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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Judl. DEPARTMENT

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Read the following papers:—

No. 109.

No. 666.

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 local supply was, as admitted in his own sentence, in the year 1863, or December 1862, as found on appeal by Mr. Bird, the Session Judge of Tanjore; whereas the bond clearly refers to dealings held from 1863 to 28th 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 28th 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 refer 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.

6. That his intention in this case was also to reach the Sheristadar through your petitioner is plain from the whole of the proceedings, depositions, and sentence being mostly against the Sheristadar, when he was no party to the case, and from the fact of his having in Court questions re-examined the 1st witness two days after the first examination only about the Sheristadar, and from that of his having taken statements not contained in his deposition before the Civil Court referred to by the Magistrate.

7. That, moreover, at the time of hearing Mr. Parker refused even to see Mayne's Principles of Criminal Law, page 32, pointed out by his Vakeel, to show that the matter in question was only a civil matter, and was angry with his Vakeel during the trial, and that he also did not give your petitioner copies of depositions, as is evident from the accompanying Memorandum, when he wanted them for preferring an appeal.

8 That your petitioner, therefore, most humbly begs to add that the Magistrate most illegally and maliciously punished him to a rigorous imprisonment in Jail, where he was unmeritedly subjected to great indignities and hardships, and he has therefore committed an offence punishable under Section 220 of the Indian Penal Code.

9. That your petitioner most humbly begs your Lordship in Council will be graciously pleased to refer to the copies of the grounds of conviction of the Magistrate, appeal petition, and appeal order of the Session Judge of Tanjore, herewith submitted, and allow him sanction, under Section 167 of the Criminal Procedure Code, to proceed against the said G. A. Parker, Esq., the late Acting Head Assistant Magistrate, criminally. And your petitioner, as in duty bound, will ever pray.

(Signed) AMOORTHUM PILLAY.

Copy of the Appeal Petition.

To the Session Court of Tranquebar.

I, Amoorthum Pillay, prisoner in Case No. 82 of 1867 on the file of the Acting Head Assistant Magistrate of Tanjore, appeal on the following grounds from the sentence of the said Magistrate, convicting me under Section 403 of the Indian Penal Code, as having criminally misappropriated the complainant's property :—

As admitted by the complainant himself in the deposition, both I and he amicably entered into an adjustment of accounts, and I executed a deed for the balance struck against me and made a part payment of Rupees 4. Hence it is evident that I had no "dishonesty," the chief ingredient of the offence, as defined in Section 403 of the Indian Penal Code.

Under the Section in question misappropriation of one's property is the chief element. In this case the amount due by me merged into a debt by the execution of the document, and a debt is not a "moveable property" not being "corporeal," and cannot, therefore, be "misappropriated" by any one.

The complainant himself admits in his deposition that he intended civilly to sue for the debt if it were not paid, and the fact of his having obtained the deed from me further shows his intention to go to a civil action in case of non-payment. Had he construed my non-payment into a dishonest misappropriation of his property to my own use, he would have taken a criminal prosecution, but, on the contrary, the Session Judge sent for him, took deposition from him, and sent him up to the Magistrate.

The law, as enunciated in Mayne's Principles of Criminal Law, page 32, is, where goods are sold upon credit the purchaser cannot be criminally prosecuted, though the goods are never paid

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or, 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 28th 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.

The witnesses examined in this case are officials of the Court, and their evidence is very discrepant and incredible.

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 quite false.

The witnesses have given such false evidence, having taken advantage of the great misunderstanding 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 a 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 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 complaint 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 complaisance 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

Magistrate used to dine frequently at the Judge's house and drive with the latter often. The 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 16th 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 considers the sentence recorded wholly 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 tower Court) the prisoner and 1st witness settled their

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 under Section 409 against him, and Section 403 being 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 abetter 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).
(Signed) E. W. BIRD,
Session Judge.

15th January 1868.

(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. Punjanatha Iyen, Record-keeper in Civil Court.
4. Sheik Hoossain, Duffadar in Civil Court.

Charge.

