

MADRAS RECORD OFFICE.

Government of Madras.

Indrail DEPARTMENT.

G.O. No.	2039	Press
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Dated	11-12-1867	

34/35

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,

11th December 1867.

Read the following papers:—

No. 139. From the Acting Registrar of the High Court of Judicature, Madras, Appellate Side, to the Chief Secretary to Government, Fort Saint George; dated Madras, 30th November 1867, No. 60.

I am directed to submit to you the marginally noted letters with their enclosures, with a view to Government passing such orders upon them as may seem proper in the circumstances of the case.

From the Acting Civil Judge, Trichinopoly, No. 229, dated 14th October 1867.
From do. No. 319, dated 14th October 1867.

2. Before stating the opinion of the Chief Justice and Judges of the High Court with regard to the conduct of the Acting District and Deputy Magistrates of Trichinopoly in the matter now under notice, it will be advisable to give an abstract of the enclosed correspondence, and to show succinctly the circumstances in which it appears to have originated.

3. It seems that, on the 9th of August last, the Deputy Magistrate of Trichinopoly issued an order, under Section 303 of the Criminal Procedure Code, to one Tatamiengar and two others, to pull down certain houses situated in Thencadam Chitrai street and the northern row of the Uthiravithi street at Sreerungum. The individuals to whom the order was addressed seem to have objected to its terms, and, on the 6th of September, instituted three suits in the Court of the District Moonsiff of Trichinopoly, praying that the Deputy Magistrate's order might be cancelled, and the peaceful possession of their property secured to them; and, together with the plaintiffs, they seem to have presented applications for injunctions to be issued under Section 93 of the Code of Civil Procedure, with the object of restraining the Deputy Magistrate from carrying his order into execution.

4. The plaintiffs appear to have been admitted and registered, and the District Moonsiff seems to have issued three processes in the usual form, giving notice to the Deputy Magistrate to appear and answer in the suits brought against him.

5. These notices seem to have been duly served on the Deputy Magistrate, and that Officer appears to have done thereupon the first of a series of most unusual, and, in the opinion of the High Court, most reprehensible, acts.

6. On the 10th September, he appears to have placed on record a Magisterial Proceeding, in which he declared that the "papers from the Court of the District Moonsiff" were not legal processes; and it was ordered that a copy of this Proceeding should be furnished to the District Moonsiff "for his information," and another to the Acting Magistrate of the District, with a view to the latter moving the Civil Court to interfere in the matter.

7. On the 17th September, the Deputy Magistrate appears to have written a letter to the Acting Magistrate of the District, submitting an extract from his Proceeding of the 10th, above noticed, and setting forth his views on the subject of jurisdiction.

8. Upon receipt of this, the Acting Magistrate of the District would seem to have placed on record a Magisterial Proceeding, under date the 20th September, in which he declared his concurrence in the view of his subordinate touching the illegality of the notices served upon that Officer, and directed that an extract from the said Magisterial Proceeding should be forwarded to the Civil and Session Judge, "with a request that he would take such notice of the proceedings of the District Moonsiff as he might think fit."

9. On the following day, being the 21st September, three processes in the form of injunctions, under Section 93 of the Civil Code, appear to have issued from the Court of the District Moonsiff to the Deputy Magistrate, by the terms of which he was prohibited from carrying his order into execution, and was, at the same time, directed to furnish security, in compliance with the requisition of the Court.

10. Upon this, the Deputy Magistrate seems to have passed a Proceeding, under date the 24th September, in which he declared "the papers to be nullities," and threatened to punish, under the provisions of the Penal Code, all and any who should attempt to enforce the order of the Court of the District Moonsiff, and ordered that the District Moonsiff should be furnished with a copy of the said Proceeding for his information, and that another copy should be forwarded to the Acting District Magistrate.

11. Upon receipt of a copy of this Proceeding, the Acting District Magistrate appears to have passed a Proceeding, under date the 5th October, in which he resolved to forward a copy of the Deputy Magistrate's Proceeding to the Civil and Session Judge; declared that the District Moonsiff had rendered himself liable to a punishment under Section 189 of the Indian Penal Code; threatened to "treat the District Moonsiff as a private individual under the provisions of the Indian Penal Code;" and stated that the Deputy Magistrate "remained under the special protection of the Police from the threatened illegal action of the District Moonsiff", pending the receipt of an answer from the Civil and Session Judge to the request conveyed in the Proceeding of the Acting District Magistrate of the 20th September.

12. On the 24th October, the Acting Civil Judge wrote a letter to the High Court, submitting for their consideration an extract from the Proceedings of the Acting District Magistrate of the 5th, together with other documents, of which the substance has been shown; and on the 30th October, the Acting Civil Judge wrote a second letter to the High Court, submitting, at the request of the Acting District Magistrate, extracts from the Proceedings of that Officer held on the 12th and 14th October respectively, from which it appears—

1st.—That the Acting District Magistrate forwarded to the Acting Civil Judge, on the 12th October, an extract from the Proceedings of the Deputy Magistrate, showing that the Deputy Magistrate had declined to submit to be arrested by an Officer deputed by the District Moonsiff's Court to arrest his person.

2ndly.—That the Acting Magistrate of the District, on the 14th October, essayed to prove to the Acting Civil Judge the impropriety and illegality of the Moonsiff's conduct, and informed him that the District Moonsiff was about to be tried in the Court of the Acting Head Assistant Magistrate on a charge of bribery.

13. Such is the substance of the correspondence now submitted for the consideration of Government, and I have now to convey to you the opinion of the Chief Justice and Judges of the High Court regarding the action which has been taken in this matter by the Deputy Magistrate and his superior Officer, the Acting Magistrate of the District of Trichinopoly.

14. The Chief Justice and Judges of the High Court are unanimous in thinking that the Deputy Magistrate grossly misconducted himself by contemptuously setting at defiance the several processes of the Court of Justice of which the District

Moonsiff is the Judge, issued in the pending suits, and by using his power as a Magistrate to enforce his defiant resistance.

15. They also agree in thinking that the Acting Magistrate of the District acted most improperly in supporting his subordinate in the illegal course pursued by him, and in threatening to support that illegal resistance by the Police placed under his authority for purposes very different. In the presence of acts probably unexampled, the subordinate but grave improprieties of the Magistrate's language and demeanour towards the Session Judge sink into relative insignificance.

16. Assuming for the present purpose that the Proceedings of the District Moonsiff were an utterly unfounded assumption of jurisdiction, the same legal course by defence and appeal was open to the Deputy Magistrate as to an ordinary defendant, and no other course. And if the District Moonsiff's conduct amounted to an offence, or was thought to render him unfit for his office, he was amenable to a regular proceeding under the Criminal Law, or might be removed, or otherwise punished, by the proper authority. The notion, even, that a Subordinate Magistrate, or any other functionary, may assume the power to determine for himself the legality or illegality of the proceedings of a Civil Court, and act on that determination, in the opinion of the High Court, calls for repression so decisive as to prevent the possibility of its being even entertained by any other Magistrate.

17. If the Magistracy of Trichinopoly be permitted to indulge with impunity in active antagonism to the law, it would seem to be impossible that the administration of justice in that district can be rendered effectual. If, in consequence of these proceedings, the Courts had used the powers vested in them by law with the intemperance displayed by the Magistrate and his subordinate in the assumption of powers which they have not, it is obvious that excessive public scandal, for which those Courts would have been in no way responsible, must have resulted.

18. In conclusion, I am directed to inform you that the Moonsiff has been acquitted of the charge of bribery instituted with obvious virulence by the Deputy Magistrate, and the Judges who have considered that case see no reason for dissenting from the conclusion of the Acting Session Judge, that the charge was a false one. There are other matters affecting the conduct of the Moonsiff still under the consideration of the Court, but they have no connection with the present proceedings.

From W. McQUIHAE, Esq., Acting Civil Judge of Trichinopoly, to the Acting Registrar of the High Court of Judicature at Madras; dated Trichinopoly, 14th October 1867, No. 329.

