

MADRAS RECORD OFFICE.

Government of Madras.

Provincial DEPARTMENT.

G.O. No.	840	Press
		~~Mis~~
Dated	12/6	1917

Not to be folded or roughly handled

No. 84. Read the following letter from G. BANBURY, Esq., Acting Magistrate of Tinnevely, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government Saint George; dated Palamcottah, 17th May 1865, No. 136.

I have the honor to request that the following case may be laid before the Advocate General for the declaration of his opinion upon the legal point involved therein.

2. The Deputy Magistrate's precis of the case I herewith forward, and have only to make the following brief remarks thereon. The question arose from a charge actually made; it is not an hypothetical case.

3. A and B two Court Vakeels in partnership mutually agree that when B is separately retained he shall deliver over half the fees to A. Upon B's return from holding a brief at an out-station he furnishes a Memorandum to "A" stating that the fees he earned for conducting a certain case were only Rupees 50; whereas from information subsequently obtained A produces testimony tending to show that B's fees in the case were Rupees 100. This allegation, however, B denies; still maintaining his remuneration was only Rupees 50. A now brings a criminal charge against B, under Section 406, of criminal breach of trust.

4. My first impression was certainly that the whole matter was one of purely Civil nature, and consequently not cognizable magisterially; but the comments by Mr. Mayne upon this Section cause the doubts which have prompted this reference. The remarks which bear upon this case particularly are as follows:—

"1. A trust has been defined by Lord Coke as 'a confidence reposed in some other.'"

"2. I conceive that no universal rule can be laid down as to whether the breach of an implied trust is criminally indictable. Every case will, in my opinion, resolve itself into a question of fact: did the party know that he was in fact holding the property under a trust, and did he wilfully violate the trust, intending thereby to defraud?"

"3. The fact that the defendant has himself a joint interest in the money entrusted to him is no defence, if he fraudulently applies it in violation of the terms of the trust."

5. The question appears to resolve itself into this one legal point upon which I now solicit a solution:—"Was B trustee for A of the share of the fees due to the latter as per mutual arrangement?" If B is ruled to be a trustee he is doubtless liable to be criminally indicted; if not, no magisterial charge can be entertained.

Question for the opinion of the Advocate General in a case pending before the Deputy Magistrate of Tinnevely.

1. A and B, two Vakeels of the Civil Court of Tinnevely, entered into an agreement that they were to be partners in their profession as Pleaders, and B was to receive 25 per cent. of the fees. It was afterwards agreed between them that in cases in which B was exclusively engaged, he was to take half and pay the other half of the fees to A. In a Criminal case, B was exclusively engaged, and, in a Memorandum furnished by him to A, he stated on the debtor side that the fee derived by him in the above case was 50 Rupees, and A's share thereof 25 Rupees.

2. A now prefers a criminal charge against B, stating that B had received 100 Rupees in the case in question; that B was his trustee for the balance of 25 Rupees not mentioned in the said Memorandum; and that as he B had appropriated the same, knowing that he had no claim whatever thereto, he is guilty of Criminal breach of trust, under Section 406 of the Indian Penal Code.

*Proceedings of the Madras Government, Judicial Department,
12th June 1865.*

3. A admits that he holds certain deposit monies received in other cases in which B is entitled to a share, and these are not alluded to in the Memorandum, and it does not appear from the parties that any final balance has been struck by the parties or their attorneys, and, under

5. Copy of the Memorandum furnished by B, and alluded to in the question, is enclosed, omitting names.

(Signed) T. VENCATROW,
Deputy Magistrate of Tinnevely.

Copy of the Memorandum alluded to in the question.

Due to me by A.

Due to A by me.

Criminal Case, Tuticorin.....	40 Rs. 12 0 0	Reverend Trinkels* case to	
		Virdoochapatty.....	50 Rs. 25 0 0
Revenue case to the Collector.	100 ,, 30 0 0	Appeal case, Small	,, 35 0 0
			not yet realized.
Small appeal case.....	25 ,, 7 8 0	O. S. No. 9 and 11 on the file	
		of the Principal Sudder	
Total...	49 8 0	Ameen's Court if realized.	100 Rs. 50 0 0

* This is the item now in dispute.

(Signed) T. VENCATROW,
Deputy Magistrate.

No. 85. ORDER THEREON, 12th June 1865, No. 840.

The Governor in Council is not prepared to refer the question put in the foregoing letter to the Advocate General. Officers of the Magistracy must decide all cases that come before them to the best of their judgment, leaving it to the parties to appeal if dissatisfied.

(True Extract).

Chief Secretary.

To the Acting Magistrate of Tinnevely.

Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Recd. from the Acting Magistrate of Tinnevely.

Recd. under 17th May 1865.

Order received in June 1865. P. 40.

The Governor referred to ref.

free

best of their judgment to appeal if dissatisfied.

W. M.

To the Acting Magistrate of Tinnevely desd 17/6

Under 1865. Department.

No. 240.

PROCEEDINGS OF GOVERNMENT.

Journal
Sept. 10/61.

Dated 2 " 1865.