M.R.O. 1—33,000—16-10-20.

# MADRAS RECORD OFFICE.

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## Government of Madras.

Judicial DEPARTMENT.

G.O. No. 192
46-47

Press
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Dated 5 - 2 - ~~15~~ 1983

11/12

***Not to be folded or roughly handled***

No. 46. Read the following letter from E. B. FOORD, Esq., Acting Collector of Kistna District; to A. J. ARBUTHNOT, Esq., Chief Secretary to Government, Fort Saint George, dated Gudivadah, 31st December 1862.

At the request of my Deputy Collector, M. Narsimha Puntooloo, I have the honor to forward herewith for the consideration of the Governor in Council, a Memorial, and copy of the judgment delivered in the High Court of Judicature, in an action brought by Narsimha Puntooloo against the Proprietor of the "Madras Times" newspaper, regarding certain imputations on his character in the discharge of his duties, as Deputy Collector and Magistrate of North Arcot, published in the said newspaper.

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To the Right Honorable Sir WILLIAM DENISON, K.C.B.,
*Governor in Council, Fort Saint George.*

The humble Memorial of M. NURSIMHA PUNTULU, Deputy Collector, Kistna District.

Respectfully Sheweth,

That your Petitioner having incurred the serious displeasure of Government and been deprived of his Magisterial authority on account of certain alleged misconduct in his office, took the earliest and only means open to him of challenging those who had brought forward such charges to prove their truth in the face of the public and with the fullest opportunity for the most searching investigations before Her Majesty's High Court of Judicature at Madras.

2. With this view he brought an action of libel against the Proprietor of the "Madras Times," the Journal in which charges of gross corruption and malversation of office, had been published concerning him.

3. He now ventures to submit for your Excellency's perusal and consideration the most accurate report of the judgment of the Court, which, it is in his power to obtain, drawn up from his Counsel's notes taken at the time.

4. And your Petitioner trusts that the candid perusal of the searching dissection to which the Chief Justice has submitted the whole of the evidence, will have the effect of clearing him in the eyes of Government of those charges of corruption which once brought, the Court observed, there was an especial obligation to seek to clear himself of the imputations made upon his character from.

5. Your Petitioner is free to admit that he may have committed some errors of law and judgment as pointed out by the Court, but these, he respectfully submits, are of a very pardonable character, and such as are any one unprofessionally educated Magistrate might have fallen into, though he by no means seeks to evade or diminish his responsibility for his faults.

6. And he would point out, that with reference to the presence of extra judicial remarks in his decisions, though he sees now how improper such observations are, as the Chief Justice points out, the very fact that they have elicited no observations from your Petitioner's superior Officer, shows, what your Petitioner submits is the plain fact, that he has but copied in this an error of so universal prevalence as not to attract any notice, save in one instance, and then by a Judge whose professional education no doubt pointed out to him as objectionable what would not have struck the generality of country officials as an anomaly.

7. Advantage has been taken of the very scanty and imperfect report of the judgment, which appeared in the local Press to detract from the weight and value of the decision by misinsertions that the result might have been different, had the case been dealt with by a Jury or Judge versed in the peculiarities of Native evidences.

8. Such remarks, it would be impertinent in your Petitioner, to attempt to meet. The judgment itself is the best answer to them.

9. Advantage has also been taken of the same circumstances to represent the remarks which the Chief Justice made expressive of dissatisfaction with the course pursued by your Petitioner, as far more severe and damaging than they really are.

*Proceedings of the Madras Government, Judicial Department,*
*5th February* 1863.

10. In submitting the judgment to your Excellency, your Petitioner does not couple with his Memorial any prayer for restitution of Magisterial functions, or other marks of renewed confidence on the part of Government, he simply feels it due to himself and to the Government, whose servant he still has the honor to be, that your Excellency who felt compelled to come to a conclusion hostile to him upon the reports and opinions of one Judge, (Mr. Collett) may now have placed before you the unanimous opinion and decision of both Her Majesty's Judges, after a far fuller sifting of all the cases tried by your Petitioner, than Mr. Collett had either the means or opportunity of instituting.

11. He is well assured that it will be a satisfaction to your Excellency to see how completely the High Court has exonerated him from all those heavy charges, which, if true, were fatal to his character as an official and a man; and he respectfully craves your Excellency's attentive perusal of the judgment submitted herewith.

And your Petitioner shall ever pray.

MASULIPATAM,
*27th December* 1862.

(Signed) M. NURSIMHA PUNTULU,
*Deputy Collector, Kistna District.*

No. 47. ORDER THEREON, 5th February 1863, No. 192.

To be recorded.

(Signed) A. J. ARBUTHNOT,
*Chief Secretary.*

Exd. T. McMeotry.

18th AUGUST 1862.

*PRESENT.*

SIR, C. H. SCOTLAND, *Knight Chief Justice.*

*and*

SIR, A. BITTLESTON, *Knight Puisne Justice.*

NARSIMOOLOO PUNTOOLOO, VERSUS, WRAY.

This is an action brought by the Plaintiff Narsimooloo Puntooloo against the Defendant Mr. Wray as Proprietor of the Madras Times, complaining of imputations on his character in the discharge of his duties as Deputy Collector and Magistrate of North Arcot.

*C. J.*

We have had some difficulty in going through the Mass of evidence oral and documentary on both sides within the short interval of time which has intervened since the Trial; but we felt that in such a case there should be as little delay as possible in the delivery of our judgment and we are happy to say that the result at which we have arrived is one that is entirely satisfactory to our own minds.

It is a case not only of grave importance to the parties but it is one of public interest bearing as it does upon a matter of deep concern at present. The admission of educated native gentlemen to a share in the Government and Official administration of their country, and I must say there was an especial obligation upon the Plaintiff to seek to clear himself of the imputations made upon his character.

As to the law there can be no doubt whatever on the subject. It is clear that a publication which contains imputations injurious to the character of an individual and calculated to lower and disgrace him in public estimation is a Libel; where the person is a public Officer he is properly open to observation and considerable latitude in comments on his public conduct. But even in this case there is a limit beyond which public observations cannot be allowed to go.

Mr. Advocate General has alluded to the fact that the Press is of the greatest possible service as a public teacher. I go with him entirely in what he has said on that subject, but whilst the public good demands the encouragement of the Press as a public teacher, it is important to guard against the licentious Press.

Because the very fact that the Press exercises the functions of the public teacher, if it be not so guarded, might be made the means of the most serious attacks.

Now there is no especial privilege possessed as thrown out, not I am sure seriously by a writer in a News-paper. He has no more right to go beyond the limits of fair comment than a private individual. The question in every case, is whether the publication exceeds the limits of fair and legitimate comment under the particular circumstances, and Paris, V. Long 30 L. J. C. P. 11 shews that there is no distinction in this respect between a writer in a News paper and any other individual. And when the Advocate General alluded to the Bombay case and the observations of Mr. Justice Arnold in that case, it was evident that learned Judge did not lay down any such general proposition as was suggested. His observations were directed to the particular case before him, and I am not prepared to say that if the occasion demanded it, I would not go the same length. But I do not understand him to say generally that the writings of a Public paper are confidential communications, all I understand him to say is, that in such a case as that then before him, the rule as to privileged communications might be so enlarged, that is when the matter dragged to light is a public pest, a great moral stain on society.

Then as to the cases of privileged communications cited such as Harrison and Bush (25 L. J. Q. B. 25) which was a memorial to the Secretary of state by a person who had an interest and a duty in the subject matter of it they can have no application, nor is this case in any way within the cases of "Reports" of Proceedings in Courts of Justice such as Saunders 7 Mills in 6 Bing. But if it were the limits of fair publication is the privilege and no more. In the case of Saunders. V. Mills 6 Bingham 218 Tindal C. J. an eminently learned Judge says "that which I am about to say will not interfere with the generally received doctrine that News-papers and other publications which narrate what passes in Courts of Justice are to a certain extent privileged, no one can read their accounts of Judicial proceedings without being sensible that on several occasions they do to a great extent serve the cause of Public Justice. They ought therefore to be privileged, but then privilege must be restrained to occasions in which they publish fairly what passes in the Court."