I have the honor to submit, for the information of the High Court, an extract from the Proceedings of the Acting Magistrate of Trichinopoly, dated 5th October, in the latter part of which he complains that I have not interfered to restrain the District Moonsiff of Trichinopoly from taking cognizance of three suits. Proceedings of the Magistrate, dated 20th September, and a report from the Moonsiff, dated 11th October, with translations of three complaints and an injunction, are also enclosed.

2. In these Proceedings the Magistrate complains of two acts done by the Moonsiff. The first is the registration of the three complaints above referred to and the issue of the usual summons upon them, and the second is the issue of injunctions under Section 93 of the Procedure Code.

3. The complaints have been withdrawn from the Moonsiff's Court, and placed on the file of the Civil Court, and, as a criminal prosecution of the Moonsiff for receiving money subsequently has been ordered by the Magistrate, any misconduct of which he may be found guilty must be dealt

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with hereafter. The Magistrate also does not appear to see the difficulty which exists about treating the Moonsiff's act in filing these plaints as misconduct before they have been disposed of judicially.

4. At present, I consider it my duty to lay these papers before the Judges, and to bring to notice the unusual action taken by the Magistrate in the matter of these suits.

5. It appears to me that, when a plaint is filed against a Magistrate, he should either answer it in the manner prescribed by law, or not answer it at all; and I think that the Proceedings of the Deputy Magistrate, dated 24th September, * are written in a style which should not be used by a Magistrate in addressing any Civil Court. The

injunctions complained of could have been brought before me judicially by appeal; but the Magistrate, having arrived at the conclusion that these plaints ought not to have been filed, threatens the Moonsiff with the penalties of the Penal Code, and thus adopts the dangerous course of deciding himself on the legality of a process issued by a Civil Court, and using his powers as a Magistrate for the purpose of quashing it.

EXTRACT from the Proceedings of the Acting District Magistrate, dated 5th October 1867.

Read again Extract from the Proceedings of this Court, dated 20th September 1867.

Read also the following Extract from the Proceedings of the Deputy Magistrate, dated 24th September 1867.

Extract from the Proceedings of the Deputy Magistrate, dated 24th September 1867.

Read papers alleged to be signed by the District Moonsiff of Trichinopoly, and professing to be injunctions.

With reference to the Proceedings of the Deputy Magistrate under date the 10th instant, copy of which was furnished to the District Moonsiff, it is observed that the papers, being illegal, are nullities.

Any trespass committed in connection with the above papers, or any attempt to use criminal force, or to commit an assault, will subject the perpetrator thereof, his aiders, and abettors, to the penalties prescribed in Sections 352 and 353 of the Indian Penal Code.

Resolved that an Extract from these Proceedings be forwarded to the District Moonsiff of Trichinopoly, also to the District Magistrate for information.

(True Extract.)

(Signed) R. RAGOONATHA ROW,
Deputy Magistrate.

Resolved that an extract from these Proceedings be furnished to the Civil and Session Judge.

The nullities in law, in the shape of the papers purporting to be injunctions, issued by the individual holding the office of District Moonsiff of Trichinopoly to the Deputy Magistrate, contain a demand for security under a threat of imprisonment, and thereby render the author amenable to the provisions of Section 189, Indian Penal Code. The Acting District Magistrate approves the Proceedings of the Deputy Magistrate, dated 24th September, and should the District Moonsiff attempt to enforce the threat held out by him, the Acting District Magistrate will consider it to be his bounden duty to take notice that the District Moonsiff is acting *ultra vires*, and to treat him, accordingly, as a private individual, under the provisions of the Indian Penal Code.

The Acting District Magistrate is not aware that any notice has been taken by the Civil and Session Judge of the facts brought to his notice in the Extract from the Proceedings of the Acting District Magistrate, dated the 20th September, and, meanwhile, the Deputy Magistrate remains under the special protection of the Police from the threatened illegal action of the District Moonsiff.

With a view to close this public scandal, the Acting District Magistrate requests the Civil and Session Judge will intimate to him whether it is his intention to interfere to restrain his subordinate.

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In the event of the Civil and Session Judge declining to interfere, the Acting District Magistrate will be prepared himself to bring the misconduct of the District Moonsiff to the notice of the Judges of the High Court.

(True Extract.)

(Signed) C. W. W. MARTIN,
Ag. Head Asst. Magistrate,
for Ag. District Magistrate.

PROCEEDINGS of the Court of the District Magistrate of Trichinopoly, 20th September 1867.

Read the following letter from the Deputy Magistrate of Sreerungum, dated 17th September 1867.

Read also the following Extract from the Proceedings of the Court of the above Deputy Magistrate submitted therewith, and dated the 10th idem.

From the Deputy Magistrate, Sreerungum, to the Acting Magistrate of Trichinopoly; dated Trichinopoly, 17th September 1867.

In submitting an Extract from the Proceedings of this Court, I beg to lay before you my views on the subject of jurisdiction.

2. A Magistrate can pass an unjust order in either of the following two ways—corruptly or maliciously, or unintentionally.

3. In the first case, Section 219 of the Indian Penal Code, as governed by Chapter XI of the Code of Criminal Procedure, is applicable.

4. In the latter case, the remedy, as appears to me, is not against the Magistrate, but against his order.

5. A Magistrate may pass an unjust order unintentionally either by mistake of fact or of law. Regarding the former, the injured party can obtain redress from the Jury sanctioned by law, or from the Appellate Authority. If the Magistrate has exceeded his jurisdiction by mistake of law, the High Court will afford redress to the injured party.

6. Thus it will be seen full remedy is afforded by law, without reference to the Civil Courts, to parties who may be injured by Magistrates, who are Judges in Criminal Courts—vide Sections 11 and 19 of the Code of Criminal Procedure, and of the Indian Penal Code, respectively.

7. I hold that no Court can command another Court which is not subordinate to the former, and appeals from which have not been declared by law to lie to it.

Extract from the Proceedings of the Deputy Magistrate of Sreerungum, under date the 10th September 1867.

Read the following papers from the Court of the District Moonsiff of Trichinopoly, calling upon the Deputy Magistrate to appear to answer the plaints filed by one Tatamiengar and two others, complaining against certain notices issued by the Court for the removal of their houses, &c.

(Here enter 7th September 1867, in O. S. Nos. 333, 334, and 335).

The Deputy Magistrate observes that the aforesaid papers are not legal processes. The notice complained of having been issued under Section 308 of Criminal Code Procedure from this Court, and a complaint against its having been issued having been dismissed by the Session Court, its propriety or legality can only now be adjudicated upon by the High Court, and not by any Civil Courts. The District Moonsiff has no jurisdiction in this case—vide Section 311, Criminal Procedure Code, and Section 1, Civil Procedure Code, and Section 11 of Regulation II of 1802.

Ordered that a copy of these Proceedings be forwarded to the Court of the District Moonsiff for his information.

That a copy be also submitted to the District Magistrate, with a request that he will address the Session Judge with a view to the latter Officer directing the District Moonsiff to refrain from issuing similar processes to Criminal Courts.

(Signed) R. RAGOONATHA ROW,
Deputy Magistrate.

This Court concurs with that of the Deputy Magistrate in considering the action of the District Moonsiff to be illegal and the process issued by him to be null and void, and resolves, accordingly, to forward an Extract from these Proceedings to the Civil and Session Judge, with a request that he will take such notice of the Proceedings of the District Moonsiff as he may think fit.

(Signed) J. D. B. GRIBBLE,
Asst. Magistrate,
for Acting Magistrate.

From T. RAJAGOPAL NAIKER, District Moonsiff of Trichinopoly, to the Acting Civil Judge of the Zillah of Trichinopoly; dated Trichinopoly, 11th October 1867.

In obedience to the Takeed received yesterday at ½ past 4 p. m., accompanied with an Extract from the Proceedings of the District Magistrate, under date the 5th instant, calling upon me to furnish explanation in the matter, I most humbly beg to submit that, on the 6th ultimo, one Tatamiengar and two others of Sreerungum respectively presented three plaints, accompanied with motions applying for injunctions under Section 93 of the Code of Civil Procedure.

