

*Proceedings of the Madras Government, Judicial Department,
13th March 1867.*

the hearing of the suit, a written statement as per the draft prepared by the Government Pleader, omitting, however, the following words from paragraph 2, viz., "under the provision of the 62nd Section of the Code of Criminal Procedure."

6. As directed by the telegram previously received, I have requested Mr. Crole to move the Civil Court to call up the suit from the Moonisiff's Court, and also, in consideration of the necessity which has arisen for again addressing the Government on the subject, to apply for further time, up to the 1st April, for putting in the answer.

7. Paragraphs 3 and 4 of Mr. Dale's answer are in accordance with existing facts, and will be retained as they are.

Proceedings of the High Court of Judicature at Madras, 18th February 1867.

Read letter, dated the 22nd ultimo, from the Session Judge of Tranquebar, referring for the orders of the High Court, under Section 431 of the Code of Criminal Procedure, the proceedings of the Acting Head Assistant Magistrate in Case No. 99 of 1866, as contrary to law.

(Here enter H. C., No. 533 of 1867).

1. The question before the Court in this case is, whether the Subordinate Magistrate had power, under Section 62 of the Criminal Procedure Code, to order the accused to demolish their sluice. If the order was *extra vires*, it is null, and the Head Assistant's subsequent proceedings against them for disobeying it must be quashed.

2. It appears to the High Court that the case is clearly within the provisions of Section 329 (Chapter XXII) of the Code of Criminal Procedure. There was a dispute whether the water was open to the use of the public or to any class of persons, and the creation of the sluice was a taking or retaining the exclusive possession of that which, to render an order legal, must be found a matter "open to the use of the public." The person to adjudicate upon the question of public right of user was therefore a person having the powers of the Magistrate of the District: the jurisdiction of the Subordinate Magistrate under Section 62 was barred.

3. The proceedings of the Head Assistant Magistrate are accordingly quashed.

(True Extract).

(Signed) P. P. HUTCHINS,
Registrar, Appellate Side.

To the Session Judge of Tranquebar.

(True Copy).

(Signed) R. G. CLARKE,
Session Judge.

To the Magistrate of Tanjore for his information.

(True Copy).

(Signed) G. L. MORRIS,
District Magistrate.

No. 161. ORDER THEREON, 13th March 1867, No. 411.

The foregoing letter and its enclosure will be forwarded to the Government Pleader for his opinion as to whether, under the circumstances represented therein, the draft answer furnished with his letter of the 25th ultimo, No. 35, modified as suggested by the Magistrate of Tanjore, will be sufficient.

(True Extract).

Chief Secretary.

To the Government Pleader.

Edw. J. Tulloch.

16th March 1867 No 455

Communicated to the Ma-
-gistrate of Tanjore

Drafts of Tanjore despatch 16/3

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	455	Press ~~Mis~~
227-228		
Dated	6 - 3 - 1918	6/6

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
16th March 1867.*

No. 227. Read the following letter from the Government Pleader, Madras, to the Chief Secretary to Government, Fort Saint George ; dated Madras, 15th March 1867, No. 53.

I have the honor to acknowledge the receipt of the Proceedings of Government, under the date and number noted in the margin, and to state, for the consideration of the Right Honorable the Governor in

13th March 1867, No. 411, Judicial Department.

Council, as my opinion, that, under the circumstances stated by Mr. Morris, in his letter referred to in the Proceedings of Government noted above, the draft answer furnished with my letter of the 25th ultimo, No. 35, modified as suggested by the Magistrate of Tanjore, will be sufficient.

No. 228. ORDER THEREON, 16th March 1867, No. 455.
Communicated to the Magistrate of Tanjore.
(True Extract).

A. J. ARBUTHNOT,
Chief Secretary.

To the Magistrate of Tanjore.

Proceedings of the Madras Government, Judicial Department,

26th February 1867.

No. 240. Read the following letter from the Government Pleader, Madras, to the Chief Secretary to Government, Fort Saint George; dated Madras, 25th February 1867, No. 35.