That he, on or about the year 1865, at Tranquebar, in the Taluq 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 Moochee 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 contigencies, 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 thenceforward 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 complainant out of his own pay, at the rate of Rupees 2 a month, until the debt was discharged. This, if true, discloses on the part of the Sheristadar a most disgraceful breach of duty, as, if 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 Taluq 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 48 of the Code of Criminal Procedure, that this sentence of imprisonment shall take effect from the date of the expiration of the term of imprisonments 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, Subbaroya Naick, as a compensation for the injury he has received.

16th October 1867.

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

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No. 708.

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 Jawab. neviss and they were most illegally kept under strict custody of batta peons, who were neither 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 Sundays.

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, as to 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 therefore committed the offences punishable under Sections 220 and also 343 of the Indian Penal Code, in having kept them under wrongful confinement about forty-five days.

14. 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. Eliott, 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) அறுமுகம் பிள்ளை.
(,,) வேதநாயகம்.

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 stolen, (and formed the 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 ; this charge like the rest 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.

16*th 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 SOOBRAMANY, IYER, late 4th Goomastah in the District Moonsiff's Court of Tranquebar.

Respectfully Sheweth,

That your petitioner was entertained in the public service in 1854, 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 (not the Diary-keeper) 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 batta peons.

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 plaintiff, 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 while under departmental inquiry, which is only a preliminary measure to find out 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, 220, 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 அய்யர்.

No. 112. ORDER THEREON, 15th April 1868, No. 605.

The Governor in Council directs that petitions, Nos. 666 and 708 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,

605/1

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 if, 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.

Ind. J. Tulloch.

Gen. 4

Dis. 66/68
21/3/68

60/8 1

To

The Right Honorable Francis
Baron Napier K.T.
Governor in Council
Fort Saint George

The Humble petition of
Amoorthum Pillay late Moochie
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 & Parties Esqre. had most illegally proceeded against, and sentenced him to 6 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 Rs. 8. being the balance of the price of paper said to have been supplied to [illegible]

2. That the amount was secured by a bond and has thus became a debt; which, not being moneable 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 said the whole case before him, the bond upon which the charge was based clearly says that it was executed for "clearing field" and not for the price of paper supplied to Court. The date of the discontinuance of the local supply was, as admitted in his own Sentence, in the year 1863 in December 1862 as found in appeal.

Mr. Bird, the Sessions Judge of Sanjore, whereas the bond clearly refers to clearings held from 1863 to 28th September 1864, thus evidently shewing that it related to other than the Court's supply and fully proving the Petitioners plea. But, as evident from the order of Mr. Bird, the Magistrate has wrongly dated the transactions as 28th September 1863 instead of 1864 and the receipt as 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 [illegible]

6/9

which he would not have done if this did not form part of the private dealings. Some of the Witnesses said before the Magistrate that my Petitioner drafted 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.

That the matter was further purely subject of a Civil Suit. The prosecution 1st Witness himself has stated that he intended to sue my Petitioner for the amount but that he appealed as he was sent for by the Court and the 3rd Witness, a mere Durjudeer, has also stated before the Magistrate that, if he were to refer it to Mr. Clarke, the permanent Judge of Shangueban he would refer 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 minute of conviction "expressing his most sincere regret that the offence was not one in which he could award [illegible] flogging, clearly shew [illegible]

to punish your Petitioner when he proceeded with the case

6. That his intention in that case was to attack the Sheristadar whereas your Petitioner is plain from the whole of the proceedings, deposition and Sentence being mostly against the Sheristadar, when he was no party to the case and from the facts of his having in Court questions re-examined the 1st Witness two days after the first Examination only about the Sheristadar and from that of his having taken statements not contained in his deposition before the Civil Court referred to by the Magistrate

That moreover, at the time of hearing Mr Parker refused even to see Maynes Principles of criminal law page 32 pointed out by his Pleader to shew that the matter in question was only a civil matter and was angry with his Pleader during the trial and that he also did not give your Petitioner a copy of deposition as is evident from the accompanying memo when he wanted them for preferring an appeal

7. That your Petitioner therefore most humbly begs to add, that the Magistrate's conduct

maliciously punished him to a rigorous imprisonment in Jail where he was unmercifully subjected to great indignities and hardships and he has therefore committed an offence punishable under Section 220 of the Indian Penal Code