2. I considered that the plaints contained a cause of action, and that the defendant was amenable to the Civil jurisdiction, inasmuch as Section 311 of the Criminal Procedure Code only prohibited the Civil Courts from entertaining suits in respect of anything *necessarily* or *reasonably* done to give effect to an order of the Magistrate in these instances. By the introduction of the words "*necessarily*" or "*reasonably*" in the above Section, it is apparently implied that the Civil Courts are empowered to take cognizance of suits of this nature if the order of the Magistrate be given *unnecessarily* or *unreasonably*. In the plaints, it is set forth that the buildings did not encroach upon the high way, as would be found by the survey and pymash accounts, and that they were standing on the site for a very long period.

3. Independent of this, Section 308 of the Code of Criminal Procedure applies only to new buildings, as there appears no provision in the Section as regards long standing ones. To suppose that the words "obstruction" or "nuisance" in the first part of the above Section applies to old buildings, would be incorrect, inasmuch as that Section is a re-enactment of the English Law, and the expression "obstruction" in a thoroughfare is identical with the technical expression "Purpresture." This is defined (by Blackstone, volume IV, page 167, 15th edition) to be house erected or an enclosure made upon any part of the King's demesnes or of any highway, &c. This only speaks of a house erected, *i. e.*, *apparently newly*, and it does not seem to apply to an old building of long standing; and as a separate provision is made in Section 308 as regards new buildings, the expression "obstruction or nuisance," therein alluded to, cannot but mean any obstruction or nuisance caused in any high-way by throwing down stones, &c.

4. Irrespective of this, the houses in question were situated within the third wall of the Sreerungum Pagoda.

5. Under these circumstances, I considered that an action might be against the defendants.

6. With this my humble opinion I entertained the suits, and then gave my attention to the grounds of the plaintiffs' motions applying for writs of injunction under Section 93 of the Civil Code, which appeared to be emergent, since they represented in their affidavits that the houses will be positively demolished the very next day but one, which was Sunday. I, therefore, complied with the petitioners' request, and directed the issue of a notice under Section 93 of the Civil Code, adding thereto that both the parties should not interfere in the demolition of the buildings, *till the specific time* given in the notice for passing a final order regarding the issue of an injunction expires.

7. The notice was duly served on the defendant, and returned on the 10th ultimo with the signature and *the official seal of the defendant*. The next day I received the accompanying Extract from the Proceedings of the defendant; but as the defendant was required by law to put forth his objections in writing upon stamp paper, either in person or by an authorized Vakeel, I did not take any legal notice of it.

8. There is no doubt that the issue of the above notice from my Court tended to stay the proceedings of the defendant, but as the Courts in India are Courts of Law as well as Equity, I think I am justified in issuing it (Goldsmith's Doctrine of Equity, page 124).

9. On the 13th ultimo, the plaintiffs again applied to me that, after the service of the above notice, the defendant ordered the Sub-Magistrate of Trichinopoly Taluq to demolish the houses on that day, and that they (plaintiffs) received a notice from the latter Officer to make arrangements for the removal of their family chattels, &c., and requested me to issue an injunction forthwith under Section 93 of the Code; but I did not comply with their request, thinking that the few words added to the notice were tantamount to an injunction, and ordered that I will not interfere in the matter until the defendant actually infringes the law. On the 17th ultimo, the plaintiffs again presented a motion informing me that, as represented by them in their last motions, the defendant and the 1st Class Sub-Magistrate of Trichinopoly with some others mentioned therein, actually razed the houses to the ground, with the exception of the foundations, and praying that the further proceedings of the defendant may be stayed, and the materials of the buildings, which the plaintiffs stated that the defendant was about to put to public auction, may be attached and brought to Court, and that, otherwise, no trace of the buildings will be left behind. On this, I issued an injunction under Section 93 of the Code, enjoining the defendant to *refrain from continuing* the wrongful act complained of.

10. On the 21th ultimo, the written order given to the peon to serve the above injunctions on the defendant was returned, with an endorsement that he defendant refused to receive the writ, on the ground that it was illegal, and that the copy thereof was stuck up to a post near the demolished buildings.

11. On the 25th ultimo, I received the accompanying Extract from the defendant's Proceedings, under date the 21th idem, of which I took no notice, as being unwarranted by law.

12. On the 28th ultimo, the plaintiffs again presented a motion representing that, after the issue of the injunctions, the defendants destroyed even the foundations, leaving no traces of the buildings behind, and sold all the materials for low bids, in contradiction to the Court's processes, and that the defendant intends to make some use of the site where the buildings lately stood, and that he may, therefore, be directed to abstain from further proceedings.

13. In this state of circumstances, I found that I had no other alternative left to me by the law than to issue a warrant, as directed in Section 93, and in consequence I issued the warrant, and directed the peon with whom it was entrusted for execution not to *arrest* the defendant *actually*, but merely to inform him that he has a warrant of arrest to be executed, and to make a return of the reply he (defendant) may make; and the peon has returned it yesterday, stating that he was *unable to execute it*, unless he used physical power, because he (defendant) who had Police Constables by him at the time, besides his own servants, said that the process was illegal, and that he would not mind it, and that he (peon) may be off.

14. Under the foregoing circumstances, I beg to submit to your Honor that I have conducted myself in my capacity as far as the law permits me to do, and as I am at a loss to know what measures I should adopt in this predicament, I beg your Honor to instruct me as to the proper course I ought to pursue in this case.

15. With this my humble explanation, I beg to submit, for your honor's perusal, the petitions of the plaintiffs as well as the processes that have been issued by me in the aforesaid suits.

ORIGINAL SUIT No. 333 of 1867.

To the District Moonsiff of Trichinopoly.

Plaintiff.

Defendant

Tatamiengar, son of Nadamuni Seshadri Iyengar, living in Sreerungum, Trichinopoly Taluq.

R. Rageonatha Row, Deputy Magistrate of Trichinopoly, living in Sreerungum.

Suit, under Section 26 of the Civil Procedure Code, to establish the plaintiff's right to a terraced house and shop, and to the ground on which they stand, worth Rupees 609.

1. The terraced house which has been in existence from a long time, and which is situated in Sreerungum, within the boundaries herein below specified, formerly belonged to one Renga Iyengar of Sreerungum ancestrally, and was sold by him to Venkatam Iyengar, from whom plaintiff

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purchased it on the 9th April 1866, for Rupees 190. He also bought another piece for Rupees 25, on the 3rd November 1866, from one Sesha Iyengar. The plaintiff repaired the building at a cost of Rupees 385, and is ever since in the enjoyment thereof.

2. The defendant has issued a notice on the 9th August last, directing the building to be demolished within thirty days, on the ground that it is an encroachment upon the public road. Neither the survey accounts nor the old pymash accounts, which the defendant alleges have led him to issue the notice, show that the ground in question is entered as public road.

3. The plaintiff, therefore, seeks to establish his right to the building and the ground, and to stop the execution of the notice improperly issued by the defendant.

The terraced building and the ground on which it is built, are worth Rupees 600, and are situated in the northern row of the south Ulthiravithi in Sreerungum, and are bounded on the west by Kurathalvar Gopuram, on the north by the Mathal (Pagoda wall), on the east by Ariyamangalam Sesha Iyengar's house and by the ground around plaintiff's half well, and on the south by the street running east to west, and measuring 27 feet east to west, and 25 feet from north to south.

The two deeds of sale alluded to in this plaint are herewith filed.

I, plaintiff, do hereby declare, that what is herein stated is true.

(Signed) NADAMUNI TATAMIENGAR,

6th September 1867.

Filed 7th September 1867.

(Signed) T. RAJAGOPAL NAIKER,

District Moonsiff.

(True translate).

(Signed) W. McQUIHAE,

Acting Civil Judge.

ORIGINAL SUIT No. 334 of 1867.

To the District Moonsiff of Trichinopoly.

Plaintiff.

Ranga Iyengar, son of Nadamuni Seshadri Iyengar, residing in Ulthiravithi, Sreerungum, Trichinopoly Taluq.

Defendants.

