was concerned it was passed in revision and not in the course of an interlocutory proceeding. The Subordinate Judge had refused to issue a commission for the examination of a witness. That was a mere interlocutory order. Mr. Justice BODDAM set that aside in revision. Could his order be treated as other than interlocutory so far as the execution proceeding was concerned in which the witness was to be examined on commission? It is unnecessary to express an opinion on the question whether Mr. Justice BODDAM'S order was a judgment. A full examination of the cases cited on both sides leads me to the conclusion that no appeal lies from the order of Mr. Justice WALLIS in the present case. I would answer the reference accordingly.

AYLING, J.—I agree that the answer to the question referred for disposal should be in the negative.

ORIGINAL CIVIL.

Before Sir Arnold White, Chief Justice.

MALLIKARJUNA DUGGET (PLAINTIFF),

1911. January 27.

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT) *

Evidence Act I of 1872, *s.* 35—*Admissibility of report by Tahsildar to Collector.*

A Tahsildar, in response to the requisition of the Collector, sent the following report:—"I beg to state that the village munsif of Inavanam reports that the charities referred to have not yet been commenced."

Held, that the report was not admissible under the first part of section 35 of the Evidence Act to prove that the charities referred to were not performed on the date of the report.

Although in certain cases an isolated document may be considered a book or register within the meaning of the first part of section 35, it does not follow that every report regarding a fact from a public servant to his official superior in pursuance of directions from the latter, is admissible evidence to prove such fact.

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* Original Suit No. 315 of 1909.

WHITE, C. J

MALLIKARJUNA DUGGET v. SECRETARY OF STATE FOR INDIA.

C. P. Ramaswami Ayyar and *Nanabhoy Devay* for plaintiff.

The Hon. The Advocate-General for defendant.

THE CHIEF JUSTICE.—In this case the Advocate-General on behalf of the defendant has tendered in evidence a document dated the 10th August 1900. The document is a report from the Tahsildar to the Collector of Chingleput district. It is in these terms:—Adverting to (a certain reference): "I beg to state that the village munsif of Inavaram reports that the charities referred to have not yet been commenced." The Advocate-General tenders this under section 35 of the Evidence Act as a "statement of fact in issue or relevant fact," "the fact in issue or relevant fact" being that the charities in question "have not been commenced," in other words, he tenders it in evidence of the fact that the charities had not been commenced on the day when the report was made. Mr. Ramaswami Ayyar on behalf of the plaintiff has objected to this document and has contended it is not evidence under section 35. The Advocate-General has also tendered in evidence certain other documents which he says are admissible under section 9 as explaining the circumstances in which this report contained in the letter of the 10th of August was made by the Tahsildar. I do not think I need set out the purport of these other documents because the Advocate-General does not contend that they are admissible in evidence except as explaining the circumstances in which the letter of the 10th of August, was written and has conceded that if I am against him as regards his contention with reference to the letter of the 10th of August, these other documents would not be admissible under section 9 of the Act. After careful consideration I have come to the conclusion that the letter or report of the 10th of August is not admissible under section 35 for the purpose for which the Advocate-General says it is. I say nothing as to whether it would be admissible for other purposes or as to whether the other documents on which the Advocate-General relies as showing the circumstances in which the letter of the 10th of August was written would not be admissible for other purposes. Section 35 of the Evidence Act contains two branches. The first branch of the section so far as the question I have to decide is concerned runs: "An entry in any public or other official book, register or record, stating a fact in issue or relevant fact"—"and made by a public servant in the discharge of his official duty"—is itself a relevant

fact. The second branch runs : " or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record, is kept " is itself a relevant fact. The Advocate-General did not argue that this was an entry by some person in the performance of his duties " specially enjoined by the laws of the country." But he says it was an entry which fell within the meaning of the first branch of the section. It has been held by this Court in a judgment to which I was a party that a single document may be a public record within the meaning of this section : that is the case of *Raman* v. *The Secretary of State for India in Council* (1). In that case we relied upon the decisions under which records of judgments though single documents were held to be admissible in evidence under section 35. There is not much authority as to how far an isolated document can be said to be an " entry in any public or other official book register or record " but we have held that it may be for the purposes of the section and I do not wish to suggest for one moment that that decision was not good law.