I do myself the honor of acknowledging the receipt of the Order of Government of the date and number noted in the margin, and of returning a form of written statement, which I think it would be desirable to file in the suit there referred to.

Proceedings of Government, Judicial Department, 22nd February 1867, No. 231.

2. In the statement I have shown that the three defendants do not claim any interest; in the 2nd paragraph I have framed the defence a little more closely to the language used in the Act than Mr. Morris had done; and in the 3rd paragraph I have claimed similar exemption for the 12th defendant, under Act XVIII of 1850.

3. I inserted the 3rd paragraph from the language used in the 4th paragraph of the plaint, and on the assumption that, if the 12th defendant was about to enforce the order, it was his duty to do so; this, however, will require the attention of Mr. Morris, with the view of his satisfying himself it is consistent with truth.

4. No defence for the 13th defendant has been suggested by Mr. Morris. I conclude, however, the 4th paragraph is in accordance with the fact.

5. I have slightly altered the 2nd paragraph of the proposed answer, as I do not see any necessity for offering a suggestion for cavil, whether the present suit is or is not a personal action for damages.

6. I observe the hearing had been adjourned till the 31st of January last.

7. It is desirable that a fair transcript in English, of the written statement as finally settled, should be annexed to the Vernacular. In translating pleadings back again into English a Native Interpreter, as a general rule, alters the meaning, and in many cases most materially.

No. 241. ORDER THEREON, 26th February 1867, No. 311.

The Governor in Council directs that the draft answer prepared by the Government Pleader be sent to the Magistrate of Tanjore.

2. Mr. Morris will observe that the remark inserted in the 2nd paragraph of the answer proposed by him, that the order passed by the Head Assistant Magistrate could "be quashed only by the constituted Criminal Court of Appellate jurisdiction," has been omitted, there being no appeal against an order passed by a Magistrate under Section 62 of the Code of Criminal Procedure.

3. The Magistrate has already been instructed by telegraph to move the Civil Court to call up the suit, and to apply for further time for putting in the answer.

(True Extract).

Chief Secretary.

To the Government Pleader.

„ Magistrate of Tanjore, with draft answer.

Exd. J. Tulloch.

*Proceedings of the Madras Government, Judicial Department,
22nd February 1867.*

8. It was under these circumstances that the Head Assistant Magistrate issued the order which it is the object of the present suit to get cancelled.

9. I have stated the facts of this case in detail, in order that the Government may be aware of what has taken place, but I do not intend to plead them before the Court, but merely to demur to its jurisdiction, since the order was passed by the Head Assistant Magistrate in the discharge of his judicial duty as Magistrate, he, believing in good faith that he had jurisdiction, under Section 63 of the Code of Criminal Procedure, to pass such an order, and therefore being clearly protected by Act XVIII of 1850 from being sued in any Civil Court for doing so.

10. I beg to submit, for the approval of Government, a draft answer, which I propose should be filed in the names of the Head Assistant Magistrate, Sub-Magistrate, and the Revenue Inspector, all of whom have been included as defendants, and to request the sanction of Government for conducting the defence of this suit at the public cost.

11. The hearing of the case has been adjourned till the 31st of January 1867, before which date I request that I may be favored with the instructions of Government.

Proposed Answer.

The order which has been made the subject of this suit was passed by the Head Assistant Magistrate in his judicial capacity under Section 62 of the Code of Criminal Procedure, and is an order which that Officer in good faith believed himself to have jurisdiction to pass. He is, therefore, protected by Act XVIII of 1850 from any Civil action.

2. Further, the suit as brought by the plaintiffs is irregular, in that they ask for the cancellation of an order passed by a Magistrate, which, if illegal, can be quashed only by the constituted Criminal Court of Appellate Jurisdiction. No suit can lie against an order passed by a Magistrate, except by way of a personal action for damages.

3. We, therefore, pray that our names may be struck out of the plaint, and that the plaintiffs may be adjudged to pay the costs incurred by us on account of the suit.

