

# MADRAS RECORD OFFICE.

Government of Madras.

*Judicial* DEPARTMENT.

|          |            |                 |
|----------|------------|-----------------|
| G.O. No. | 1848       | Press           |
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Not to be folded or roughly handled

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*Proceedings of the Madras Government, Judicial Department,*  
18th November 1867.

No. 195. Read the following letter from the Magistrate of Coimbatore, to the Chief Secretary to Government, Fort Saint George; dated Coimbatore, 7th November 1867, No. 105.

In forwarding herewith, for the information of Government, translated copy of a *Plaint* presented in Suit No. 157 of 1867, in the Errode Moonsiff's Court, by one Masa Gounden of Moodachoor, in Sattimungalum Taluq, against Mr. Cole, Deputy Magistrate of the Southern Division, and certain others; and also translation of draft *Statement* proposed to be filed in the said Court on behalf of the above gentleman, I have the honor to request that you will be good enough to obtain the sanction of Government for defending the suit at the cost of Government.

2. The date of hearing the suit in question being fixed for the 20th instant, I request that early sanction of Government may be obtained for its defence.

Translation of a *Plaint* preferred to the District Moonsiff at Errode by Chendrasekaram Pillay and Moottoosamy Aiyen, Vakeels of the Court, on behalf of the plaintiff Masa Gounden, son of Muttunaiyai Gounden, by caste Vellala, by profession cultivator, aged 65 years, and residing at Moodachoor, in Sattimungalum Taluq, against 1. Veeri Chetty, son of Chenni Veeri Chetty, by caste Chetty, by profession Moonsiff Monigar, aged about 35 years, and residing at the above village; 2. Chenni Veeri Chetty, son of Veeri Chetty, by caste Chetty, by profession cultivator, aged about 20 years, and residing at the above village; 3. Veerabadra Chetty, son of Alagoo Chetty, by caste Chetty, by profession cultivator and Moonsiff Monigar of Palayapareyoor, aged about 25 years, and living in the said village; 4. Pullan Chetty, son of Alagoo Chetty, by caste Chetty, by profession Monigar of Aggrahara Karai and cultivator, aged about 28 years, and residing at the above village; 5. Sami Chetty, son of Palani Chetty, by caste Chetty, by profession cultivator, aged about 40 years, and residing at do.; 6. Basoova Chetty, son of Veeri Chetty, by caste do., by profession do., aged about 55 years, and residing at do.; 7. Narayana Chetty (name of his father not known), by caste do., by profession do., aged about 35 years, and residing at do.; 8. Selamba Gounden, son of Arumuga Gounden, by caste Vellala, by profession cultivator and Monigar of Aggrahara Karai, aged about 30 years, and residing at do.; 9. Nanyappa Gounden, son of do., by caste do., by profession cultivator, aged about 25 years, and residing at do.; 10. Comara Gounden, son of Vellapa Gounden, by caste do., by profession do., aged about 40 years, and residing at do.; 11. Marappa Gounden, son of Counda Gounden, by caste do., by profession do., aged about 60 years, and residing at do.; 12. Periamuppaw, son of Muttamuppan, by caste Chanan or toddy-drawer, by profession do., aged about 55 years, and residing at Peria Moodachoor, in Sattimungalum Taluq; and 13. P. A. Cole, Esq., Deputy Collector and Magistrate of Southern Division, in the District of Coimbatore.

1. About 14 years ago the plaintiff caused the road or pathway now under dispute to be dug for his use across his land, described below in paragraph 4, and continued to use it till the present date.

2. Some 14 years ago all the defendants (except the 13th defendant), and certain other people, requested the plaintiff to allow them and their cattle to pass in the above way, and that they would be so careful as not to injure the surrounding fence and the crops of his field, on which he permitted them to use it, and they continued to do so till 16th October 1866.

3. But the defendants, without sticking to their engagement, afterwards began to destroy the fence on either side of the way, on which the plaintiff objected to their using the said way; but the defendants, without giving heed to his objection, cut off the above fence, filled his well with mud or earth, and destroyed a good portion of his cholam and other crops in the early part of February 1867 (1st to 12th February 1867).

4. The Deputy Collector and Magistrate P. A. Cole, Esq., the 13th defendant, passed an order (favorable to the defendants) on 6th May 1867, under Section 63 of the Criminal Procedure Code, directing the plaintiff not to obstruct them (defendants) from using the pathway.

