

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.

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*Proceedings of the Madras Government, Judicial Department,
6th January 1865.*

No. 26. Read the following letter from the Honorable J. B. NORTON, Advocate General, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Madras, 19th December 1864.

For the information of His Excellency the Governor in Council, I have the honor to report upon a case in part heard by the High Court on its Original Side on the 29th and 30th November last, No. 253 of 1864, *Shah Buddeen Khan Cabullee* v. C. C. Streemom Teruvengada Mooneapah Ramoonojah Dasen (whom it will be convenient to call by his better known designation of Streemom) the Right Honorable the Secretary of State, and myself as Advocate General of Madras.

2. The plaintiff is an Affghan describing himself as a Merchant, but who, I believe, originally came to Madras with some horses from Cabul. The 1st defendant shortly after his attaining his age in 1859 was by the late Supreme Court's decree of the 7th September 1859 (confirming the Master's Report, dated 29th August 1859) appointed Receiver and a proper person to manage certain charities founded by one of his ancestors, the due administration of which had formed the subject of an Equity suit wherein the Honorable East India Company were plaintiffs, and the late C. S. Streenevassa Pillay and others defendants.

3. The charities were four in number.

1st.—A Choultry at Comaleswara Covil (at the back of Messrs. Richardson's late shop.)

2nd.—A Choultry at Sydapet.

3rd.—A Choultry at Jumboo Casaveram (near Trichinopoly.)

4th.—A Choultry at Pootoor (near Naggery.)

4. By his Report of the 29th July 1859, the Master found that the Choultry at Comaleswara Covil having been taken by the Government for public purposes, a house, Nos. 30 and 202 Nagapah Moodelly Street, suitable for a Choultry was then for sale, and might be purchased for Rupees 3100; that Rupees 1200 would put the Sydapet Choultry in repair; 500 Rupees that at Jumboo Casaveram: and Rupees 215-9-5 that at Pootoor.

5. Independently of the sum of 20,000 Pagodas dedicated to the charities and secured, there were available at the date of the Master's Report a sum of 4269 Rupees invested in Company's papers and accumulations of interest to the amount of Rupees 3697-8-7.

6. The Master found that the securities for 4269 Rupees ought to be sold, and that the proceeds, together with the Rupees 3697-8-7 (interest), should be applied

1st.—In payment of costs.

2nd.—In the purchase of the house in Nagapah Moodelly Street.

3rd.—In repairing the several Choultries.

7. The Court confirmed this decree on the 8th August 1859, and on Streemom being appointed Receiver, the whole of the two last mentioned funds passed into his hands.

8. Whether he ever laid out any of the monies he received as above, or the interest of the charity funds (Rupees 466-10-8), which he received monthly from the Bank of Madras, does not appear, but it is certain that he forthwith commenced a career of lavish extravagance which very shortly led to his being reduced to a state of hopeless embarrassment and insolvency, and it is beyond all question that he systematically and continually pledged in advance for his private use his drafts

on the Bank of Madras for the monthly interest accruing due, and long before it had accrued.

9. Out of these transactions arose the present plaintiff's claim. His case was, that he had been at various times applied to by *Streemom* for money required for the repairs of the Choultries at Sydapet and Pootoor; that he had personally inspected the buildings, ascertained their condition, and that the money he had advanced had all been economically laid out in repairs, payment of wages, and distribution of rice to the poor.

10. His claim amounted to 12,600 Rupees which he made out as follows:

On September 3rd, 1862.—Rupees 4666-10-8 for which he received from *Streemom* 10 monthly bills or receipts for Rupees 466-10-8 each on the Bank of Madras, together with an instrument acknowledging the loan and describing it as contracted for charity purposes.

11. These receipts covered the 10 months from 1st January 1864 to 31st October 1864.

12. On the 19th May 1863 a similar transaction took place. The amount then stated to be advanced amounted to Rupees 1866-10-8, for which the plaintiff received four more monthly bills commencing with the 1st November 1864 and ending 1st February 1865.

13. It turned out that no bill had been given for the month of November; but two for December, which was attributed to a "hand mistake."

14. The third transaction was on the 14th July 1863, when 1400 Rupees were said to have been advanced and three bills given from March to May 1865.

15. The fourth and last transaction was on the 4th August 1863, when the plaintiff said he advanced a sum of Rupees 4666-10-8, for which he received ten bills from May 1865 to March 1866.

16. But here one bill was wanting, a fact which could not be accounted for but which suffices to show the reckless character of the dealings.

17. It appeared in evidence that the plaintiff had been lending money to the defendant *Streemom* for some time previously to the first of these alleged transactions, that is to say before the 3rd September 1862, and that none of his previous loans were for charity purposes, notwithstanding which *Streemom* had continuously pledged with the plaintiff his monthly charity receipts as a security for repayment of his private loans.

18. Further, the plaintiff admitted that he had received from the Bank the whole of the money payable on such receipts up to the date of the 1st of those on which he now sued, that is to say, up to the end of 1863.

