

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1770	Press ~~Mis.~~
Dated 5 - 11 - 19 1867	

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department.

5th November 1867.

Read again letter from the Magistrate of Madura, dated 17th September, and record.
ed in Proceedings of 2nd October 1867, No. 1581.

Read also the following papers :—

No. 57. From E. C. G. THOMAS, Esq., Civil Judge of Madura, to the Chief Secretary to Government, Fort Saint George ; dated Madura, 11th October 1867, No. 238.

In reply to the 2nd paragraph of the Orders of Government of 2nd October 1867, No. 1581, I have the honor to state that Doctor Joseph, a Barrister of the Inner Temple, having been enrolled as an Advocate of the High Court, has a right to plead in my Court without any permission of mine.

2. He first appeared in this Court during my tenure of office.

No. 58. From Surgeon J. M. JOSEPH, M. D., LL. D., Zillah Surgeon of Madura, to the Chief Secretary to Government, Fort Saint George ; dated Madura, 21st October 1867.

With reference to the Proceedings of the Madras Government, Judicial Department, No. 26, dated 2nd October 1867, and the Order of the Honorable Governor in Council, of even date, thereon, No. 1581, directing that a copy of the letter from the Magistrate of Madura, dated Periakolum, 17th September 1867, should be sent to me for such observations as I may desire to offer, I have the honor to state that—

1. I did, and do occasionally, appear as Barrister (having been called to the English Bar by the Inner Temple after a regular course of study, and after having been, either in May or in June last, enrolled as an Advocate of the High Court of Madras) in the Madura Courts, in civil cases, when I have leisure to attend them without in the least allowing them to interfere with my other duties.

2. As to the statement that I appear in criminal cases, I have to observe that I did so only in four cases, namely two of criminal trespass, in neither of which the accused were confined ; one of preliminary inquiry into a theft in a Pagoda ; and one grievous hurt, which occurred before my joining the District, referred to in paragraph 4 of the Magistrate's letter.

3. I may here state that, before the trial of the Pagoda theft case above mentioned, I had resolved never to appear in criminal cases in future, and apprized Mr. Burrows, the Assistant Magistrate, of this my intention more than a month and a half ago.

4. I may also observe that the reason why I employed my leisure hours (which I looked upon as at my own disposal) in taking up a few cases is that I had been given to understand that another Military Officer, who is also a Barrister, in Staff employ in Burmah, was practising in the Courts there, and that the Government knew of this, and did not object to it.

5. As to the 2nd paragraph of the letter, I beg to state that the only prisoners under conviction for whom I appeared are two in number ; and for these, I did so only in the preliminary inquiry before the Native Town Sub-Magistrate, having declined to defend them at the Sessions, in accordance with the resolution referred to above.

6. As regards the discipline maintained by me in the Jail, I can only appeal to facts, and not to possibilities as the Magistrate is pleased to do.

Madura

5th November 1867.

7. The case of grievous hurt upon which the Magistrate lays such stress in paragraph 4 of his letter under observation is one that occurred in June last, prior to my joining the District. It was entirely under the treatment of the Native Surgeon who was in every respect competent to give evidence in it and actually did so. My evidence, therefore, was altogether unnecessary, and the certificate I gave, and which was before the Court (copy of which I annex, marked A) will itself show whether there was any leaning on my part towards any of the accused persons. Under these circumstances, the Magistrate's observations respecting me are obviously unfounded.

8. The entire defence in the above case was conducted by a Barrister whom I assisted in the Magistrate's Court merely, and that too in behalf of two of the defendants only, who were acquitted, and never came into Jail at any stage of the proceedings; this occurred only a few days after my arrival at Madura, and previous to my determination to abandon criminal practice altogether.

9. This happened in June last, and the investigation was before a subordinate of the Magistrate himself. Why did not the Magistrate, if he thought I was doing wrong, state his objection to me, or report to Government immediately, instead of waiting till 17th September? If he was interested in the public welfare, this delay would not have occurred—either he must have been guilty of gross neglect of duty, or looked upon it as harmless, as indeed I did, till he was induced by designing individuals to make it a matter of official representation. Had he given me the slightest warning, as an official desiring to maintain purity in the administration of justice, and to preserve discipline in the Jail, would and should have done if he thought my conduct objectionable, I would have taken the hint, and have thought no more of a practice which, after all, was a matter of little or no moment to me.

10. As regards the 5th paragraph, the most stringent inquiry will prove that the most vague, and, I must in justice to myself add, most unjust, assertion is totally unfounded. If there was any favouritism, why are not the individuals named, and details stated as to how this favouritism was shown? Indeed, why did not the Magistrate report the result of his own visit to the Jail, and of his inquiry into this very matter of favouritism?

11. I respectfully protest against one Government Officer entertaining against another non-official reports, and impeaching his character by mere injurious insinuations, without specifying the charges, so as to enable him to meet them openly, honestly, and fairly. Why is not the official report referred to forwarded to Government, so that I may have the opportunity of remarking upon the only tangible thing that could justify the representation of the Magistrate against me, and why is this vaguely mixed up with non-official reports? The fact is, the official report was founded upon an ignorance of the Jail Rules regarding diet, and imputed blame to me for allowing food to be brought to the prisoners under trial from without, though this is quite regular under the following Jail Rule:—"Officers in charge of Jails will exercise their own discretion in permitting any indulgence in regard to food to prisoners under trial and civil defaulters, but without their sanction no person is to be permitted to take his meals outside the precincts of a Jail, or to receive food from without. When any prisoner under trial is provided with food by his friends under this permission, no ration whatever is to be issued or charged for

5th November 1867.

"him." I did not go even so far, but only allowed it in the cases of prisoners undergoing preliminary inquiry before the Native Town Sub-Magistrate who were unable to cook for themselves, and who were sent to Jail because the Lock-up was in a "filthy" state—vide Jailer's report, marked B.

12. I have also to state that, immediately on the receipt of the Proceedings of Government, I wrote to the Civil and Session Judge, and requested him to proceed, as soon as practicable, in his official capacity, both to the old and new Jails, and make the most searching inquiry regarding the statements set forth in the Magistrate's letter. His reply, marked C, is herewith submitted.

13. As to the 6th, 7th, and 8th paragraphs, I venture to submit that the Magistrate of Madura has, in accepting the statements of Mr. Colquhoun and Vencatasamy Naick, and in putting forward their slanderous assertions and base insinuations respecting a matter that concerns me in my private capacity only, quite gratuitously and unwarrantedly gone out of the sphere of his official limits, and has thus given encouragement and importance to a grossly libellous account of a conversation which is on the face of it so improbable, and so maliciously false, that it is a matter of surprise how the Magistrate could have consented to accept it, and put it forward with the stamp of his own belief.

14. I would treat the matter with the contempt which it deserves, but, for the satisfaction of His Excellency the Governor in Council, I deny most emphatically these slanderous statements and base insinuations. The only part of the story which is true is that, when Mr. Colquhoun and Vencatasamy Naick pressed me to accept a case against Mr. Fischer (who was not on his deathbed, or even very ill) I replied that, as a Barrister, I would do so, and, if Vencatasamy Naick would leave the matter to me, that I would try and get my friend Mr. Fischer to recall his official letter to the Collector, if Vencatasamy Naick would consent to drop the prosecution.

15. That such (what I have above stated) was my object is clear and most conclusive from copy of letter of Mr. Fischer's own son, marked D, who is the present lessee of the Shevagunga Zemindary, and a Pleader of the Civil Court. Can any one with a grain of sense believe that, if I intended to make any such base proposal as stated, I should have consented to meet Vencatasamy Naick at Mr. Colquhoun's house, and thus secure the presence of another, and that other, as I shall presently show, on indifferent terms with me?

16. It now occurs to me that the proposal pressed upon me by Mr. Colquhoun in the first instance, and the subsequent desire expressed by Vencatasamy Naick to meet me there, was a part of the plot to give colour to a preconcerted story injurious to me, or why should Vencatasamy Naick, if his conduct was *bona fide*, and if there was no conspiracy beyond asking the Collector's permission to bring the action, enter into any details of any conversation so damaging to the very person whose services he was apparently so anxious to secure, and why should Mr. Colquhoun, who has officially nothing to do with the Collector, separately bring this matter to his knowledge? Does not this clearly prove a previous arrangement to get up a story to injure me?

17. Here, I would respectfully solicit the attention of His Excellency the Governor in Council to the Collector's admission of having received reports against

an Officer in Her Majesty's Service from his own Native subordinate, and taking them for granted without any explanation from him; nor can I refrain from stating that Mr. Colquhoun was a man known by the Collector to be hostile to me.

