

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1033	Press
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292-294		
Dated	30.6.1863	AD.

7/8

Not to be folded or roughly handled

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Proceedings of the Madras Government, Judicial Department,
30th June 1863.

Read the following papers:—

No. 292. From F. B. TEMPLER, Esq., Colonial Secretary at Colombo; to the Chief Secretary to Government, Fort Saint George, dated 8th June 1863, No. 19.

I am directed by His Excellency the Governor to transmit to you the enclosed copy of an affidavit made by Captain Fisher before Mr. D. E. deGaram, Justice of the Peace, and copies of proceedings charging one Singalie with theft, committed within this Island, together with a Warrant for his apprehension, and as the accused has absconded, and is supposed to be at Madura, I am to request with reference to the Act No. VII of 1854, that you will move the Honorable the Governor of Madras in Council, to give directions to the proper authorities to take steps for the arrest of the accused.

2. Should he be arrested, I am to request that he may be sent in custody to Ceylon by the earliest opportunity.

Referred to the Advocate General for advice.

FORT SAINT GEORGE,
24th June 1863.

(Signed.) J. D. SIM,
Secretary to Government.

No. 293. From JOHN ROBERT BOYSON, Esq., Government Solicitor, Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Madras, dated 26th June 1863, No. 423.

1. I have the honor to acknowledge the Order of Government noted in the margin, with the papers which accompanied it relative to the application by the Ceylon Government to this Government for aid in the apprehension and transmission to Colombo of one Singalie, charged there with theft, and who is now supposed to be at Madura.

2. I submitted the papers for the consideration of the Advocate General and have also conferred with him thereon, and

3. I now forward a copy of his opinion.

4. I likewise return the order and papers above noted.

COPY—OPINION.

I am of opinion that this is not a case falling within Act VII of 1854 which provides for the apprehension, &c., of parties charged with the commission of *heinous offences* beyond the Indian territories.

Section 21 defines what are "heinous offences" within the meaning of the Act.

The accused in this case is charged with theft as appears by the Warrant: and theft is not one of the offences specified as "heinous."

I do not see that the Ceylon Government can in any way mend the matter, or I would suggest such a course of action as might make this Government to co-operate in bringing the party to justice.

"Embezzlement" is one of the crimes designated "heinous" in Section 21.

But this is not a case of embezzlement which technically only applies to cases where the party receives the property by virtue of his office, and *intercepts* its reaching his employer.

Here the employer voluntarily gave the accused the possession of the money; and I do not see how it can be a case of *theft* unless indeed it could be shown that the accused took it *animo furandi*. It is much more probable that the dishonest intention to appropriate the property sprung up in his mind at sometime subsequent to his obtaining possession, which possession was in its origin lawful.

Nor is this the common case of a mere servant in charge of his master's property as a butler, or the like, who of course can commit larceny in respect to that property because his possession is in law the possession of the master.

one was paid to one Singalie Canganu
The

Proceedings of the Madras Government, Judicial Department,
30th June 1863.

Here the employer, apparently at the end of a working-season pays the accused up for past services, and entrusts a fresh sum of money to him over which he is to have the entire control for the purpose of obtaining a supply of coolies on the Coast; I presume the Coast of India.

It is a clear case of Bailment and Breach of Trust. In India, that offence has been criminal ever since Act XIII of 1850 and now by Section 405 of the Penal Code. In England Breach of Trust was not made criminal till 1857 (20 and 21 Vic. C. 51). I am not aware whether even now Breach of Trust has been rendered a criminal offence.

But be that as it may, Breach of Trust is not an "heinous offence" under Act VII of 1854. Nor could this Government proceed under Section XIV of Act VIII of 1851. For Act I of 1849 therein referred to applies only to Foreign States, not to dependencies of the Crown.

The only course that suggests itself to me, though that is necessarily attended with expense and difficulty, is for the employer to sue the accused before the Zillah Court within the jurisdiction of which he is residing.