And Paris and Levy 30 L. C. P. 11. shews that in this respect there is no distinction.

Then is this a Libel. Now the first Para taken by itself cannot be said to be so. It comments generally on the inequality of Europeans and natives, and expresses the views of the writer against the inexpediency of allowing natives officially with the "means "of inflicting injuries on the feelings, the character, and the liberties of Englishmen for "which adequate compensation can never be made to the individual sufferer." Then comes the 2nd Para which connects it with the rest of the libel, that the writer's object is to give publicity to practical illustrations of his views, by what he is about "to state with "reference to the conduct of" a native Magistrate located at "no great distance from Madras" and who is afterwards named and is the Plaintiff in this action. Then is stated conditionally that which is afterwards applied to the Plaintiff." "If within a few hours journey from the Presidency and subject therefore to the restraining influence of the public opinion of a large European community, a Hindoo Magistrate feels no scruple *to abuse* the power entrusted to him for the vexation and damage of *obnoxious* persons, who shall fix the limits of arbitrary oppression and Official insolence in districts remote from any English society out of the reach of telegraphs, railways, the press, and all other agencies and tokens of Western civilization." This is charged to refer to the Plaintiff, and I may say at once that there can be no doubt that it does.

The 3rd Paragraph points to and names the Plaintiff but guards against the writers being supposed to attribute any thing to want of ability or zeal. This is important as shewing the real object of the article. "For aught we know to the contrary Narsimooloo Puntulu may be a very clever man and an efficient public servant." Then it charges him with being influenced in the discharge of his public duties as a Magistrate by two feelings. "In his Magisterial functions, he seems to be under the influence mainly of two feelings, a strong prepossession in favor of his own dignity, and that of his relatives, and dependants, and an equally strong antipathy to the Railway Officials." "The railroad un-"fortunately for his equanimity runs through his district and the railroad is his "*bete noir.*" "He cannot arrest the trains or no doubt he would have done so ere this, but he can ar-"rest station Masters and station Peons and treat Engineers with marks of his august dis-"approbation, and these privileges he does not allow to rust unused. His ante railroad pre-"judices however have recently taken so decided a form that the question is, which shall "prevail in the North Arcot district, the Steam Engine or the Native Magistrate, the im-"putation is this, that to shew his own dignity and carry out his strong antipathy against "the object of his detestation the Railway, he does not allow his Magisterial powers of "arrest to rust unused."

The 4th Paragraph professes to give an instance in proof of the Plaintiffs administration of justice against Railway servants. It refers to what is called the Govindoo case. It states that a Peon of the Plaintiff's establishment being about to proceed by Train was requested to shew his ticket, that he insisted on being allowed to take his seat without doing so. That the station Master ordered him to be removed from the platform, where he was creating a disturbance, and that for so doing, he was fined by the Plaintiff. It charges that the Plaintiff did this as Magistrate to avenge the affront offered to his peon. "For thus doing his duty, he was summoned before Narsimooloo Puntooloo, who avenged "the affront offered to his Peon by fining the station Master in the sum of 15 Rupees."

The 5th Paragraph states that the Railway charged his relations and servants with trespassing on the Railway premises and assaulting some of the Watchmen, and it alleges that "contrary to usage and without any reasonable pretext, the trial was conducted in "private. The Court was closed and the Public excluded". It charges in effect that the investigation was private, and that it was advisedly and purposely so held to screen the parties charged. The 6th Paragraph states that a charge of assault was made by one of the Magistrate's Peons against the "obnoxious" Station Master, that a substitute was provided to enable the Station Master to attend, and that intimation was given that the Station Master was ready to attend. "Four days elapsed but no reply having been recei-"ved, the substitute returned to Madras. No sooner had he gone than a summons issued "for the instant appearance of the Station Master before the Deputy Magistrate's tribu-"nal. The accused pleaded the public inconvenience and danger, that would ensue if he "left his station before a competent person was put in charge, for which it would be ne-"cessary to refer again to the Traffic Manager. The reply to this was a Warrant for "his apprehension the same evening, in virtue of which, he was detained in custody to "the day following. The charge was not sustained by evidence sufficient even to satisfy "Narsimooloo Puntooloo, who acquitted the Station Master of assault, but committed the un-'fortunate object of his displeasure to the Chittoor Jail for one calendar month, in con-'sequnce of his inability to pay a fine of 50 Rupees imposed as the penalty for not ap-'pearing at the first summons." The article then proceeds to notice Mr. Baskett's case. "During the trial, another station master, an Englishman, who was present watching the



"proceedings, seeing a vacant chair rashly seated himself in it. The Puntooloo's wrath was "roused at this instance of Railway audacity, and he ordered the Station Master to leave "the seat he had with such unparalleled insolence usurped. The chair was immediately "vacated with the expression of a modest hope that no great harm had been done. The "Station Master got off cheaply with a reprimand", the imputation being throughout this Para, that the Plaintiff was acting from the same two feelings attributed to him in the discharge of his public duties. The 7th Paragraph says these are only specimen cases and winds up with the main thing of the case. "The result is that the Engineer of the Dis-"trict declares that the Railway servants are now so thoroughly intimidated that he cannot "protect the company's Property. The proceedings of Mr. Narsimooloo have, we are happy "to hear, been duly represented to Government, and we trust soon to be able to inform "the public that the Puntooloo has been removed from Naggery, and deprived of those Ma-"gisterial powers which he has proved himself so ready to abuse."

Now the whole of this article must be taken together, and tho' it is broken up in the pleas and in passing, I may observe not regularly broken up, yet to decide whether it is a Libel or not, the whole must be read together, and there can we think be no doubt whatever that what it imputes substantially to the Plaintiff is, that for the gratification of his personal and private feelings of hostility and prejudice against persons in the Railway service who are obnoxious to him and from antipathy to the Railway, he intentionally prostituted and abused the functions and powers of his office as a Magistrate and was guilty of arbitrary oppression.

No one can doubt, we think, that such a publication is a libel, and one of a very grave character, unless true, though it is said this is not any attack on private character, yet when the charge is that a man, a Judicial Officer, can prostitute his powers for the unworthy purposes of private revenge, it must reflect most seriously on his private as well as on his public character. This libel therefore appears to us to be one of a very serious character.

The law in such cases infers malice, for if you publish what in law amounts to a libel and cannot prove the justification pleaded, the law infers malice, that is legal malice in the sense, that you do an act wrongful in itself and without any justifying cause, such is the inference of the law from the bare fact of publication of a libel, which is not justified, but we cannot say that in this case it stands on that alone. It is difficult to say there was not express malice, not indeed on the part of Mr. Wray, the nominal Defendant, but the fact of the circumstances relied on, on the part of the defence being brought into court and insisted upon to the last, must shew that those who have acted in this matter through the medium of Mr. Wray are persisting in attributing to the plaintiff the imputations contained in this publication. The case therefore does not stand wholly on the mere legal inference of malice.

This publication then being a libel, the next question is; is it true? There are 5 pleas of justification.

The 1st is as to Govindoo's charge. The plea says that a Peon of the Plaintiffs establishment was about to take his seat, that he was thereupon requested by Parthasarthy Naidoo, the Station Master to produce his ticket in pursuance of his duty, that the Peon refused to do so and made a great noise on the Platform, and that Parthasarthy legally caused the Peons removal "and that *for this and no other cause* Parthasarthy was summon-"ed before the Plaintiff and was fined in the sum of 15 Rupees" "merely for having "removed the Peon in the discharge of his duty." Now with reference to this Plea, what occurred at the station could not in any way be a justification. If that were the whole of the Plea, we would find for the Defendant, but the Plea goes on that for this cause viz. that it was for having acted in the discharge of his duty that the Plaintiff convicted him, what therefore took place at the station before the Plaintiff became seized of the case as Judge can have no effect whatever as against the Plaintiff as to what did there take place. Parthasarthy says "when I came out, Govindoo was on the Platform "I asked him if he had a ticket. He said he had no ticket. I told him as you have no "ticket, you must leave the Platform, you must not remain here. I told him to go away "3 times: as he did not go away, I called to my Peons and ordered them to take and "leave him outside the Platform; my peon told him to go away, after he made use of "abusive language, I put him in the custody of one of the peons there." That is the only witness as to this on the part of the defence. On the other hand, we have the depositions taken down at the time. It appears from them that Govindoo said in effect that he went to the station in order to send his brother to Tirtani; that he there asked the Station Master who was then distributing Tickets for one; that he refused a ticket and became earnest; and that Parthasarthy got angry and ordered the 2nd and 3rd Defendants to lock him up until further orders; and that he was released by the Daloyet.

