

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

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Fort St. George, Judicial Consultation, 9th April 1858.

Read the following letters.

No. 44. From H. A. BRETT, Esq., Magistrate of Salem ; to H. FORBES, Esq., Secretary to Government, Fort St. George, dated 22nd March 1858, No. 85.

SIR,

I have the honor to transmit translation of a Decree passed by the Moofly Sudr Ameen of Salem in original suit, No. 23 of 1856, with copy of an appeal petition which I have prepared on behalf of the 1st and 11th defendants ; and to request, with reference to certain circumstances, about to be explained, that the Right Honorable the Governor in Council will permit an appeal to be preferred in the case of those defendants at the public expense.

2. The plaintiffs in the above suit are ryots in the villages of Yegoor and Audyoor, in the Tengerycotta Talook, in the Salem District. The 1st defendant is the Village Moonsiff of Yegoor, and the 11th defendant the Village Moonsiff of Audyoor. The remaining defendants are persons of the same class as the plaintiffs.

3. The object of the suit was to recover damages from the defendants for an alleged conspiracy to prefer against the plaintiffs a false and malicious charge. The damages were laid at 1,567 Rupees.

4. On the 19th June 1856, a complaint was preferred by the 6th and 7th defendants before the 1st defendant (Village Moonsiff) charging the plaintiffs and others with having committed a robbery at the complainant's sheep-fold. The 1st defendant forwarded the complainants to the Head of Police, who, after investigating the evidence, committed the plaintiffs to the Criminal Court. The Sub Judge released the accused, assigning as his reason for so doing that "the evidence was of too equivocal a nature to warrant his committing them for trial."

5. The Moofly Sudr Ameen adjudged to the 1st, 2nd, 3rd, 4th and 7th plaintiffs in the civil suit Rupees 300 as damages for special loss, as well as for loss of character, and costs. The 6th plaintiff withdrew from the suit before Judgment was passed. The 5th plaintiff was allowed no damages because he had on some other occasion been sentenced to imprisonment.

6. The main grounds on which this decision is open to appeal are briefly set forth in the appeal petition. It is clear on its face that the Judgment is based on insufficient grounds, inasmuch as it does not state that there was any conspiracy ; and 2ndly, the evidence of the three witnesses referred to in para. 20 of the decree (the only para which touches on the evidence intended to support the charge of conspiracy) was wholly unworthy of credit.

7. I also observe that two out of those three witnesses did not at all implicate the 1st and 11th defendants, the two persons for whom I am now addressing the Government. It appears from the record in the criminal case that one of these two persons (the 1st defendant) wrote a report to the Head of Police, stating that a charge of robbery had been preferred against the plaintiffs. The other (11th defendant) was present in his capacity of Village Moonsiff when a Sub Police Officer searched the plaintiffs' property. Neither person took any part in the case but what he was bound to take in the execution of his office.

8. In the civil suit, a single witness deposed to having heard the defendants (including the 1st and 11th) on a certain night, consult together to prefer a false charge against the plaintiffs. This testimony, so far as the 1st and 11th defendants were concerned, was uncorroborated in any way, and it was from its character unworthy of belief.

* Vide Section 47 of the " Rules of Procedure " directing that " the facts sworn to proving the circumstances " shall invariably be given.

9. The Moofly Sudr Ameen has omitted to cite the facts* sworn to in proof of the conspiracy, or whatever was the circumstance that he found to be proved, I have learnt the facts, such as they are, from the depositions.

10. Besides the general reference in para. 20 to the evidence of the three witnesses, reference is made in the same para to the decision passed in the criminal number, as if that decision afforded further evidence for the plaintiffs, a passage from that decision is quoted in para. 4 of this letter. The Sub Judge thought that the evidence was too equivocal to allow of his committing the accused parties for trial ; but this remark on the case for the prosecution does not afford the slightest evidence that the dozen defendants entered into a preconcerted scheme to prefer a false and malicious charge.

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11. Seeing therefore that the decree is open to such grave objections, I think it right to recommend that the 1st and 11th defendants be allowed aid from Government to enable them to get so unjust a decision reversed.

12. The remaining defendants who appear as private parties in the case, have appealed at their own charge.

Translation of a decision passed by the Moofy Sudr Ameen of Salem in O. S. No. 23 of 1856, under date the 24th December 1857.