9. That your Petitioner most humbly begs your Lordship in Council will be graciously pleased to direct the Collector the grounds of conviction of the Magistrate, Appeal Petition and Appeal order of the Session Judge of Tanjore, herewith submitted, and allow him sanction under Section 167 of the Criminal procedure Code to proceed against the said G. A Parker Esqre the late acting Head Assistant Magistrate criminally. And your Petitioner as in duty bound will ever pray

Pulay

Copy of the Appeal Petition 1/

506/12

To

The Sessions Court of Tranquebar

S. Amirtham Pillai, Inspector has been
of 1867 on the file of the Acting Head Assis-
tant Magistrate of Tanjore, appeals to the
Sessions Court against the order
and imposes a fine of Rs 100 on him
under Section 403 of the Indian Penal Code as having crimi-
nally misappropriated the Complainant's
property.

It admitted by the Complaint himself in
his deposition Exh. I and he amicably ar-
-ranged with the defendant and received
payment and made a part payment of
Rs 40. Hence it is evident that I had no
"dishonesty" the chief ingredient of the offence
as defined in Section 403 of the Indian
Penal Code

I submit the Sessions Court will be pleased
to set aside the order of the Lower Court
in the case and acquit me of the charge
under Section 403 of the Indian Penal Code
and restore the property to me.

Tranquebar
19th

3. The Complainant himself admits in his depo-
-sition, that he intended to sue for the
debt if it were not paid, and the refusal of his having
detained the deed from me further shows his
intention to go to a Civil Action in case of
non-payment. Had he conducted me in any
-ment and a dishonest misappropriation
of his property to my own use, he would
have taken a Criminal prosecution, but on
the contrary, the Session Judge sent for him,
took depositions from him and sent him up
to the Magistrate.

The Complainant admits in answer to Plea
-ding of Crimination that he sold upon credit, the paper &c.
and sold upon credit, the purchaser &c.
he Criminally prosecuted though he gave
and never paid for, and the non-payment of
itself will merely constitute a Cause for
Civil Action; otherwise there will be a mul-
-titude of Criminal Prosecutions which
dead blow to Civil Actions.

The deed does not state, that it was execu-
-ted for money due for paper supplied
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 his measure was the price of the paper supplied to ... at the Magistrate admits in his sentence ... practice of Local supply ceased in 1863. The deed filed in this case clearly shews that ... it, were settled from 6 years ...

Capt ...

debt therein mentioned is not the price of the paper supplied to the Court, but of that purchased by and for private Suitors, & this is supported by the evidence of the 2nd witness, who admits that he purchased paper from ... examined in this Case are officials of the Court, and their evidence is very discrepant and incredible.

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

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 [illegible] it to apply in
public Court, & that in the presence of the
2nd 3rd and 4th witnesses who are respectable
persons. This, therefore at once strikes at
the credibility of the witnesses who depose
to his (Meenakshi's) alleged interference.

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

[illegible] is false
evidence, having taken advantage of the
great misunderstanding which the judge
has against Shereshadar & myself.

The 2nd 3rd and 4th witnesses who are
great enemies to the Shereshadar gave evi-
dence against [illegible] are
[illegible] to be given only of the
hon. Sy
offer".
section 138 of the Code
of Cr. Procedure and that to the
Police Officer, and not to the judge. But
the Magistrate Criminating Shereshadar
is contrary to law & practice as the

Sheristadar is not ~~~~ yet ~~~~
which is the Ch~~~~ ~~~~ ~~~~
specified in ~~~~ 202 of the Indian
Penal Code. And so it is evident that in-
order to implicate the Sheristadar his ~~~~
has ~~~~ ~~~~ ~~~~.

From the proceedings ~~~~ Magistrate
expressing in his sentence his sincere
regret for the offence not being one for
which I may be flogged, in which he did not
know my Conduct as I had not served
him even for a day, it is clear that his Majes-
trate has ~~~~ ~~~~ ~~~~
with a preposession against me, and that
therefore he ought not to have enquired into
the Case.

I therefore beg your Honour will be
graciously pleased to send for the records
of the Case, to allow me an hearing and
to release me ~~~~ ~~~~.

