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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

India DEPARTMENT

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B.P. No.		Mis.
Dated 15 — 4 — 1868		197

V. S. M.

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
15th April 1868.

Read the following papers:—

No. 666.

No. 109. To THE RIGHT HONORABLE FRANCIS BARON NAPIER, K. T.,
Governor in Council, Fort Saint George.
The humble Petition of AMOORTHUM
PILLAY, late Moochee of the Civil and
Session Court of Tranquebar.

RESPECTFULLY SHEWETH,

That your humble petitioner begs to state that the Acting Head Assistant Magistrate of Tanjore, G. A. Parker, Esq., has most illegally proceeded against, and sentenced him (to six months' rigorous imprisonment, and to pay 16 Rupees fine) in Criminal Case No. 82 of 1867 on his file, on a charge, under Section 403 of the Indian Penal Code, of having criminally misappropriated Rupees 8, being the balance of the price of paper said to have been supplied to Court; whereas it was, in fact, due for paper supplied to him in his private dealings.

2. That the amount was secured by a bond, and has thus become a debt, which, not being moveable property, as defined in Section 22 of the Indian Penal Code, its non-payment cannot at all amount to a criminal misappropriation punishable under the said section.

3. That he had the whole case before him; the bond upon which the charge was based clearly says that it was executed for "dealings held," and not for the price of paper supplied to Court. The date of the discontinuance of the proceedings was, as admitted in his own evidence, 1863, or, at least, the Session Judge of Tanjore, clearly refers to dealings held from 1863 to 23rd September 1864, thus evidently showing that it related to other than the Court's supply, and fully proving the petitioner's plea. But, as evident from the order of Mr. Bird, the Magistrate has wrongly dated the transactions at 23rd September 1863 instead of 1864, and the receipt at 4th March 1864 instead of 1865. Besides the prosecution 2nd witness, who is the Nazir of the Civil Court, being the party responsible for the proper application of the advance money, has further stated before the Magistrate that he had at times bought paper of your petitioner, which he would not have done if it did not form part of the private dealings. None of the witnesses said before the Magistrate that your petitioner admitted before them or before the Sheristadar that the money in question was due for paper supplied to Court, and therefore he had no reason whatever to think that the amount was due on account of Court supply.

4. That the matter was further purely subject of a civil suit. The prosecution 1st witness himself has stated that he intended to sue your petitioner for the amount, but that he appeared as he was sent for by the Court, and the 3rd witness, a mere Duffadar, has also stated before the Magistrate that, if he were to report it to Mr. Clarke, the permanent Judge of Tranquebar, he would report the complainant to a Civil Court; whereas the Magistrate has most unlawfully treated a civil case as a criminal one.

5. That the words at the conclusion of Mr. Parker's "Grounds of conviction," expressing his most sincere regret "that the offence was not one in which he could award a sentence of flogging," clearly show that he had a malicious intention to punish your petitioner when he proceeded with the case.

15th April 1968.

[illegible]

(S. 604) AMOORTHUMILLAY.

(S-1) AMOINTHILLAY.

(Signature)

1. That the said Plaintiff, prior to the 20th of 1917, on the file of the Acting Head Assistant Magistrate of Taitung, signed on the following grounds, from the sentence of the said Magistrate, concerning the said Defendant, that of the Indian Penal Code, as having criminally misappropriated the said land and property:-

Under the Section in question, misappropriation of one's property is the chief element, and a necessary part of the crime. Hence it is evident that that is the chief ingredient of the offense, as defined in Section 141 of the Indian Penal Code.

Under the Section in question, misappropriation of one's property is the chief element. Both were the amount due by me to said firm, and by the execution of the document, and a document a "movable property" not being "money, real," as I am not, therefore, be "misappropriation" of my own.

The complainant himself admits in his deposition that he intended civilly to sue for the goods if they were not paid, and the fact of his having obtained the deed from the father shows his intention to go to a civil action in case of non-payment. Had he construed my non-payment into a criminal appropriation of his property to my own use, he would have taken a criminal process against me. The Station Judge sent for him, took deposition from him, and sent him to the County Jail, where goods are

The law, as enunciated in Mayne's Principles of Criminal Law, page 62, is, where goods are bought on credit the purchaser cannot be criminally prosecuted, though the goods are never paid for.

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for, and the non-payment of itself will merely constitute a cause for civil action; otherwise there will be a multiplicity of criminal prosecutions and a dead blow to civil suits.