<i>Plaintiffs.</i>		<i>Defendants.</i>	
1 Sooba Reddy.	} <i>Versus.</i> }	1 Coolunday, resident of Yegoor in the Tengaricotta Talook.	}
2 Coolay Cownden.		2 Maurun.	
3 Chennania Cownden.		3 Mookun.	
4 Aundy Cownden.		4 Nynaan.	
5 Annamalay Cownden.		5 Ramen.	
6 Anoomun.		6 Samoondy.	
7 Conary Odian.		7 Vagoth thandee.	
By Vakeel.	}	8 Soobbun.	
Appasawmy Pillay.		9 Maliala Cawly.	
		10 Karcan.	
		11 Maurun.	
		12 Kilmootoor Moottien.	

1st, 2nd, 3rd, 6th, 7th and 11th defendants by Vakeel Goolam Oossain Saib, and 4th, 5th, 8th, 9th, 10th and 12th defendants by Vakeel Runga Charry.

The plaintiffs state in the plaint that they were in the habit of giving dead cattle, and common food to Hanooman, Toty of Yagoor, that the defendants who refused to do so, seeing that the plaintiff's were favorable to the said Toty, joined together, and conspired from motives of enmity on that account, to subject the plaintiffs to loss of character and to corporal punishment, as well as to disturb them in their professions; that accordingly the defendants, alleging that the plaintiffs entered the penfold of the 6th and 7th defendants, and there committed a robbery, brought and concealed in a heap of straw which the 6th plaintiff had put in the 1st plaintiff's field, the legs of a dead sheep, its head, and skin, as well as an old cloth with a pair of golden ear-rings and set up the 6th and 7th defendants as complainants in the case while the 1st defendant wrote a false report to the Tahsildar Teagaraja Pillay, who was partial to the defendants, that the Tahsildar made the plaintiffs prisoners, and committed them to Court in criminal case No. 85 of 1856, that the Sub Court released the plaintiffs on the ground that the charge brought against them was a false one. The plaintiffs therefore claim damages for the loss which they sustained during the time they were kept in Jail up to the close of the trial, both in character and in their cultivation, calculated with reference to the circumstances and respectability of each plaintiff amounting in the aggregate to Rupees 1,567, in accordance with a Memo. annexed to the plaint.

2. The 1st and the 11th defendants answered that the plaintiffs were not so respectable as to be entitled to damages; that the 1st defendant who was the Moonsiff of Yegoor, to whom a complaint was preferred by the 6th and 7th defendants wrote as his duty required a report on the subject to the Tahsildar, that on this, under the orders of the Tahsildar, the Karcoon and others together with the 11th defendant, who was the Moonsiff of the neighbouring Village, conducted a search; that in that part of the district, cumboo crops are first sown in the months of Chittry and Vyasy, and are reaped in the month of Avany; that afterwards areum is sown and reaped; that the plaintiffs having reaped these products of the season had no ground to complain of loss of cultivation; that the plaintiffs were not thrown out of caste and that there was no custom among the plaintiffs requiring them to purify themselves for admission into caste.

3. In the answer given by the 4th, 5th, 8th, 9th and 10th defendants, they state that as they formed no parties in the charge brought against the plaintiffs, they cannot be made to give even a pie to the plaintiffs; that in respect to disposing of dead cattle, the Government have left it to the owners to dispose of their cattle as they may think fit; that as described in the Attavanay in the criminal number, the plaintiffs are of bad character that therefore the plaintiffs cannot claim any damages and that besides they sustained no loss in cultivation.

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4. The 2nd and 3rd defendants urge in their defence that they only gave evidence in the criminal case to the effect that the articles found in the search belonged to the 6th and 7th defendants, and that it was improper that the suit should have been brought against them also, that the plaintiffs suffered no loss, and are still in their caste.

5. The 6th and 7th defendants state in their answer that in the case of the robbery committed in their penfolds, they reported to the Circar the names of the persons whom they recognized as well as of those whom they suspected, that on this the plaintiffs were committed to the Court, that if as alleged by the plaintiffs a false charge was brought against them, the Circar would have treated the defendants according to law; and that the plaintiffs, though subjected to imprisonment for 20 days in the trial before the Police and the Criminal Court, are not respectable enough to be entitled to any damage for loss of cultivation.

