The present suit undoubtedly falls under this category, and although respondent's vakil may be right in contending that, before the amending Act, it fell under clause (v), the effect of the amendment was clearly to take it out of clause (v) (if it were ever there) and put it into clause (xi) (*cc*). The indirect effect of the amendment would then be to enlarge the scope of section 8 of Act VII of 1887 which applies to all suits other than those referred to in section 7, clauses (v), (vi), (ix) and (x) (*d*) of the Court Fees Act. It certainly cannot be contended now that this suit is not covered by section 8 of the Suits Valuation Act. Whether this effect was intentional or due to inadvertence may be a matter of speculation but is of no importance. The Acts must be construed as they stand.

Adopting the most favourable view for respondent, viz., that section 14 of the Madras Civil Courts Act at the time of its enactment was intended to cover a case of this kind, in the event of conflict, I think preference must be given to section 8 of the Suits Valuation Act as the later enactment. Section 14 of the Madras Civil Courts Act is referred to in the Suits Valuation Act; but I find nothing to indicate that section 8 should be read subject to its provisions.

I must therefore set aside the order of the District Judge and restore that of the Subordinate Judge. The petitioner will get his costs in this and the District Court from the respondent.

APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Seshagiri Ayyar.

VENKATARAMA AIYAR AND TWO OTHERS (ACCUSED), PETITIONERS,

v.

SAMINATHA AIYAR (COMPLAINANT), RESPONDENT.*

1914, April 28 and 29 and May 1.

Criminal Procedure Code (Act V of 1898), sec. 15.—Bench of Magistrates—Judgment and conviction by only some, legality of.

The hearing of a case of assault was commenced by six members of a Bench of Magistrates whose legal quorum was only two. On adjourned hearings of

* Criminal Revision Case No. 780 of 1913 (Criminal Revision Petition No. 631 of 1913).

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the case, sometimes four and sometimes only two took part. These two who took part in the proceedings of the case throughout, concluded the trial and delivered judgment convicting the accused:

Held, that the conviction was legal.

Karuppana Nadan v. *Chairman, Madura Municipality* (1898) I.L.R., 21 Mad., 246, followed.

There is no analogy between a trial by a Bench of Magistrates and trials by arbitrators or jurors.

PETITION under sections 435 and 439 of the Code of Criminal Procedure (Act V of 1898), praying the High Court to revise the order of R. NAGASUNDARAM AYYAR, the First-class Sub-Divisional Magistrate of Kumbakonam, in Criminal Appeals Nos. 200—202 of 1913, confirming the judgment passed by V. S. NARAYANA RAO, the President, Bench of Magistrates, Kumbakonam, in Summary Trial No. 665 of 1913.

The facts of the case appear from the judgment of SESHAGIRI AYYAR, J.

T. Arumainatham Pillai for the petitioners.

J. C. Adam for the *Public Prosecutor* for the Crown.

AYLING, J.

AYLING, J.—The sole ground on which we are asked to revise the decision of the Lower Appellate Court in this case is that all the Bench Magistrates who were present at the earlier stages of the case did not take part in the decision thereof or sign the judgment. It is not denied that the two Magistrates who did sign the judgment were present throughout all the earlier hearings and heard all the evidence or that they constituted a legal quorum.

I see no reason to differ from the view taken in *Karuppana Nadan* v. *Chairman, Madura Municipality*(1), which is clear authority for holding that the conviction is not illegal. This conflicts with no provision of law, and no consideration of justice or expediency. The contrary view would materially hamper the work of Benches of Magistrates in all but the very simplest cases. I do not think any argument can be based on a supposed analogy with the case of a jury, or a body of arbitrators. The law and practice in England appears to be similar to what I hold to be legal here. *Vide* section 29 of the Summary Jurisdiction Act.

I would dismiss the petition.

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(1) (1898) I.L.R., 21 Mad., 246.

SESHAGIRI AYYAR, J.—In this case, the accused were charged with assault under section 352 of the Indian Penal Code and convicted. The trial was before a bench of Honorary Magistrates for the town of Kumbakonam. At the commencement of the trial, six members of the bench, including the president, sat to hear the case. On adjourned hearings sometimes four and sometimes two only took part. The trial which was concluded on the 19th June 1913 was attended by only two. They delivered the judgment in the case. It is conceded that these two Magistrates took part in the trial throughout. The question is whether the proceedings are vitiated by the fact that those who took part in the trial at the beginning and at the intermediate stages were not present to give their final decision in the case. Section 15 of the Code of Criminal Procedure, clause (1), empowers the local Government to direct "two or more Magistrates to sit together as a bench." If a bench had been constituted in this manner, it may well be argued that if any member of the bench ceases to take part in the subsequent proceedings, the trial is not regular. In the second clause of that section, the legislature has provided that the powers of a bench shall be "of the highest class conferred on any one of its members." If a bench took cognisance of a case triable by a First-class Magistrate on the ground that one of its members was a Magistrate of the first class, can it be tried by the remaining members in his absence? The intention of the legislature apparently is that all the members before whom the case was begun should continue to take part in the proceedings until judgment. Therefore, if the matter were *res integra*, I would have felt considerable hesitation in holding that the proceedings in this case are regular. But it was decided in this Court in *Karuppana Nadan* v. *Chairman, Madura Municipality*(1), that the absence of some of the Magistrates from the further stages of the trial and at the time of judgment will not vitiate the proceedings. I am unwilling to disturb a practice which has guided Lower Courts for such a long period. Ordinarily, Honorary Magistrates will not be able to sit continuously and it may result in the undue prolongation of trials, if they are required to attend throughout. The object of appointing Honorary

(1) (1898) I.L.R., 21 Mad., 246.

VENKATA-RAMA AIYAR v. SAMINATHA AIYAR.

SESHAGIRI AYYAR, J.

Magistrates to hear cases is to ensure speedy disposal; that will be defeated by insisting upon the attendance of all the members of the bench from beginning to end. While thus alive to the difficulties which may result from not following *Karuppana Nadan* v. *Chairman, Madura Municipality*(1), I would suggest that the Government under section 16 of the Code should frame rules to obviate the difficulty. The legislature must also make a change in the language of the section. The analogy of arbitrators is not in point. As pointed out by Mr. J. C. Adam for the Public Prosecutor, the arbitrators derive their power under a contract and each of the referring parties is entitled to say that he has the right to the experience and guidance of every referree deciding his case. *Thammiraju* v. *Bapiraju*(2), proceeds on that principle. Nor is the provision relating to the termination of the proceedings when one of the empanelled jurors is unable or unwilling to take part in the trial *in pari materia* with this case. The minimum number of jurors has been fixed by the notification of the Government in the different districts of the Presidency. The absence of one of the jurors will vitiate the trial as the required number does not take part in it. On the other hand, the rules promulgated in England for trials by Justices of the Peace (Halsbury, Volume XIX, section 1259) seem to indicate that the trial will become invalid only if persons who did not take part in the taking of the evidence assisted in arriving at the final decision: *Hardwar Sing or Lall* v. *Khega Ojha*(3), and *Damri Thakur* v. *Bhowani Sahoo*(4), proceed upon this principle. I agree with my learned colleague in dismissing this petition.

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(1) (1898) I.L.R., 21 Mad., 246.
(2) (1889) I.L.R., 12 Mad., 113.
(3) (1893) I.L.R., 20 Calc., 870.
(4) (1896) I.L.R., 23 Calc., 194.