The deed does not state that it was executed for money due for paper supplied to Court. The witnesses could not say that the sum was for the paper supplied to the Court, and they, therefore, cannot attempt to state that this money was the price of the paper supplied to Court. The Magistrate admits in his sentence that the practice of local supply ceased in 1863. The deed filed in this case clearly shows that accounts under it were settled from the year 1863 to 29th September 1864. Hence it is evident that the debt therein mentioned is not the price of the paper supplied to the Court, but of that purchased by me for private sales, and this is further supported by the evidence of the 2nd witness, who admits that he purchased paper from me. Examined in this case are officials of the Court, and their evidence is very

The witnesses examined in this case are officials of the Court, and their evidence is very discrepant and incredible. By the Magistrate, the late Sheristadar had actually arranged the debt to be repaid by the Sheristadar.

If, as stated by the Magistrate, the late Sheristadar had actually arranged the debt to be paid off at 2 Rupees a month the debt would certainly have been cleared off either within two months, as 4 Rupees had already been paid in one month, or within four months at the rate of 2 Rupees.

If, as stated in the sentence, the Sheristadar had with the knowledge of the offence so arranged for the purpose of concealing the same from the late Judge he would not have done it so openly in public Court, and that in the presence of the 2nd, 3rd, and 4th witnesses, who are responsible persons. This, therefore, at once strikes at the credibility of the witnesses, who depose to his (Sheristadar's) alleged interference.

The 4th witness says that the Sheristadar arranged the debt to be discharged at 2 Rupees a month, and that accordingly he received 2 Rupees and paid to the complainant one month, but there is only one payment of 4 Rupees endorsed on the deed, and therefore his evidence is false.

The witnesses gave such false evidence, having taken an understanding which the Judge has against the Sheristadar and myself.

The 2nd, 3rd, and 4th witnesses, who are great enemies to the Sheristadar, gave evidence against him, with a view to injure him. Information is to be given only of the offences specified in Section 138 of the Code of Criminal Procedure, and that to the Police Officer, and not to the Judge. But the Magistrate's criminating Sheristadar is contrary to law and justice, as the Sheristadar is under no legal obligation, which is the chief ingredient of the offences specified in Section 176 or 202 of the Indian Penal Code; and so it is evident that, in order to implicate the Sheristadar, this case has been prepared against me.

From the fact of the Magistrate expressing in his sentence his sincere regret for the offence not being one for which I may be flogged, while he did not know my conduct, as I had not served him even for a day, it is clear that the Magistrate has tried and determined the case with prepossession against me, and that, therefore, he ought not to have inquired into the case. I therefore, beg your honor will be graciously pleased to send for the records of the case and make the sentence.

I, therefore, beg your honor will be graciously pleased to send for the records of the case to allow me an hearing, and to release me quashing the sentence.

Note.—This case has originated from this Session Court. In the absence of any complainant, to allow me an hearing, and to release me quashing the sentence.

by the 1st witness the Court compelled his attendance by a batta peon, Sami Row, and although a deposition had previously been taken from him during the departmental inquiry in Case No. 81 this case was not then sent up, but was taken up by the Magistrate ten days [after the result of that case was known. The witnesses are under the complacency of the Judge, they being his Court servants, and were sent up by the Court, and in the face of their self-implications they were left out by the Magistrate for pleasing the Judge and the Sheristadar alone, who is the Judge's opponent, is implicated under Section 176 or 202 of the Indian Penal Code—Sections inapplicable to him. During the inquiry of my Case No. 81, there were frequent exchanges of notes between the Session Judge and the Magistrate, and the former, at the time of my wife's examination, sent to the Magistrate Norton's Law of Evidence with a piece of paper in it, marking out that part of it which speaks of the old law which excluded evidence of females. During his stay here the

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Magistrate used to dine frequently at the Judge's house and drive with the latter often. They frequented each other's quarters several times a day, and thus there having been a very close intimacy between them the Magistrate imbibed, through the Judge, a strong animosity against me, and therefore the Magistrate has recorded in his sentence that he most sincerely regrets that it is not in his power to award a sentence of flogging.

I, therefore, beg that as this Court cannot, under the above circumstances, decide this appeal the Court will be pleased to recommend to the High Court the transfer of this case to any other Court.

(Signed) AMOORTHUM PILLAY.
(..) F. DUCKWORTH, M. D.

Extract from the Proceedings of the Session Court of Tanjore, under date the 15th January 1868.

Criminal Petition, No. 133 of 1867.

Read again Appeal petition presented by Amoorthum Pillay, late Moochee of the Civil and Session Court, Tranquebar, dated 12th November 1867, the said appeal having been transferred to this Court by the High Court under Section 35, Code of Criminal Procedure, on the 4th December 1867.