18. I should indeed be sorry to reflect on any one's character, or violate the sanctity of private life; but I consider myself perfectly justified, when put on the defensive, to show the real character of the men upon whom the Collector has chosen to rely.

19. Vencatasamy Naick is the Sheristadar of the Collector, whose character is too well known throughout the whole District, and who, on several occasions, has been charged with corruption, and against whom, I am informed, there are now pending inquiries in the Board of Revenue, regarding certain charges of fraudulent acquisition of property. It is well known that the loan of 40,000 Rupees from the funds of the Lying-in-Hospital and Civil Dispensary to the insolvent Zemindar of Shevagherry, at a very low rate of interest, and, if I remember rightly, for 20 years, which I was called upon to report to Government, was entirely negotiated by Vencatasamy Naick, and although it was represented to Government, so far back as February or March last, that the money would soon be forthcoming, it has not yet been paid; and I have on several occasions informed Vencatasamy Naick that, if the money was not paid up, I would bring the matter to the notice of Government, and that I was determined that the Hospitals should not lose this large sum of money.

20. I regret much in being compelled to lay before Government the character and conduct of Mr. Colquhoun, the intimate friend and constant companion of Vencatasamy Naick. Mr. Colquhoun, who was convicted by the High Court of adultery, and sentenced to imprisonment, is now leading a notoriously scandalous life, in defiance of all decency and propriety, and to the disgust of every right-minded man in the place, by daily parading about his mistress, Mrs. Coleman, who is in an advanced state of pregnancy, in an open carriage, in company with his own wife, in the public streets, drives, &c., where the wives and daughters of Her Majesty's Civil and Military servants, as well as those of other gentlemen, are obliged to meet them, and witness this outrage on public morality.

21. I am not surprised at Mr. Colquhoun endeavouring to injure me by supporting the statement of Vencatasamy Naick, as I had reported him for his irregularities in connection with the Jail not long ago—vide correspondence marked E. He also trumped up a charge against one of my Dressers, which was proved to be false, as is shown by the annexed correspondence, marked F.

22. It is melancholy to see that the chief Civil Executive Officer of so important a District as Madura should be influenced by men of such position, antecedents, and character as Mr. Colquhoun and Vencatasamy Naick, to advance the statements contained in paragraphs 6, 7, and 8 of his letter, especially after I had, in a friendly way, warned the Collector of this very man (Mr. Colquhoun) in April last, when I was on the eve of leaving Madura for good, as I then thought, and informed him that the whole town was astonished at the Collector's driving about with Mr. Colquhoun, and that the rumour was that the Collector was under his thumb, and that appointments were made through his influence.

23. It astonished every one to see the Collector, only the other day, vote the admission of a man like Mr. Colquhoun into the Civilian's Book Club. I need not say that he was, as a matter of course, rejected.

24. The judgment of the Session Court of Salem, in appeals from certain decisions of the District Magistrate of Salem (the present Magistrate of Madura), in Cases 43, 46, 53, 55, and 57, clearly shows that the Magistrate is not sufficiently careful in the reception of statements injurious to the character of public servants, and that, in such matters, he is credulous to a degree. The judgment is herewith submitted, marked G.

25. I have also to state that, since the receipt of the Proceedings of Government under consideration, Mr. Colquhoun, on three distinct occasions, told me that the Collector's statements were totally at variance with what had occurred in his house, and anxiously invited official correspondence, evidently with the object of gaining the opportunity of putting on paper, which he has actually done, the story which he had told the Magistrate. But I will not take up the time of the Government by entering into any further details in respect of a matter so purely personal, especially as I wish to make this slander a subject of judicial inquiry, and I, therefore, entreat His Excellency the Governor in Council most respectfully to grant me permission to prosecute Mr. Colquhoun and Vencatasamy Naick for defamation against my private character, and bring them to justice.

26. In conclusion, I beg to state that, though it would be hard to give up my civil practice, and thus abandon the chance of improving myself, during my leisure hours, in a profession which has cost me a great deal, and may become useful to me hereafter, yet, I am ready to resign all connection with the Courts, and to give up legal practice of any kind, if the Government should deem it expedient that I should do so.

Referred to the Inspector General, Indian Medical Department, who will be requested to state whether any communication has taken place between himself and Dr. Joseph as to Dr. Joseph being allowed to practice in the Courts of the Madura District while employed as Civil Surgeon at Madura, and, if so, the nature of the communication made to Dr. Joseph.

FORT SAINT GEORGE,
29th October 1867.

(Signed) R. S. ELLIS,
Chief Secretary.

No. 59. From W. MACKENZIE, Esq., M. D., Inspector General, Indian Medical Department, to the Chief Secretary to Government, Fort Saint George; dated Fort Saint George, 29th October 1867, No. 422.

In reply to your reference of this date, on the subject of Dr. Joseph's case, I have the honor to submit the following statement.

2. In an official conversation with me in my office here, about three or four months ago, Dr. Joseph asked whether I would have any objection to his practising in the Courts at Madura as a Vakeel.

3. In reply, I informed him that if he contemplated practising in this way, while holding the position of Zillah Surgeon, the proceeding was one I should consider highly objectionable and could not possibly sanction.

4. He replied that he had anticipated this would be my view of the matter, and then asked whether I would object to his being enrolled as a Barrister in the High Court.

5. This I did not oppose, knowing that he would have no opportunity of appearing there while employed as a Civil Surgeon.

No. 60. ORDER THEREON, 5th November 1867, No. 1770.

From the papers above recorded, it appears that Dr. Joseph, the Zillah Surgeon at Madura, who is also Superintendent of the Jail, has been practising as a Vakeel in the Civil and Criminal Courts at Madura. The Governor in Council learns with surprise and grave displeasure that an Officer in Dr. Joseph's position should have pursued the course of conduct which is exhibited in the correspondence above recorded.

2. Dr. Joseph would, in the opinion of Government, have acted with impropriety and imprudence if, holding the office of Zillah Surgeon at Madura, he had merely practised in the Civil Courts without the sanction of his official superiors, such an arrangement being in many respects inconsistent with his position and duties as a Medical Officer in charge of a civil station; but the Governor in Council observes that, in thus practising in the Civil Courts, Dr. Joseph acted in direct contravention of the verbal opinion delivered to him, at an official interview, by Dr. Mackenzie, the Inspector General of the Medical Department, who informed Dr. Joseph that his practising as a Vakeel while holding the appointment of Zillah Surgeon was a proceeding which Dr. Mackenzie considered highly objectionable, and which he could not possibly sanction. If, therefore, Dr. Joseph's practice as a Vakeel had been limited to the Civil Courts he would have, in aggravation of a professional irregularity, been guilty of an act of disobedience to the instructions of the Officer at the head of the Medical Department.

3. Dr. Joseph did not, however, limit his practice to the Civil Courts. Holding the office of Superintendent of the District Jail at Madura, he has appeared as a Vakeel in certain criminal cases, in which some of the accused were actually, and others might have become, subject to his official superintendence and control.

4. The Governor in Council considers that such a course of action was highly unbecoming in an Officer in Dr. Joseph's position, and altogether inconsistent with the principles which should have guided his conduct.

5. The Governor in Council cannot permit a Medical Officer who has shown so little discretion and sense of his official duty, and who has so deliberately disobeyed the orders of the Head of his Department, to remain in the comparatively independent position which Dr. Joseph now occupies, and he accordingly resolves to direct that Dr. Joseph's services be replaced at the disposal of His Excellency the Commander-in-Chief.

(True Extract).

Chief Secretary.

To the Magistrate of Madura.
" Inspector General, Medical Department.
To Surgeon J. M. Joseph, M. D.
To the Military Department.

Ed. J. H. Burns.

From

Surgeon J. M. Joseph M. D. & Co.

Zillah Surgeon of
Madura

The Chief Secretary to Government
Fort St. George

Sir, Madras

With reference to the Proceedings
of the Madras Government Judicial
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and the Order of the Honorable Governor in
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Madras

Madura Courts, in Civil Cases, when I have leisure to attend them without in the least, allowing them to interfere with my other duties.

2 As to the Statement that I appear in Criminal Cases, I have to observe that I did so only in four cases namely Two of Criminal Trespass in neither of which the accused were confined, One of Preliminary Enquiry into a Theft in a Pagoda and one of Grievous Hurt which occurred before my joining the District, referred to in Para 1. of the Magistrate's letter.

3 I may here state, that before the trial of the Pagoda Theft case above mentioned I had resolved never to appear in Criminal Cases in future and apprised Mr. Burrows the Asst. Magistrate of this my intention more than a month and a half ago.