1. R. Ragoonatha Row, Deputy Magistrate of Trichinopoly, living in Sreerungum.

2. Sesha Iyengar, son of Iya Iyengar, living in the village of Ariyamangalam, Trichinopoly Taluq.

Suit, under Section 26 of the Civil Procedure Code, to establish the plaintiff's right to enjoy a terraced building which he holds under a mortgage for Rupees 150 till the expiration of the stipulated time.

The plaintiff paid Rupees 150 on the mortgage of the undermentioned house and obtained a deed of mortgage on the 14th September 1865, from the 2nd defendant, the owner of the house in question, providing that the plaintiff shall enjoy the house for four years, that is, till 13th September 1869, in lieu of the interest; and he enjoys it under this right. The 1st defendant has, on the 9th August last, issued a notice to the 2nd defendant, directing him (2nd defendant) to knock down the house within 30 days, alleging that it is an encroachment upon the public road. The 2nd defendant having received some money from the 1st defendant as compensation for the house, the 1st and 2nd defendants try to deprive the plaintiff of his mortgage right before the expiration of the stipulated time. The plaintiff, therefore, prays for a decree to the effect that he shall occupy the house till the expiration of the time, and then surrender it on receipt of the mortgage amount; and that the notice in question shall not be carried into execution.

The Manai and the terraced building measure 37 feet from east to west, and 25 feet from north to south, and is situated in the northern row of the southern street called Ulthiravithi, in Sreerungum, to the west of Anaikattimedu, north of the street, running east to west; east of the

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Manai belonging to the plaintiff's brother Tatamiengar, the well and the lane which measures five feet north to south, and which was sold by the plaintiff's brother to the 2nd defendant; and to the south of the pagoda wall (Mathal).

Amount of mortgage, Rupees 150.

I shall produce the deed of mortgage herein alluded to at the first hearing, as I have pledged it with one Vettithirumutham Singam Iyengar in Sreerungum.

I do hereby declare that what is herein stated is true.

6th September 1867.

(Signed) NADAMUNI RANGA IYENGAR.

Filed 7th September 1867.

(Signed) T. RAJAGOPAL NAIKER,

Moonsiff.

(True Translate).

(Signed) W. McQUIHAE,

Acting Civil Judge.

ORIGINAL SUIT No. 335 of 1867.

To the District Moonsiff of Trichinopoly.

Plaintiff.

Iya Iyengar, son of Ramasami Iyengar, living in Kila Adiyavalanjan Street, Sreerungum.

Defendant.

R. Ragoonatha Row, Deputy Magistrate of Trichinopoly, living in Sreerungum.

Suit, under Section 26 of the Civil Procedure Code, to establish the plaintiff's right to the terraced house and shops, and the ground on which they stand, worth in all Rupees 400.

1. The ground, as well as the house and shops thereon situated, within the boundaries hereinbelow specified, formerly belonged to Vethaviasatirumalai Bhattar Iyengar, of Sreerungum, whose forefathers have been enjoying it for generations; and he sold it in the year 1825 to one Gundo Panditor, and his father Kupparoyer. The plaintiff's father, Ramasami Iyengar, purchased them for Rupees 330 on the 28th June 1848, from Lechumi Ammal and others, heirs of the said Gundo Panditor and his father Kupparoyer, and laid out Rupees 500 for repairing the same. The plaintiff subsequently sold the southern half of the house, measuring 22 feet, and is now in possession of the northern half, consisting of the house, shops, &c., in dispute.

2. On the 9th August last, the defendant has unjustly issued a notice to bring down the house, &c., within 30 days, alleging they are encroachments on the public road.

3. The plaintiff's claim to the ground on which the disputed house, &c., stand is established by the pymash accounts of Fusly 1244, when this ground also was surveyed. The plaintiff, therefore, seeks to establish his title to the disputed house, &c., and to stop the execution of the notice improperly issued by the defendant.

The estimated value of the house and the shop is Rupees 400. They are situated at Then-candam in the eastern Chitrai street at Sreerungum, within the boundaries, viz., south to the road of Domodaram Gopuram, north to the house sold by plaintiff, east to Rajavidi, and west to Domodaram Gopuram.

I have herewith produced the deed of sale.

I verify that what is stated herein is true.

(Signed) IYA IYENGAR,

() CHINNASAMI NAICK, Fakeel.

6th September 1867.

Filed 7th September 1867.

(Signed) T. RAJAGOPAL NAIKER,

District Moonsiff.

(True Translate).

(Signed) W. McQUIHAE,

Acting Civil Judge.

NOTICE.

Under Section 93 Act VIII of 1859 (Batta Peon).

District Moonsiff's Court at Trichinopoly.

ORIGINAL SUIT No. 333 of 1867.

Plaintiff.

Defendant.

Tatamiengar, son of Nadamuni Sashadri
Iyengar, residing in the east Ulthiravithi, at
Sreerungum, Trichinopoly Taluq.

R. Ragoonatha Row Avergal, Deputy Magistrate
of Trichinopoly, residing in the said village.

To you the Defendant.

Whereas application has been made to this Court by the plaintiff abovenamed for an injunction to restrain you from committing the injury hereinunder specified, you are hereby commanded, on penalty of imprisonment, to refrain from the repetition or the continuance of such wrongful act, and from the committal of any injury of a like kind relating to the same property or right, and to furnish, on or before the 26th September, security in the sum of Rupees 700 duly to obey this injunction.

Specification of the act.

You should not demolish the terraced house in dispute, which is situated east of Kurathalvar Gopuram in Ulthiravithi street at Sreerungum; and if any portion of the building had been demolished, you should not interfere with the other portion which was not demolished, and with the materials of that already demolished.

(Signed) RAJAGOPAL NAIKER,
District Moonsiff.

21st September 1867.

(True Translate).

(Signed) W. McQUIHAE,
Acting Civil Judge.

From W. McQUIHAE, Esq., Acting Civil Judge of Trichinopoly, to the Acting Registrar of the High Court of Judicature, Madras; dated Trichinopoly, 30th October 1867, No. 349.

At the request of the Acting Magistrate of Trichinopoly, I have the honor to submit, herewith, Extracts from his Proceedings, dated 12th and 14th October, in continuation of my letter dated the 14th October. The Moonsiff has been committed to take his trial at the next Criminal Sessions for an offence punishable under Section 165 of the Penal Code. I, therefore, say nothing further regarding his conduct at present.

Extract from the Proceedings of the Acting District Magistrate of Trichinopoly, dated 12th October 1867, No. 142.

Read the following letter dated the 11th instant, from the Deputy Magistrate of Sreerungum:—

From the Deputy Magistrate, Trichinopoly, to the Acting Magistrate, Trichinopoly; dated Trichinopoly, 11th October 1867.

In continuation of my several Proceedings submitted to you, I beg to inform you that, on the morning of the 10th instant, while I was engaged in official business at home at Sreerungum, my orderly brought a message that a peon wanted to come to me, stating that he had certain processes of the Court. He was permitted to appear before me, and he very respectfully placed three

papers before me, and stated that they were warrants from the District Moonsiff. They contained a requisition to the peon to produce me before the District Moonsiff on the 10th instant, with a false assertion, amongst other things, that a notice under Section 95 of the Civil Procedure Code had been served on me.

2. I told the peon that these papers were not legal processes, and that, with this knowledge, if he chose, he might act upon them. He took the papers back very respectfully and went away.

3. Unless you move to put a stop to such illegal conduct of the so-called District Moonsiff, the Magistracy cannot perform their functions properly in administering the law entrusted to them.

Resolved that an Extract from these Proceedings be furnished to the Civil and Session Judge, with reference to the Proceedings of the Acting District Magistrate, dated 20th September and 5th instant.

(True Extract).

(Signed) G. VANS AGNEW,
Acting District Magistrate.

Extract from the Proceedings of the Acting District Magistrate, dated 14th October 1867.

Read Extract from the Proceedings of the Session Court, dated the 10th instant.

The Acting District Magistrate observes that there are no "points", in connection with the subject of his Proceedings of the 20th ultimo and 5th instant, which he "wishes to have determined" nor any "questions" which he "wishes to refer for the decision of the Judges."

The Acting District Magistrate is of opinion that there is no occasion to ask the Judges to pronounce upon the illegality of the District Moonsiff's proceedings: that illegality he believes to be sufficiently patent.