Note. This Case has originated from his
Session Court. In the absence of any
Complaint by the 1st witness, the Court
compelled his attendance by a letter
from their Peon and although a depositi-
tion had previously been taken from

him during the departmental enquiry in Case No. 81, the Case was not taken cognizance of but was taken up by the Magistrate 10 days after the result of that Case was known. The witnesses are under the Complainant & the Judge, they being his Court Servants and were sent up by the Court, and in the face of their deposition implications they were left out by the Magistrate for pleasing the Judge and the Shirestadar alone who is the Judge's Superintendent is implicated under Sections 166 or 202 of the Indian Penal Code and liable to him. During the enquiry 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 Magistrate used to dine frequently at the Judge's house and drink with the latter often. They frequented each other's quarters

several times a day, & has there having been a very close intimacy between them, the Magistrate inflicted through the Judge a strong animosity against me; and therefore, the Magistrate has erred in his sentence, that he most Humbly appeal 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 the Higher Court.

Signed. J. Amarasekara Police

Signed- F. Duckworth. M.S.

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

Criminal Petition No. 1334 of 1867.

Read again appeal Petition presented by Annangam pillay

Late Magistrate of the Civil and Session Court Trinchinopoly dated 12 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 Vakils for the Prisoner have been duly heard

The Session Judge on the 11th December 1867

1. 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 considers the sentence passed one wholly 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 when

1st Sheet

"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 Re-
cords, 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
[illegible] have been realised by 1st Witness (as indeed
undoubtedly — admitted before the Civil Judge of Trangue-
in his deposition, which gave rise to these Proceedings in 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
[illegible] and found, the Court has been at some pains to
see whether Prisoner (as a Public servant — con-
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 to, his Conduct in
this Case at least is (Criminally) irreproachable

6. The Case arose out of certain

2nd Sheet

605/22

advances. 20 Rupees which Prisoner as Moonshy was
entrusted with 3 or 4 years ago by the Civil Court to sup-
ply 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 seems rather appears)
when the Courts supply of paper was forwarded from
Madras direct. On the 28th September 1864 (not 1863 as
supposed by the Lower Courts) the Prisoner and 1st Witness
settled their accounts regarding these transactions in paper,
and 12 Rupees was found due to the latter by the former.
for the period reported. The Prisoner gave 1st Witness the Bond
in question. On the 4th March 1865
Court Notice was served on 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 mis-
appropriating from 1st Witness under Section 403 of
the Indian Penal Code.

It will be seen that with such facts
to hand with, the Prisoner's Conduct as to the money en-
trusted 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 Courts.

J. to shew with;

3rd Sheet

satisfaction the Razors account being correct, and there-
fore the Court having no fault to find with him as re-
gards the paper suspected, 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 Brenner
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, Brenner honestly discharged the 1st
[illegible] him for the value of paper due, and the
[illegible] 1st Witness evidently most clearly was
aware of. The amount of the Bond further, it is quite obvious
enclosed paper suspected by 1st Witness to Brenner not for
the Court only but for the private use of the Razor and others,
who got it through Prisoner. He states further more this
important fact. These being, thus in charge of Criminal
8. breach of Trust [illegible] Prisoner was
a Public servant maintainable under Section 407
him, and Section 403 being [illegible]
Cognizable, the Case is fit for a Court of Session to be

J. A. Sheet.

Conclusion that Prisoner has assuredly committed an "offence" whatever on the Matters charged, under the Indian Penal Code, and that the Sentence of 3 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 Exceedingly improper & irregular 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 Tanjore as an Abettor of Prisoner is severely discussed upon, tho' 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 Civil & 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.

Eighth and last Sheet
15 January. 1868.

(True Extract)
(Signed) E. W. Ibbetson
Session Judge

True Copy
(Signed) C. Masqueirine
Sheristadar.
(Signed) V. Krishna Row.
Writer

Calendar Case No. 82 of 1867

605/65

Complainant
1. Subbaraya Naik

Prisoner
Amoordam Pillai

Witnesses.
1. Subbaraya Naik
2. Anna Pillai Nazir in Civil Court
3. Sanjanatha Iyen Record Keeper in Civil Court
4. Sheik Dawood Bailiff in Civil Court.

Charge

That he on or about the year 1866 at Tranquebar in the Taluk of Mayaveram, dishonestly misappropriated the sum of Rs 8, and converted the same to his own use and thereby committed an offence punishable under section 403 of the Indian Penal Code.