Read also records of the case. The three Vakeels for the prisoner have been duly heard in support of the Appeal petition.

1. The Session Judge, on the 10th December 1867, directed the release of the prisoner from Jail under Section 421 of the Code pending the appeal, as the Court was about to close for Christmas, and there appeared grounds on the face of the lower Court's Calendar to doubt the correctness of the finding appealed against.

2. The Session Judge, considering the sentence recorded was unsupported, the offence alleged, one which is not described in Section 403, Indian Penal Code, and that the prisoner is entitled to his discharge on the following grounds.

3. In the first place, the charge under Section 403 of the Penal Code can only be maintained in a case where "moveable property" has been "dishonestly misappropriated." Moveable property is defined (Section 22, Indian Penal Code) to be all corporeal property, with certain exceptions. The property prisoner is alleged in the charge to have dishonestly misappropriated is not "moveable or corporeal property" at all; for it is Rupees 8, the balance due on a settled account, and such a debt is not "moveable property."

4. There was clearly and on the face of the proceedings no "dishonest" intention whatever attributable to prisoner in regard to his non-payment of the 8 Rupees, balance due by him to 1st witness on the said instrument; for the settlement of account produced at the trial was admitted by prisoner, his debt under it allowed to be due, and it might at any moment have been realized by 1st witness (as indeed indirectly admitted before the Civil Judge of Tranquebar in his deposition, which gave rise to these proceedings on the 28th September 1867) by suing the prisoner before the nearest District Moonsiff with Small Cause powers.

5. The charge, as laid under Section 403, Indian Penal Code, being wholly inapplicable to the facts stated and proved, this Court has been at some pains to see whether prisoner "as a public servant" could, under Section 409 of the Code, have been legally amenable to the penalties of that Section for "Criminal breach of trust as a public servant." In this respect too his conduct, in this case at least, is (criminally) irreproachable.

6. The case arose out of certain advances—twenty Rupees—which prisoner as Moochee was entrusted with three or four years ago by the Civil Court to supply paper for the use of the Court at Tranquebar. The prisoner dealt with the 1st witness in the matter of the paper supply, the latter giving prisoner the paper, and the prisoner paying him at various times in part or in full for the same. The practice obtained till 1863 (the latter end of 1862 it would rather appear) when the Court's supply of paper was forwarded from Madras direct. On the 28th September 1864 (not 1863, as supposed by the lower Court) the prisoner and 1st witness settled their

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accounts regarding these transactions in paper, and 12 Rupees was found due to the latter by the former for paper supplied. The prisoner gave 1st witness the bond, or settled account for the amount. On the 4th March 1865 (not 1864, as the lower Court again in error supposed) prisoner paid 1st witness 4 Rupees of the amount thus settled, and the 8 Rupees then due on the bond or account is what prisoner is now charged with dishonestly misappropriating from 1st witness under Section 403 of the Indian Penal Code.

7. It will be seen that with such facts to deal with the prisoner's conduct, as to the money entrusted with him by the Court as a public servant, was quite beyond all blame. He was a contractor under the Court to supply paper for money advanced. He supplied paper accordingly, presumably to the Court's satisfaction, the Nazir's account being correct, and henceforth the Court having no fault to find with him as to the paper supplied was not in a position to proceed against him criminally, as regards the monies due by him to sub-dealers for the supply of that paper to prisoner. Prisoner was under no sort of obligation to the Court to retain the money advanced him till paid away either in a public cash chest or on his person, for evidence to that fact is not adduced; but he actually did satisfy his sub-contractor, the 1st witness, (who chose to trust him) by passing in his favor the valuable security for 12 Rupees on the 28th September 1864, which the 1st witness as creditor was willing to accept, and did accept as payment. By such proceedings prisoner honestly discharged the 1st witness' claim on him for the value of paper due, and the latter henceforth could only claim the amount of his bond, which of course was a matter for the Civil Courts to deal with, as 1st witness evidently most clearly was aware of. The amount of the bond further, it is quite obvious, included paper supplied by 1st witness to prisoner, not for the Court only but for the private use of the Nazir and others, who got it through prisoner. The dates further prove this important fact.

8. These being, thus no charge of criminal breach of trust, in respect of money entrusted to prisoner as a public servant, maintainable—petition for appeal against him—prisoner as a public servant, manifestly altogether inapplicable—the Session Judge can only come to the conclusion that prisoner has absolutely committed no "offence" whatever in the matters charged under the Indian Penal Code, and that the sentence of six months' rigorous imprisonment appealed against must, therefore, be quashed. He is released consequently unconditionally, and the fine awarded, if levied, must be returned to him.