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18th November 1867.*

The plaintiff prays the Court will be pleased to cancel Mr. Cole's order and confirm his claim to the pathway cut across on the west of his field, bounded on the east by a field of Moodachoor, in Sattimungalum Taluq, on the west by a field of the Monigar Petta Naiken, on the south by Coundappa Gounden's garden, and on the north by a piece of Poramboke, No. 50, called Palayadi Vallavari. The pathway measures about 20 feet from east to west, and about 390 feet from north to south, and is valued at about 15 Rupees.

The plaintiff prays the Court will be pleased to pass a sentence, adjudging his right to the pathway, and directing the defendants not to enter and make use of the same in future.  
19th July 1867.

(Signed) MASA GOUNDEN,  
( " ) CHENDRASEKARAM PILLAY,  
Vakeel of the Court.  
( " ) MOOTTOOSAMY,  
Vakeel of the Court.

*Declaration of the Plaintiff.*

I do hereby solemnly declare that the facts mentioned above are true to the best of my belief,  
(Signed) MASA GOUNDEN.

1. The path in dispute is liable to assessment; 2, but it is not clearly determined. The assessment to be proportionately charged on it is six Annas.

(Signed) CHENDRASEKARAM PILLAY,  
( " ) MOOTTOOSAMY AIYEN,  
Vakeels of the Court.

Filed on 19th July 1867.

(True Translation).

(Signed) P. GRANT,  
Magistrate.

Translation of a statement proposed to be presented in the District Moonsiff's Court at Errode by Vyapoory Pillay, Pleader of the said Court, on behalf of P. A. COLE, Esq., Deputy Magistrate, Southern Division, 13th defendant in Original Suit No. 157 of 1867 on the file of the said Court, under the provisions of Section 120 of the Code of Civil Procedure.

The 13th defendant demurs to the jurisdiction of the Court to entertain this suit so far as he is concerned—1st, because the order complained of was passed by him in his Magisterial capacity under Section 63, Criminal Procedure Code; and, 2ndly, because he is not liable to be sued for acts done by him in the discharge of his judicial duty—Vide Act No. XVIII. of 1850.

2. The pathway, which forms the subject matter of this suit, having been used by the public for the last 15 years, as admitted by the plaintiff himself, the 13th defendant, in his Magisterial capacity, was justified in issuing an order for the removal of any obstruction on the part of the plaintiff.

(Signed) P. GRANT,  
Magistrate.

No. 196. ORDER THEREON, 18th November 1867, No. 1848.

The Governor in Council sanctions the defence proposed on behalf of the Deputy Collector and Magistrate of the Southern Division, Coimbatore District, in Suit No. 157 of 1867, in the Errode District Moonsiff's Court, in which one Masa Gounden of Moodachoor is plaintiff, and Mr. Cole, Deputy Collector and Magistrate, is defendant, with twelve others.

(True Extract).

R. S. ELLIS,  
Chief Secretary.

To the Magistrate of Coimbatore.

Ed. J. Tulloch.

No. 2436/67. Ind. Dep't.

I would dissent the opinion of para I of the answer proposed to be filed by the Cole.

His office may be protected by act 18 of 1850 against the consequences of any act bona fide done magisterially; but as no appeal to the Session or High Court lies against orders passed under Section 63 C. Crim. Proc., we cannot reasonably demur to the jurisdiction of a civil court in which a suit has been filed to determine a right of way the merits of which may have been misunderstood by the Cole.

In fact, if the jurisdiction of the Civil Court could be barred in such cases we practically constitute a body of irresponsible arbitrary magistrates whose orders

may be productive of much  
injustice to individuals. As I see  
the points of the case understood,  
the only mode available for testing  
the merits of Mr Cole's order is by the  
action of the Plaintiff has now in-  
stituted. It is not an appeal. It  
is a suit by one man against several  
to try whether a crew of 15 years  
can be destroyed. (112)

अध्यापक

I would be the simplest  
answer. But  
first (not even throw out  
the plan of a new of your design  
if it <sup>has been fully before</sup> ~~has been~~ <sup>is</sup> ~~proposed~~ I think  
the plan is by all valid and

I agree with the opinion expressed  
by Mr. Ashmun.

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1848 of 18<sup>th</sup> November 1867

The Governor in Council sanctions the defence  
proposed on behalf of the Deputy Collector and  
Magistrate of the Southern Division, Criminal  
District in Suit No. 157 of 1867 in the  
Criminal District Munsiff's Court, in which  
one Maza Gounder of Moodachoor is  
Plaintiff, and Mr. Cole, Deputy Collector  
& Magistrate is defendant, with-  
out the Munsiff.

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W. H.

To the Magistrate of Criminal District

see separate  
memo.

W. H.