6. The 12th defendant submitted that he was not a resident of the village in which the disputes referred to are stated to have taken place; that he belonged to a different village, and that owing to the emmity which had arisen between himself and others on the one side, and the 1st plaintiff on the other, this suit had been brought against him.

7. In the replies the plaintiffs state that when the 2nd defendant, who was the principal person among the defendants, infringed the rules of caste, the remaining plaintiffs to the knowledge of 6th and 7th plaintiffs, wrote a cadjan letter to Coorombary Maurappa Gownden, head of the caste, and to Perianna Gownden, Nattagur, in the month of Anny of the year Nala, reporting the matter, and that the heads of caste excluded the 2nd defendant from caste, that from this cause of enmity the defendants all combined together and brought the plaintiffs into trouble; and that if what was contained in the Tahsildar's Attavanay was true the Criminal Judge would not have released them as innocent.

8. The 8th, 9th, 10th and 12th defendants did not rejoin. The other defendants rejoined in support of their several answers.

9. Points recorded.

The plaintiffs should prove—

1st. That the defendants combined and considered together to subject the plaintiffs to loss of character, corporal punishment, and to disturb them in their professions.

2ndly. That the defendants brought and concealed certain property in the 1st plaintiff's fields, as if a robbery had been committed at the time stated in the complaint in the penfolds of the 6th and 7th defendants and that they accordingly brought a false charge against the plaintiffs.

3dly. That the 1st defendant wrote a false report on the subject.

4thly. That the plaintiffs were innocent.

5thly. That the plaintiffs were persons of respectability, and on that account, and for re-admission into caste, the sum stated in the plaint would be required.

6th. Point

That the emmity which existed in on account of the Toty and the caste case was the reason why the defendants acted as stated in the first of the points.

10. The 1st and 11th defendants should prove

1st. That the plaintiffs were not so respectable as to be entitled to damages.

2ndly. That the plaintiffs did not sustain so much loss as alleged.

3rdly. That the plaintiffs were not separated from their relatives (through loss of caste.)

4thly. That the plaintiffs were not required by custom to perform any ceremony of purification.

5thly. That it was on a regular report made by the 1st defendant that the Carcoon and others made a search.

6th. That the plaintiffs had been previously subjected to punishment before the Police and the Criminal Courts.

11. The 2nd and 3rd defendants should prove

1st. That the plaintiffs were not persons in such circumstances or of such respectability as to be entitled to any damages.

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2ndly. That the 2nd and 3rd defendants gave evidence to the effect that the articles found in the search belonged to the 6th and 7th defendants, and that the plaintiffs acknowledged to the same effect.

12. The 4th, 5th, 8th, 9th, and 10th defendants should prove

1st. That the lands mentioned in the plaint yielded a proper crop and that the plaintiffs duly enjoyed it; also that the plaintiffs sustained no loss.

2ndly. That the plaintiffs are not persons of respectability.

13. The 6th and 7th defendants should prove

1st. That the plaintiffs were not persons of such state and respectability as to be entitled to any damages.

2ndly. That there was no loss of produce.

3rdly. That there is no custom which required the plaintiffs to spend money for re-admission into caste.

4thly. That 6th and 7th defendants, in the case of robbery committed in their sheep-folds having reported to the Circar the names of those whom they recognized, and of those whom they suspected, the articles were found, and the parties were committed to Court.

14. The 12th defendant should prove that there existed enmity between him and the 1st plaintiff in the case of a girl and that from that cause this suit was brought against him.

15. The 6th plaintiff stated that he sustained no loss from the defendants, and that he signed the Vakalutnamah in this suit in consequence of the persuasions of the other plaintiffs.

16. The plaintiffs delivered on their behalf copy of the decision passed in Criminal case No. 85 of 1856. The defendants delivered no documents.

17. The plaintiffs and defendants named witnesses, on their behalf; the plaintiffs named 16 witnesses; 1st and 11th defendants 7 witnesses, 2nd and 3rd defendants 2 witnesses, the 6th and 7th defendants 4 witnesses, the 4th, 5th, 8th, 9th, and 10th defendants 5 witnesses, and the 12th defendant 2 witnesses.

