it stands, it might convey the idea that the incarceration of persons in a lunatic asylum is being undertaken in the interests of their relatives: this is the last idea which our lunacy procedure should encourage. As matters stand, a designing relative might first get the patient imprisoned, then persuade the patient to consent to terms imposed and finally, having attained this end, he might *direct* his release. Section 30 (3) provides for the release of the lunatic by the officer in charge of the asylum, and I submit that he is the only person entitled to a voice in the matter.

31. *Chapters IV and V.*—A petitioner who wishes to secure the confinement of a relative has apparently a choice of tribunals. He can either move a magistrate in the manner provided in chapter II, or he can move a civil court and secure the confinement of the alleged lunatic as an additional relief (*vide* sections 23, 44 and 70).

32. As the Bill now stands, it appears that a party could get a relative confined by a Judge, though his petition to the magistrate had been dismissed, and *vice versa* I submit that the principle of "*Autrefois acquit*" applies to lunatics as much as to criminals. I would suggest that the civil courts be altogether deprived of the power of confining lunatics, in favour of the tribunal suggested by me in paragraph 14 above or some other tribunal devised so as to secure an impartial enquiry. A civil court is doubtless the proper authority to decide on questions as to the control of property, including the question whether a given person is, by reason of unsoundness of mind, incapable of exercising such control, but the control of the person of an alleged lunatic is a measure of a penal nature and seems to be an exclusively magisterial question. If this view be not accepted, I submit that, in any case, a civil court should be bound, before enquiring into the question of confining a lunatic, to ascertain whether the matter is under enquiry before a magistrate and, if so, should postpone his enquiry, pending the magistrate's decision. If the magistrate's decision is not taken as final, it could be made to constitute a *cause of action* for further proceedings in the Civil Court.

VIII

Letter—from Khan Bahadur M. AZIZ-UO-DIN SAHIB Bahadur, District Magistrate of South Arcot.

To—the Chief Secretary to Government.

Dated—Cuddalore, the 4th November 1911.

No.—Camp R.O.C. 32.

I have the honour to submit the following remarks on the Bill to consolidate and amend the law relating to lunacy.

Section 7, clause 2.—Clauses 1 and 2 of this section provide that upon the presentation of the petition the magistrate shall consider the allegations in the petition and the evidence of lunacy appearing by the medical certificate and whether it is necessary for him personally to see and examine the alleged lunatic.

It is clear therefore that beyond the consideration of the allegations in the petition and the medical certificate no other inquiry is provided for.

Clause 2 empowers the magistrate, if he is satisfied with the allegations in the petition and the medical certificates, to pass a reception order forthwith. The procedure, however, is too summary. To safeguard the public interest it is desirable that it should not be so. The magistrate should, I think, be required to inquire into the allegations contained in the petition and to record all available evidence before passing a reception order.

Unless a magistrate investigates into the allegations contained in the petition and is satisfied as to their truth it will be dangerous to act upon them, assuming even that they are supported by medical certificates.

2. Section 8 makes the examination of the alleged lunatic necessary *only when the evidence of lunacy appearing from the medical certificates is not considered satisfactory*. It seems to me that under any circumstances the magistrate should see the alleged lunatic, as otherwise there may be a miscarriage of justice.

3. *Section 11.*—By this section the person in charge of the asylum is authorized to require friends of the lunatic to engage to pay the cost of the maintenance of the lunatic.

It appears to me that this authority may vest in the magistrate issuing the reception order under section 7 or section 10 as he has greater facilities to arrive at a more correct decision on the point than the person in charge of the asylum, viz., whether the parties concerned have sufficient means to pay for the maintenance of the lunatic.

4. Section 15, clause 2, provides that if a relative or other person who may be legally bound to maintain a lunatic but wilfully neglect to comply with the magistrate's order for such lunatic being properly cared for and treated may be sentenced

to imprisonment for a term which may extend to one month. The sentence proposed is inappropriate as it does not give the magistrate the option of imposing a sentence of fine. It may therefore be modified so as to provide for a fine not exceeding Rs. 200 or imprisonment which may extend to one month or with both.

5. *Section 18, clauses 2 and 3.*—Clause 2 provides that a reception order on petition can be made on the strength of the medical certificate containing facts observed by the medical officer concerned, and clause 3 provides that medical certificate shall be evidence of the facts therein stated to have been formed by the medical officer concerned as if the matters therein appearing had been verified on oath.

In my opinion these provisions do not safeguard the public interest. The medical certificate should not only be proved in the manner laid down in the Evidence Act but there should also be a regular inquiry into the allegations contained in the petition. I have heard of cases in which attempts were made to have soft-minded persons declared as lunatics with a view to get possession of their estate. It will be unsafe under the circumstances to base a reception order merely on a medical certificate without even examining on oath the medical officer furnishing the same.

6. *Section 20.*—After the word “sister” and before the word “sister-in-law” omit the word “or” and after the word “sister-in-law” and before the word “partner” insert the words “or any other near relative.” The object of the above modification is obvious. It is desirable that no near relative is allowed to have any connection with the medical certificate.

7. *Section 21* lays down that the reception order should be acted on without further evidence of the signature or of the jurisdiction of the person making the order when it is produced before the person in charge of the asylum.

I think as an additional safeguard it should be provided that the Magistrate making the order should communicate a copy thereof direct to the person in charge of the asylum.

8. *Section 37, clause 3,* provides that court *may* also direct a copy of such notice to be served upon any relative of the alleged lunatic.