9. The Session Judge cannot conclude without remarking on the exceeding impropriety of the lower Court's comments on the case at the termination of the "Grounds of conviction." The culpability of the Sheristadar of the Civil Court of Tranquebar as an abettor of prisoner is severely dwelt upon, though that individual was in no way before the Court, and no "offence" was in fact committed by him. The last words of the same "Grounds of conviction" further, in regard to the Acting Head Assistant Magistrate's regret that prisoner was not liable to the punishment of whipping, of course were quite unjustifiable. Such remarks ought, for the future, to be very carefully avoided.

(True Extract).

15th January 1868.

(Signed) E. W. BIRD,

Session Judge.

(True Copy).

(Signed) C. MASQUERINE,

Sheristadar.

CALENDAR CASE No. 82 of 1867.

Complainant.
Subbaroya Naick.

Prisoner.
Amoorthum Pillay.

Witnesses.

1. Subbaroya Naick.

2. Anna Pillay, Nazir in Civil Court.

3. Panjanatha Iyen, Record-keeper in Civil Court.

4. Sheikh Hoossain, Duffadar in Civil Court.

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Charge.

That he, on or about the year 1865, at Tranquebar, in the Taluk of Mayaveram, dishonestly misappropriated the sum of Rupees 8, and converted the same to his own use, and thereby committed an offence punishable under Section 403 of the Indian Penal Code, and within my cognizance.

Summary.

The prisoner in this case, Amoorthum Pillay, is the same as in Calendar Case 81, the late Meechee in the Civil Court of Tranquebar. The complainant deposed that three or four years ago he had contracted with prisoner to supply paper for the use of the Court, the prisoner paying him out of a permanent advance fund of Rupees 20 in his possession for petty contingencies, and the expenditure of which in one month was reimbursed to him at the beginning of the next month by the Nazir when the contingent bill was sanctioned. This practice had obtained in the Court since 1861. In 1863 the prisoner discontinued getting the supply of paper from the complainant, as the paper for the Court was then forwarded sent down from Madras, and on September 28th in that year the prisoner and complainant adjusted their accounts, and it was found that the latter owed the former Rupees 12 for paper supplied to him. This clearly the prisoner was in a position to pay, having a permanent advance fund of Rupees 20. But though he signed his name to a paper acknowledging the debt, he kept putting the complainant off with excuses, and has never paid the money to the present day, though he paid part of it, Rupees 4, on March 9th, 1864. It was deposed to by several witnesses that the complainant had frequently remonstrated at being kept out of his money, and that on more than one occasion he had made his complaint to the Sheristadar of the Court, prisoner's relative, who had sent for prisoner and told him that as he had expended all the Government money upon himself and eaten it all up, as he expressed himself, he must pay it back or run away and pay at the rate of Rupees 2 a month, until the debt was discharged. This, it true, discloses on the part of the Sheristadar a most disgraceful conduct, and as he was aware that the prisoner was misappropriating Government money, it was his duty instantly to have brought the matter to the notice of the Judge, which he does not appear to have done, or the matter would certainly have not been left unsettled until now. The Sheristadar would appear to be liable to a prosecution under Section 176 or 202, but as he has been already committed on one charge, which has arisen out of this prisoner's embezzlement, and as in order to prove the omission to inform, it might possibly be necessary to summon the late Civil Judge from Ootacamund, the Head Assistant Magistrate will stay proceedings, until the result of the coming trial be known. In passing sentence on the prisoner the Head Assistant Magistrate regrets most sincerely that it is not in his power to award a sentence of flogging.

Finding and Sentence.

The Court finds that Amoorthum Pillay is guilty of the offence specified in the charge, viz., that he, on or about the year 1865, at Tranquebar, in the Taluk of Mayaveram, dishonestly misappropriated the sum of Rupees 8, and converted the same to his own use, and that he has thereby committed an offence punishable under Section 403 of the Indian Penal Code, and within the cognizance of the Court of the Head Assistant Magistrate; and the Court directs that the said Amoorthum Pillay be kept in rigorous imprisonment for six Calendar months, and pay in addition a fine of Rupees 16, or, in default, be kept in rigorous imprisonment for a further period of three weeks.

2. The Court further directs, under Section 43 of the Code of Criminal Procedure, that this sentence of imprisonment shall take effect from the date of the expiration of the term of imprisonment to which this prisoner was sentenced in Calendar Case 81 of 1867 on the file of this Court. The Court directs, under Section 44 of the Code of Criminal Procedure, that the fine of Rupees 16 be paid after the usual time to the complainant, Subbaraj Nadek, as a compensation for the injury he has received.