In communicating to the Civil and Session Judge Extracts from his Proceedings of the 20th ultimo and 5th instant, the Acting District Magistrate's object was to bring to his notice the gross and culpable illegality of the acts, therein set down, of the District Moonsiff, with a view towards the Acting Civil and Session Judge interfering to control his subordinate and bringing his misconduct before the Judges of the High Court for such notice as they might deem fit.

The misconduct of which the Acting District Magistrate complains consists in that, whereas by the Rules of Practice (under head jurisdiction) it is laid down that "every plaint, on its presentation, should be examined, to ascertain, with reference to Sections 1 and 2 of the Code, and Sections 3 and 4, Act XXIII of 1861, whether the Court has jurisdiction in respect of the subject matter of the suit," and whereas, by Section 1 of the Civil Code, Civil Courts are prohibited from taking cognizance "of suits of which their cognizance is barred * * by any Regulations of the Codes of * * Madras * *" and whereas Section 11, Regulation II of 1802, prohibits Civil Courts "from interfering in any respect in any cause or matter of a criminal nature declared cognizable by the Magistrates * *," and whereas by Section 308 of the Criminal Procedure Code, the removal of nuisances has been declared cognizable by the Magistrate of a District or of the division of a District, in admitting upon his file plaints in the matter of the removal of nuisances, praying for decrees directing that the orders of the Deputy Magistrate should not be carried into effect, the District Moonsiff not only acted wholly without jurisdiction but in bad faith, inasmuch as he cannot be considered to have acted with that "due care and attention," which constitutes good faith, in neglecting to take notice of the above quoted clear provisions of the law, of which it is impossible to suppose a Civil Judge of his standing could be ignorant, also in that the District Moonsiff issued injunctions in order to prevent the Deputy Magistrate from acting in the execution of his legally bounden

duty, under Section 311, Criminal Procedure Code, notwithstanding that the concluding lines of the Section itself forbid the interference of any Court, and that he demanded security from the Deputy Magistrate, and, in default of compliance, threatened his person, and actually issued warrants for the production of his person before him, every one of these acts being palpably undertaken in bad faith.

And not only does the Acting District Magistrate impute to the District Moonsiff bad faith, but, on the 12th instant, he became aware of facts which warrant him in stating that the District Moonsiff lies under the gravest suspicion of having acted throughout from corrupt motives. The Acting District Magistrate has already directed the institution against him of criminal proceedings, under Chapter IX of the Indian Penal Code, and the District Moonsiff will very shortly have an opportunity, if innocent, of clearing himself before the Acting Head Assistant Magistrate from the charge of receiving a bribe of Rupees 2000 from parties interested in the subject matter of his proceedings now in question.

Whatever may be the result of this charge, the Acting District Magistrate deems it to be his duty, on this occasion, to state that the habitual corruption of this District Moonsiff is a matter of the utmost notoriety. In public estimation he weighs as a curse upon the people subject to his jurisdiction, and covers with disgrace the administration of justice.

The Acting District Magistrate, who has many sources of information, believes the judgment of the public to be correct. He vouches that what he has stated is their judgment.

(True Extract.)

(Signed) C. W. W. MARTIN,

*Acting Head Asst. Magistrate,
for Acting Magistrate.*

To the Session Judge, Trichinopoly.

No. 140. MINUTE by the HONORABLE H. D. PHILLIPS, dated 4th December 1867.

The circumstances of the extremely grave official misconduct which the Judges of the High Court bring to notice, and of which, as Magistrates, Mr. G. Vans Agnew and Ragoonatha Row, are clearly guilty, are so well stated in the Judges' communication, that it seems only necessary I should specify the course which, in my humble opinion, the Government ought now to pursue.

2. It is impossible not to regard Mr. Vans Agnew and Ragoonatha Row's proceedings in the light in which they have appeared to the four Judges of the High Court. I agree entirely in their unanimous opinion; and, on a careful review of the facts, I am unable to discover any excuse for what the two Magistrates appear to have been so intent on doing. The original object of the Native Magistrate was the demolition of a house situated within the third wall of the great Pagoda at Sreerungam. As this building was an ancient construction, there could have existed no reasonable or urgent necessity for hurrying the work of its removal. It may have been, on sanitary or other grounds, an inconvenient building, or an unsightly object, and both the Native Magistrate, Ragoonatha Row, and his superior European Magistrate, Mr. Agnew, may properly have considered it to be an obstruction of the class which, under the Code, they were competent to remove. When, however, the correctness of the view and the justice of the proceedings of the two Magistrates were formally impugned in a Court of Law—such Court being the only medium through which the proprietors of the house could test the lawfulness of the operations taken by the Magistracy to their detriment—it is obvious, beyond all doubt, that it at once became the bounden and solemn duty of both Magistrates to support the

action of the Court, and meet its requisitions with obedience. Instead of so doing, they placed themselves in antagonism to the Court's formal injunction, evaded in terms of studied disrespect its legality, and sneered at an asserted want of jurisdiction. Assuming the Court of the District Moonsiff to have been egregiously wrong throughout—which it was not, for the reverse is the case—it was not for the Magistracy to raise a question of insufficient jurisdiction, unless in the answer to the civil suit, which they ought to have presented to the Court trying the suit.

3. The principal Magistrate, Mr. Agnew, went, we further find, to the unexampled extent of warning the Civil Judge (Mr. McQuhae) that he would carry out the order of demolition issued by his Subordinate Magistrate, by calling in all the local Police to support the work of destruction!

4. The High Court have very justly observed that, if the judicial authorities at Trichinopoly "had used the powers vested in them by law with the intemperance displayed by the Magistrate and his subordinate in the assumption of powers which they have not, it is obvious that excessive public scandal, for which these Courts would have been in no way responsible, must have resulted."

5. In fact, had the District Moonsiff and the Civil Judge operated against Mr. Agnew and Ragoonatha Row to the full and lawful extent of the judicial powers they possess, we should have seen the two principal Officers of our Magistracy at the chief town of Southern India in arrest for contempt of the authority of one of the constituted Civil Courts, which, as servants of the Government, they were bound to obey and support—and there can be no higher contempt than that of a Magistrate who disobeys a legal injunction issued by a Civil Court, and who proceeds to complete an act of aggression which that Court has been appealed to to repress.

6. The Judges of the High Court observe that the administration of justice in the Trichinopoly District cannot be rendered effectual if the Magistracy there be permitted to indulge with impunity in active antagonism to the law. I am quite of their opinion, and think that early notice should be taken of the extremely pernicious example set by the Magistrates in question to the awkwardly mixed population of fanatical Mahomedans in the Fort and town, and the bigotted Brahmins who occupy the Island of Sreerungam.

7. The removal of both these Officers from Trichinopoly to another District appears to me to be a measure of imperative necessity, and I shall be prepared to join the Government in an order for their suspension from office for a period which might be determined in consultation. Personally, I consider that six months would be an appropriate period, for it is the most obvious duty of the Government to do without hesitation what will uphold the established Courts in public estimation.

8. If the false prosecution of the District Moonsiff on a charge of bribery was instituted, as the Judges represent it to have been, by Deputy Magistrate Ragoonatha Row, "with obvious virulence", and during the period when that Magistrate and Mr. Agnew were thwarting the just operation of the District Moonsiff's injunction, the act is one that demands the most serious consideration of the Govern-

not; let me observe that the paper now sent from the High Court does not supply the material on which rests the above opinion of the High Court.

9. I would, therefore, suggest that the record of the trial referred to in paragraph 12 of the letter from the High Court be sent for, that we may ascertain whether the circumstances under which the District Munsiff was brought to hold the Criminal Court can be distinctly attributed to Ragoonatha Row.

10. Should this additional and most grave set of misdeeds of his magistratorial powers be fully made out against the Deputy Magistrate, it will be necessary to adopt in his respect a far more severe course than the one I have advised.

(Signed) H. D. PHILLIPS.