18. Witnesses examined on behalf of the plaintiffs.

- | | |
|-----------------------------|------|
| 1. Ramasamy Cownden, | 1st |
| 2. Perooma Cownden, | 2nd |
| 3. Malinga Cownden, | 4th |
| 4. Chinna Nunjoonda Naiken, | 5th |
| 5. Chennappa Cownden, | 6th |
| 6. Samun, | 7th |
| 7. Gooroonatha Chetty, | 8th |
| 8. Perooma Cownden, | 9th |
| 9. Comachee Cownden | 10th |
| 10. Mauruppa Cownden, | 11th |
| 11. Perianna Nattun, | 12th |
| 12. Vellay Samun, | 13th |
| 13. Chinnian Toty, | 14th |
| 14. Mauruppa Cownden, | 15th |
| 15. Chemmoonachy Gownden, | 16th |

Witnesses examined on behalf of the 1st and 11th defendants.

- | | |
|---|---|
| 1. Chinna Cownden, | 1 |
| 4th witness Chennappa Cownden, | 2 |
| 5th witness Perooma Cownden, | 3 |
| 6th witness Govindoo Gownden, | 4 |
| 7th witness Vencatagery Naiken, | 5 |
| On behalf of the 6th and 7th Defendants. | |
| Parasoorama Oodian | 1 |
| Govinda Oodian, | 2 |
| 4th witness Aundy Cownden | 3 |
| On behalf of the 4th, 5th, 8th, 9th, and 10th defendants. | |
| Padootha Gownden, | 1 |
| 3rd witness Arasun Gownden | 2 |
| 4th witness Parasappa Gownden | 3 |
| 5th witness Vencutrama Naiken | 4 |
| On behalf of the 12th defendant. | |
| Vyramany Coronden | 1 |
| Caria Cownden | 2 |

The remaining witnesses were not examined, as the two parties stated that no more witnesses need be examined.

19. The pleadings and evidence given on both sides were carefully pursued and considered.

20. It appears clear from the evidence of the 4th, 5th and 6th witnesses of the plaintiffs, as well as from the decision passed in criminal No. 82 of 1856, that as stated in the plaint the defendants wilfully and with intent to subject the plaintiffs to disgrace, caused the plaintiffs to be charged as prisoners in criminal case No. 82 of 1856.

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21. It is proved by the evidence of the 4th, 5th, 8th, 9th, 10th, 12th and 14th witnesses on behalf of plaintiffs that in consequence of the plaintiffs having been kept in Jail from the time they were committed to the Court to their release, they sustained loss in cultivation, but the Court cannot determine what amount of loss was sustained by the plaintiffs. Though there is no strong written document on this subject, the Court have no doubt that there was a loss.

22. On these grounds it is decreed that the defendants should pay to the 1st, 2nd, 3rd, 4th and 7th plaintiffs, Rupees 60 each or 300 Rupees in all with interest of costs, for special loss and for loss of character sustained by the plaintiffs. The 5th plaintiff having been once kept in Jail and released, the Court do not admit his respectability.

23. The 6th plaintiff having applied for leave to withdraw himself from the plaintiffs in the suit, he is accordingly excluded from the suit.

(True translation.)

(Signed) H. A. BRETT,

Magistrate.

Draft of an Appeal Petition to the Civil Court of Salem, by, (1) Colunday Gounden, Village Moon-siff of Yegoor in the Tengericotta Talook, 1st Defendant in O. S. No. 23 of 1856, on the file of the Moofy Sudr Ameen's Court at Salem, against a decision passed in the said suit under date the 24th December 1857, in favor of Respondents, (1) Soobareddy, (2) Coolay Gounden, (3) Sinnanna Gounden, (4) Audy Gounden, and (5) Conary Gounden, 1st, 2nd, 3rd, 4th, and 7th Plaintiffs in the original suit, residents of Yegoor and Aundyoor in the Tengericotta Talook.

The object of this Appeal is to set aside the decision passed by the Moofy Sudr Ameen of Salem in the above suit, adjudging the appellants, with certain other defendants in the O. S., to pay Rupees 300 as damages to the above named respondents, with costs of suit.