16th October 1867.

(Signed) G. A. PARKER,
Acty. Head Asst. Magistrate.

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15th April 1868.*

No. 703.

No. 110. TO THE RIGHT HONORABLE FRANCIS BARON NAPIER, K. T.,
Governor in Council, Fort Saint George.

The humble Petition of ARBUTHUM
PILLAY and VAYDAMOOTHOO
PILLAY, two of the Commissioners
in Original Suit No. 8 of 1863, on the file
of the Civil Court of Tranquebar.

RESPECTFULLY SHEWETH,

That your petitioners were appointed Commissioners in the said number from the beginning of 1864, and discharged the duties connected therewith with great diligence. The late Civil Judge, Mr. Clarke, has approved of them by several of his proceedings; but Mr. Elliott, in giving vent to his feelings of animosity against the Sheristadar took up the appointments of your petitioners as two different charges against him and dismissed them from the service, but in order to give some weight to his said order of dismissal the Judge, on the 21st September last, sent a cuttalay or order by a batta peon who was allowed no batta as required by the rules of practice to produce your petitioners and another Commissioner appointed in the case.

2. That, on the 1st October last, they were accordingly produced and dismissed arbitrarily without any inquiry at all, and in the absence of any complaint from any quarters some depositions were afterwards taken from them by the Iswah novias and they were most illegally kept under strict custody.

were never paid under the batta rules, nor authorized by any written order for keeping your petitioners under their custody for about forty-five days together with the defendant Carriagar, who was also in custody for about a month.

3. That your petitioners were kept under the peons' custody, notwithstanding their request to be set at liberty, as the first petitioner, Arbuthum Pillay, was then greatly suffering from an ulcer in his right hand, which has since been greatly injured owing to his not having attended to it on account of the restraint placed upon him, and as the second petitioner, Vaydamoothoo Pillay's wife, was seriously ill and has not yet fully recovered, and that the strictness of the custody is further evident from the fact of the Acting Judge having dismissed, on the second or third day of their custody, two batta peons for their alleged breach of duty in guarding them; whereas their duty under the rules of practice, under the head of batta, is only to serve processes on payment of batta.

4. That, during their custody, your petitioners were not even allowed during the whole time to attend Divine service on Sandays.

5. That, during their custody, the Judge sent for and examined the whole of the plaintiffs and defendants, including the Gosha women who cannot, under Section 22 of the Civil Procedure Code, be compelled to appear in public, and who, though forced to come from a distance of fifteen miles, were after all examined at the station only by a Commissioner and not by the Judge himself when his Court was only two or three houses distant from the place where they were examined. They all declared that they had nothing to complain against your petitioners, as may be seen from their depositions before the Court.

6. That notwithstanding, the Acting Session Judge maliciously sent your petitioners up to the Joint Magistrate of Tanjore under some alleged offences falling

under Sections 166, 167, 192, and 466 of the Indian Penal Code, and they were, to their great disgrace and mortification, kept in the Tranquebar Subsidiary Jail on the night of their commitment, and then on the next morning taken to Negapatam under the guard of Police Constables.

7. That the Joint Magistrate, after a strict inquiry, fully acquitted your petitioners of all those grave and false charges laid against them by the Judge, as may be seen from the accompanying copy of the Magistrate's sentence of our acquittal.

8. That, with regard to the first and second head of the charges, the Magistrate says that, "in the absence of complaint or of any evidence to show that any injury was caused to any one, it is impossible to presume a malevolent intention," and that "the chief" parties to the suit "declare that they have suffered no injury, and have no complaint to make of the Commissioners."

9. That, as regards the "alleged" charge of "perjury" under Section 192, the Magistrate remarks that the Chief Commissioners satisfactorily explained the discrepancy between the two accounts of May 1866, and October 1867. Here your petitioners beg to say that the Chief Commissioner could not explain to the Judge, as remarked by the Magistrate, since he was not allowed by the Judge an opportunity of so doing, as complained by him in his deposition given before the Judge himself.

10. That the alleged charge of forgery under Section 466 of the Indian Penal Code, the Magistrate says that he "has searched the records in vain for any document which can even be suspected of being a forged document," and that he was "at a loss to understand upon what ground the Civil Court was led to suspect that the Commissioners were guilty of the offence of forgery," and he concludes his decision with the words that "this charge like the rest must fall to the ground."