P. S.—I place in the paper a note from Mr. Agnew sent to me by His Lordship the President. It does not seem necessary, I submit, to call for explanation from Mr. Agnew. His acts are explained, supported, and justified in his own chosen language as used in the Proceedings of the Court which form part of the packet. The Codes now in force were before the public mind from the 1st January 1862, when they came into operation. From that date, the members of the Civil Bar had had equal advantages for studying and applying the provisions of the Codes, and the present Lord seemed to have no difficulty in construing any part of them. They are daily and hourly in the hands of the Magistery, who, in reality, have more frequent opportunities of studying the law—the law of the two Codes—than the persons to whom Mr. Agnew's note seems in one part to allude.

(Signed) H. D. P.

No. 141. Minute by the Honorable A. J. ARBUTHNOT, dated 4th December 1867.

I entirely concur in the opinions expressed by the Judges of the High Court, and by my colleague Mr. Phillips, as to the gravity of the misconduct of which the Acting Magistrate of Trichinopoly, Mr. G. Vans Agnew, and the Deputy Magistrate, R. Ragoonatha Row, have been guilty in this matter.

2. The Judges designate the acts of these Officers as "profoundly unbecoming," and I certainly cannot call to mind any previous instance of resistance to the constituted authority of the civil tribunals, on the part of an Officer of the Magistery, so gross, so intemperate, and so obviously unwarrantable as that brought to notice in the case now before us.

3. Nor is it possible in my judgment to attribute the acts of these Officers either to a mistaken sense of duty or to ignorance of the law. They are both Officers of considerable experience, and I cannot believe that, in setting at defiance, as they did, the process of a duly constituted Court, and in adopting the contemptuous tone which characterizes their communications, they acted in good faith, or in the belief that the course taken by them was correct in law, or right in principle. I can only attribute their conduct to a fixed determination to carry out the measure on which they had resolved, utterly regardless of consequences and of the public scandal which must necessarily result from their acts.

4. It is clearly out of the question that either of these Officers should be permitted to hold office any longer in the District of Trichinopoly, and I concur in the opinion of Mr. Phillips that a more severe punishment than mere removal to another District is required. I would send Mr. Vans Agnew back to his permanent appoint-

ment as Sub-Collector and Joint Magistrate of Tanjore, and would intimate to him that he will not be re-appointed to the charge of a District for at least one year, and not then unless the Government shall be satisfied that his duties have, during the interim, been discharged with that temper and discretion which are essential in an Officer entrusted with the responsible functions devolving on the Collector and Magistrate of a District.

5. Ragoonatha Row I would reduce to the third grade of Deputy Collector, and place him in charge of the Treasury in another District. In the first instance, however, I would call for the record of the trial referred to by Mr. Phillips, in case any ulterior measures should be necessary with reference to this Officer.

(Signed) A. J. ARBUTHNOT.

No. 142. Minute by the Right Honorable THE PRESIDENT, dated 5th Decr. 1867.

I concur essentially in the views conveyed by the High Court (as it seems to me, with some unnecessary warmth of expression) respecting the conduct of the Acting District Magistrate of Trichinopoly and the Deputy Magistrate. There can be no question that the course pursued by both these Officers has been characterized by want of temper, by ignorance of law, and by an insensibility to official responsibilities and duties which are in the highest degree worthy of blame in Officers of their station. Such an exhibition of indelicacy has caused a conflict of authority extremely prejudicial to public order, and which might have produced consequences calculated to bring the Government into contempt, and to provoke a spirit of insubordination in the people. I have read the communications of Mr. Agnew and of Ragoonatha Row with astonishment, and I think that they both deserve to be censured and punished.

2. On a comparison of the opinions enunciated by my colleagues, I incline to the suggestion offered by Mr. Arbuthnot, believing it to be the milder one, though still sufficiently severe. I would send Mr. Agnew back to his substantive appointment of Sub-Collector for a year, with an admonition that he will only be preferred to a higher employment when the Government has grounds to believe that he is prepared to exercise his duties with gravity and moderation. I would, as a preliminary measure, suspend the Deputy Magistrate until further orders. We shall soon be enabled to form a judgment as to his motives in directing the prosecution of the District Munsiff on a charge of bribery.

(Signed) NAPIER.

No. 143. ORDER IN COUNCIL, 11th December 1867, No. 2032.

In the letter above recorded, the Chief Justice and Judges of the High Court bring to the notice of Government certain proceedings of Mr. Agnew, the Acting Magistrate, and of Ragoonatha Row, the Deputy Magistrate of Trichinopoly, by which these Officers have, in a manner which is justly described as unbecoming, placed themselves in a position of open antagonism to the law, and have set at defiance the authority of the Civil Courts, to which it was their duty to have shown respect and obedience. The Deputy Magistrate has not only treated with contempt the processes of the District Munsiff's Court, by declaring these processes to be

I beg to say that I have submitted, with
reference to para 1 of the order, that
I believed that the only means of redress given
to the parties aggrieved was to ask for a copy
as provided in section 10 of the Criminal
Procedure code, & to let it be sent to them, & that
I have explained to the parties concerned

I have to say to you most solemnly
that I preferred with abundant evidence the charge
of bribery against the District Munsiff, but in the
country I was adverse to the prosecution of the
charge, a fact well known to you & to
Mr. J. P. Police Superintendent

4. With these explanations, I leave my case
in the hands of Govt for recording the matter.
I have the honor to be
Sir,
Yours obedient servant
15 December 1877
P. N. S. P. S.

To
The Chief Secretary to Government.

Sir,

1. Deputy Magistrate Ragoonath Row
has forwarded to me the accompanying
original letter upon the subject of the G.O.
of the 11 instant which I received and
communicated to him yesterday.

2. Had Ragoonath Row requested me
to do so, I should have equally felt
myself bound in honor to lose no time,
as soon as an opportunity was afforded
me, in relieving him of the greater
portion of the responsibility which it
seemed probable would be, and which,
from their order, I perceive that the
Govt. have actually attributed to him.
Ragoonath Row, I beg to assure the
Govt. cannot in justice be held respon-
sible for any step beyond the recording
and communicating to the District
Munsiff his first Proceedings. Of this
step I was not cognizant until it had
been

been taken. For everything that was done afterwards I am alone responsible. Ragoonath Row's second Proceedings I wrote myself, telling him then, as I have repeatedly told him since, that the responsibility was mine and that he could not be held accountable for my acts.

Ragoonath Row would have drawn back and furnished the security demanded by the District Moonsiff, in which case no warrant for his arrest could have been issued. He wrote and asked me to allow him to do so; but I refused, telling him that the conduct of the affair and the responsibility rested upon me. I submit to the Govt. that considering our relative positions and the assurances I had given him, Ragoonath Row ought not to be held responsible. I beg of the Government to consider how doubly painful my position is rendered by seeing my subordinate suffer professional ruin thro' bending to a will which it can scarcely be imputed to him as blame - he was incapable of

11
of resisting.

4 The entire Proceedings which I presume contain the remarks of the High Court have not yet reached me, but I can assure the Government that Ragoonath Row is innocent of the accusation of having "preferred the charge of bribery against the District Moonsiff with 'obvious virulence'". Ragoonath Row did not prefer the charge at all. He gave me certain information - information, the truth of which has never been disputed, equally well known to others, and which in all probability I must have obtained from other quarters - but he did not know that I would act upon it. My firm belief is that had he thought I would have acted upon it he would not have given it to me, for he was not blind to the fact that his motives would be subject to attack. For this reason it is true that he was averse to the prosecution, and so unmistakably did he show his unwillingness by withholding from me assistance which I knew he could render if he chose, that

Recd. March
Recd.

that I upbraided him for his want
of public spirit in allowing himself
to be influenced by what I considered
such cowardly motives.

I have the honor to be,

Sir

Your most obed^t. servant

George Agnew

14 Decr 1867.

Mr Wm
Muir

Baginatti P. P.
may so
be sent.

I concur entirely in the views conveyed
by the High Court. (as it seems to me with
some unnecessary warmth of expression)
respecting the conduct of the Acting District
Magistrate of Mookimpooy and the Deputy
Magistrate. There can be no question
that the course pursued by both these
officers has been characterized by want of
temper, by ignorance of law, and by an
insensibility to official responsibilities and
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Such an exhibition of indiscretion has
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of insubordination in the people. I

Can read the communications of Mr. Agnew
and his Rajasthan Revenue with astonishment
and I think that they well deserve to be
censured and punished.