By Section 5 of the Civil Procedure Code a party is liable to be sued if the cause of action has arisen within the jurisdiction, or the Defendant at the time of commencement of the suit shall dwell or personally work for gain within such limits.

It has been expressly held that the Civil remedy is not suspended in cases of Breach of Trust until the offender has been convicted criminally.

There seems therefore to be no other obstacle than that of expense and inconvenience in the way of the party defrauded pursuing his civil remedy, if so advised, and this in my judgment is the only course at present open to him.

MADRAS,
25th June 1863.

(Signed.) JOHN BRUCE NORTON,
Advocate General.

(True Copy.)
(Signed) J. R. BOYSON,
Government Solicitor.

No. 294 To the Colonial Secretary at Colombo, dated Fort Saint George, 30th June 1863,
No. 1,033.

In acknowledging the receipt of your letter, dated 8th Instant, No. 19, I am directed to forward in reply a copy of one from the Government Solicitor and its enclosure, being the opinion of the Advocate General on the application of the Ceylon Government, for the apprehension of one Singalie who has been charged with theft and who is now supposed to be at Madras.

(Signed) J. D. SIM,
Secretary to Government.

Ed. T. McMootry.

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Form of information for a Criminal offence.

District of

Colombo

The information of

William Fisher

residing at

Ham Island

in

Colombo

taken before me

David Ernest de Saram

Esquire, a Justice of the Peace for the said District, this

29th day of May

1863, who being

duly sworn

deposes:

That one Singalie who was employed as Head Coolie at the Government Estate at Kandy in the month of May 1862 at the above Estate, entrusted with a large sum of money by the Government for the purpose of procuring and bringing as many coolies as he could for the money so advanced, to work on his Estate; and that the said Defendant has very improperly appropriated the said amount to his own use and has staged away in the Coast. The Informant has lately received information, that the said Deft is now somewhere in Madras in the Madras Presidency, for the Informant signs the said Deft with a warrant for his apprehension for the apprehension of the said Deft.

Taken the day and year first above written, before me.

David Ernest de Saram
Justice of the Peace.

Interpreted by

Interpreted by

one was paid to one Singalie Langame

Justice of the Peace Office
Belombé May 29th 1863

Complainant sworn -

I gave the accused
in all 3 cheques. - one dated 10th February
1862 for £30-0-0
and two dated May 6th 1862 - 182-14-0
making in all a total of 212-14-0

This was partly in payment of the
work done in the Oetake - and £120
of it was for the purpose of bringing coals
as stated in my affidavit. The Defendant
was to return from the Coast with coals, the
following October. - He did not come and
up to this day I have not heard from
him. I produce my books & accounts,
by which it will appear, that I have
been credited monthly with £120, as an
advance to the accused Sangakie

Signed J. E. Desbaron
J. P.
Signed W. Fisher

R. Simmtamby Affirmed.

I was on the 6th May 1862
employed at the Mercantile Bank
as "payment Shroff". I know
these cheques (two) both dated 6th May
1862 for £182-14-0 one of them the £150
one was paid to one Sangakie Canganie

He

signed R. Sinnelbury
 signed D. C. DeSaron
 J. P.

of June 1882

Will Lavan
Justice of the Peace
for Highland
County

dupd 4

Judicial Dept
No 1033

To the Colonial Secretary at Colombo.

Sir,

In acknowledging the receipt of your letter dated 8th ^{instant} ~~inst~~ ^{inst} ~~inst~~ No 19, I am directed to forward in reply a copy of an opinion from the Govt. Solicitor & its enclosure, being the opinion of the Advocate General on the application of the Ceylon Govt. for the apprehension of one Singalie who has been charged with theft & who is ^{now} supposed to be at Madura.

Dated 26th June 1863. No 23.

Fort St. George
30th June 1863

[Handwritten signature]

For the Colonial Secretary, 15th Oct 1863

Recd 15th Oct 1863

dist of Michx.

Pro. Amc.

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To
The National Academy
of Sciences
London

30 June 1873

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