The word “shall” may be substituted for the word “may” and after the words “known to be in charge of his person or property” may be added. The object of the modification is to protect the interest of the lunatic and of those interested in him and his estate. The absence of such a provision may lead to the miscarriage of justice. The following may serve as an illustration: a Muhammadan is an idiot; he has no issue but has a wife who is a Pardah-Nashin woman. A has a brother B who is disposed to get possession of his (A's) property by having him declared a lunatic and sent to an asylum. If a notice is served only on A, it is conceivable that he may neglect to take notice of it with the result that the allegations contained in the petition which may be either exaggerated or false may go unchallenged. To guard against this it is obviously desirable that A's wife should, by the service of a notice, be made aware of the proceedings pending against A.

9. *Section 39.*—The provisions contained in this section should be made applicable also to the proceedings before a magistrate under chapter II.

10. *Section 56.*—This section provides that when a lunatic has been engaged in business the court may, if it appears to be for the lunatic's benefit that the premises should be disposed of, order the committee of the estate to sell and dispose of the same, etc.

Cases may arise in which the closure of the business may seriously affect the interest of the lunatic's heirs. It is therefore desirable that the business is continued. Provision may therefore be made for its continuance by the recognised heirs of the lunatic, if any, subject to such control as the committee of the lunatic's estate may consider necessary.

11. *Section 77.*—Where the accuracy of the inventory or accounts is impugned this section *inter alia* authorizes court, at its discretion, to refer the petition impugning the accuracy of the inventory or accounts to any subordinate court or to the Collector if the manager was appointed by the Collector.

The section is, however, silent as to the action to be taken by the subordinate court or Collector. The following words may be added: "for enquiry and report and may make such order as it shall consider proper."

The other provisions in the Bill do not, in my opinion, call for remarks.

IX

Letter—from C. A. INNES, Esq., I.C.S., Acting District Magistrate of Malabar.

To—the Chief Secretary to Government.

Dated—Calicut, the 3rd November 1911.

No.—D. 1207-M.

With reference to Government Memorandum No. 6016-2, dated 12th October 1911, forwarding, for my opinion, a copy of the Bill to consolidate and amend the law relating to lunacy, I have the honour to submit the following remarks:—

Section 11.—Under section 7 of Act XXXVI of 1858 the power to require engagements to meet the cost of maintenance of lunatics is vested in the visitors or the manager of the asylum. Under section 11 of the Bill, the power has been restricted to the person in charge of the asylum. I am inclined to think that the power should be vested in the first instance in the magistrate having power to pass a reception order. When he makes inquiry under sections 7 and 9 and passes an order under section 10, he may as well pass orders as to whether the cost of maintenance should be recovered, and if so, from whom. Where no such orders are passed, the officer in charge of the asylum or the visitors should be at liberty to recover or remit the cost.

Section 16.—This section provides that the magistrate at the request of the medical officer who has been called in may, by order in writing, authorise the detention of the alleged lunatic for medical observation. The words "at the request of the medical officer who has been called in" may be omitted. A medical officer cannot always be had when a lunatic is produced by the police before a magistrate. The magistrate should, I think, have the power to send the lunatic to the asylum for observation without reference to a medical officer.

Section 29 (1).—Three of the visitors of any asylum, of whom one shall be a medical officer, may, by writing under their hands, order the discharge of any lunatic detained in such asylum. This is a reproduction of section 9 of Act XXXVI of 1858. Practical inconvenience has resulted from this provision. For want of quorum of three some lunatics could not at times be discharged. The number may, therefore, be reduced to two. In the matter of the discharge of a lunatic it is the medical officer's opinion that is required.

Chapter V.—Section 72 of the Bill which reproduces section 11 of Act XXXV of 1858 requires, I think, some modification. As it stands at present it gives the court unfettered discretion to saddle the Collector with the charge of a lunatic's estate (provided that estate consists in whole or in part of land) and the Collector has no say in the matter at all, no provision being made as in section 40 of the Guardians and Wards Act whereby, with the approval of Government, the Collector can ask to be relieved of the charge of an estate thus unceremoniously thrust upon him. I venture to suggest that this provision of the Bill requires amendment and that the Collector should be given some means of protecting himself from being burdened unnecessarily with a work which is often of a peculiarly troublesome and harassing kind. Lately the estate of the Kongad Valiya Nayar, a malikhanadar in the Palghat taluk of this district, was placed under my charge by the District Judge, South Malabar, under section 11 of Act XXXV of 1858. In that case without being consulted or given any opportunity of objecting, I suddenly found myself placed in charge of a heavily encumbered estate. There were over twenty members of the tarwad and the Elaya Nayar, the next heir to the stánam and the natural guardian, was a man well advanced in age and quite competent so far as years go to take charge of the estate. But he had quarrelled with other members of the family; they objected to his being appointed guardian, and the District Judge conveniently cut the knot by putting me in charge. I cannot see that there was any justification for his action. A Collector is not a maid of all work though he appears often to be regarded as such, and I cannot see why I should have been pitchforked into the management of

a large and almost bankrupt estate because the members of the family were too suspicious of one another to agree to one of their member being appointed manager and guardian. I am strongly of opinion that Government should take power to prevent such abuse of the Act by inserting a clause similar to section 40 (1) and (2) of the Guardians and Wards Act.

Section 83.—The Bill does not prescribe the procedure to be followed in the restoration of the estate in the event of the death of the lunatic's proprietors. Provision should, I think, be made for such contingencies. The Kongad Nayar referred to above died recently, and the Act being silent on the point, I had to take legal advice as to whether I could hand over the estate to his successor on my own initiative or whether I had first to get the authority of the court.

Section 96.—The section as it stands now is wide enough to admit of payments of pensions being made to the persons having charge of the lunatic, whether the lunatic is in the asylum or not. I think it should be rendered clear and definite by the addition of "whether confined in an asylum or not" after the words "certified by a magistrate to be a lunatic."