(Signed) G. L. MORRIS,

Magistrate.

To the Court of the District Moonsiff of Mayaveram.

PLAINTIFFS.			DEFENDANTS.		
1. Alagapillai of Chittakadu, Mayaveram Taluq.			1. Sannyan, son of Aiyatorayan, residing in Pattamangalam Agraharam in the said Taluq.		
2. Nadaraja Nainan.			2. Ramasami Aiyar, son of Toppaiyan of Mattur.		
3. Saminada Pillai.			3. Venkatanaranappiyan, son of Duraisami Aiyar.		
4. Sapapatli Pillai.			4. Vasuvayan.		
5. Arumugatta Pillai.			5. Subbaiyan.		
			6. Ramasami Aiyar.		
			7. Ramasami Aiyar, Pattamaniyam of Akkalur, residing in the above-said village.		
			8. Suppa Pillai of the said Chittakadu.		
			9. Runganatha Pillai.		
			10. Muttukumara Pillai.		
			11. The Head Assistant Magistrate of Tanjore at Mayaveram.		
			12. The 2nd Class Sub-Magistrate of Mayaveram Taluq.		
			13. Duraisami Aiyar, Revenue Inspector of the said Taluq.		

versus

DEFENDANTS.

Mirassidars.

Mirassidars.

Employment.

*Proceedings of the Madras Government, Judicial Department,
22nd February 1867.*

PLAINT.

The extent of 65 Velies of Nanjai land we possess in the said village of Chittakadu is irrigated from a long time by three small channels or kannis branching from the Pallavan channel, and by three similar kannis branching from Kar Vaikal channel of Chittakadu, crossing the said Pallavan channel through aqueducts constructed and repaired in Kudimaramat by our ancestors, &c., with the consent of the Circar, and which aqueducts are, moreover, being used for irrigating our lands on a high level from time immemorial and without any objections being raised thereto ever since.

2. As of the three aqueducts, that of the Pullaiyar Kanni, within the limits below mentioned, had fallen down during the last year, we have as usual restored the same in Kudimaramat at a cost of about Rupees 150, after informing the Circar of the same in April of the current year.

3. With a view to injure us by depriving us of the long established enjoyment of the said irrigation, defendants 1 to 7 at the instigation of our enemies, defendants 8, 9, and 10, gave false information to the 12th and 13th defendants, being Circar authorities, to the effect that the aqueduct in dispute, which was restored in lieu of the old one, was to their prejudice. Upon this, and on an erroneous report made by the 12th and 13th defendants, the 11th defendant has, on the 14th August, issued unjustly and without consideration an order for the removal of the said aqueduct enjoyed by us from a long time. This order the 12th defendant has begun to carry out.

4. We have brought this suit against the first 7 defendants, as they are directly connected with the case, against 8th, 9th, and 10th defendants on account of their trying to create disturbance, though quite unconnected with the matter, and against the 11th, 12th, and 13th defendants in their capacities of Government Officers, on account of the first one having issued an illegal order which the 2nd is about to enforce on a false report made by the third. We, therefore, request that the said order issued to cause us loss may be cancelled and the aqueduct in question be left undisturbed.

Particulars of the work under reference.

The Pullaiyar Vaikal aqueduct, a building of brick and stone, valued at Rupees 150, constructed by us in our land and within the following limits, that is to say, bounded on the north by Subramaniya Chetty's field in the said Chittakadu village of Mayaveram Taluq, on the south by Aiyasami Naick's field, on the west and east by the Pallavan Vaikal Channel.

We, therefore, pray that the Court will be pleased to decree that the above said structure, valued at Rupees 150, may not be removed, and that the cost of the suit be awarded to us.

The names of defendants 11 and 12 have not been given here agreeably to Clause 6, Section 25, Act VIII of 1859.

We, plaintiffs Alagapillai, &c., hereby firmly declare that all that has been said in the above plaint are true.