4 I may also observe that the reason why I employed my leisure hours (which I looked upon as at my own disposal) in taking up a few cases is, that I had been given to understand that another Military Officer who is also a Barrister in Staff Employ. in Burmah, was practising in the Courts there, and that the Government knew of this and

and did not object to it.

5 As to the second Para of the letter I beg to state, that the only Prisoners under conviction for whom I appeared are two in number, and for these, I did so only in the Preliminary enquiry before the Native Town Sub. Magistrate, having declined to defend them at the Sessions in accordance with the Resolution referred to above.

6 As regards the discipline maintained by me in the Jail I can only appeal to facts and not to possibilities as the Magistrate is pleased to do.

7 The case of grievous Hurt upon which the Magistrate lays such stress in Para 1. of his letter under observation is one that occurred in June last prior to my joining the District. It was entirely under the treatment of the Native Surgeon who was in every respect competent to give evidence in it and actually did so. My evidence therefore was altogether unnecessary and the certificate I gave and which was before the Court (copy of which I annex marked A) will itself show whether there was ^{any} leaning on my part towards any of the accused persons. Under these circumstances the Magistrate's

Magistrate's observations respecting me are obviously unfounded.

8 The entire defence in the above case was conducted by a Barrister whom I assisted in the Magistrate's Court merely, and that too, in behalf of 2 of the Defendants only, who were acquitted and never came into Jail at any stage of the proceedings, this occurred only a few days after my arrival at Madras and previous to my determination to abandon Criminal Practice altogether.

9 This happened in June last and the investigation was before a Subordinate of the Magistrate himself. Why did not the Magistrate if he thought I was doing wrong, state his objection to me or report to Government immediately instead of waiting till 17th September.

If he was interested in the Public welfare this delay would not have occurred, either he must have been guilty of gross neglect of duty or looked upon it as harmless, as indeed I did, till he was induced by designing individuals to make it a matter of official representation. Had he given me the slightest warning as an official desiring to maintain purity in the administration of justice and to preserve discipline in the Jail, would

has in accepting the statements of Mr Colquhoun and Venkatasamy Naick and in putting forward their Slandorous assertions and base insinuations respecting a matter that concerns me in my private Capacity only, quite gratuitously and unwarrantably gone out of the sphere of his official limits, and has thus given encouragement and importance to a grossly libellous account of a conversation which is on the face of it so improbable, and so maliciously false, that it is a matter of surprise, how the Magistrate could have consented to accept it and put it forward with the stamp of his own belief.

14 I would treat the matter with the contempt which it deserves, but for the satisfaction of His Excellency the Governor in Council, I deny most emphatically these slanderous statements and base insinuations. The only part of the story which is true, is, that when Mr Colquhoun and Venkatasamy Naick pressed me to accept a case against Mr Fischer (who was not on his deathbed or even very ill) I replied that as a Barrister I would do so, and if Venkatasamy Naick would leave the matter to me, that I would try and get my friend Mr Fischer to recall his official letter to the

the Collector, if Venkatasamy Naick would consent
to drop the prosecution.

15 That such (what I have above stated)
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Madras } I have the honor to be
21 October } Sir
1864 }
Your most obedient servant
J. M. Joseph M. D
Zillah Surgeon

preliminary enquiries into the complaints, and the public prosecutor employed to conduct the prosecutions; but the result is that in 14 cases out of 20 brought before the magistrate, the accused has been discharged, and in the 6 in which he has been convicted, the convictions will not have been upheld in appeal. The magistrate describes the petitioner's career as one of tyranny and corruption; but there is no evidence on the record to show, that he was ever degraded or punished, or ever that any charge of oppression or corruption was ever preferred against him. In the absence of such evidence it may reasonably be inferred from the fact of his having been permitted to remain in employ for 34 years, that his character was unblemished so far as any actual proof of delinquency is concerned. Such considerations however can have no weight in criminal cases except to enhance or diminish the punishment after conviction. Now, whether the time at which the present complaints have been made, or the manner in which they have been brought to light, or the clumsy attempts made to connect them with some official act of the Petitioner, be taken into consideration; they can, I think, leave no other impression on the mind than that the accusations are without any reasonable or probable foundation, and that the witnesses are utterly unworthy of credit. The only way in which a Court can deal with such complaints with any hope of passing a safe decision is by estimating the probability or improbability, from the whole circumstances of the case, of the offence having really been committed. To allow to the evidence of a complainant and his witnesses deposing to facts alleged to have taken place some years before the same weight that is given to the testimony of persons narrating matters of recent occurrence would be contrary not only to judicial practice but also to common sense. It stands to reason that the credit of a witness is very materially affected by the circumstances under which he gives his evidence, and suspicion naturally attaches to evidence which has been long withheld. The present complaints are also rendered incredible by the fact that, if true, the complainants would have had more than ordinary reasons for taking immediate proceedings against the Defendant. A person robbed has often no expectation of recovering his property, and silence might in such a case be quite consistent with the fact of a robbery having been actually committed; but where a man has paid a large sum of money in order to free himself from a false charge or to obtain immunity from official persecution, it is obvious that he has the strongest of all inducements for seeking early redress; and the absence of any complaint under such circumstances at the time when the money is alleged to have been extorted or corruptly received, raises a reasonable presumption that no payment was in reality made. The reason assigned for the delay in preferring these complaints is, that the complainants were afraid to prosecute the Defendant while he was in authority, lest he should do them some injury; but a moment's reflection will suffice to show that this is a mere pretence. Thus, they have now come forward with all the elements of a strong case; witnesses speaking to the actual payment of the sums to the accused, and particular official transactions being referred to as forming the ground work of the offences alleged to have been committed. Now it is perfectly clear, that if the evidence were true, and it was really available at the date of the offence, the knowledge of its weight and the confidence which always accompanies a just cause would completely have removed from their minds any fear of future molestation by the certainty that punishment would follow, and further oppression be rendered impossible. It is also incredible that so many persons should have been under the influence of fear. In a solitary instance of extortion the sufferer might possibly be a person of too timid a disposition to complain of the injury; but here the parties are many in number, and if there had been any truth in their allegations, they would doubtless have heard of each other's wrongs and have combined together to bring the oppressor to punishment; or it is reasonable to suppose that at least one among them would have had the moral courage to complain. Another element of improbability consists in the class of persons from whom the money is in most of the cases said to have been taken. It is quite intelligible that a corrupt public servant should receive a bribe from a rich suitor; but it seems in the last degree improbable that he should exact money from his own subordinates. A further circumstance which tends to deprive the story of the complainants of the least shadow of probability is, the absurd disproportion between the sums alleged to have been exacted and the service which was to be rendered. Thus, in case No. 46, the complainant had simply been fined two Rs. for

carelessness in keeping his accounts, and yet he now asserts that while the enquiry was pending the Defendant extorted from him the sum of three hundred Rupees. The complaints against the Defendant were not only not made at the time at which the offences are said to have been committed; they were not even preferred when it was known that the Defendant was shortly to be pensioned, nor for some time after he had quitted office. It was only after he had petitioned the Board of Revenue to be allowed to defer taking his pension that efforts were first made to effect his ruin. I consider that the reference of these cases to the Police for preliminary enquiry was inexpedient and not calculated to advance the ends of justice, but rather the reverse. When the Magistrate is satisfied that an offence has been committed, but is unable to proceed to a satisfactory decision of the case, either on account of the insufficiency of the evidence for conviction, the non-apprehension of the real offender, or from any other cause, it is proper that due enquiry should be made before the accused is discharged or the case dismissed; but in the present instance there was nothing for the Police to trace out, and all that was necessary was for the Magistrate to hear the evidence tendered. If this course had been adopted; I think that there would have been fewer complaints; and one great source of doubt as to the truth of the charges would have been avoided. The complainant, in appeal No. 29, expressly deposes that he had no intention of complaining, and did not complain either to the District Magistrate or any one else; that he merely mentioned the matter in his deposition in another case; that he did not complain of his own accord before the Superintendent of Police, but that the latter sent a constable to call him and told him that he had heard that he had given twenty pounds to the Defendant. It is obvious therefore that but for the intervention of the Police this charge would never have been preferred: and the natural inference is, that the evidence by which it is now supported did not before exist. A similar declaration was made by the complainant in case No. 58 dismissed by the Magistrate. There the complainant admitted that he had not gone before the Superintendent of Police of his own accord, but had been taken by the Inspector; and that before that he had never complained to any one that the Defendant had extorted money from him. The Inspector of Police also deposed that the Taluq Sub-Magistrate had sent for the complainant, and that when he arrived he took him before the Superintendent of Police. If the Magistrate gave general directions to the Police to enquire into all complaints against the Defendant, without expressly referring each individual case for preliminary enquiry, he made in my judgment an erroneous use of the power vested in him by Section 133 of the Code of Criminal Procedure. And if the Police received any of the complaints without such express reference, I think they exceeded their jurisdiction. The consequence to the Defendant has been that he has had to contend with many influences which could not so easily have been opposed to him if the few complainants who at first came forward had been left to substantiate their complaints in the usual way: there was every reason for pursuing this course on account of the peculiarly suspicious circumstances under which the charges were preferred. If the Magistrate had had reasonable grounds for believing that the Defendant while in office was abusing his authority, he would doubtless have been warranted in making the most searching enquiries into his conduct and encouraging injured parties to appear and declare their grievances; but as no such steps were then taken and the Defendant was permitted to take his pension, it must be inferred that the Magistrate was not aware of any such abuse by the Defendant of his official powers, and the presumption of law in favor of his innocence strengthened by the absence of any complaint in respect of these alleged acts for so many years should have obtained for him, I think, a different mode of treatment from that actually adopted. After weighing the evidence adduced against the Defendant in the five cases now pending before me, I have come to the conclusion that there is not a word of truth in any of the charges, and that he is the victim of a conspiracy formed to prevent his return to office. I consider that no explanation such as a Court of Justice can admit has been given for the unreasonable delay in preferring these complaints; and that on this account, and on account of their intrinsic improbability and the fact of their being spoken to mainly by interested witnesses, they must be rejected as incredible. I also consider that it is patent on the face of the records that the complainants are mere tools in the hands of persons who are using the law as a means of promoting their private ends. Great discredit is brought