2. The appellants object to the Moofy Sudr Ameen's decree on the following grounds:

1st. That the respondents failed to prove by any credible evidence that the appellants conspired with the 6th and 7th defendants to prefer a false and malicious charge.

2nd. That the ground on which the Moofy Sudr Ameen has decreed damages, viz., that the several appellants prosecuted the respondents with intent to disgrace them, does not render them liable in the eye of the law to damages, (inasmuch as the respondents, if they committed the offence charged to them, deserve disgrace.)

3rd. That the judgment is materially defective in form, inasmuch as it does not show, first, what were the facts sworn to in proof that the appellants intended to disgrace the respondents, and with that intention caused them to be prosecuted; 2dly, whether the several points given to be proved were proved or not.

3. The appellants therefore pray that the decree in the original suit may be reversed, and the respondents charged with the costs both in the original suit and in the appeal.

(Signed) H. A. BRETT,

Magistrate.

No. 45. From H. A. BRETT, Esq., Magistrate of Salem; to H. FORBES, Esq., Secretary to Government, Fort Saint George, dated 22nd March 1858, No. 86.

SIR,

I have the honor to transmit translation of a decree passed by the Moofy Sudr Ameen of Salem in O. S. No. 13 of 1856, with copy of an appeal which I have prepared, and to request with reference to certain circumstances about to be explained, that the Right Honorable the Governor in Council will permit an appeal to be preferred on behalf of the several defendants at the public expense.

2. The Plaintiff in the above suit is a Ryot in the village of Paramutty in the Paramutty Talook. The 1st and 2nd defendants were complainants in a criminal charge laid before the 3rd defendant, who is the Head of Police in the Paramutty Talook.

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3. The Plaintiff's object was to recover damages from the defendants for loss of character, and for special loss sustained by the Plaintiff through his illegal imprisonment.

4. A complaint was preferred by the 2nd defendant before the 3rd defendant on the 9th June 1856, charging the plaintiff with having been concerned in a theft committed in the 1st defendant's house on the night of the 7th June 1856. The 3rd defendant after searching the plaintiff's house released the accused parties from custody, but reported the case for final orders to the Joint Magistrate who directed that the charge should be dismissed.

5. The Moofly Sudr Ameen awarded to the plaintiff 60 Rupees damages with costs, to be paid by the 3rd defendant. The ground for this decision was that the plaintiff had been prejudiced in his reputation; and had suffered special loss through his having been kept in custody by the 3rd defendant.

6. The 1st and 2nd defendants were condemned to pay their own costs, but for this part of decree no grounds were assigned.

7. I have stated briefly in the appeal petition the main objections to which this judgment is open.

8. As to the 3rd defendant, it is apparent on the face of the decree that one of the facts held to be proved, viz. that the plaintiff was detained in custody for some days, was not put in issue at the hearing. 2ndly, it is clear on principles of general policy that the 3rd defendant was entitled to protection, if he had jurisdiction in the subject matter before him, and was not influenced by corrupt or malicious motives. It does not appear that the plaintiff even imputed such motives to the 3rd defendant.

9. As to the 1st and 2nd defendants, the plaintiff failed to make out that they had committed any wrong, and so they were clearly entitled to their costs according to the usual practice of the Courts. Though these persons appear as private parties in the case, I wish to include them in the appeal on the ground that they have been subjected to protracted litigation, and are now threatened with considerable loss, on account of what I must term the incompetency of the public Officer by whom the action has been tried. If any ground of action existed, so far as these two parties were concerned, it was for a malicious prosecution on their part, though even in that case the plaintiff must have pleaded, which he did not, that there was a want of probable cause, as well as a malicious motive.

Translation of a decision passed by the Salem Moofly Sudr Ameen's Court in O. S. No. 13 of 1857, under date the 24th December 1857.

Plaintiff.

Defendants.

Kistnien of Purumutty by Vakeel Nursier.

Versus { 1 Coopa Row of Purumutty.
2 Coopar Row.
3 Vencatnarainappa, Tahsildar of Purumutty.

The 1st and 2nd defendants by Vakeel Conary Pundit, and the 3rd defendant by Vakeel Goolam Oossain Saib.