Now the Advocate-General relied on a decision of the Privy Council in the case of *Raja Muthu Ramalinga Sethupati* v. *Peria Nayagam Pillai* (2) the passage of the judgment on which he relied being at p. 238. I need not read the whole of it. The judgment runs : " Their Lordships think it must be conceded that when these reports express opinions on the private rights of parties, such opinions are not to be regarded as having judicial authority or force. But being the reports of public officers made in the course of duty, and *under suitable authority* they are entitled to great consideration so far as they supply information of official proceedings and historical facts, and also in so far as they are relevant to explain the conduct and acts of the parties in relation to them and the proceedings of the Government founded upon them." In that case their Lordships really rest their decision, as I understand it, upon the fact that it was the duty of the Collector who made the report in that case to do certain things under the provisions of Regulation VII of 1817, and it seems to me with all respect to the Advocate-General's argument, although this may be a decision which one would have to consider carefully with regard to the second branch of the

(1) (1901) 11 M.L.J., 315. (2) (1874) 1 I.A., p. 299.

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MALLIKARJUNA DUGGET v. SECRETARY OF STATE FOR INDIA.

section, one really gets very little help from it with reference to the first part of the section, because it is not suggested here that when the Tahsildar made the report he did so in performance of a duty specially enjoined by the law of the country. I need not now pause to consider how far a report purporting to be made by an officer in pursuance of the provisions of Regulation VII of 1817 would be admissible in evidence under section 35.

The Advocate-General also relied upon the case of *Raman* v. *The Secretary of State for India in Council* (1). The report in question there which was held admissible under section 35 was a report on Government forests made by a Forest officer with reference to some question as to the reservation of forests, and it seems reasonably clear the report was made under the provisions of the Forest Act. The report in that case is a report which would be admissible under the second branch of the section. I think the same observation applies to the case of *Madhav Rao* v. *Deonak*(2). This again is a case which really does not afford me much assistance with regard to the construction of the first branch of the section. The Advocate-General invited me to go to this length—he invited me to hold that any statement made by any public servant in pursuance of directions given him by a superior officer was a statement which would be evidence of the fact to which the statement relates. The Advocate-General has not been able to call my attention to any authority which goes so far as this. I know of no authority. The Advocate-General suggests it is a question of drawing the line. I agree; but in the absence of some authority I am certainly not prepared to carry the law further, as it seems to me, than it has ever yet been carried. In a sense no doubt the statement is made in the discharge of official duties, because, I take it, it is made in connection with a matter which came within the sphere of his duties and in pursuance of orders given by a superior officer. But, as I say, I am not prepared on that ground alone to hold that the statement is admissible in evidence within section 35. As regards this particular statement it is really nothing more than a statement at to what the Munsif had reported to the Tahsildar. I do not say that the statement to be evidence within the section must be a statement within the persenal knowledge of the party making it. All

(1) (1901) 11 M.L.J., 315. (2) (1897) I.L.R., 21 Bom., 695

I say is—and I desire to confine my observations to this particular statement—I am not prepared to hold that it is admissible under section 35.

Mr. Ramasawmy Ayyar has called my attention to certain authorities but I don't propose to discuss them at any length. In the case *Jigoyamba Bai Sahiba* v. *Venkatakshmi Ammal*(1) in the course of the judgment I observed "Our attention has been called to no case in which it has been held that correspondence, official it may be, comes within the terms of that section. As I construe that section, it does not apply to ordinary correspondence though that might be conducted by officials." After having had the full benefit of the arguments in this case I see no reason to depart from the view which I then expressed.

There is one other case to which perhaps I ought to refer, seeing it is a judgment of the Privy Council. It is the case *Parbati Kunwar* v. *Chandar Pal Kunwar*(2). The judgment runs (page 475) :—"Various technical objections to declarations, such as those of the Kannugas, to entries made in the village records by the officer charged by Government with that duty and to answers given to official enquiries made under Government directions as to the rules of succession prevailing in particular families were urged by the plaintiff. Speaking broadly these objections seem to their Lordships to have been material rather to the weight than to the admissibility of the particular evidence, which was *primâ facie* admissible as purporting to be made by the proper officer in performance of a special duty and presumably with due regard to the rules laid down for his guidance." These are very general observations and made with reference to the documents in question in that case. And the conclusion I have come to is that for the purposes for which the Advocate-General now seeks to put this document in evidence it is not admissible under section 35.

I am told that the Munsif and the Tahsildar are still alive. The proper way to prove the fact to which the statement in the report relates is by calling them.

W. O. David, Attorney for defendant.

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(1) 7 M.L.J., 117. (2) (1903) I.L.R., 31 All., 457.