IN THE COURT OF SESSION AT SALEM.

28th November 1866.

CRIMINAL PETITION Nos. 26 to 30 of 1866.

B. TEAGARAJA PILLAY PETITIONER.

Appeals against the Sentences of the District Magistrate of Salem in Cases Nos. 43, 46, 53, 55 and 57.

JUDGMENT.

The first point which attracts my attention in these cases is the late hour at which the complaints have been preferred. Thus, the offence in case No. 26 is affirmed to have been committed in 1863; the circumstances with which it is connected are found to have occurred in 1862; and the complaint is not made till 1866. There has also been more or less delay in the other cases. There is doubtless nothing in law or practice to prevent a person being prosecuted and punished for an offence committed some years back; but in every such case, as far as my experience goes, the facts must have been made known at the time of their occurrence, and some steps must have been taken by the injured party to bring the offender to Justice; otherwise the Magistracy will not, as a rule, entertain the complaint. Thus, if a man complain of a robbery, or any other offence, said to have been committed some years before, and it appear that no information was given of such offence at the time of its alleged commission, it is I believe the universal practice to refuse to subject the accused to Criminal Proceedings. If this protection is afforded to private individuals, much more in my opinion should it be thrown around a public servant every act of whose official life must necessarily be prejudicial to the interests of one or more of persons appearing before him as litigants, and thus tend to engender feelings of animosity against him. The reasons for refusing a summons in the case of antiquated charges are certainly very cogent and important, first, the long reticence of the party complaining renders it highly improbable that any offence has been committed; Secondly, facilities are afforded for fabricating false evidence and tutoring witnesses, which do not exist where information is immediately given and an investigation at once held; Thirdly, the accused whose position the law always regards with anxious solicitude is placed at a great disadvantage if required to prove his innocence under such circumstances. Of course the case is totally different where an offence is directly reported, and evidence of the corpus delicti obtained, but the offender is either unknown or evades justice for a series of years. All doubt as to the actual commission of the offence is there entirely removed, and the evidence against the accused is such as was made known at the time, or new evidence of a circumstantial nature tending to connect him with the offence. Upon grounds of public policy it seems to me highly inexpedient that encouragement should be given to complaints of offences by public servants being preferred against them after they have retired from office. It is obvious that under such a system a real offender, instead of being arrested in, would be allowed to pursue his career of oppression; and his eventual punishment would after all become exceedingly problematical from the general reluctance of parties to complain when time has effaced the first feelings of irritation produced by the offender's act, and from the extreme improbability of the complainant's story and that of his witnesses being credited. Such prosecutions are, moreover, calculated to create needless dismay and disaffection among a large class of public servants who are placed in a very helpless and invidious position. No native could indeed retire from the service without being exposed to the risk of having his character blasted by groundless accusations from persons who were under his authority and whom he had offended in the course of his official duties. The soundness of the general rule is strongly exemplified by the result of these exceptional prosecutions. Here criminal charges have been freely entertained against the defendant and the whole machinery of the State has been put in operation against him, the Police having been directed to make

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upon the administration of justice if such practices are allowed to be carried on with impunity; and some effort should be made to discover and bring to condign punishment the parties by whom the complainants have been instigated to prefer these palpably groundless charges. With these observations, I proceed to record my reasons for disbelieving the evidence in each particular case.

In Case Number 26.—The complainant alleges that he was summoned by the Defendant in a Revenue matter two or three years ago; and that during the enquiry the Defendant threatened him and said to him "I know you are a bad man and have made collections from the Villagers, I must handcuff you and send you to the West"; that subsequently the Defendant in his garden said he would let him go if he gave him 300 Rupees; that the Defendant used no threat in his garden, but that he agreed to pay the money because he was afraid of Defendant's threats; that he went immediately to his village and next day at noon brought Rupees 250, which he entrusted to the 2nd witness to carry; that on the way he picked up the third and fourth witnesses and delivered the money to the Defendant through the third witness. The complainant when put to the test of cross-examination contradicted himself so often that it is impossible to gather from his evidence when it was that the demand is alleged to have been made. He first said that it was after the enquiry had been completed; then that it was on the second day of the enquiry, which he affirmed lasted three days; he then said that the enquiry was concluded on the second day, and that the demand was made after it was concluded and after his opponents had been sent away. In another place he contradicts this by stating that he even paid the money before the enquiry was completed. The documentary evidence shows that the enquiry only occupied one day; so the whole story of the demand and payment is evidently a fiction. The complainant admits that he was dismissed from his Maniem at the instance of the Defendant, and states that the money was paid a month before his dismissal. He also admits that he petitioned the Collector so late as September last about his dismissal, but even then did not complain about the 250 Rupees. Any circumstances more calculated to destroy the credit of a witness it would be difficult to imagine. Very little need be said upon the evidence as to the alleged payment of the money. The second witness was a Village Thoty under the complainant, while the latter was Maniegar. The fourth witness was dismissed from his Maniem on the Report of the Defendant. Their testimony therefore cannot be free from bias. The evidence of each witness is moreover inconsistent with that of the complainant and the other witnesses. Thus, the complainant states that he took the third and fourth witnesses with him in order that they might intercede for him if the Defendant should not be satisfied with the 250 Rupees; but the third witness deposes that the complainant merely told him that he had been summoned in a case, and had some money to give to the Defendant and wanted him to go with him; and the fourth witness declares that he went for no other reason than to borrow money for the complainant in case the Defendant was not satisfied. The 2nd and 4th witnesses assert that the bag or bundle supposed to contain the money was dipped in water by the 2nd witness before being given to the complainant; but the complainant does not say that any such ceremony was gone through, nor does the 3rd witness, though the 2nd and 4th witnesses both assert that the complainant told the 2nd witness to wet the bundle. The 2nd witness states that this was done near the Cutchary, and the fourth near the Police station. The 3rd witness deposes that immediately the money had been given they all came out; the 2nd witness states that they were inside 2 or 3 Indian hours, that is about an hour. The 3rd witness says in one part of his deposition that they waited outside the Cutchary till the Defendant went to his house, and in another part that the Defendant had left the Cutchary before they arrived. The 4th witness affirms that the Defendant after receiving the bundle went into the next room and then came out and told them to go. This is directly opposed to the evidence of the complainant and 3rd witness, who state that the Defendant on receipt of the money told them to go and that they went away immediately. None of the witnesses saw what the bundle contained, and the 2nd witness who says he carried it is unable even to say whether the coin was silver or copper. It is quite clear therefore that the conviction cannot stand. There is no evidence that the sum of Rupees 250 was paid to the Defendant, and the character of the testimony delivered in this case leaves no doubt on my mind that the witnesses are perjured.