11. That the whole records of the case, inclusive of all your petitioners' reports and the Civil Court's orders thereupon, had not been sent up to the Magistrate, which, if done, would have given no room to the Magistrate even to suppose, as he has done, that there was carelessness on petitioners' part. Regarding this carelessness the Magistrate properly remarks your petitioners were responsible to the Civil Court. The Judge sent to the Magistrate only such of the records of the case as appeared to him to bear upon the charges, and therefore the Magistrate was unable to gather from them anything, and therefore he was also obliged once to send the case back to the Judge, requesting information on the subject.

12. That it is extraordinary that a Session Judge, whose duty is to revise the proceedings of the Magistrates under his jurisdiction, should have thus acted.

13. That from the above circumstances your Lordship in Council will clearly see that the Acting Judge had no room to think that your petitioners committed any offence punishable under any section of the Indian Penal Code and to commit them to the Magistrate for trial, but that he has taken the proceedings in question only with the view of injuring them unjustly, and that the Acting Judge has therefor committed the offences punishable under Sections 220 and also 313 of the Indian Penal Code, in having kept them under wrongful confinement about forty-five days.

11. That your petitioners, therefore, most humbly beg your Lordship in Council will be graciously pleased to grant them sanction, under Section 167 of the Criminal Procedure Code, criminally to proceed against the Acting Civil and Session Judge, Mr. E. F. Elliott, for the sake of public justice, and for your petitioners retrieving their reputation which they had been unjustly deprived of. And your petitioners will ever pray.

(Signed) அரபுதம் பிள்ளை.
(") வையமூதூ பிள்ளை.

CALENDAR CASE No. 120 of 1867.

Regina

versus

1. Arbuthum Pillay.
2. Vaydamoothoo Pillay.
3. Arokianadum Pillay.

Remarks.

This case has been gone into by the Acting Joint Magistrate at the request of the Session Judge, who forwarded proceedings held on the Civil Side of his Court.

It is pointed out in these proceedings that Arbuthum Pillay, Vaydamoothoo Pillay, and Arokianadum Pillay were, in December 1865, appointed Commissioners by the Civil Court for the year 1865-66, in accordance with a decree in O. S. No. 8 of 1863, to recover from first defendant in said suit rent, paddy, &c., and pay the same to the plaintiffs. Numerous orders are referred to in the Court's proceedings, nearly all of which are said to have been disobeyed or disregarded. Two reports are also referred, dated respectively 17th May 1866 and 2nd October 1867, and discrepancies between these two reports in the amount of paddy stated to have been harvested are pointed out. Further, certain quantities, which are known to have been stored subject of two criminal inquiries) are, it is pointed out, not entered in any account of the Commissioners, so much for 1865-66. The Civil Court then refers to the transactions of 1866-67, beginning with the order, dated 22nd February 1867, appointing the three accused persons (Arokianadum Pillay having meanwhile deceased), Commissioners for 1866-67. The Court proceeds to point out how this and several other orders during the course of the year were disobeyed, and concludes by stating that the Court has reason, under the above circumstances, to believe that the Commissioners have been guilty of an offence or offences falling under one or other of Sections 166, 167, 192, and 466 of the Penal Code. In a subsequent letter (No. 768, dated 26th November 1867) the Session Judge explains that the records forwarded appear to prove disobedience of orders on the part of the Commissioners, and perjury and forgery, to which they finally resorted to support or explain away their disobedience.

The Acting Joint Magistrate has gone carefully through the records forwarded in this case, and has altogether failed to find evidence to establish a charge of such disobedience of orders as is punishable under the Criminal law. There is no doubt proof of gross carelessness and disregard of orders on the part of the Commissioners in discharge of the Commission, which the Civil Court entrusted to them. For this, of course, they are responsible to the Civil Court. But to establish a charge under Section 166 or 167, Indian Penal Code, it is necessary to show that there was an intention to cause injury to some person. In many cases of gross disobedience, such as that now under inquiry, such intention would be presumed should actual injury be proved, should there be a complainant to press the case against the accused. In the absence of such complaint, or of any evidence to show that any injury was caused to any one, it is impossible to presume a malevolent intention. It is especially so in this case where mere carelessness is a sufficient explanation of the Commissioners' conduct. The chief defendant and the chief plaintiff in the Civil Suit (O. S. 8 of 1863) were examined in Court, and both declare that they have suffered no injury, and have no complaint to make of the Commissioners.