Parthasarthy's statement is to the effect that he thought he would be at his old practice of running after the train, and ordered him to be taken out; and that Govindoo was now and then complaining to me when they were going in the train. The train was there at the time. The 2nd and 3rd Defendants in that case confirm Govindoo as to the order to take him into custody; but say nothing about "locking up" and the two witnesses for the Prosecution also speak to this. It was a question of credit as to which of these parties the plaintiff would believe. It was for the Magistrate to deal with the evidence before him, and if it be true that the evidence given on that occasion was as taken down in these Depositions, neither this nor any other Court can doubt that he was abundantly justified in convicting the party charged on the evidence before him. The learned Counsel for the Defendant, feeling this, have made attacks on the depositions. Parthasarthy is examined as to his statement, and he attempts, I can't say he does so: positively to suggest that a passage in his statement was tampered with, and that the man who read it out to him read out as he mentioned it in Court here, so that we are called upon to believe this extraordinary story, that the man holding the paper before him in which he had taken down what the party had not uttered read out to him exactly what he had in fact stated. Now unless we were prepared to bring our minds to the conclusion that the Plaintiff and his writers and Daloyets were all in a conspiracy against the Station Master, we cannot believe that they pretended to read to him what was in fact not contained in the statement read out. Mr. Mayne has referred with some force to the passage itself. The statement as taken down and now translated is "as this man was always running with the carriages I thought he "would do the same this time, I therefore told him to go out. He said, will I stay here "if you give me a hundred Rupees, and I will go". Now when this was first read to him, Parthsarthy admitted that he said so, afterwards he said he did not understand it, and finally he said he did not say so, and that what he did say, was, "He told me that even if "10 Pagodas were to be given to him, he would not leave the place till the train started." Mr. Mayne urges that the written statement is wholly without meaning on this head. It does not seem to me to be necessarily unmeaning. It might be. Would I stay here even if you "gave me a hundred Rupees? I will go", and when we have a Deposition sworn to have been correctly taken down and confessedly signed by Parthsarthy on the one hand, and his present declaration on the other as to the expression actually used; and that from memory and contrary to his written deposition, the Court cannot say that it will adopt his persent version. The next matter for consideration here is this. If all this was entirely wrong, one would expect an appeal. This is met by a suggestion that he was in effect prevented from appealing by being sent off to Chittoor in December. Looked at in a broad way, it may bear such a complexion. But if the man really felt aggrieved at this conviction which took place on the 22nd November 1861, we should, I think, find him at all events initiating, taking steps for the appeal which the law allowed him at once. The conviction as I have said was on the 22nd November; he is not locked up then; there is nothing to prevent his making an application himself or even by his friends for copies of the Depositions or at least for a copy of the order to be appealed against. But he does nothing of the sort. On the whole we are of opinion that it cannot be said that this Plea is made out Viz. that the Station Master was convicted and fined for having acted in the discharge of his duty and for no other "cause or reason whatsoever." I need not refer to the law which applies to such a case. The Railway authorities have a perfect right to remove a trespasser from the Platform, but not to lock him up, and such right only applies to trespassers, and not to one who is applying for a ticket. Now as to the 2nd Plea. It is pleaded to the 2nd para,—but is confined to a justification of so much of it as alleges that the parties charged were the servants of the Plaintiff. It states that 2 or 3 days after (the 24th November) certain servants of the Plaintiff were charged with a trespass on the Railway Premises and assault of a Watchman on the line, that the Plaintiff sitting to try this charge, closed the Court, and excluded the Public and conducted the trial in private, contrary to usage and without any reasonable pretext, and therefore improperly and thereby prevented the public and the Officers and servants of the Railway Company from knowing what evidence "was tendered on either side or whether "the case was disposed of, in accordance with or contrary to the evidence" that all that was known was dismissal after such private trial." We think that this Plea is entirely disproved. Mr. Stanly, and I must make one observation here as to the demeanour of that Witness in the Box. Although I am sure he would not come here to state what was untrue, yet it seemed to us that there was in his tone and manner considerable hostility towards the Plaintiff, and that makes us cautious in dealing with his evidence. Mr. Stanley says that every one was ordered out but himself. But this he immediately qualifies. He "says all the Railway people were ordered out. I mean that his own people were allowed "to remain: several Railway Porters came in. They were immediately ordered out by the "Plaintiff's Peons. He gave the order himself. His words were, I will have no Railway "people here." Ramaswamy says all the people were sent out. Pumbiah says the Railway people were ordered to go out; that salt was being sold out side, and that it was being brought from inside by little and little. Parthsarthy says "A person whose business it "is to sell salt was there; no one else." Then he says, I was called as witness, I was examined about 1 or ½ past 1. That is about the middle of the examination when Stanley is examined: see how it stands. He says the persons charged were sitting together amongst other natives, and there may have been fifteen persons present more or less. Then Sawmy Cannoo says, in his cross examination by Mr. Branson, that he was the 3rd witness examined, and that it was then that the order was given for people to leave. He adds that 20 or 25 persons were there to buy salt, though certainly he does not say that they were inside. So stands the case on the part of the Defendant. Now look at the case on the part of the Plaintiff. It is spoken by the Plaintiff and 3 of his witnesses; the Plaintiff says that he only orderd the witnesses to go out, and I think that if any order was given, it must have been of that kind. The Plaintiff's witnesses declare that there were several persons there; that salt was being sold; Railway Trucks were coming in and going out; and that porters were employed in loading and unloading them with goods. It may be that they are venturing to state things more broadly than they are warranted in doing, but we must see whether substantially this must not be true, what was the place? an openshed, a Railway goods station through which run permanent lines of Railway to bring goods to, and take goods from the Platform. Large openings on either side to admit of the Trucks being pushed in and out. The enquiry begins at 7 A. M. and continues till past 12, and we are asked to believe that with the salt people there to sell, and people there to purchase, and all the Railway people there to carry on the business of the Railway, that for five hours nevertheless every thing was still, and locked up. We cannot come to that conclusion; moreover in Stanley's appeal (No. 14) nothing is said as to this. Mr. Mayne, in his able observation, says the parties called for the Plaintiff are not independent witnesses. He felt the force of their evidence. They were all friends we may take it of the Plaintiff, and more or less connected with the transaction. But on the other hand, though it is true, Mr. Stanley has retired from the Railway, yet it must be borne in mind that all the persons who have been examined on this subject on the part of the Defendant have a lively interest in the matter. But there is one other circumstance which seems to us to set this at rest, and it is this, Stanley was an Officer in the Railway, He is the prosecutor, He is invited, He is asked to become the prosecutor, and no doubt whatever that he was there as such, no objection whatever is taken at the time that the enquiry was private, and yet the Plea alleges that the Railway Officers had no knowledge of what took place except the fact of dismissal. The place in which the investigation was held moreover is not selected or suggested by the Plaintiff. He holds the enquiry in the goods shed, after that very place had been selected by Mr. Stanley himself. It is, we think, impossible to come to any other conclusion upon the whole of this evidence than that this Plea, that the Plaintiff closed his Court and excluded the public, is not established, so far as the investigation at the goods shed is concerned. An adjournment then takes place, and the trial is subsequently proceeded with at the Cutcherry. Mr. Stanley is invited to attend, and might have attended, and there is no suggestion of any attempt there to prevent the enquiry being public. Therefore as to this Plea, it is not only not proved, it is disproved.