The plaintiff states that the 2nd defendant, the brother-in-law of the 1st defendant presented to the 3rd defendant a complaint on behalf of the 1st, stating that on the night of 7th June 1856, a theft was committed in the house of the 1st defendant; that the plaintiff was concerned in the said act, and that the stolen articles were in the house of the plaintiff; that thereupon the three defendants attended by certain peons and establishment, entered the houses of the plaintiff as well as the houses of his friends Chemaniah, and Caroopyen, and held a search therein, that no articles were found in the search, that afterwards the plaintiff and his farming Ryot Madooray Veerun were detained in custody from the 11th to the 27th June, that on that date he and the others that were kept in custody were released under the orders of the Joint Magistrate, that the plaintiff is a considerable land-holder and a man of respectability, and that his reputation has suffered from the conduct of the three defendants. He therefore requests that the following sums be adjudged to be paid to him by the defendants viz. damages for the loss of his reputation.

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150 Rs. Loss of produce occasioned by his having been kept away from house in custody.

425 Rs. Loss of profits incurred in the saltpetre contract.

Total 1,575 Rs.

Answer. 2. The 1st defendant denies in his defence, that the plaintiff had any cultivation, or that he had any concern with the saltpetre contract or other trade either directly or in connection with other people. He states that the plaintiff is a person who frequents dancing women's houses, that he is an accomplice with drunkards, and one who is accustomed to give false evidence, that his house was searched because certain people had slept in his house on the night that the theft took place, and that to a man of the plaintiff's character the search made under the above circumstance could have been no cause of disrepute. The 2nd defendant pleaded that he had nothing to do with the case on hand.

The 3rd defendant (Tasildar) has set forth in his defence that the 2nd defendant stated before him that on the day preceding the night on which the theft of 2,705-8 took place in the 1st defendant's house, one Maroodun came and offered to work for coolly wages and observed the place where the articles had been kept; and that this person, and some other persons of the plaintiff's party viz., Arrack Muroodun and Seerungun, came on the night that the theft took place to the plaintiff's house, and lay down there; that there was a way leading from the plaintiff's house to that of the 1st defendant, and that as from these circumstances he suspected that the plaintiff might have been concerned in the theft, he prayed that the plaintiff's house might be searched. The 3rd defendant further pleaded that as it would give room for a charge against him before the Magistrate, if he did not comply with the 2nd defendant's request to search the plaintiff's house, that after the suspicion was cleared, he wrote an Urzee on the subject to the Joint Magistrate, and then released the parties. He denies that the plaintiff was so respectable as stated in the plaint, or that the plaintiff was kept under custody, so as to prevent him from attending to his business.

4. The plaintiff replies that Arrack Muroodun never lay down in his house, that the other defendant's house to work for coolly, and repair the door of the room then closed, that he did not agree to do this, and that the laying a charge against the plaintiff of having been concerned in the theft on the ground that such a man was the plaintiff's servant was unjust. He has stated in the reply other things agreeably to his plaint.

Rejoinder. 5. The defendants have rejoined supporting their answers.

6. Points recorded in the case to be proved by the plaintiff,

1st. That he was not a man of bad character.

2nd. That he was of such high respectability as to be entitled to the high damages claimed in the plaint.

3rd. That loss of produce, and loss in saltpetre arose to him from his having been detained in custody.

To be proved by the 1st defendant.

1st. That the plaintiff's house was examined on information received regarding suspicion against the plaintiff in the matter of the theft in the 1st defendant's house.

2ndly. That thereby no loss or damage or repute has been occasioned.

3rdly. That the plaintiff is not a man of good character or respectability.

4thly. That the plaintiff is living by the earnings of his father and others.

5thly. That the Plaintiff was not kept in custody.

To be proved by the 2nd defendant.

1st. That it was for the 3rd defendant to discover the theft referred to.

2ndly. That he was no way concerned in the case.

To be proved by the 3rd defendant.

1st. That the plaintiff's house was searched owing to the suspicions excited by certain parties having lain in the plaintiff's house on the night that the theft took place, as well as owing to the representations made by the 2nd defendant with the view of clearing the suspicion.

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2ndly. That the plaintiff is not a man of respectability.

3rdly. That the plaintiff was concerned in the theft in question.

7. The documents filed by the plaintiff are, viz.,

1. A. Copy of a diary extract from the Proceedings that took place before the 3rd defendant on the 28th July 1856, marked A.