On a comparison of the opinions
expressed by my Colleagues I incline
to the suggestion offered by Mr. Detmold,
believing it to be the milder one. This is still
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Agnew back to his substantive appointment
of Sub Collector for a year with an
admonition that he will only be preferred
to a higher employment when the Govt.
has grounds to believe that he is
prepared to exercise his duties with
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as a preliminary measure suspend

16 13
The Deputy Magistrate until further
orders. We shall soon be enabled to
form a judgment as to his merits in
directing the prosecution of the District
Inspector on a charge of Bribery.
J.

Camp
Newington



14
24th Nov. 167.

My Lord

I have just received a hint
that Govt. contemplate treating
me with severity on a reference
by the Judges. I beg your Lordship
to permit an order to be passed
without giving me an opportunity
of offering a full explanation of
the grounds which led to my adopting
the course which I presume has been
objected to. I believe I can put
a different complexion on the
matter from that in which the
Judges have probably regarded it.
If they have condemned the view
of the law which I took I fear I

cannot defend myself
from having made a grave
mistake, but I beg your
lordship & the Govt. to believe
that I acted throughout with
the very best intentions -

I beg your lordship to consider
what is the fact - that I have
had a peculiarly difficult part
to play in a most demoralized
corrupt district especially
in securing interests of the Govt.
which for many years past
had been totally neglected.

Duties of this nature cannot be
performed by anyone who is not
prepared to accept responsibility
& if in their performance errors
are committed - however grave

they may be in appearance to those
whose constant study is the law -
I do think that from the Executive
Government some forbearance is
due to the Officers who may
commit them, while acting to
the best of their ability solely
in the interests of the Govt.!

At all events I venture to ask
as a personal favor of your
lordship that I be not condemned
unheard. and I beg your
lordship to remember that it
is not Collectors & Magistrates
who fear to accept responsibility
who effect real good in their
districts. If your lordship
were to visit this district I

Thank I could prove to your
lordship that I have effected
improvements & generally
raised the tone of the administration
in a degree that your lordship
would admit should entitle
me at least to the forbearance
of the public in respect to any
particular error I may be
considered to have committed.

I have the honor to be
my lord
your lordship's obedient servant
G. A. S. S. S.

Mr. Agnew and Raganadha Row

The circumstances of the extremely grave
official misconduct which the Judges of
the High Court bring to notice, and of
which, as Magistrates, Mr. J. Vans Agnew
and Raganadha Row are clearly guilty,
are so well stated in the Judges'
communication, that it seems only necessary
to specify the course which, in my
humble ^{opinion}, the Government ought now to
pursue.

It is impossible not to regard Mr. Vans
Agnew and Raganadha Row's proceedings,
in the light in which they have appeared
to the four Judges of the High Court. I
agree entirely in their unanimous opinion,
and on a careful review of the facts,
I am unable to discover any excuse
for what the two Magistrates appear
to have been so intent on doing. - The
original object of the Native Magistrate
was the demolition of a house situated
within the third wall of the Great Bazaar
at Seremban. As this building was
an ancient construction, there could
have existed no reasonable or urgent
necessity for hurrying the work of its
removal. It may have been, on sanitary
or other grounds, an inconvenient building,
or an unsightly object - and both
the Native Magistrate Raganadha Row
and his Superior European Magistrate
Mr. Agnew, may properly have considered

it to be an obstruction of the class
which, under the Code, they were compelled
to remove. When, however, the correctness
of the view, and the justice of the
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— such Court being the only medium
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to their detriment; — it is obvious beyond
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disrespect, at its behest and sneered
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Assuming the Court of the District-Magistrate
to have been egregiously wrong throughout —
which he was not; for the reason is the
case — it was not for the magistracy
to raise a question of insufficient juris-
diction, unless in the answer to the
Civil Court, which they ought to have
presented to the Court by way of the Court.

The principal Magistrate, Mr. Adams
sent me further word, to the undersigned
extent of warning the Civil Judge (Mr.
McGuire) that he would carry out
the order of demolition issued by his
subordinate Magistrate, by calling in aid
the

the local Police to support the work
of destruction!!

The High Court have very justly observed,
that if the judicial authorities at Trichin-
opoly "had used the powers vested in
them by law, with the intemperance dis-
played by the Magistrate & his subordinates in the
"assumption of powers which they have not,"
"it is obvious that exceptional public scandal
"frankly those Courts would have been in
"no way responsible, must have resulted."

In fact, had the District Magistrate
and the Civil Judge operated against Mr.
Agnew and Parasurama Row, within full &
lawful extent of their judicial powers,
they perhaps, we should have seen
the two principal officers of our Magis-
tracy at the Chief Court of Southern India,
in arrest for contempt of the authority
of one of the constituted Civil Courts - which,
as servants of the God, they were bound
to obey and support - and there can be
no higher contempt than that of a
Magistrate who disobeys a legal in-
junction issued by a Civil Court and who
proceeds to complete an act of oppression
which that Court has been appealed to
to suppress.

All the Judges of the High Court observe
that the administration of justice in the
Trichinopoly District, cannot be rendered
effective, if the Magistrate there be
permitted to indulge with impunity in
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Trich

quite of their opinion and think that
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tremely pernicious example set by the
Magistrates in question, to the unwashed
mixed population of fanatical Mahomedans
in the Fort and Town and the
bigotted Brahmins who occupy the Island
of Ceylon.

The removal of both these Officers
from Cutchidra to another District,
appears to me to be a measure of impe-
rative necessity, and I shall be pleased
to sign the Government an order for
their suspension from Office for a period
which might be determined in consultation.
Personally, I consider that six months
would be an appropriate period for it
as the most obvious duty of the Govt. to
do without hesitation, what will uphold
the established Courts in public estimation.

1 false

If the prosecution of the Ser. Moonsiff
on a charge of bribery, was instituted, as
the Judge represents it to have been, by
Messrs Messrs - Rajanatha Rao "with
"obvious violence" and during the
period when that Messrs & Mr. Agnew
were thwarting the just operation of the
Messrs' injunction, the act is one that
demands the most severe course of
the Govt.; but I observe that the
papers now sent from the High Court
do not supply the material on which
rests the above opinion of the High Court.

5
I would, then, suggest that the
record of the trial admitted to be para:
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the circumstances under which the De:
moniff was brought before the
Criminal Court can be distinctly attri:
buted to Paganadha Row.

Should this additional and most blame
act of misuse of his master's power
be fairly made out against the Deputy
Magistrate, it will be necessary to adopt
in his respect a far more severe course
than the one I have advised.

4 Decr 1867

W D U

To place in the paper, a note from Mr.
Agnew sent to me by Her Lordship the
President. It does not seem necessary
to submit, because for explanation from
Mr. Agnew. His acts are explained, justified,
and justified in his own strong language as
used in the proceedings of the Court which form part
of the packet. The study of the Codes now
in force were before the public long
before the 1st Jan'y 1862, when they came
into operation. From that date the
members of the Civil Service have had
equal advantage for studying and
applying the provisions of the Codes,
and the present loud scandal has
not arisen from any difficulty in construing
any part of them. They are daily
and hourly in the hands of the
magistrates

Magistrates who usually have more
frequent opportunities of studying
the law - the law of the two codes I mean
the persons to whom we are now able
to refer in our report to allude

W. H. H.

Minute

7²²
I entirely agree in the opinions
expressed by the judges of the
High Court and by my colleagues
in the High Court as to the propriety
of the amendment of which
the Acting Magistrate of Delhi
- namely, Mr S. Van Agnew,
and the Deputy Magistrate,
R. Raghunath Rao, have
been guilty in this matter.