I now come to the 3rd Plea of justification. It alleges that immediately after such dismissal by the Plaintiff of the charge against his own servants, a false counter charge of assault was brought before the Plaintiff against Parthasarathy, the Station Master, by a Peon of the Plaintiff; that ever since Parthasarathy had caused the Plaintiff's Peon to be removed from the Platform as stated in the 1st Plea of justification, and solely on account of such removal, he, Parthasarathy, the Station Master, had become and was obnoxious to the Plaintiff; that on the said false counter charge being made and brought before the Plaintiff (3rd December 1861.), the Traffic Manager sent a substitute to the station at Naggery to admit of Parthasarathy's attending before the Plaintiff, without inconvenience or danger to the Public; that after the arrival of such substitute, Parthasarathy (3rd December) informed the Plaintiff in a respectful manner that he was ready to attend at any time and place appointed; that the Plaintiff took no notice of this; that after 2 days being taken without any proceedings, the substitute returned to Madras (5th December), he believing that the charge had been abandoned; that immediately after such return (5th December), the Plaintiff issued a summons for Parthasarathy's appearance forthwith; that in this Plaintiff acted harshly, unresonably, and without necessity on special cause, and contrary to the usual custom; that on receipt of the summons, the said Parthasarathy, the obnoxious Station Master, respectfully informed the Plaintiff that he could not attend without danger and inconvenience to the Public, until a substitute arrived, for which it would be necessary to refer to Madras; that the Plaintiff replied by issuing a Warrant (5th December) for the Station Master's apprehension, and caused his detention in custody till the next day; that on the 10th December, the said false counter charge was heard, but that the evidence adduced was wholly insufficient; whereupon the Plaintiff dismissed the charge. That Plaintiff had no sooner dismissed the said charge (we shall see that it was not then but long before) then he sentenced the said Parthasarathy to pay a heavy and excessive fine of 50 Rupees, merely for not having attended forthwith, in obedience to the summons before the Plaintiff, on the 5th December. It is a curious plea, and is made applicable to the summons only, and in default illegally sentenced the said Parthasarathy to be imprisoned

for one month in the common Jail at Chittore. It is conceded on all hands that the Plaintiff wrote a letter to Mr. Church on the 26th November. Exhibit A. D. (to which his Lordship shortly referred) after that, it appears that Mr. Morris was sent to Naggary on the 2nd December as a substitute for the Station Master, Parthasarthy. It may therefore be fairly inferred that he came in consequence of that letter. Then Parthasarathy writes the letter No. 3.

To The Deputy Collector. Naggary.

Sir,

I beg to say that in accordance with the Traffic Manager's orders, I am requested to appear before you. Be good enough to let me know when and where I am to do so.

Parthasarathy says, he received no answer to that, and that the Plaintiff left for Madras; that he returned on the 5th; and that then he issued the summons for 12 o'clock and afterwards the two warrants; and that when he was brought upon the 2nd warrant before the Plaintiff, he was fined 50 Rupees; but not detained as stated in the Plea, but allowed to return that night, on the understanding that he was to appear the next day, and he says that he was told to come the next day at 10 o'clock; that case was adjourned and the charge of assault dismissed on the 10th December, and the fine of 50 Rupees was imposed, the fine not having been paid, and the distress warrant having been ineffectual, such fine was commuted to imprisonment for 1 month. On the other hand the Plaintiff says I sent an answer by the messenger who brought me Parthasarathy's letter that the witnesses had gone to Madras, and that when they returned I would send him a summons. It is singular, if the Plaintiff's statement be not true, that Parthasarathy should as he admits have gone to the Plaintiff's Cutcherry the next day. Certainly it is singular he should do so, if he knew as he says he did, that the Plaintiff was not there. The witnesses, the Plaintiff says, arrived on the night of the 4th, and on the 5th the summons was issued. It is clear that no summons or warrant was issued so as to interfere with the Train. Then the Plaintiff says all the depositions were regularly taken and they are produced here (Ac to A. G. and G.), and I have heard nothing to bring home to our minds any doubt that they were taken down according to what was said. Attempts were made once or twice to get from the witnesses that there were threats used, but these failed entirely. There is no evidence whatever to shew that the Plaintiff knew that Mr. Morris had come and gone. Upon these facts and the probabilities, we think that the statement made by the Plaintiff bears on it's face what most probably occurred. It is witness against witness and after turning all over in our minds, we are satisfied that the Plaintiff's account of what took place is that which is most consistent with the probabilities. We have then a clear refusal to come, the excuse is insufficient: legally he was bound to attend, of course in an extreme case, he might run the risk of not immediately attending, and no doubt the court would not in such a case issue any process for the default. And this brings us to the real point, was the reason so conveyed and of such a nature as to make out harshness on the part of the Plaintiff in the course he adopted. When we come to look at the endorsement on the summons, it is very different from the language of Parthasarathy here. We cannot help remembering moreover that Parthasarathy in his own evidence in Govindoo's case had no great fear of the Plaintiff, and as I observed at the time appeared to have bearded the Magistrate. This must be borne in mind when we consider whether the Plaintiff acted, with *Mala fides*, the endorsement on the Summons is "I cannot on any account whatever leave the station unless ordered by the Traffic Manager to do so." It amounts to this. I cannot and wont leave the Station unless ordered by the Traffic Manager. The fact of the summons being made returnable forthwith is not meant by this. He does not say I am busy now but I will come if you will give me time. Then comes the question, does the issue of the 2nd warrant under such circumstances shew harshness and unreasonable exercise of authority on the part of the Plaintiff.? No doubt Parthasarathy might have gone down himself and said to the Plaintiff, I am excessively busy just now, give me time, and I shall be ready to attend. He was only half a mile off and it is quite clear, there was no Train in or expected at the time and no pressing necessity for his presence at the station, and he himself says he was "writing accounts &c., in other words "It was very inconvenient for me to attend" and as my Brother Bittleston reminds me, we dont hear that he cannot attend in Govindoo's case, and one of the witnesses says he saw him going to a village on occasions & we therefore cannot suppose that he was absolutely prohibited leaving the station without the Traffic Manager's permission. I might go on dealing with the warrants in the same way, but it is not necessary. Now if Parthasarathy bearded the Plaintiff as he says he did in Govindoo's case, it was not unnatural for the Plaintiff to suppose obstinacy on his part, and if the Plaintiff bona fide believed that he was holding out against him, and setting his authority at defiance, the Plaintiff had a perfect right to issue these warrants. Another point taken is that the summons was issued contrary to the usual custom in being made returnable forthwith. There is not much evidence as to the custom here, but we cannot on the evidence say that the summons being made returnable immediately in this case was improper. It is said that



the practice is to make it returnable the next day. That may be the usual practice, but a Magistrate is not bound to take that course; all you need do is to give the party a reasonable time for appearance. In this case, the station is close by, and I cannot say that under such circumstances it was a harsh proceeding to make it returnable the same day. We do not say one way or the other, whether it might have been better to have waited an hour longer or till the next day, for all that depends on the Judicial Officer, and what he considers, ought to be done under the circumstances of the particular case before him. Now then, we come to Mr. Collett's decision, in which he thinks the warrant was indiscreet, and the imprisonment excessive, and that the distress Warrant and imprisonment were illegal. Mr. Collett, with reference to the arrest, says that it appears to have been such an "indiscreet use of authority as to amount in one sense to an abuse of it." We are not indisposed to say that we do not concur with him in the latter part of this his observation. We don't say that the Plaintiff might not have exercised more forbearance. There was an absence of a mild consideration of the case; but then there was on the Plaintiff's mind a bona fide belief of intentional disregard of his process. He was a Country Magistrate, and it was essential that his authority should be respected. We do not agree that the exercise of his authority in this case can be said to amount in one sense to an abuse of it, but as far as the word indiscreet is concerned, we think the Plaintiff might have been milder and more discreet, and we agree with Mr. Collett in thinking that the punishment was excessive, but that again turns on the circumstances existing at the time. Then comes the question, was it illegal to issue this distress warrant and in default to send the party to Jail? We had some discussion on this. According to the Regulation 9 of 16, a power is given to inflict a fine of 50 Rupees, or imprisonment for 15 days. The imputation is as to the period of imprisonment. The Plaintiff says, I had recourse to Act 2 of 39, because no means are given in Regulation 9 of 16, to enforce the payment of the fine. On looking at Regulation 9 of 16, and Act 2 of 39, we agree with Mr. Mayne: enough appears to induce me to think that Mr. Collett's view is correct, and that the Plaintiff was wrong in acting upon Act 2 of 39. The Plaintiff's object was to enforce the fine; and the provisions of the Regulation and the Act when carefully considered shew that was not applicable to this case. We say so not on the ground that the Act refers to "Acts" and not "Regulation." That is rather a nice question of law, but we say so on this ground. In Regulation 9 of 16, the punishment and period of imprisonment are provided for; Act 2 of 39, applies only where a pure fine is given by an Act, and not when an Act provides a fine or a period of imprisonment.