2. B. Copy of a petition presented by the Plaintiff to the (Tahsildar of Purumutty) against Ardanaree and Appavoo Chetty on the 16th May 1856, marked B.

3. C. Copy of a deposition given before the 3rd defendant by one Nunjun on the 10th June 1856, marked C.

4. D. Copy of a deposition given before the Tahsildar by Aromoogum on the same date.

5. E. Copy of do. do. by Paleny do. do.

6. F. Copy of do. do. by Marooda Veeran on the 11th Idem.

7. G. Copy of a deposition given by one Marooda Moodelly before the Tahsildar of Purumutty on the 12th June 1856.

8. H. Copy of do. do. do. by Seerunga Gounden on the same date as above.

9. I. Copy of an Urzee written by the 3rd defendant to the Magistrate on the 13th June 1856.

10. J. Copy of a Takeed issued by the Joint Magistrate to the 3rd defendant on the 26th June 1856.

11. K. Copy of an Urzee written by the 3rd defendant to the Joint Magistrate on the 8th December 1856.

12. L. Copy of a Takeed issued by the Joint Magistrate to the 3rd defendant on the 22nd September 1857.

Witnesses examined on behalf of the Plaintiff.

1. Moneyam Coopanah Gounden.
2. 3rd witness Narasiah.
3. 4th „ Comarasawmy Iyen.
4. 5th „ Ragoonada Iyen.
5. 6th „ Chennia Narayanien.
6. 7th Valuppa Gounden.
7. 8th Carooma Gounden.
8. 10th Ramasamien.
9. 13th Anamalay Moodely.
10. 14th Nachiappa Gounden.

Para: 8. The other witnesses were not examined as both parties have given Memos. to that effect.

Para: 9. On an attentive consideration of the pleadings on both sides, as well as of the documents filed, and the evidence of witnesses, there appears no doubt as detailed below, as to the plaintiff having been brought into disgrace, as alleged in the plaint and as to the responsibility of such a proceeding falling upon the 3rd defendant.

10. For instance the detention of the plaintiff in custody while no stolen property was found in the search made in his house certainly caused damages to his reputation.

11. The point that the plaintiff was kept in custody for 15 days has been proved by the evidence of the 7th, 8th, 10th and 14th witnesses as well as by the 11th witness of the 1st and 2nd defendants who are Government servants. Moreover the truth of the same

* *Marked H.* point, is apparent from an Urzee* written by the 3rd defendant to the Joint Magistrate, in which he clearly states that the parties were in attendance, and that he would act as should be directed, and from the diary in which he recorded the release of the parties under the order of the Magistrate. The plea urged by the 3rd defendant in his defence that the plaintiff was not confined so as to prevent him from attending to his business is not borne out either by the above Diary Extract or in any other way. If the 3rd defendant had at once released the parties by taking security for their appearance, the Urzee he had written to the

Witnesses examined on behalf of the 1st and 2nd defendants.

1. Periya Tumby Gounden.
2. Ramsing.
5. 6th witness Rungasawmy Naick.
4. 7th „ Kistnien.
5. 8th „ Ramasawmy Chetty.
6. 10th „ Eeswara Iyen.
7. 11th „ Narasemien Naick.
8. 12th „ Mohomed Saib.

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Joint Magistrate would have been drawn up in the same form as the document, No. 10, marked K. This not being the case, no doubt is left as to the plaintiff's having been kept under custody.

12. The plaintiff has proved by his witnesses that he suffered loss from his having been kept in custody, both in his cultivation and in his saltpetre contract. That he suffered loss in these things the Court entertain no doubt whatever; but it is difficult to determine whether the loss was so great as the plaintiff has alleged.

13. The plaintiff claims 1,000 Rupees for damages inflicted on his character. The Court hold that such a damage to one's honor is not a thing that can be measured, weighed or numbered, and that the honor once lost cannot be regained by receiving money in return from the offending party. The injured party can however find a course for redeeming himself from the disgrace into which he has fallen by bringing the defendant before a Court of Justice, and causing him to be disgraced by a fine. Though the fine is carried to the credit of Government, yet the fining is equivalent to taking so much honor and respectability from the defendant and giving it over to the offended party.