5
In Case Number 27 the complainant alleges that about 2 years ago he attempted to carry out a marriage procession under authority obtained from the Magistrate, but was from time to time prevented by the Defendant who refused to allow the procession to take place unless the complainant paid him 500 Rupees. The complainant states that he made a verbal complaint to the Joint Magistrate at the Jamabundy and was referred to the Magistrate, but admits that he made no written complaint to the Magistrate till his examination was taken in this case. That there cannot be a particle of truth in the present charge is perfectly plain from a perusal of the Petition presented to the Magistrate by the complainant on the 24th January 1865. In that he expressly charges the Defendant with being in the interest of his opponents, with wilfully disobeying the Magistrate's Orders and submitting false reports; and states that he was driven out of the Cutchery, and that the Defendant had entertained strong ill will against him for a long time. Now it is alleged that it was before the presentation of this Petition that the money was demanded. Is it credible that a person writing so bitterly and so boldly against the Defendant, and confessedly at enmity with him, would have omitted to mention this demand and the threats which the complainant asserts accompanied it, or that he would have hesitated an instant to prefer a charge of extortion against the Defendant if any money had been afterwards paid? I think that the fact of no allusion being made to any corrupt practices in such a Petition tells greatly in favor of the Defendant, and shows not only that he exacted no money on that occasion but also that whatever his faults, if any may have been, corruption was not one of them. The 2nd witness states that he lent 500 Rupees to the complainant to give to the Defendant, and was present when the money was delivered. He admits that he took no bond or security for the debt, and did not enter the transaction in his accounts. He affirms that the complainant, who was in such needy circumstances that he was obliged to borrow money even for his marriage expenses, re-paid the loan with interest in 2 months, upon which he returned complainant's receipt for the money. The 2nd witness admits that he has been twice fined by the Defendant. The 3rd and 4th witnesses depose that they went to the 2nd witness to borrow money; that he told them he would lend it at Salem where he was going to sell some Grain; and that they accompanied him to Salem. Now, it is obvious that if there had been any truth in their statement, the money would have been lent to them at Salem, for that was the purpose for which they affirm that they accompanied the 2nd witness; but they damage their own credit by adding that they returned with him to Athoor without obtaining the loan, and that the 2nd witness there lent the money to the complainant to give to the Defendant, and that they were present when it was delivered. The 3rd witness says that as it was a secret matter they went in the dark, and that the Defendant sent away a Peon who was standing at the gate, but that nevertheless no objection was taken to the witnesses being present, though they were strangers to the Defendant. It seems waste of time to go further into such evidence. I do not therefore consider it necessary to set out minutely all the discrepancies between the statements of the complainant and the witnesses as to the manner in which the money was delivered, the conversation that took place, and what was done by the Defendant. On the face of the evidence it is manifest that the whole account is a pure fabrication, not having the slightest foundation in fact. The complainant had obtained leave from the Magistrate to have his procession, and although the Defendant thought that it ought not to be permitted lest it should lead to a breach of the peace, and because the street was a private street and not a Public High-way, yet these objections were overruled and there was not the slightest necessity for the complainant to offer any gratification to the Defendant; nor can it be believed that he would have done so, when the final order had been passed directing the Defendant to permit the procession and take measures for preserving the peace, especially as according to his own statement he had resisted the Defendant's demands up to that time.

The complaint in Case No. 28 is to the effect that three years ago certain persons accused the complainant of malversation in his Revenue duties, and that while the matter was under enquiry before the Taluq Sheristadar the Defendant sent for him and, saying that he was not obeying the Sheristadar, and that there were erasures in his accounts, threatened to punish him on the Police side; that he denied that there was any thing wrong in his accounts, and asked the She-

tion that the claim was given up to avoid punishment in the fifth witness's case can only, therefore, be looked upon as an unscrupulous attempt to convert an ordinary official act of the Defendant into a foundation for a charge of oppression. In the second place, the facts of the original case have been wilfully perverted. The record shows that the fifth witness named in her complaint the person to whom she had given a Vakalatnamah, that is, the eighth witness; and the power itself is dated the day before the complaint. Yet oral evidence is adduced to show that the Defendant asked the sixth witness to conduct the case after the complaint had been filed, and on his declining induced the eighth witness to accept a Vakalat. Nothing can be more clear than that some unscrupulous hand has been at work in preparing the case for the prosecution. The documentary evidence proves beyond all question that the evidence of the sixth and eighth witnesses must of necessity be false. The sixth witness has been called to prove that the Defendant asked him to accept a Vakalatnamah in the case, but his name does not appear upon the records, and no allusion is made to him by any of the witnesses who speak to the facts of that case. How then was he brought in as a witness? The complaint moreover was one of assault equally against three persons, and yet the fourth and fifth witnesses are called to prove that the Defendant instigated the charge, though it is evident that had he really done so it would have been against the complainant alone. In the third place, the story of the loan and release is palpably a fabrication. The complainant admits that he never lent any money to the Defendant either before or after this alleged transaction, and does not assign any reason for his doing so on this occasion. He states that it was an ordinary loan, but that he took no bond or acknowledgment for the money, not even a receipt from the Peon, the third witness, who he says came to fetch it; that he entered the payment in his account, but tore it up after he had relinquished his claim to the money. He admits that he never made any written complaint to the Magistrate even after the Defendant had been removed from office. The complainant is a Taluq peon. These three speak to the alleged delivery of the money to the third witness; the third witness is the only person who deposes to the alleged payment to the Defendant; the complainant and second witness are the persons who affirm that the Defendant induced the complainant to relinquish his claim to the hundred Rupees. The first witness after a great deal of prevarication admits that he has been frequently fined by the Defendant; also that he never went to the Defendant's house before this occasion, but states that the Defendant nevertheless "spoke freely" to the complainant about the relinquishment of the hundred Rupees in his presence, and that though also one of the parties summoned in that case he was not asked to pay any thing to the Defendant. The reason given by the complainant for the second witness and himself going together to the Defendant is, that they were both Defendants in the case. It is of course inexplicable that the Defendant should have extorted money from one and not from the other. I do not consider that either the complainant or the second and third witnesses are worthy of credit, and I do not believe any money was ever paid, or the claim to it afterwards relinquished. The first witness for the Defence, the Inspector of Police, deposes that he has known the complainant for the last twenty months, but that he has never told him that he had paid money to the Defendant: The complainant states that though the Defendant was removed from office about two or three months before, it was not convenient to him to go and complain, and that he did not even send a written complaint to the Magistrate. I am satisfied, from the whole circumstances of the case, that the complaint is one of recent origin. The question therefore arises, and it is a very serious one, by whom has the complainant been put forward, and who is responsible for the production of the witnesses? The Inspector deposes that the Superintendent of Police enquired into the complaint by order of the Magistrate, and that he thinks it was after complaint to the Magistrate that the enquiry was made about the 26th September, that is, about a week after the final order in appeal No. 18 of 1866; that he assisted in bringing the parties before the Superintendent, who took notes of what the parties said; that he produced the complainant by order of the Superintendent; that he does not remember whether he first complained to the Superintendent or the Superintendent first asked him about his complaint; that

the Superintendent sent for the witnesses in the case; that the second and fourth witnesses, Curnum and Moonsiff, came of their own accord with the complainant, that the complainant asked him why he was wanted, and he told him that the District Magistrate wished a certain case enquired into; that there were other complaints against the Defendant, and that on the Superintendent's order he produced these other parties before him; that as the enquiries went on the witnesses appeared; that so far as he can remember, most of these were summoned by the Taluq Magistrate, and that as they appeared he produced them before the Superintendent. The Inspector admits that the Defendant made remarks against his official proceedings, but affirms that he has nevertheless been all along on friendly terms with him: the fact, however, of the Defendant having in an Urzee, dated the 15th May 1866, accused him of concocting false charges against him shows that this assertion of friendship is opposed to the truth. He cannot say exactly, but he thinks he might have reported against the Defendant to the Superintendent for irregular proceedings. It is impossible to read this statement without being impressed with the conviction that the complainant and witnesses did not come forward voluntarily, but were instigated by others to give evidence against the Defendant; and so fully am I convinced that the complainants and witnesses are perjured that I deem it my duty to suggest to the Magistrate the propriety of his calling for the diaries of the Superintendent of Police under Section 154 of the Code of Criminal Procedure, and for such written explanation as may appear necessary with the view of ascertaining the following points (1) the dates on which the complainants and witnesses severally appeared; (2) the statements they then made; (3) the manner in which their evidence was discovered to exist; (4) the mode in which their attendance was procured; (5) the names of any witnesses who were produced or attended without summons; (6) the names of any witnesses summoned by the Taluq Magistrate, and the reason of his issuing summons for their attendance. The Charge Sheet does not mention the date on which the complainant appeared or the complaint was referred for enquiry; nor does it afford any such information as is above indicated. I am of opinion that the ends of justice require that similar enquiries should be made in the other cases, and the first statements of the parties carefully compared with evidence given at the trial. In cases, tried before the Court of Session great importance is attached to such early statements, and variances from them in any subsequent examination or at the trial are always regarded as injuries to the credit of the deponents. It is possible, however, that in the present cases, which are of course wholly artificial, and in which there was abundance of time to prepare the evidence before commencing the prosecution, that test may be ineffectual to the discovery of the real truth. With these remarks I close my examination of the evidence and proceed to acquit the Defendant. Bearing in mind the circumstance that the sentences were passed by the Chief Magistrate of the District, I have devoted two days to the hearing of these appeals and careful consideration of the voluminous records, but the more I have scrutinized the evidence the more reason have I found to adhere to the opinion formed at the time that I first perused the Calendars, namely, that the charges are on the face of them without the slightest foundation.