We think then as to so much of the 3rd Plea, as alleges that the Plaintiff illegally sentenced the Station Master to be imprisoned for one month in the common Jail at Chittoor, that it is proved, but every Plea of justification must be made out altogether. And if not so established, it wholly fails. We consider that for the reasons I have already given, the rest of this Plea is not proved, and therefore there must be judgment against the Defendant on this also.

We then come to the fourth Plea. That is the chair business. The Plea says that during the last mentioned trial on the 10th December, another Station Master, a European, George Basket, was present watching the Proceedings; that during the progress thereof, he quietly and in an orderly manner seated himself in a vacant chair in the Court in the presence of the Plaintiff; that by that, the Plaintiff's wrath was roused, and he in an angry, offensive, and unwarranted manner, constituting an improper display of official insolence, reprimanded Mr. Basket, and ordered and obliged him to leave the chair, and to stand and remain exposed to the sun, which he thereupon did. The evidence on the part of the Defendant in this Plea is that of Parthasarathy and Basket. There is some differnce between them. But Basket says it began with a question about the fine. He makes the order as to the chair, immediately he said that the fine would not be paid. He says, a few minutes after the Plaintiff sat down, he said "Mr. Basket what about the fine of 50 Rupees. "I rose from "the chair, went up to the Table opposite to him, and informed him that the fine would "not be paid. He then asked me what Mr. Church had said about it, I again replied "that the fine would not be paid, and the law must take it's course. And I again went "and sat on the chair: a few minutes afterwards the Plaintiff said some thing, I did "not exactly understand. But on repeating it again, I understood that it was to remove my "chair. I did so a few paces to my left, and in such a position that I was obscured from "his view by the pillar of the Verandah. His manner was apparently excited. He stood "up at the table and made use of the words, Mr. Basket, I tell you again that you shall "not sit there. I made a motion to rise, and in the act of doing so, the chair was seized by "a Peon in the service of the Plaintiff, taken from me, and placed at his (the Plaintiffs) right "hand, where it remained vacant during the time I stopped there."

On the other hand, the Plaintiff's account of it is this. "I went in and after finish-"ing my writing business inside, I came out to hold my office in the Verandah as usual "within half an hour. Mr. Basket was still seated there, but I did not notice it, I did not "speak to him, as I began the enquiry; he took the chair to the place where the witness

"was being examined. There is no particular place for the witness. Basket asked Partha-
"sarathy to explain to him in English what the witness said. He could not explain fully,
"so he came to ask me, by saying the writer to stop. He first came down to me and
"shewing a piece of paper, he said, he wanted to send for a witness to the Station House.
"I asked him on whose behalf. He said on behalf of Parthasarathy. I told him he can do
"so. Then he asked me what the witness who was being examined was saying. Then I ask-
"ed him what brought him there when he was neither a party or a witness in the case.
"He told me he was authorized by Mr. Church to watch my Proceedings. I asked him
"if Mr. Church had given him any such instructions. He said he did, and saying this, he
"went and was seated again on the chair. A little time after this it struck my mind about
"the word *watching*, and called Mr. Basket and asked him about that very word. He told
"me, yes. Then I told him he had no business to watch my proceedings: at the same time
"I told him I was not required to give chairs to those who came to the Court of their
"own accord, and that in fact he had no chair on the previous occasion. He then told
"me "Do you mean to say a European should not have a chair before a Native." I told
"him in reply that respect was due to the Bench; that his language in Court will be con-
"sidered as contempt punishable by Law. On this, he went away from me but was walk-
"ing to and fro in the same place where he was first seated. He was there until the
"case closed and then went away. He appeared before me as if he was an officer to
"control over me. As I went there, he did not rise up, and he did not speak to me, and
"when I called him from the chair, and by his answering in a loud tone, I guessed what
"was his meaning. My manner was as quiet as I am now." Parthasarthy makes it appear
as if the chair was taken by force.

Now, is it likely that the Plaintiff without any thing being said would address Basket in the way he represents him to have done, or is it not more likely that something did occur, and that something was what the Plaintiff has stated it to be in his evidence? We think that looking to all the surrounding circumstances that it was undoubtedly so.

Basket says the Plaintiff shook a Book at him, the Plaintiff says he did not shake the Book at him, but that he put his hand upon it. That looks as if he had been insulted, and is to our minds indicative that something must have occured to induce the Plaintiff to believe, that Basket was there for the purpose of *watching his* proceedings in the offensive sense in which he understood that term. Basket was not there as a Witness or as a party. No doubt he had a perfect right to be there; but we think it was quite a fair inference on the part of the Plaintiff, under the circumstances, that he was there watching his proceedings in the sense ascribed by the Plaintiff to those words. He had no illfeeling against Basket. Down to that time, there was no want of respect towards Basket. On the 6th, Basket sat at the same table with him, and on the 7th he sat and walked about as he liked in the same place. How is it possible to reconcile that with the charge that the plaintiff on the 10th without any reason whatever ordered him to quit the chair &c. We have from the Plaintiff that what Basket said was that he was authorized by Mr. Church "to watch *your* proceedings." Another circumstance obliges us to give to the Plaintiff's evidence the counterbalancing weight. The Plea alleges that Basket was obliged to stand in the sun. In his examination in chief, he says. "I told "him I thought it was a very hard case to be kept exposed to the sun. and that I had "never been accustomed to it." But in cross examination by Mr. Branson, he admits that he had been sitting in the chair in that very place under the pendal, before the Court opened; that he had been sitting there on the 7th, and that after the chair was removed, he was walking about in the same place, and that when he left for the Tope, it was of his own accord that he did so. That is a total disproof of the allegation in this Plea that he was obliged to stand in the sun. We are bound to consider that and to come to the conclusion that this Plea is disproved.