As to the alleged perjury under Section 192, Indian Penal Code, it is presumed that it relates to the supposed fabrication of false returns and accounts by the Commissioners when called

on to satisfy the Civil Court as to the manner in which they had administered their trust. The chief (if not only) proof of this falsity lies in certain discrepancies which exist between the accounts furnished in May 1866 and in October 1867; as the Commissioners are not suspected of any offence of the description of criminal misappropriation or criminal breach of trust, the hypothesis raised by the said discrepancies must be that the Commissioners having disobeyed repeated orders, and being, in consequence of the careless manner in which they discharged their duties, utterly ignorant of the state of affairs, the amount of paddy, &c., did, on pressure from the Civil Court, and with a view to conceal their disobedience, concoct and furnish false accounts and returns. Now as it is impossible to ascertain the exact amount of paddy that was harvested two years ago (independent of the Commissioners' own accounts) it is equally impossible to prove the falsity of any particular account. It may be stated, however, that the discrepancy between the two accounts of May 1866 and October 1867, pointed out in the Civil Court's Proceedings, has been satisfactorily explained by Arbuthum Pillay, the Chief Commissioner (vide his statement before the Joint Magistrate), and the only regret is that the same explanation was not furnished to the Civil Court.

Finally, as to the charge of forgery the Acting Joint Magistrate has searched the records in vain for any document which can even be suspected of being a forged document. The only documents which are capable of having been forged are the 51 receipts, but the person whose signature they purport to bear (viz., the chief plaintiff in the civil suit) allows their genuineness. The Acting Joint Magistrate is, therefore, at a loss to understand upon what ground the Civil Court was led to suspect that the Commissioners were guilty of the offence of forgery under Section 466, Indian Penal Code. In none of his communications on the subject has the Judge referred to any document which he considers forged, there being apparently no forged documents in the records; the charge must fall to the ground.

Finding and Sentence.

The Court having taken the evidence for the prosecution and finding that no offence has been proved against the accused persons direct that they, Arbuthum Pillay, Vaydamoothoo Pillay, and Arokianadum Pillay be discharged under Section 250 of the Code of Criminal Procedure.
16th December 1867.

(Signed) J. HOPE,
Acting Joint Magistrate.

(True Copy).

(Signed) A. R. HUTCHINS,
Actg. Head Asst. Magistrate in charge.

No. 697.

No. 111. TO THE RIGHT HONORABLE FRANCIS BARON NAPIER, K. T.,
Governor in Council, Fort Saint George.

The humble Petition of SOOBARAMANY,
IYER, late 4th Goomastah in the District
Moonsiff's Court of Tranquebar.

RESPECTFULLY SHEWETH,

That your petitioner was entertained in the public service in 1851, and continued to discharge his duties for the last 14 years, and has borne a good character for conduct and abilities, as certified to by several of the Moonsiffs under whom he had served.

2. That in 1864, at the instance of the plaintiff in No. 90-64 on the file of the Tranquebar Moonsiff's Court, defendant's paddy was attached, pending the result of the suit. The Ameen sent a report, praying for orders to sell the paddy as it was wet. The Moonsiff, who used verbally to give orders in trivial matters, gave order as usual for the sale of the paddy, and your petitioner wrote it on the back of the

report and issued the process. The paddy was accordingly sold and money sent to the Head Goomastah for deposit in Court, who, having embezzled it, was convicted for criminal breach of trust.

3. That a copyist of the Court (Mr. Shunker) who wrote the diary entered the Ameen's report, but omitted the order thereon, entering, however, all the other subsequent proceedings. On comparing the diary as usual your petitioner found the omission and added it under the order of the Moonsiff.

4. That the Acting Judge, calling this addition of a line as forgery, asked your petitioner while being examined as a witness against the above Head Goomastah, and he replied that both the order on the report and the addition of a line were under the Moonsiff's orders, and that he might be sent for and examined; whereupon the Judge accused him also with perjury, on the ground that his statement was false, and without the least inquiry dismissed him at once from his post for forgery and perjury on the 8th October last, and further placed him in the custody of two battepeons.

5. That the next day your petitioner was without any shadow of inquiry committed to Jail under a warrant, where he remained for fifty-three days in confinement and at Government expense, notwithstanding his several entreaties to be fed with meals from home.

6. That, without commencing the inquiry then at least, the Judge examined two of the Goomastahs, who are at the same station, about the 4th day, and he sent for the defendant, Ameen, and paddy merchants, not at once but at his pleasure, and at an interval of 4, 5, and 10 days, without sending for and examining Mr. Shunker, as requested by your petitioner in his deposition, and though they deposed to his innocence he did not get any relief.