The judges designate the acts
of these officers as "probably
unwarranted," and I certainly
cannot call to mind any
previous instance of resistance
to the constitutional authority
of the civil tribunals, or the
part of an officer of the magistracy
to disobey, or intimidate, and

so obviously unavoidable
as that brought to notice in
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but is it possible in my judgment
to attribute the acts of these
Officers either to a mistaken
sense of duty or to ignorance
of the law. They are both Officers
of considerable experience,
and I cannot believe that in
sitting at defiance, as they did,
the process of a duly constituted
Court, and in adopting the
contumacious tone which charac-
-terizes this communication,
they acted in good faith, or in
the belief that the course taken
by them was correct in law or
right in principle. I can only
attribute this conduct to a
fixed determination to carry
out the measure on which they
had resolved, utterly regardless

of consequences and of the
public scandal which must
necessarily result from their
acts.

It is clearly out of the question
that either of these Officers
should be permitted to ~~continue~~
~~discontinue~~ hold office any
longer in the District of Si-
-ching-poh, and I am in
the opinion of Mr. Theobald that
a more severe punishment than
has been moved to another District
is required. I would send
Mr. Van Agnew back to his
present appointment as
Sub Collector and Joint Magistrate
of Yang-joo and would intimate
to him that he will not be
reappointed to the charge of
a District for at least one
year, and not then unless
the Government should be satisfied

but his duties have been ^{during an interim}
discharged with that temper
and discretion which are
essential in an officer entrusted
with the important functions
devolving on the Collector and
Magistrate of a District.

Rajkumaran Rao I would
~~recommend~~ recommend to the third
grade of Deputy Collector and
place him in charge of the District
in another District. In the first instance
however I would
G. J. Cantelmo call for the
record of the
trial referred
to by Mr. Phillips
in case any allusion
therein should
be necessary with
reference to this
Office.



My dear Mr. Ellis
The High Court
have not yet
passed an order
in the matter of
the Probation
Mag.tribunal
But the
proceedings are

state in circulation -
I should rather say
the record connected
with the bribery
case.

It will be available
for inspection in
two or three days;
and I think it

will be better in the
meantime (to save
time) to apply specially
to the C. I. for its
submittal.

I have communicated
with the C. I. on the
subject - and hence
my suggestion.

As I am writing, it
will perhaps be
well to inform you
that I am permitted
to leave the High
Court after court
on Monday, and
start for Kumbhaksham
by the night-train.

Yours very truly

J. W. Nelson

134. S. P. No.

7. 12. 67

Memo for orders.

I request orders, on the
accompanying papers
relating to the conduct
of the Ag. Magistrate
and the Sub. Magistrate
of Richmond, towards
the civil courts of the
District.

The letter from the Ag.
Registrar of the High
Court gives a very complete
resumé of the case, and
there can be no doubt
of the justice of the
opinion expressed by
the High Court, if

The extraordinary miscon-
ception of ^{legal procedure} ~~legal procedure~~
exhibited by Mr.
Agnew and Raghunada
Rao:-

There would seem no
reason to attribute
any improper motive
to either the Ag. Mag.
or the Sub. Mag.

but they have behaved
with lamentable want
of judgment and
it seems unnecessary
not only to convey
to them the severe
censure of Govt but

to remove them from the
jurisdiction of the Courts
to which they have
shown such want of
respect.

I would suggest that
Mr. Agnew be removed
to the Kistna district
and that Raghunada
Rao be transferred
to the Malabar district
and be placed in charge
of the Treasury at
Calicut without magis-
trates powers.

This would give an
opportunity of moving

Pringle's health where
health has suffered
from the climate
of the western coast.

Land Revenue
Department
v. D. S. S. S.
J. S. S. S.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the
Registrar of the High Court.

of 30 Novr. 1867. No 60.

Order thereon. 11 Decr. 1867. No 2039.

In the letter above
recorded the Chief Justice
and Judges of the High
Court bring to the notice
of Govt. certain proceedings
of Mr. Agnew, the Acting
Magistrate, and of Rago-
matha Rao, the Deputy
Magistrate of Trichinopoly,
by which those officers
have in a manner
which is justly described
as unexampled, placed
themselves in a position
of open antagonism to
the

the Law and have set
at defiance the authority
of the Civil Courts to which
it was their duty to have
shown respect and obedience.
The Deputy Magistrate
has not only treated with
contempt the processes
of the District Moonsiff's
Court by declaring these
processes to be 'nullities',
but he has gone still
further in his defiance
of the Law by refusing
to be arrested by an
officer deputed by the
Moonsiff's Court to arrest
his person, and by
threatening to punish
under the provision of
the Penal Code all or
any who should attempt
to enforce the order of
the District Moonsiff.

It

3130
2. It was the obvious
duty of the Acting Magistrate
to restrain the illegal
action of the Deputy Ma-
gistrate. Instead of follow-
ing this natural course,
Mr Agnew actively sup-
ported Ragonatha Rao
in his contemptuous
resistance to the processes
of the District Moonsiff's
Court, and in a formal
proceeding which he com-
municated to the Civil
and Sessions Judge, stated
that the Deputy Magistrate
remained under the
special protection of the
Police from what the
Acting Magistrate took
upon himself to describe
as the illegal action of
the District Moonsiff.

The

3. The conduct pursued
by the Acting Magistrate
and the Deputy Magistrate
has been throughout
characterized by extra-
ordinary want of temper,
~~by ignorance of the Law~~
and by an insensibility
to official responsibility
~~and decency~~, which
are in the highest degree
worthy of blame, and
which, had it not been
for the wise forbearance
shown by the Civil and
Session Judges, must
have brought the Ma-
gistracy and the
Civil Courts into open
collision and have
caused a scandal
which was calculated
to

to bring discredit on the Govt.
The conduct
of these officers appears
to the Governor in Council
without any excuse.
The original object which
the Deputy Magistrate
had in view was the
removal of a house
situated within the third
wall of the Great Pagoda
at Secringham and
which he considered an
obstruction. The parties
aggrieved by the order
for the demolition of this
house sought the only
means of redress open
to them by a civil action
and by applying for
an injunction to restrain
the Deputy Magistrate
from carrying his order
into

into execution.

5. Even if the Court of the District Moonsiff had assumed a jurisdiction which it did not possess, the Deputy Magistrate had his legal remedy in the defence of the suit filed against him in the Court of the District Moonsiff and by appeal to higher judicial authority from the decision of the District Moonsiff. Nor can the ~~highly reprehensible~~ conduct of Mr. Agnew and Ragonatha Rao be justified by inexperience. Both are officers of

⁺ Mr. Agnew will give over charge of his office to the Head Assis.
- Capt. M. Crole.

~~of known ability~~ of considerable standing in the service, and they have for many years exercised Magisterial powers.

6. Under these circumstances, the Governor in Council considers it his duty, to mark the grave displeasure of the Govt., by removing Mr. Agnew from his present responsible office and remanding him to his substantive appointment of Joint Magistrate and Sub Collector of Tanjore.

7. With reference to the remarks of the High Court that the charge of bribery against the District Moonsiff, of which that officer has been acquitted by

by the Sessions Court,
 now prepared by Ra-
 .ganatha Rao with
 "obvious violence", the
 Governor in Council
 directs that an appli-
 cation be made to the
 High Court for the
 recall of the case, with
 a view to determining
 whether Rajonatha Rao
 should be allowed to
 remain in the Public
 Service. Under any
 circumstances, he will
 be removed from the
 Trichinopoly District
 and will not be allowed
 to exercise magisterial
 powers.

order at end of
 para 6.

M. Greaves will give
 an charge of his office
 to the Head Quarter
 M. Cole.

Para 6 to C. S. Broke Esq. dated 12/11/88
 Para 7 to Commr of Tanjore in MS. dated 12/11/88
 Para 8 to Secy of Claims - in MS. dated 12/11/88
 Honble the Judges of the
 High Court - dated 13/12
 G. S. Broke Esq.
 Secy. Magli of Trichinopoly
 Printed copy of the complete proceedings
 sent to the Secy Magli - dated 13/12
 Revenue Department

Copy of the order above to
 R. Rajamallu Rao. dated 13/12/88

139243.

Wm. L.
186 . Department.

No. 2039

PROCEEDINGS OF GOVERNMENT.

Wm. L.
186
Dated 11th Dec 1869

for 1549