As to 6th Plea, the 5th Plea of justification, it justifies the parts constituting the sting of the Libel. It refers to the previous pleas of justification and says that the matters there pleaded were and are facts, and only specimen cases illustrative of the way in which the Plaintiff as Deputy Collector and Magistrate dispensed justice in cases in which persons were concerned, who were in the service of the Madras Railway Company, and did and do prove that the Plaintiff was ready to abuse his Magisterial powers, and shew that a Hindoo Magistrate tho' only within a few hours journey from the Presidency, and therefore subject to the restraining influence of the public opinion of a large European community did not scruple to abuse the powers entrusted to him for the vexation and damage of persons obnoxious to him, and amount to arbitrary oppression, and displayed official insolence, that the said several matters do fairly, naturally, reasonably, and properly suggest the inference, that it was not prudent or polite to make the experiment of entrusting to a Native Magistrate such as the acts of the Plaintiff shewed that he has the power of subjecting an English gentleman to the degradation of the lash. And did and do shew that the Plaintiff did seem to be and was under the influence mainly of two feelings, a strong prepossession in favor of his own dignity and that of his Depend-



ants, and an equally strong antipathy to the officials of the Railway: and that he did not allow to rust unused the power possessed by him as such Deputy Collector and Magistrate to arrest Station Masters, but on the contrary that he exercised such power in an arbitrary, oppressive, and improper manner to wit in the manner in the other pleas particularly mentioned. This is the core of the whole matter, and this Plea rests on the proof of the other Pleas, which have been already disposed of. The new matter put forth is that the Plaintiff took frequent occasions to treat, and did treat Mr. Pinson, the Engineer of the Railway in his district with marks of displeasure. As to which, there is a total want of proof. Indeed Mr. Pinson says "I have never spoken to the Plaintiff:" so far therefore the Plea is absolutely disproved. It then proceeds that the result thereof and of the said several acts in the pleas taken collectively was, that the said Engineer did declare, and the fact was, that the servants of the Railway Company were so thoroughly intimidated by the said several acts of the Plaintiff, that the said Engineer could not protect the property of the company. As to this allegation of intimidations, I can find nothing in the evidence on the subject, except it be what was put to one of the witnesses as to whether he signed his deposition under coercion, and which wholly failed. The Plea goes on that the said several acts were duly, and truly represented to Government. Mr. Pinson's evidence on this point is, that he wrote his letter partly from reports of his Inspector, and partly from his own inspection. So that this part of the Plea can hardly be said to be made out. The Plea goes on and were such as authorized, justified, and warranted the Defendant, and all persons interested in the due administration of Public Justice, the repression of arbitrary oppression, and of official insolence, and the success of the said Madras Railway, as a token of Western civilization, in hoping that the Plaintiff might soon be removed from Nagary aforesaid, and deprived of Magisterial power. It is not necessary for me to refer to this latter part, as to what is stated in this Plea, that people were justified in hoping that the Plaintiff would be removed from his post, and deprived of Magisterial power, for that really amounts to nothing. It is nonsense.

All the Pleas of justification then are either not established or disproved. We have therefore to consider now the question of damages, and here I may observe that I do not remember a case in which so many collateral matters have been brought forward in mitigation, I will take them in the same order as the Pleas. 1st Govindoo's case, one or two expressions attributed to Plaintiff are relied on as indicating *Mala fides*. Parthasarathy says that the Plaintiff when he appeared before him said, that all the people that are at the Railway Company are rogues, and pic-pockets &c., and men of straw &c. That is totally denied by the Plaintiff, and our disposition is to believe that such expressions were not used, and we cannot make out what motive there could have been for using such language. Then we come to what no doubt is a very important part of this case, viz. to what is called the 6 trespassers' case. It is suggested that the Plaintiff's son was placed on his trial before him, and that that fact was suppressed in the Record. This is no part of the Libel except as included in the term relations, nor is it in any of the pleas of justification. Certainly we must characterize this as a most serious imputation. The imputations in the libel though grave fall far short of this. The charge is either that he substituted a person for his son at the goods shed investigation, or that having tried his son, he tampered with the record, and substituted the name of another for that of his son. Any thing more degrading cannot well be imagined.

It is on this point a very singular case, but in the result, we are of opinion that it is made out beyond all doubt, that that young man was not there. Now the evidence for the Defendant is that of Stanley, Parthasarathy, SawmyCunnoo, also Chinniah. They all speak positively to the fact of the son having been there, and when the man was produced, and of all the men I have ever seen that young man appeared to me to afford the most abundant facilities for identification: when he is called in, they say with one exception, yes, that is the man. Willix not only undertakes to say he was there, but he suggests whose name it was that was put in his stead. He says Varanasee Narsimloo was *not* there, and in the Record of the case, the name of the son does not appear; whereas that of Varanasee Narsimloo does appear. It is fair to Mr. Stanley that I should say that though his manner indicated some, and was yet that when the lad was produced, he cautiously said, he thought he was there; but he would not pledge himself to his being the individual. On the other hand, it is denied by the Plaintiff and all his Witnesses, and amongst others by the lad himself. Now in weighing the Defendant's evidence, it must be remembered that Pumbiah comes in direct conflit with Willix. He says he does not know whether the boy was taken out of the carriage, but he says Varanasee Narsimloo *was* there. Willix says he was *not*. Ramaswamy says the son was not at the goods shed examination at first, but that he did get out of carriage, and Chinniah says he did not come to the goods shed examination at all. All this raises the greatest possible doubt as to the identity of the lad. In the result, the question is this, was the son there, or was it Varanasee Narsimloo? Now, an observation occurs here, which is of some importance, and it is this. This was not the first suggestion that had nothing to do with Varnasee Narsimloo. The first suggestion was that it was the 1st Defendant that

was the son; and that to mask the fact, the Plaintiff returned the Deposition of the 1st Defendant without inserting in it his fathers name; and in the appeal Petition, it is suggested that he was the son. But here, that failing the chage is, that the son was tried under the name of Varnasee Narsimloo, who was not there at all. No doubt it is a most serious matter for the Court to be obliged to express an opinion contrary to positive testimony. But of all questions of fact, questions of identity or rather mistaken identity have produced most conflicting evidence. We are willing to hope that no other imputation can be made than that the Witnesses for the Defence having formed in their minds an impression that the son was there, and then hearing that this young man was the Plaintiff's only son, that they thus got themselves into the conviction that was the person; I do not say that this is satisfactory, but they may have acted under mistaken impressions as to his identity. Mr. Mayne says it was most probable that the son would be there, because of his father's marriage. The son denies it, and so does the father, and the father says he was not there, because of sorrow for his deceased mother, and the mother, he says, died 3 years before. This is remarked upon as absurd, and no doubt, if these words are taken in their literal sense, sorrow for 3 years, it would be ridiculous. But the Plaintiff explains that this marriage was a marriage by him of a second wife, and would suggest to the son the death of his own mother. We can quite understand that such circumstances might lead the son not to go. Another matter must be here remembered. Though the witnesses speak of the son being present, yet there is no mention of the son's having done any thing from beginning to end. In the proceedings, you never find any of the witnesses say, the Plaintiff's son did this or did that, nor that his name was ever mentioned. Now, it is impossible, that all could have believed that the son was there, and yet that they should never have referred *to* him. The Plaintiff allows the shed to be selected, and asks Stanley to prosecute. Stanley was in the shed, and if any other person had been substituted for the son, Stanley certainly would have noticed it. Then, what becomes of the suggestion that Varnasee Narisimloo was not there. He, Varnasee Narsimloo, says he was there, and in corroboration of this, we have that most important evidence, the Railway Ticket, and the Railway Ticket for luggage. The latter being actually in the name of Varanasee Narsimloo himself. How then, are we to believe that he was not there? Then, there are the 2 letters written to the Plaintiff by Mr. Stanley, H. and I.

Both friendly letters, and in neither of them does he directly or indirectly refer to the son. Then we found that he is never heard of till Mr. Church presents the appeal No 14, and then for the first time, we find it stated that the son was present; but then it is suggested, not that Varanasee Narsimloo's name was substituted for the name of the son, but that the son was the 1st Defendant.

Mr. Mayne. That is not so stated in No. 14.

C. J. Mr. Church states in No. 14., that the Defendants are the son-in-law, peon, and friends of the Magistrate, and upon that, we have Mr. Collett's judicial remarks, referring to the omission of the heading of the 1st Defendant's statement alleged to be the son.

Now so far from 1st Defendant being the Plaintiff's son or son-in-law, he is of a different caste from the Plaintiff; the Plaintiff is a Bramin, and the 1st Defendant Balakistna Pautrooloo is a Soodra.