(Signed) SAMINADA PILLAI,

(..) SABAPATHI PILLAI, son of
Kolanda Velayda Pillai.

(..) ALAGA PILLAI,

(..) ARUMUGATTA PILLAI,

(..) NADARAJA NAINAN.

(Signed) VEDANYAGAM PILLAI,

District Moonsiff.

28th August 1866.

(True Copy).

(Signed) C. S. CROLE,

Ag. Head Asst. Magistrate.

(True Translation).

(Signed) E. L. MORRIS,

District Magistrate.

Proceedings of the Madras Government, Judicial Department,

22nd February 1867.

No. 195.

ORDER THEREON, 22nd February 1867, No. 281.

Before passing orders on the foregoing letter, the Governor in Council resolves to refer the papers to the Government Pleader for his opinion as to the sufficiency of the proposed answer. Mr. Dale's attention is specially called to the 2nd paragraph of the proposed answer.

(True Extract).

Chief Secretary.

To the Government Pleader.
" Magistrate of Tanjore.

Ed. J. Tulloch.

Proceedings of the Madras Government, Judicial Department,
15th March 1867.

No. 160. Read the following letter from the District Magistrate of Tanjore, to the Chief Secretary to Government, Fort Saint George; dated Vallum, 5th March 1867, No. 60.

I have the honor to acknowledge the receipt of the Proceedings of Government, dated the 23rd February 1867, No. 511, and before filing the answer, as per draft therewith received, I have the honor to bring to the notice of Government two mistakes of fact inadvertently made in my report.

2. In the first place, the notice under Section 62 of the Code of Criminal Procedure was not issued by the Acting Head Assistant Magistrate, but by the 2nd Class Sub-Magistrate of Mayavaram; and in the second place, the suit in question was not brought in consequence of the notice thus issued (for the suit was filed before it was issued), but in consequence of a simple order given by the Sub-Magistrate under instructions from the Acting Head Assistant Magistrate, calling upon the plaintiffs to remove the aqueduct which they had constructed. It is to be observed, that the Acting Head Assistant Magistrate's order to the 2nd Class Sub-Magistrate did not contain any direction as to issuing a notice under the Section in question.

3. I have also to bring to the notice of Government a further circumstance which has transpired since I submitted my report on this case. The plaintiffs having disobeyed the notice issued by the 2nd Class Sub-Magistrate under Section 62 of the Procedure Code, they were proceeded against and punished by the Acting Head Assistant Magistrate under Section 132 of the Penal Code; but on a reference made by the Session Judge under Section 431 of the Procedure Code, the proceedings thus held by the Acting Head Assistant Magistrate have been quashed by the High Court as contrary to law. This order of the High Court is based on the supposition, that the disputed question in this case was, "whether the water was open to the use of the public or to any class of persons," thus bringing it within the provisions of Section 329 of the Procedure Code, which vests the power of adjudication on such a question only in a person having the powers of the Magistrate of the District; that the 2nd Class Sub-Magistrate had no jurisdiction under Section 62; and that, consequently, the order issued by him under that Section, as likewise the proceedings held by the Acting Head Assistant Magistrate for disobedience of that order, were illegal. A copy of the Proceedings of the High Court is herewith enclosed for the information of Government.

4. The fact, however, of the notice in this case having been issued by the 2nd Class Sub-Magistrate, and it, as also the Acting Head Assistant Magistrate's proceedings which followed, having been quashed by the High Court as above, does not, in my opinion, materially alter the line of defence to be taken in the matter of the Civil suit in question. As already stated, it is not the notice issued under Section 62 of the Procedure Code which has been made the ground of the suit, and whatever may have been the form of the proceedings taken by the Magistracy in this case, the line of defence rests solely and entirely on the protection which Act XVIII of 1850 gives to Magisterial Officers acting in good faith and in the belief that they had jurisdiction.

5. Unless, therefore, I receive instructions from Government in the meantime to the contrary, I propose to file, on the date that may be eventually fixed for