ORDER.

The Appellate Court, after perusing the proceedings of the lower Court and after hearing A. Davaagayum Pillay for the appellant, reverses the findings and sentences appealed against and directs that the appellant be discharged.

(Signed) C. F. CHAMIER,
Session Judge.

(True Copy)

(Signed) P. APPOOVYENGAR,
Head Writer.

(Signed) T. AUDINARAINA CHETTY,
Acting Sheristadar.

Examined
T. MANIKUM.

PRINTED AT THE HINDU PRESS.

N 54 of 1867

Larn,

Lo,

Sir

Madras Jail
16 April 1867

13

The Superintendent of Jail
Madras

The Inspector General of Jails
Madras

I have the honor to report that one of the Convicts a Brasier by trade located and working at the site of the new Jail has been employed without my knowledge during the last three or four months in making a number of Brass Water Goblets drinking cups, Beattie cutters and other articles, and as far as I am able to ascertain from the testimony of a number of witnesses as well as that of the convict himself for the private use of the Contractor and the overseer of the Public Works Department.

I am unable to state the exact number of articles made by this Convict but I believe it to be between seven and ten some of which are now in the stores of the D. P. W. at the site of the new Jail in a rough & unfinished state.

The fact of ^{the} Convict being thus employed was brought to my notice only two days ago and as I was informed that the Sub Engineer in charge of the Works was aware of this. I called upon him for an explanation. I told him that I was of opinion that convicts who had

Recd 1867 29/4/67
du No 2308
Jails - Nov 19/67 du 1585

had been sent and located there for the specific purpose of assisting in the construction of the prison could not be employed in making fancy articles for the Contractor or any body else.

4 The Sub Engineer admitted that he was aware that these articles had been and were being manufactured by the Convict above alluded to and that he thought the Contractor had a right to employ him on such days and such times when he got no work to do for the new Jail.

5 I beg to submit that the employment of the convict in the manner above alluded to without my knowledge was not only improper but likely if unnoticed to open the door to abuses of a more serious character. If the Contractor had no public work to give to this convict the circumstances ought to have been brought to my notice and I would have temporarily withdrawn him and given him work required for the use of the Jail.

6 Soliciting your instructions in this matter as early as practicable.

I have &c.

Signed J. M. Joseph L.L.D.
Mg. Supth of Jail.

(True copy)

J. M. Joseph L.L.D.
Jillak Surgeon

N. 52
1867 L

1311
Captain A. L. Pendergash
Superintending Engineer 8th Division

Sir

Madura

Mr. Sub. Engineer Colquhoun
not having as yet withdrawn the highly
offensive and disrespectful portion of his
letter to me which is now in your possession I have the honor to request that you will be good enough either to direct him to do so without any further delay or return the letter to me by the bearer that I may adopt such measures regarding it as I may deem expedient.

Madura Jail Office I have &c.
12th April 1867 /Signed/ J. M. Joseph L.L.D.

Mg. Supth of Jail

(True copy)

J. M. Joseph L.L.D.
Jillak Surgeon

14
Sivamangalam.

My Dear Joseph

I had written to Mr. Colquhoun
telling him to withdraw his former
letter to you and send it in by your
messenger as it had not gone.
I am really very sorry that you
have had those causes of complaint
and that you ^{had} sent a memo addressed
to you today. I have taken notice
of this in writing now to Mr.
Colquhoun. I trust there will be
nothing further amiss.

Your sincerely

H. L. Prendergast Capt.

Kodaikanal

N: 128

L.

20th April 1867.

Surgeon. J. M. Joseph L. L. D.

Sir Superintendent of Jail Madras

With reference to your memo N: 56
of the 16th instant addressed to Sub Engineer
Mr. Colquhoun I have the honor to request
on the part of Mr. Colquhoun that you
will be so good as to allow him to withdraw
the latter part of his letter of the 10th instant.
on

on his assurance that it was not
intended to be offensive.

I have &c.

/Signed/

Prendergast Captain
Off. Superintending Engineer & Division
(True Copy)

J. M. Joseph

N^o 140

To

Kodai Kanel

23^d April 1867

Surgeon J. M. Joseph L. L. D.

Sir,

Madam

I am informed that on the 14th instant
One of your Dressers called upon the Police Depart-
ment not to allow any thing in or out of the
Public Works store room at the new jail: and that
a constable actually took possession of a book
that had been sent for by the Range Officer.

This indignity appears to have been
put upon the P. W. Department, without any
previous reference to the Range Officer, or any
communication being made to myself as the
local Head of the Department either before or
afterwards: and a public insult has been offered
in one of my records being forcibly taken in
custody by the Police which I could not submit to.

Before, however, reporting the cir-
cumstances to the Government, I have the honor
to make known to you, the light in which I
regard them: and as one of your Subordinates
seems to have called for the interference of the
Police. I have to request you will inform
me by what Authority he acted: As in the
absence

Strom. The de Joux Engineers,
Engineers & Builders
Lancaster, Pa. Sept 22d
1868

any

any of your Dressers nor did any of the
Constables or sentry over the new jail wall
gates on that day 14th April forcibly take
possession of any book or property be-
-longing to the D. P. Works

I have the
/signed/ J. M. Joseph L.D.
H. W. Blair Lieut
Apt. Sup. of Police in charge.

(True copy)

J. M. Joseph L.D.
Biliket Surgeon

No. 60 of 1867.

From

Madras Jail Office

25th April 1867

The Superintendent of the Jail
To
Madras

The Sub-Engineer in charge of the Works
at the site of the new Jail Madras
Sir,

I have the honor to acknowledge
receipt of your letter No. 40 dated the 24th Instant
forwarding a Bill for Rupees 11-6-0 for a Bason
frame which you were good enough to have made
for me some time ago and which amount had
already been paid by me.

On referring to the Bill I find that
One Rupee six annas and eight pies 11-6-8 is charged
for carriage labour. When you were at my quarters
some two or three months ago and offered to get the
Bason frame made for me, you stated that you
had good carpenters at your disposal and that they
would turn out the work well of course I was
under the impression that free labor only was to
be used for making it. A Carpenter was sent by
you to my quarters to receive instructions from me
regarding its height and size and a few weeks after
when I was at the site of the new Jail the frame
was brought out from the work shop shed in an
unfinished state for my inspection not by convicts
but by carpenters who were free labourers thus
confirming my belief that free labor alone was being
used in its construction.

On the 18th Instant I was given to understand that some convicts had assisted in making the Basin frame. The next morning when on my official visit to the site of the new jail in company with Lieut. Blair the Acting Superintendent of Police I asked you in the presence of that gentleman and others if any convict labor had been employed in the making of it. You admitted that convicts had assisted in the work. I told you that I had not the remotest idea of this and that I had been most sadly and completely deceived and again pointed out to you the impropriety of making use of convicts for private work who had been sent to the site of the new jail for the specific purpose of building the Prison.

I regret that I have again to record the improper employment by you of convicts at the site of the new jail for private work and without my knowledge. I shall certainly take the opportunity when I am at Madras of bringing this circumstance also to the notice of the Inspector General of Jails.

I have &c.

Signed J. M. Joseph L.L.D.
 Secy. Supt. of Jails.

(True copy)

J. M. Joseph
 J. M. Joseph
 J. M. Joseph

N^o 61 of 1867 L

Captain H. L. Prendergast
Superintending Engineer 8th Division

Sir,

Madurai

With reference to your letter N^o 140 dated the 23rd instant I have the honor to inform you that no directions were given by me on the 14th instant or at any other time to the Dresser doing duty at the site of the new jail to prevent the ingress or egress of articles into or from the Public works store room.

2 Immediately on the receipt of your letter I wrote to Lieut. Blair the Asst. Superintendent of Police regarding the complaint preferred by you. Copies of my letter to him and his answer are herewith forwarded for your information and from which you will observe that the Dresser did not call upon the Police Department to interfere with the bringing in or taking out of articles by your Department.