The Plaintiff in his letter L (16) a very proper letter denies that his son was one of the Defendants. He says "As regards the allegations of Mr. Stanley, and the ob-"servations thereupon of the Acting Session Judge, I beg to explain that among the De-"fendants, there is neither my son nor son-in-law; and that the 1st Defendant who is stated "to be my son is a Soodra. The 2nd Defendant who is stated to be my Son-in-law, though "a Bramin, is a Vidick, while I am a Neyoghee; and moreover, how could there be a Son-"in-law when I have no daughter." I ought here to make one observation on L. Willix's evidence as to that is some what singular. Plaintiff says there that his son was not one of the Defendants, and that he shewed the Draft of L to Willix, and asked him to correct it. Willix's evidence on that subject is very unsatisfactory. He says "I never heard "of a charge against the Plaintiff of having substituted any one for his son. Plaintiff "told me he sent an explanation to the Magistrate to send to the Civil and Session Judge. "I saw it also in his Office after he had sent it; I do not remember that I corrected it. "I read it. It was sometime after the trial, a week or 10 days after. I might have ta-"ken pen and ink in my hand; he might have told me to read and see if I could make "any corrections. Then he says looking at L. There are several things incorrect here. "The sentence, "my son was not one of the Defendants" is wrong, I cannot say this was not "in the statement he shewed me. I told him that his son was there, I told him so at "the time. I told him" I delivered your son at the time", and yet Mr. Willix says he never mentioned this to any one; we think this is an additional reason why we should



receive with very great caution what Mr. Willix has said on the subject of his son having been present. It is difficult to account for the evidence of the Defendant's witnesses; then adherence to it even to the suggestion of substitution. But this can hardly have been possible. If not present at the goods shed, he must have been missed. If present, the alteration of the proceedings is, we think, much too bold a step to have been ventured upon. Another circumstance put forward on the part of the Defendant is, that when Chinniah, the Watchman, was under examination, the Plaintiff, according to Mr. Stanley and Chinniah, shook his fist at him, and Mr. Stanley says, he was excited and said to him, "The Scoundrel is denying himself." The Plaintiff denies it, and we cannot see why there should have been any exhibition of anger on the part of the Plaintiff. The suggestion is that his prepossessions were all in favor of the Defendants. If so, he was about to get rid of the case, and Chinniah, the Prosecutor, was denying himself; why then, should he get into a passion for that which was in fact only furthering such his supposed object. We cannot belive it, and we cannot understand, why he should do any thing of the sort unless to shew his disapprobation of the untrue statement of Chinniah. If so, it was harmless. Now as regards the expression itself, the Plaintiff admits, he said that Chinniah was denying himself. Stanley says he made use of the word "Scoundrel", a peculiar term. This the Plaintiff denies. We do not see the object of such a term, and if he had said the fellow is denying himself, or any other expression of that sort, for there is no doubt he was denying himself, there would have been nothing in it. I now come to the letter J. A good deal was made of this; Stanley says he sends a man who saw some of this transaction. The Plaintiff does not examine him. If it had appeared that this was done to get rid of evidence bearing against the parties charged, it would be of serious consequence. But what are the circumstances? Stanley tells the Plaintiff at the goods shed, "he (Chinniah) told me differently, and I can prove it by three witnesses," 2 of these 3 witnesses were called and examined, and this man, I infer was the third, and if he was coming simply to say that he had heard Chinniah give a different account of the matter, his evidence ought not to have been acted upon. The Magistrate, in my opinion would have acted wrongly, if he had convicted them on the evidence of this man, if such evidence was only to shew that Chinniah at another time gave a different account of the affair. Mr. Mayne says, he might have seen the assault himself from the station, I do not say that the words wont admit of that construction. But the Plaintiff might most reasonably have put the other construction on it, and may have believed that this witness was only to prove that Chinniah had made to him a statement different from that which he (Chinniah) had made before the Magistrate; and that therefore it was wholly immaterial. The next point is the correctness of the Decision: 1st, as to the assault, there is the watchman, and his contrary account to Mr. Stanley, and there is no other present. He said he had been pushed as they were coming along, in other words that it was part of the trespass and not in the ordinary sense of the word an assault. I am very far from saying that if I had been sitting as the Magistrate, I would not have considered it myself as part of the trespass. The Plaintiff dismisses the charge of assault, and deals with the question of trespass on other grounds. Then 2nd as to the trespass. No doubt a trespass had been committed strictly speaking. A wilful act is necessary to constitute a trespass, and here upon the evidence, there was that, I think the Magistrate ought, if he had strictly discharged his duty to have said, this is a trespass in law, but I find that the cutting was used as a common road, and I think therefore the fine should be only a nominal one. That would have been according to the strict letter of the law, and what I or any other Magistrate thoroughly versed in the law would have done; but the question is, whether the Plaintiff acted corruptly or so as to abuse his authority. How is it possible to say that? Willix himself says he went by the cutting the same morning, and it appears that on this occasion not these people only, but others passed through it in a crowd, and the Magistrate says that at the time the investigation at the goods shed was going on, others were passing through the same cutting, and that is noted in the proceedings. The Magistrate might very well say that these people were only following what others did, and that as they were only going in the Railway property as Passengers, that was not a case for trespass. I do not say that he was strictly correct in this, but I am very, very, very far from saying that there was any thing like an abuse of authority on his part.

Then as to the case of resistance of process, I have already observed on this, and the only further observation I have to make in this here is this, the inconvenience which is said to have been occasioned to Parthasarathy. He however does not seem to have gone beyond 3 miles a day, and when he arrives at Chittore, the fine is paid, and he is let loose and comes back. But then it is said, if you had not inflicted a month's imprisonment, he would not have gone to Chittore at all. That depends on the legality of the sentence in point of law, and to that I have already addressed myself. It is however quite clear that if there was no error here, there was no means of imprisonment at Naggery for 1 month, supposing the month's imprisonment to have been properly inflicted.

We now come to two singular cases. They are not in the Libel or in the Pleas

though the Defendant had the opportunity of pleading them as "specimen cases". They are the cases of Runga Row and Gungooloo on the 18th December. In the first, the Plaintiff convicted the Defendant of trespass on the Railway premises, a very slight trespass, and fined him 8 annas, or 8 days in default. In the other, the Magistrate convicted the Defendant of causing the other man to continue the trespass by continuing to take him about 300 yards further along the line, and fined him 3 Rupees, or 8 days in default. In Runga Row's case, he is said to have declared that if not let go, he, Gungooloo would share the fate of Parthasarathy. If true, the Plaintiff cannot be made responsible for that. Mr. Mayne observes with regard to the first of these cases, that the Magistrate in inflicting so small a fine as 8 annas, acted on the man's own statement as to his means. I am very far from saying that he was not entitled to do so, if he had no reason, and he says he had none to disbelieve him. I am not prepared to say there was any thing improper in that; we all take such matters into consideration in passing sentence, and as regards the trespass itself it certainly was not of any aggravated kind. Then we come to Gungooloo's case, and certainly I cannot make out any thing on which to sustain this conviction. The proceeding is so extraordinary as to be absurd. The Magistrate appears to have got it into his head that he might fine a party for trespass, who takes up a trespasser, if instead of removing him off the premises, he continues to take him on along the line to a Police station, that a servant of the Railway taking up a trespasser becomes a trespasser himself if he takes such trespasser further on the line. All that we can say is, that this is wholly without legal foundation, the conviction was entirely wrong, and demanded a reprimand. Then, it is said, you make the charge yourself. Now in justification of that, the Plaintiff refers to a Circular order, but on referring to that, it only shews what should be done by Criminal Judge viz. that he should send the case back to the Magistrate. Now that does not mean necessarily that the Magistrate is to make the charge; but that he is to put the matter in a course to be investigated that a regular charge may be made. It is quite clear however that though he ought not to have made the charge, and then and there to have disposed of it, yet that it makes it the duty of the Magistrate to initiate the proceedings, and the question upon this case, is whether under such circumstances his having done so can be taken as an abuse of authority to opress this man. Though this is illegal, and though the construction we put on this C. O. is that he ought not to have proceeded to the trial and conviction of this man, yet we are unable to say that it evidences the abuse of his powers as a Magistrate for any unworthy purpose. Another circumstance that must be borne in mind here, is that there is no keeping back of any thing, the whole statement is set out and on the face of these proceedings, he exposes to his superiors this illegal decision.