19. A more audacious attempt than that of the plaintiff to fix the charities with the burthen of the trustees private debt has never come within my experience. It is manifest that when, upon the advice of my predecessor, the Bank declined to honor any more of *Streemom's* Bills, the plaintiff got up his present story of the money having been lent for the charities, and there can be no doubt that the whole of the transactions, both before and after the 3rd September 1862, were of one and the same character.

20. There are several curious coincidences to be drawn in respect to the four sums sued for. One and all exactly correspond with the precise amount of the bills pledged for them respectively; so that the money required for charity purposes on

each occasion was exactly that for which the bills were then given. Again it is curious that in September 1862 and August 1863, the charities should require precisely the same amount, Rupees 4666-10-8; nor will it be forgotten that the precise amount of repairs necessary at each Choultry had been ascertained by the Master in 1859; that the repairs were comparatively trifling, and that *Streemom* had received, on his appointment, ample funds to put all in thorough repair.

21. The plaintiff swore that the principal repairs were at the Choultry at Sydapet: the rest of the money he represented as being required for Pootoor.

22. He was of course obliged to call the defendant *Streemom*, who has for some months been in Jail on account of his inability to render any account of his expenditure of the Charity Funds.

23. *Streemom* point blank denied the whole of the plaintiff's case. He said that the various amounts received by him as consideration for his instruments were insignificant; that he had been regularly cleaned out by the plaintiff, who in addition to the sums received by him on the bills had received about 3000 Rupees from an estate in the hands of the Administrator General, on which *Streemom* had a claim to that extent; and that his furniture, chandeliers, sofas, &c., had all passed into the hands of the plaintiff. In short, he revealed the ordinary course of events between a usurious money lender and a reckless borrower. He admitted that the whole of the money borrowed from the plaintiff was for his own private necessities, and that nothing had been laid out on the charities.

24. *Streemom* had, however, been induced by the plaintiff on a former occasion to make an affidavit in which he substantially admitted the whole of the plaintiff's case as it was now represented. This affidavit had never been filed, or in any way made use of in any proceeding in Court; and I can only look upon it as a voluntary affidavit procured at the instance of the plaintiff with the object of having a hold over *Streemom*.

25. *Streemom* was of course confronted with his affidavit by the plaintiff's counsel, when ensued the melancholy revelation of the most direct and palpable perjury. Both his statements could not possibly stand; there can be no doubt, however, that his affidavit was false, and his testimony in the case before the Court substantially true.

26. After *Streemom's* evidence it was impossible that the plaintiff could recover; and accordingly on the morning of the 1st December, after two days' trial, his case was withdrawn.

27. I desire particularly to bring the circumstance to the notice of His Excellency the Governor in Council, because it furnishes a glaring illustration of a grave defect in the present Procedure Code, by Section 97 of which a plaintiff is at liberty at any time before judgment pronounced to withdraw his suit *without payment of costs*. I need not dwell upon the injury thus inflicted upon defendants who are dragged into Court against their will, and after incurring heavy expense in meeting the plaintiff's case suddenly find themselves burthened with all their costs which ought legitimately to have been borne by the plaintiff.

28. I believe that this point has been brought before the Committee of the Supreme Legislative Council at present engaged in the revision of the Code; but it may possibly be advisable to transmit to the Committee a copy of this report,

requesting particular attention to this paragraph and the three immediately preceding.

29. In the course of Streemom's cross-examination, I elicited facts which showed that the plaintiff's story of advances made for repairing the Sydapet Choultry was physically impossible since this portion of the charity property had actually been sold by the Sheriff on the 19th September 1861, in satisfaction of Streemom's private debt, and the property put into the possession of the purchaser who has ever since retained it. The first advance for repairs it will be remembered was alleged to have been made on the 3rd of September 1862.

30. The facts of this transaction are shortly these:—The several documents were produced and proved. On the 19th March 1860, Streemom mortgaged the Sydapet Choultry to Nagogee Row, for Rupees 4500, Streemom subsequently redeemed this mortgage by borrowing 6000 Rupees from one Iyaloo. Nagogee re-assigned the property on the 7th March 1861. Streemom then mortgaged it on 13th March 1861 to the new mortgagee. In August 1861 he created a further charge of Rupees 1130 on the property. He was sued on the mortgage, and the property sold by the Sheriff on the 19th September 1861 to one Vellary the present holder.

31. The falsity of the evidence with respect to the Choultry at Pootoor was not so striking; but I was in a position had I had the opportunity of going into the defence, to show that it was not less untrue in point of fact than the evidence touching Sydapet.

32. Another startling revelation was made by Streemom. It will be remembered that the Comaleswara Covil Choultry had been taken for public purposes, and that Streemom was directed to purchase a certain house in Nagapah Moodelly Street for 3100 Rupees. The purchase was made in the name of one Vurdamulley alias Rutunum Pillay, a relative and creature of his own. This house Streemom subsequently sold to one Nursemaloo Naidoo for about 1000 Rupees, which Streemom put in his pocket. Nursemaloo pulled down the house, and sold the ground to one Narrainsawmy Naidoo who is now in possession.

33. A more flagrant case of breach of a Charity trust, His Excellency will probably be of opinion, has seldom been brought to light.