7. That, in consequence of the above confinement, on the 9th and 10th October your petitioner was shut up in a cell with three pariahs, and from 11th to 15th solitarily, when he was locked up all night and day. He was taken out by the Police hand-cuffed to answer calls of nature, and was forced to take his meals in an earthen vessel called "mullay" instead of plantain leaves used among Brahmins; that your petitioner like convicts was allowed an old "cumbly," a coarse blanket, and an old mat. When he was sent to the Moonsiff's Court to deliver over his charge, he was to his great mortification, sent hand-cuffed and under Police custody, and while your petitioner was taken to Court for inquiry he was several days hand-cuffed and taken in the custody of Constables, and during the inquiry he was often placed in the prisoners' bar, a place destined only for criminals at their trials, and guarded by a Constable with a drawn sword, as if he were a regular prisoner undergoing a session trial.

8. That your petitioner was even refused to be admitted to bail, pending inquiry, although he had asked the Judge several times both in the Jail and in Court.

9. That your petitioner was sadly obliged to employ a Pleader at an exorbitant fee of Rupees 315, and begged the Judge in vain to accept the sureties, who are respectable people.

10. That at last, as requested by his Counsel, the Judge sent for and examined Mr. Shunker, whose deposition having verified your petitioner's statement, the Judge released your petitioner on the 30th November 1867.

11. That your petitioner, one of Her Majesty's subjects, received treatment never heard of before under the English Government, and which were quite contrary to all law, equity, and practice, and was put to great indignities, hardships, loss of caste, and very large expense.

12. That your petitioner further begs to say that the Acting Judge was quite wrong in having charged your petitioner with forgery and perjury before finding out from Mr. Shunker (proper authority) whether your petitioner's statements were "true or false."

13. That there can be nothing in the least against your petitioner as regards the charge of perjury, since he did not give two contradictory statements on oath, or there were no other statements opposed to his, or any false statement in petitioner's deposition cannot be presumed until it was denied by Mr. Shunker.

14. That the Judge had no room even to suspect your petitioner of forgery, inasmuch as the subsequent proceedings entered in the Diary, next to the line added, clearly make a reference to the order contained in the line, and as, in consequence of that order, process was sent to the Ameen, paddy sold, the sale proceeds entrusted to the Head Goomastah, for the embezzlement of which amount the said Head Goomastah was convicted by this very Judge.

15. That the inquiry was only a departmental one, during which the Judge ought to have, at the most, kept your petitioner under peon's custody, as he did on the first day, and there is no law warranting the commitment of a party to jail without departmental inquiry, which is only a preliminary, whether there is any charge against the accused.

16. That the Acting Judge having, under all the above circumstances, committed the offences punishable under Sections 166, 229, and 343 of the Indian Penal Code, your petitioner most humbly craves your Lordship in Council will be graciously pleased to take the above deplorable circumstances and hardships into your favorable consideration, and sympathizing with him grant him sanction, under Section 167 of the Civil Procedure Code, to proceed against the Acting Judge, criminally. Your petitioner, as in duty bound, will ever pray.

23rd March 1868.

(Signed) *சுப்பிரமணிய பிள்ளை*

No. 112.

ORDER THEREON, 15th April 1868, No. 605.

The Governor in Council directs that petitions Nos. 666 and 705 of 1868, be referred to the Honorable the Chief Justice and Judges of the High Court, with the request that the Government may be informed whether the cases to which these petitions relate have come under the notice of the High Court, and be favored with the expression of the opinion which the Judges of the High Court entertain of the proceedings of the Acting Civil and Sessions Judge and of the Assistant Magistrate in the cases to which these petitions refer.

2. Petition No. 697 contains allegations against the officers of Government of so serious a nature that the Governor in Council resolves to direct the Magistrate of Tanjore, Mr. Morris, to proceed to Tranquebar and to inquire into the truth of the statements contained in this petition. Mr. Morris will submit, after a careful inquiry, a detailed report of the circumstances under which the petitioner was sent to Jail, by whose orders he was, as alleged, treated as a convicted criminal,

kept on prison diet, forced to eat from a common pot, wear the prison dress, and was at certain times hand-cuffed, especially when being taken to the Judge's Court for examination. Mr. Morris will also report, as is stated, the petitioner was detained in Jail for fifty-three days, and whether this was by the order of the Assistant Magistrate, all of whose proceedings and orders in the petitioner's case should be submitted for the information of the Government.

3. A copy of these Proceedings will be furnished to the Acting Civil and Sessions Judge, who will submit to Government a statement of the public servants suspended or dismissed by him since assuming charge of the Tranquebar Court, with an explanation in each case of the grounds of suspension or dismissal.

(True Extract).

Chief Secretary.

To the Honorable the Judges of the High Court.

" Magistrate of Tanjore.

" Acting Civil and Sessions Judge of Tranquebar."

Ed. J. T. Welch.