Then as the written expressions to be found in the face of the Plaintiff's proceedings. They are undoubtedly what we must take into consideration; certainly it struck me with great surprise that in every instance, we have a sort of historical account of the parties' antecedents. I can't conceive a more improper proceeding. If superiors permit or encourage their subordinates in stating or expressing such antecedents, it is not to be wondered at that they may come to consider themselves bound to enter into such matters. At home proceedings in such language would be considered an insult to one's understanding. Mr. Norton referred us to a reported Case, and certainly no language can well be stronger than that used then towards parties not before the Court.

*Mr. Advocate General.* The Sudr rebuked the Judge for it. C. J. It was a very gross case. But then we must consider that here are 4 cases, and I find in sentence after sentence, in return after return not one without the same historical account of antecedent matters, and I do not find that the superior officer objects to this in any way, except what Mr. Collett says in Gungooloo's case. "The Acting Session Judge observes that the De-"puty Magistrate has prefaced his Judgment by some remarks about the Defendants for-"mer character. A man's former character is on a charge of trespass, an utterly "irrelevant topic, and the remarks of the Deputy Magistrate were quite uncalled for." There is a very strong instance of this in Gungooloo's case. He says, "this Defendant was "formerly employed in the Police Department as Deputy Sergeant, and for having unnecessa-"rily created a great disturbance in Calastry Division by exercising undue authority was "found guilty, and dismissed in August last, as recommended by the Deputy Magistrate. "Then, he appears to have taken shelter in the Railway Department by concealing his "former character." Now this has nothing to do with facts of the case before him, and yet this is all that is said upon the subject by the appellate Court.

*Mr. Advocate General.* Mr. Collett rebukes him for that in—C. J. There is nothing before to shew that. But on the part of the Defendant, I am asked to put extreme construction that he inserted all this for his own vindictive purposes.

In sentence No. 2 Govindoo's case, he says. "As it is always with the station Mas-"ters, and particularly with the 1st Defendant as complained to me verbally by several men "on more than one occasion. I think some example is necessary to meet the ends of Justice"

and accordingly, I find the Plaintiff in his evidence, says that people complained of being abused, and pushed and refused Tickets. It would have been most incorrect if the Plaintiff had allowed this to influence his mind as to the facts of the case then before him. But if he were clear in that, though I don't say that that is a proceeding to be encouraged, such a circumstance might be considered to a limited extent in determining the amount of fine to be imposed, but certainly, it ought to form no part in forming his judgment on the decision to be arrived at on the facts. In this Court, it is not uncommon after conviction in the judges, to ascertain that charges of the kind of which a Prisoner has been convicted, have often been made, and judges in passing sentence often say that they must consider that circumstance in awarding punishment, and indeed it must be so, if one of the objects of punishment be to deter people from the commission of like acts.

Then in the sentence 13 A in the trespass case, he refers to Govindoo's case and the trial of the Plaintiff, and says that the Station Master as a matter of revenge got the Deloyet and the other Defendants removed from the carriage, by inducing the watchman to complain to Stanley. In his letter to Mr. Church of the 26th November, he says the same. Stanley, he says, told him that Parthasarathy was the cause of it all, and certainly Stanley's two notes do not disprove that such a statement was made by Stanley as is represented by the Plaintiff, but I do not say that this is justifiable, and it ought not to be encouraged or allowed, but it does not follow that he therefore abused his office. The next that I have to notice is, the use of the expression "obstinate and unscrupulous conduct" of the Defendant in sentence No 8, the resistance case. The Plaintiff says, he refers to the case before himself; there can be no doubt that these terms ought not to have been used, but the question is, whether they can be taken as shewing abuse of authority, and we are of opinion that they cannot.

Then comes the letter to Mr. Robinson of the 6th December, in which, he says "I am sorry that the conduct of the Station Master is so notorious, in annoying, dis-"couraging, and disgracing passengers, apparently to benifit his own pocket," and begs that his conduct may be brought to the notice of the Railway. This was most improper, and is the worst expression in all these papers, yet it is in a letter to his very superior, What is the Court to say when it finds the Plaintiff openly and designedly writing in this way to his superior Officer, and allowed to do so and not rebuked for so doing? What is the Court to say, but that he felt, he was doing only what was required of him, namely to give his opinion, besides judgment. His Lordship then referred to the Plaintiff's observations in dismissing Ramaswamy's charge of assault. Be &c., and observed the question is, what all this amounts to? we think looking at all the circumstances, that we cannot say that they necessarily establish that he was acting corruptly, or from favouritism, or from revengeful or improper motives. But at the same time, I feel it my duty to say, that all this was most improper, and we should have made him responsible for it to a greater extent than we do, if it did not appear to be a course of proceeding left unchecked, except in what Mr. Collett says.

Those are our observations in this case, at the same time that we do bear in mind all these circumstances, in considering the question of damages; we think we cannot apply them with the same force, as if the same matters had occurred in England, a few more observations, and the case is disposed of. Now no actual damage is proved, and there is no evidence, that any thing done by Government is attributable to the publication of this libel. We do not think we have any right to consider that his removal from Nagary is to be attributable to this publication. On the other hand, there is nothing to shew express malice in the Defendant, so far as motive or feeling is concerned. He has however put forth this libel, and we are bound to take into consideration, Pleas that he has put upon the file, and we must make him responsible for them, and we must also bear in mind that he persists to the last even now in his imputations and endeavours to prove the Pleas. We have also to consider that after retracting, and saying in his issue of March, that he was mistaken as to the parties charged being the Plaintiff's relatives, that he afterwards pleads a justification as to this very matter, and that to the last moment, the gravest of the imputations is strenuously reiterated, and that without notice to the Plaintiff, and endeavours to establish that the Plaintiff's son was one of the parties charged before him, and that the Plaintiff suppressed that fact, and substituted another name for that of his son.

The Plaintiff however has in the exercise of his functions as a Magistrate acted in some respects indiscreetly, and his judicial proceedings have been properly made the subject of observation, reprimand, and objection; and in this respect, his capacity and sufficient qualification for the Magisterial Office might have been made the subject of fair comment by the public press. Upon the true state of facts, he would have had no greater immunity in this respect than any other judicial or other Public Officer. But the gross and disgraceful abuse of his Magisterial powers, which is imputed by this Libel, and which to the last has been eagerly but unsuccessfully sought to be esta-

blished by circumstances of serious aggravation, is not made out. The Plaintiff then is entitled to damages at our hands. He has shewn no actual damage attributable to the Libel, but he has a right to such temperate damages as under all the circumstances will shew that he has vindicated his character from the imputations contained in the Libel.

Verdict for the Plaintiff Damages.
600 Rupees.

Signed and given by J. W. BRANSON *Barrister at Law.*—4th December 1862.

*Kistna District Collectorate Press.*



*Judicial Department.*

*PROCEEDINGS of the MADRAS GOVERNMENT.*

Read the following letter from the Acting Collector of Kistna District.

(Here enter 31st December 1862.)

Order thereon.

His Excellency the Governor in Council sees nothing in the Memorial submitted with the foregoing letter which would lead him to question the propriety of the order to which the Memorialist refers.

I doubt whether it is necessary to pass any order — although I do not object to this in draft — and whether the papers proposed simply to be lodged — the Pantulu does not ask for the restoration of his magisterial functions, and the Magt. must stand or fall on his judgment without demur.

letter recorded

186 . *Department.*

*No.*

PROCEEDINGS OF GOVERNMENT.

*Dated*

*093] Madras—Printed at the Government Press.

C. 28 Jan/03
12.3.1821

Dist of Nos. 1 Feby

Ind. 16th Pro. Feby.
1862 Dept.

From The Acting Collr
of Madura dis.

To The Chief Secretary
to Government
Fort St. George

Dated 31st Decr 1862
Recd 9th Jany 63

Encl 2
No 36

Forwarding for
consideration of the
Govr in Council,
a Memorial of the
Deputy Collector of
M. Narsinha Chetlur
with Copy of Judg-
ment delivered by the
Hight Court of Judicature
5th February 1863 No 1974
Recorded

46 to 47

C: 28th Jany 63
R. 3d Feby