3 It is to be regretted that you did not satisfy yourself as to the correctness of the information which you had received before penning your letter to me and on the tone of which I forbear to remark. I think you will agree with me that under the circumstances above mentioned your letter was uncalled for and hope you will see the propriety of withdrawing

E.

Recd 1867 Sept 22
In No 2308
From Madurai 14.10.67

withdrawing it at once and thus sparing
me the unpleasant task of submitting
it to Government for their consideration
and orders.

Madras

26 April
1867

I have &c.

/Signed/ J. M. Joseph L.D.
Magistrate of Jail

N^o 211 of 1867
L

Kodaikanal

2^d May 1867

The Superintendent of Jail

Sir,

Madras

As your letter N^o 61 of the
26th instant explicitly states that I have
been misinformed, I have the honor to
request you will be so good as to consider
my letter N^o 140 of 23^d as cancelled.

I have &c.

/Signed/ H. L. Randerghat
Off. Superintending Engineer

(Trueloby)

J. M. Joseph M.D.

Physician Surgeon

With reference to the Certificate granted
by Native Surgeon of Anthony Pullay on the
14th instant. I do hereby further certify that
I have this day examined Kathirvaloo
Asary's left eye, which I find to be rather
seriously injured, and at present it is diffi-
cult to state what extent of vision he may
hereafter recover.

Madras } / signed J. M. Joseph M.D.
25th June 1867 } True copy / L. M. Surgeon

J. M. Joseph M.D.

L. M. Surgeon

to the Superintendent of Jail, through Mr. ...

E.

Nov 5th Nov 1867

Nov 5th Nov 1867

Nov 5th Nov 1867

Nov 5th Nov 1867

The Jailor most respectfully begs to state that 9 Prisoners under Preliminary examination before the Acting Town Sub Magistrate Gopal Chyengar were placed in the District Jail by order of the Magistrate Mr. Arbuthnot as the Lock up of Sub Magistrate Prisoners was under repair.

On the above Prisoners coming to the Jail the Sub Magistrate sent me an order to let one Prisoner who was receiving his food from outside while in the Lock up to have his food from his house. Some others applied to the Superintendent of Jail through me to have their food brought from their houses as they were unable to cook which was sanctioned. After they were committed to session Court all the above indulgence was cancelled.

Some time last month about 12 o'clock noon the Magistrate Mr. Arbuthnot accompanied by the Assistant Magistrate Mr. Burrows came to the Jail and enquired from me if the Prisoners when under the examination before the Acting Town Sub Magistrate got food from their houses I told him those who applied

Recd 15th Sept 1905
In No. 2305
From S. Choudhury L. 158.

applied to the Superintendent got permission.
The Magistrate then asked me after they were
committed to session house, did they get food
from outside I told him no and then they
left the jail.

Madura
11 October 1867.

Henry J. Connor
Jailor

(True Copy)

J. M. Joseph M. S.
Zillah Surgeon

12
13
My Dear Mr. Frischer

I am glad you have come in from
Shevavungo. I was going to send you the accom-
panying Proceedings of Government for your
perusal. Please read Paras 6, 7 and 8 and let
me know all that has passed between us upon
the subject. See how widely I have been treated

14 October 1867

Yours sincerely

R. Frischer Esq.

Signed J. M. Joseph

(True Copy)

J. M. Joseph M. D.
Zillah surgeon

My Dear Dr. Joseph

I have just read the Proceedings
of Government that accompanied your note and
am astonished at reading Paras 6, 7 and 8. I
remember well on one or two occasions discussing
the Subject of Venkatasamy Naicks contemplated
charges against my father for defamation
with you, and your telling me that such
was the case, and that you saw no way for
a compromise, as money was no object
with

B

Recd 1867
In No 2308
Nov. 5th 1867

N^o 241
1867
From

Madura Civil & Session Court
15 October 1867

E. C. G. Thomas Esquire

Civil and Session Judge of
Madura

To,

J. M. Joseph Esquire M. D.

Superintendent of Jail

Sir,

Madura

In reply to your letter of 7th instant I would suggest that if you are called upon or think it necessary to reply verbatim to each charge contained in the letter you refer to, the searching enquiry you ask for could hardly be satisfactorily conducted without the reports Official or nonofficial mentioned in Para 5 being placed before me.

2 You will learn from the Visitors Book that I have twice visited the Jail since I have been in Madura once before and once after receiving your letter, and that in the course of these ordinary visits I have not found occasion to make other than commendatory remarks. This general expression seems all that is called for at present.

I have the honor to be
Sir

Your Most Obedt. Servant
/signed/

Recd 1867 Oct 17
L. No. 2308
Ans. 5 Nov 17/67

with Venetian my Naik who had plenty of it
and as the chief motive by which he was
actuated was revenge. except by prevailing
upon my father to make up with him. and
thus put an end to the matter. I am sorry
to see that such false statements have been
put forward with a view of injuring you

14 October
1867

Yours sincerely
Signed R. Fischer

(True copy)

J. M. Joseph M. D.
Gilliam Surgeon.

Signed E. G. Thomas

Civil and Session Judge

(True Copy)

J. M. Joseph M.D.
General Surgeon

Nov. 1864 *P. l.*
In No. 2308
Pres. & Wood 14 In 208.

[illegible]

You will deem to the
conclusion that, my predecessor,
on a representation made to
him, promised to be concerned

This was cleared
- Dr Joseph Stone

Dr Joseph for Civil Employ.

On inquiry it is reported
to ~~and~~ ^{that} Dr Joseph had
an interview with The Honble.
The Governor, from whom
the concession was obtained.

That, as the order of Government
was issued and the alterations
were made from the Govt,
I write to them and favour
you submitting the subject.

Surgeon Major Joseph
is a Medical Man of

great skill, and could be
so usefully employed in
several positions where
his skill could be of wider
value, that I beg to recom-
mend ^{that} the five years removal
from that line may be deemed
sufficient punishment,
and I be permitted to sub-
mit his name for Civil
employ. Should an opportu-
nity of usefully employing
him occur.
The Surgeon Major is at present

This was done by
Dr Joseph Shonk

employed as Surgeon of
the 17th Regt. No. 1
at Perambur, Madras

Wm. R. R. R.
L. R. R.
O. R. R.

Comd.

Judicial Department

From Surgeon J. M. Joseph, M.D. Gillah
Surgeon Madras dated 21st October 1867
No. 2308-

For Orders

It is admitted by Dr. Joseph that he
did practice as Barrister but he
did not only on a civil but also
on a criminal side and that
on the latter side he defended men
some of whom died (see para 5 of
his letter) and others might have
come under his official charge
as Jail Surgeon.

This was done by very improper
- Dr. Joseph should have so

improved, removed from the Madras
Jilch and placed at the disposal
of the C. C. C. -

I do not see that there is
any more than this or that more
could be done. The only further
step that could be taken would be
to bring Dr. J. to a Court Martial
for the conduct imputed to him
in p. 6. 7. & of the Collector's letter.
But here is that this would be
a most scandalous and
effacing the Chief would
infinitely be set down with such
intention as in the Collector's and

Kenner's own hand and
with the testimony that would
be given by Mr. R. Fisher.

I am not aware what
is intended by Dr. J. His conduct
is at present before the Revenue
Bd. but if so, on the case being
disposed of the Bd. or if it is not
so, then at once - it might be well
to consider in the Revenue Dept.
whether he should not be
transferred to some other
District - He seems to have
been some time in Madras.

28/10/67.

J.P.

Dr. Joseph's case

The concurrence of opinion between
His Lordship the President and my
late Honorable colleague, Sir J. Byng,
in support of the Displacement of Dr.
Joseph from the Zillah Surgery and
his transfer to the Army, renders my
duty a light one. I have simply
to report my own view of the three
complaints made against Dr. Joseph.

1st

As regards Dr. Joseph's appearance
at the Bar of the Supreme Court as counsel
for certain persons who had been committed
for trial and were under restraint in their
Jail of which the Doctor is the Surgeon,
I am sensible that it was a grave error.
Admitting, however, to Dr. Joseph some
acknowledgment of this error and his
intimation to the Assistant Magistrate,
Mr. Harrow, that he had felt it to be
such that he had resolved to go
back to discontinue practicing as criminal
cases - a resolution which does not appear
to have been subsequently repeated
from - I am of opinion that the
error is not of that gravity which calls
for the Doctor's exclusion from civil
employment and his transfer to the
Army. I should consider it might be
properly

properly and sufficiently noticed by
exchanging him to another - say, a less
agreeable fellow than Madron - 33

In the case of another Comd.
Officer, Major Power, who lately was
found to be engaged in practice at the
Bar, and who, in a long contentious statement,
told that what he had done, he had
well done, & that it was not advisable
the Govt should impede their Officers
in benefiting themselves while striving to
secure justice for others, - we have been
very much, seen the Govt. in chief content
to censure that Officer - the Government
approving the censure - but not re-
fraining the further punishment of re-
placement under the (in) chief's command,
which is now following on Dr. Joseph's
act of insubordination.