34. Upon the case being withdrawn, the Chief Justice remarked that Streemom had been guilty of the grossest fraud, and intimated that if the case had taken the ordinary course, the Court would have directed him to be committed on a charge of perjury. His Lordship further observed, that Streemom had been clearly guilty of criminal breach of trust as a Public servant (Receiver appointed by the Court), and that it was a fit case to make an example of.

35. In these observations His Excellency will probably concur. I moved to have the whole of the documents impounded in Court, which has accordingly been done. A more shameless case it is difficult to conceive. Fortunately for the ends of Justice, it is as easily capable of proof as it is audacious; and I only wait for His Excellency's instructions to take the necessary steps for bringing Streemom to trial at the ensuing Sessions.

36. I deeply regret to have to suggest this course, because I have known the offender from his childhood, and his late uncle Streenevassa Pillay was one of my oldest friends in this country. But the case is so bad that my public duty leaves me

no other course. If such a case as this is to go unpunished I know not any case in which an offender ought hereafter to be prosecuted.

37. It will doubtless occur to His Excellency, that beyond the punishment of Streemom, steps ought to be taken to recover for the charity its property improperly sold. The Master is at present employed in appointing a new Receiver, and I am only awaiting his report, and the appointment of a person who will inform me, to take the necessary action against the purchasers for the recovery of the property. The sales were, of course illegal and invalid, and they will be set aside.

38. Streemom found sureties on his appointment. But I am afraid they are mere men of straw, and that it would be a mere waste of time and money to pursue them. On this point I shall confer with the Government Solicitor to ascertain what prospect there is of obtaining anything out of them or either of them.

No. 27. ORDER THEREON, 6th January 1865, No. 18.

The Governor in Council directs that the Advocate General will take the necessary steps for instituting a prosecution against C. C. Streemom Teruvengada Mooneapah Ramoonajah Dasen for Criminal Breach of Trust in connection with the charities referred to in the foregoing letter. A copy of the Advocate General's letter will be forwarded to the Government of India, with reference to the defect pointed out by him in the 97th Section of the Code of Civil Procedure.

2. The Governor in Council requests that Mr. Norton will report the result of any steps that may be taken by him for the recovery of the property of the charity.

(True Extract).

Chief Secretary.

To the Advocate General.

„ Government Solicitor.

„ Legislative Department.

Exd. R. H. Lee.

N^o 2670-

From the Advocate General -
dated 19th December 1864 -

For Orders

The warrant should be prosecuted
no doubt - and steps taken to get
as much of the property as possible
out of the fire -

The view taken of the Advocate Genl
in para 27 seems incorrect. By
Sec 97 of the Civil Procedure Code
a suit can only be withdrawn before
judgment by a Plaintiff or
his satisfying the Court that there
are sufficient grounds and on

and then as to costs in the
Court may deem proper. I don't
see that the text or needs emen-
-dation

"Freedom" named, I think, be prosecuted,
as proposed by the Adm. General.

The Adm. General however, seems to be
right in his remarks he has made relative
to the defective operation of Section 97 of the
Civil Code. The Court, as I read that Section,
has power to make an order in respect of
costs, when a Plaintiff moves to withdraw his
suit & seeks permission to bring a fresh
one. But, where, as in the instance under
notice, the Plaintiff withdraws his action without
seeking to secure such permission, the penalty
he pays, is a prohibition against bringing
a fresh suit for the same matter. In
such a case, the Code is silent as to the

costs, and without specific authority to
make an order for them, it may be doubted whether
a Court could spend it. The defect if it be one,
and I think it is one, - seems to have escaped
notice by the several Judges who have submitted
to Judge their suggestions for amending the Bill
for amending the Civil Code, and I don't recollect
that it attracted attention when similar
suggestions were sent in by the High Court.

Appear, then, that the Adm. General
is correct in what he has stated in para.
27 & 28 of his Court's under remark, & being
indecidable to adopt the course he advises,

W. Del

per M

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following
letter from the Advocate
General, Madras.

Here enter 19th Decr 1865.

Order thereon 6th January 1865 No. 18.

The Governor in
Council directs that the
Advocate General will take
the necessary steps for in-
stituting a prosecution against
C. C. Theemom Seruvengada
Mooneapah Ramoonojah
Dasen for Criminal Breach
of Trust in connection with
the charities referred to in
the foregoing letter. Acopy
of the Advocate General's

7
Letter will be forwarded to
the Government of India,
with reference to the defect
pointed out by him in the
57th Section of the Code
of Criminal Procedure

The Governor in
Council requests that Mr.
Watson will report the result
of any steps that may
be taken by him for the
recovery of the property of the
charity.

cc the Advocate General - Sept 4/65
The Government Solicitor - Sept 4/65 in Ind
Lyon & Co. 3/1/67

Special 1865. Department.
No. 18.

PROCEEDINGS OF GOVERNMENT.

File 120.
No. 411.

Dated 6 January 1865.

Directing the Associate
General to take the necessary
steps for instituting a
prosecution against C. C.
Heinemann & Co. for
criminal neglect of duty
in connection with certain
charities. -