14. As the 1st defendant was not present either when the theft took place in his house nor when the plaintiff's house was searched, that part of the plaintiff's claim which regards the 1st defendant cannot be sustained.

15. In regard to the 2nd defendant though he complained about the theft to the 3rd defendant, and took the necessary steps regarding it, it was for the 3rd defendant, as an Officer appointed by Government on its behalf, to enquire into the matter, and to be responsible for the steps he might take in the matter. It is therefore decreed that the 1st and 2nd defendants be excluded from the suit, and that the 3rd defendant pay to the plaintiff Rupees 60, for the special loss he suffered at the 3rd's hands and for loss of character, besides the interest and costs incurred in the suit. The 1st and 2nd defendants should bear their respective costs.

Costs by the plaintiff.

Value of stamp paper...	56	0	0
Batta to summon peon...	4	8	0
Vakeel fees.....	78	12	0
	139	4	0

By the 3rd defendant.

Value of stamp paper...	1	0	0
Vakeel fees...	78	12	0
	79	12	0

Costs incurred by the 1st and 2nd defendants.

Value of stamp paper...	3	12	0
Batta to peon...	6	0	0
Vakeel fees...	78	12	0
	88	8	0

Total cost in the suit..... 307 8 0

(True translation.)

(Signed) H. A. BRETT,
Magistrate.

Draft of an Appeal Petition to the Civil Court of Salem by (1)Coopa Row, late Nagady Goomastah of Paramutty, now Nagady Goomastah at Tripatore, (2)Coopa Row, Maramut Goomastah at Paramutty, and (3)Vencatanaranapah, Tahsildar of the Paramutty Talook, the 1st, 2nd and 3rd defendants in O. S. No. 13 of 1856 on the file of the Moofy Sudr Ameen's Court at Salem, against a decision passed in the above suit under date the 24th December 1857, in favor of the respondent Kistnien, Plaintiff in the original suit, residing at Paramutty.

The object of this appeal is to set aside the decision passed by the Moofy Sudr Ameen of Salem in the above suit, adjudging the 3rd appellant to pay Rupees 60 as damages to the respondent, with respondent's and his own costs, and the 1st and 2nd appellants to pay their own costs.

Fort St. George, Judicial Consultation, 9th April 1858.

2. The appellants object to the Moofy Sudr Ameen's decree on the following grounds, viz:

1st. That the Moofy Sudr Ameen has placed the suit on essentially wrong issues.

2ndly. That the 3rd appellant, though he searched the respondent's house and kept him in custody, was not liable to damages for those acts if they were done in good faith, and in execution of his office as Head of Police.

3rdly. That the fact on which the judgment was founded, viz., that the respondent was kept in close custody from the 11th to the 26th of June, was not recorded at the hearing, as one of the points in issue between the respondent and the 3rd appellant. (Vide the points given to the respondent and to the 3rd appellant.)

4thly. That the claim to damages having been disallowed, so far as the 1st and 2nd appellants were concerned, it was unjust and contrary to the general practice of the Courts to charge them with their costs.

It is therefore prayed that so much of the original decree as adjudged damages and costs to be paid by the 3rd appellant to the respondent may be reversed, and that the respondent may be charged with all the costs both in the original and in the appeal.

(Signed) H. A. BRETT,
Magistrate.

No. 46.

ORDER THEREON, No. 448; dated 8th April 1858.

Resolved that the foregoing papers be referred to the Board of Revenue for report. The Magistrate of Salem should have transmitted them through that authority.

(Signed) H. FORBES,
Acting Secretary to Govt.

Judicial Department

No 448

Extract from the Minutes of Consultation

Dated 8 April 1858.

Read the following Letter
from the Magistrate of Salem
(then dated 22 March 1858)

Resolved that the foregoing
papers be referred to the Board
of Revenue for report. The
Magistrate of Salem should
have transmitted them through
that authority.

Copy to Board of Revenue
" Magistrate of Salem } Despatched

in 1850: 900000

Judicial 1850 & 1851

No 440

Extracts from the

29 April 1858

28. 1852/1853
Report to the Board
of Revenue for report.
The papers received
from the Magistrate
of Salem in 1853
and 23 of 1854. I have
that the Magistrate
should have submitted
that the same should
be submitted.

440/46

1858

30 March
27 April