2nd

Dr. Joseph's second error under notice
has been his acceptance of Power of
attorney to plead, at Bar in actions
of a civil character. This of course
is venial compared with the act
first noticed. I consider it would
have sufficed to prohibit Dr. J.
from continuing his practice unless
he elected to relinquish his position
as a Govt. servant.

3rd

Then, the third offence, came (then)
yesterday in Council,
and was then discussed for the
first.

first time. It is no doubt a serious
 aggravation of Dr. Joseph's error
 that, as now appears from Dr. Mackenzie's
 course of yesterday's date; ^{his} practice
 at the Madras Bar should have
 been commenced in contravention of
 verbal orders from the Pres. Lark. Pres.
 of the Med. depart^t.
 But, with the highest respect for
 Dr. Mackenzie's statement, I am not
 of opinion with reference to his course
 usually, just & properly taken on
 such occasions, that it should be
 accepted and acted on to the detriment
 of any officer holding this Commission
 unless the latter has had an oppor-
 tunity of responding to it. - It is
 quite possible that there may have
 been a misunderstanding of Dr. Joseph
 of what passed between him and his
 medical superior. It is also possible
 that the latter may be under an
 erroneous belief as to what took place
 during the interview.

Has just come
 in
 Mr. Hinkle

I would now specially draw the
 attention of the Government to the very
 great delay which is taking place in
 our receipt from the present Collector
 of Madras, Mr. F. D. Ashurst, of
 an explanation of the circumstances
 under which, at the close of his
 predecessor, Mr. Leome's management
 of the district, the large sum of
 40000 Rs. of funds subscribed by the
 public

[Faint, mostly illegible handwritten text, likely bleed-through from the reverse side of the page.]

public franchiseable institutions were
lent to a Shaky Zimmudar for 15 years
at 6% interest.

A perusal of the paper now in the
Secutariat ~~clearly~~ ^{clearly} lead to the conclusion
that this loan can never have been
made unless with the collusion, consent
and knowledge of W. Levinger's principal
official adviser, and to him it is that
this course from Mr. L. Mr. G. F.
Fischer and Dr. Joseph, as managers of
the Despatch, point, as this person
was concerned & interested in this
painful misapprehension of Subbathing.

I now mention this matter
because the order of Mr. Fleming
Dr. Joseph under the order of Mr. L. G.
and the desire of the L. Mr. G. F.
Fischer have removed from the scene
two of the persons whose unblemished
the subject has been brought to
the notice of Mr. and though whose
testimony & saying, it seemed like
that the mystery which surrounded
the affair would have been
dispelled.

30 Oct. 63

[Handwritten signature or initials.]

33
I think that Dr. Joseph acted with
great impropriety and
impudence in holding the office of
Jellah Surgeon at Madras he had
never practiced in the Civil Courts
without the sanction of his official
superior for in many respects I
think that the practice of the
law in native Courts is inconsistent
with the duties of a Medical
Officer in that position.
We now know however, that in
practising in the Civil Courts merely
Dr. Joseph acted in contravention

of the verbal opinion delivered to him
at an official interview by J. J.
Mackenzie the Inspector General.
The error committed by Dr. Joseph becomes
therefore doubly grave.
Dr. Joseph has, however, done more
than this. Holding the ~~affair~~ ^{affair}
charge of the District of
Madura he appeared in certain
criminal cases in which the
accused were or might be
subject to his official superintendence
and control. This was, in any

37
opinion highly unbecoming in an
Officer of Dr. Joseph's position and
altogether subversive of the
principles which should have
guided his conduct.

I wish that I could take a more
lenient view of the course pursued
by Dr. Joseph and merely recommend
his removal to another Station
but I am constrained to declare
that the conduct of Dr. Joseph
in this matter has shaken my
confidence in his discretion
and trustworthiness and that
I do not think that he ought.

to be left in charge of the
multipious and delicate duties
usually associated with his
present position.

I would place him at the orders
of Mr. Crocker with a view
to that recommendation with
the opinion delivered by his
J. P. Crocker.

N

I have just had a letter
from Mr. Crocker & Joseph
from Mr. Crocker & Joseph
because I consider that
an officer who has been guilty
of so grave an indiscretion
is not made to be the defense
of persons who were or
might become innocent
of the fault of which he has
been guilty as well as the
burden of change is not
fit to be trusted in the
comparatively independent
position of a Chief Surgeon.

The inappropriateness of Dr. Joseph
Crocker is of course much
aggravated by the fact
that it was in direct
violation of the protesting
order given & given by the
Head of his department.

a point, which I regard
Dr. Henshaw's statement
as perfectly conclusive;
but I am disposed to think
that even if no such action
had been given, removal
to his true duty would
still have been his proper
mode of dealing with
Dr. Joseph's conduct.

W. A.

5706

Judicial Department.

39

40

PROCEEDINGS of the MADRAS GOVERNMENT.

Read again letter from the Magistrate of Madura d/17 Sept & recorded in Pro. of 2^d Oct 1867 No 1581.

Read also the following papers.

From the Civil Judge of Madura d/11 Oct 1867 No 238.

From Surgeon J. M. Joseph M.D. } d/21st " " " No 2308.
Zillah Surgeon. Madura. }

From Inspector Genl. of S. Dept. d/29 " " " No 4221.

Order thereon 5th Nov 1867 No 1770.

From the papers above recorded it appears that Dr Joseph, the Zillah Surgeon at Madura who is also Superintendent of the Jail, has been practising as a Vakeel in the Civil and Criminal Courts at Madura. The Governor in

seen
W.O.

by

Council learns with surprise and grave displeasure that an officer in Dr. Joseph's position should have pursued the course of conduct which is exhibited in the correspondence above recorded.

2. Dr. Joseph would in the ~~present~~ ^{past} have acted with ~~great~~ ^{impropriety and impropriety} and impropriety and impropriety if, holding the office of Zillah Surgeon at Madras, he had merely practised in the Civil Courts without the sanction of his official superiors, such an arrangement being in many ways ~~clearly~~ ^{manifestly} inconsistent with his duties as a medical officer in charge of a Civil station. But the

the Governor in Council observed that in thus practising in the Civil Courts Dr. Joseph acted in direct contravention of the verbal opinion delivered to him, at an official interview, by Dr. Mackenzie the Inspector General of the Medical Department, who informed Dr. Joseph that his practising as a Vakeel while holding the appointment of Zillah Surgeon was a proceeding which Dr. Mackenzie considered highly objectionable and which he could not possibly sanction. If therefore Dr. Joseph's practice as a Vakeel had been limited to the Civil Courts in aggravation of a ^{professional} ~~deliberate~~ irregularity he would, ~~not~~ ^{it is} have been

him guilty of a grave
act of disobedience to
the instructions of the
officer at the head of
of the Medical Department.

Dr Joseph did not
however limit his
privileges to the Civil
Courts. Holding the office
of Superintendent of the
District Jail at Madras
he has appeared as a
Warrant in certain Crimi-
nal cases in which
some of the accused were
actually, and others
might have become sub-
ject to his official super-
intendence and control.

The Governor in
Council considers ^{that} such
a course ^{of action} was highly unbe-
coming an officer

inconsistent
with
L/R.

I must say

"cannot permit
a medical officer
who has shown so
little discretion
and sense of his
official duty
to remain in the
position which
he now occupies
and resolves to direct
that Dr Joseph's services
shall be replaced at the
disposal of H.C. the
Commander in Chief
of the Madras
Militia."

Mr. Joseph M.D.
Surgeon General
Military Dept.
of a Civil Station
Mr.

in Dr Joseph's position and
altogether subversive
of the principles which
should have guided his
conduct.

The Governor in
Council is of opinion
that it will not be
conducive to the public
interests that an officer
who has shown so little
discretion and sense
of his official duty
should remain in the
responsible position which
Dr Joseph now occupies,
and resolves to direct
that Dr Joseph's services
shall be replaced at the
disposal of H.C. the
Commander in Chief

7/6/80.

[Faint, mostly illegible handwritten notes at the top left of the page.]

Dated 5th July 1867

PROCEEDINGS OF GOVERNMENT.

No. 1770

1867. Department.

I agree to the amendments
amendments. I do think
the charge of a civil station
more important than the
charge of a Reg. If we
regard the duties
associated with it
such as the jail & &
that it is not necessary
to say so!

WU

C. J. M.
R. 52