The prisoner in this case, Amoordam Pillai, is the same as in Calendar Case 61. the late Moorthi in the Civil Court of Tranquebar. The Complainant deposed that three or four years ago he had entrusted with prisoner to supply paper for the use of the Court, the prisoner paying him out of a permanent advance fund of Rs 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 after the 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 thenceforward obtained from Madras, and on September 1st in that year the

prisoner and Complainant adjusted their accounts, and it was found that the former owed the former Rs 12 for paper supplied to him. This clearly the prisoner was in a position to pay, having a further next advance fund of Rs 2. 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 Rs 4, on March 4th 1884. It was exposed to by several witnesses that the Complainant had frequently remonstrated at being thus kept out of his money and that on more than one occasion he had made his complaint to the Sheristadar of the Court, prisoners relative, who had sent for prisoner and told him that as he had expended all the Government money upon himself and could it all up, as he expressed himself, he must pay complainant out of his own pay at the rate of Rs 2 a month until the debt was discharged. This if true discloses on the part of the Sheristadar a most disgraceful breach of duty, as, if he was aware [illegible] misappropriation of Government

mail to the notice of [illegible], 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 Otacamund, the Head Assistant Magistrate will stay proceedings until the result of the [illegible] trial be known & he can sentence the prisoner the maximum

Magistrate regrets most sincerely the [illegible] power to award a sentence of [illegible]

Finding and Sentence

The Court finds the [illegible]

of the offence spec
on or about the 7
of Mayaveram, d
& Rs 8 and conv
that he has thereby
under section 403
the cognizance of
Magistrate; and —
Amoordam Pillay be kept in
for six Calendar Months; and
fine of Rs 16, or, in default, t
prisonment for a further period of three weeks.

prisoner in the same
propriated the sum
his own use, and
b an offence punishable
c a Penal Code and inflict
ad Assistant
d said
imprisonment

The Court further directs under section 48 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 [illegible]

[illegible] ment, Subbarayan Naik as a compensation for the injury he has received.

16th October 1867. (Signed) E. A. Parker
Agt. Dt. Mg. Dt. Mayaveram

605
No. 22-A

To
The Honble
The Right Honble Francis Baron Napier &c.
Governor in Council
Fort Saint George

The humble Petition of Aurbuthnott Pike and Raydam Thos Pelly two of the Commissioners in Original Suit No 8 of 1818 on the file of the Civil Court of Saugueban

Respectfully Sheweth,

That your Petitioners were appointed Commissioners in the said Suit from the beginning of 1824 and discharged the duties connected therewith with great diligence. The late Civil Judge Mr Clarke has appointed them by Mr Elliott, in giving judgment to his pleadings of a mere nullity against the Petitioners as two different charges against him and dismissed them from the Service but in order to give them weight to his said order of dismissal the Judge on the 21st Septr last, send a Battalion or order by a battalion requiring the Commandg officer to produce the Petitioners before him

[illegible]

2 That on the 1st October last the Petitioners attending for the purpose and duly [illegible]

sent for and examined the whole of the
Plaintiffs and Defendants witnesses
Gochaiwomen who came Under Section
22 of the Civil Procedure Code to com-
-pelled to appear in Public and who, thro
forced to come from a distance of 15
miles, were, after all, examined at the
Station only by a Commissioner an
not by the Judge himself when the Co
was only two or three Lowest distant from
the place where they were examined
They all declared that they had no th
to complain against your Petitioner
as may be seen from their depositio
before the Court

6. That prior to the Landing, the
Resident Sessions Judge made enquir
from Petitioners left the Jurisdi
of Sanjive under Some
alleged offences falling under Sections
166, 167, 192 and 466 of the Indian Pe
nal Code and they were to them
great Calamities and mortification
kept Carried Back in the Sanguebarade
Judiciary Jail on the night of the 6th
and there in the most
unwarranted manner taken to Vegajantam
Station by Police Constables
Regulars of Police Constables

7. That the Joint Magistrate

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 election with
the words that "the charge like the
rest must fall to the ground."

11. That the whole Records of the
Case inclusive of all upon Petition
Reports and the Civil Courts orders
thereupon had not been sent up
to the Magistrate which, if done
would have given no room to the Magis-
trate even to suppose, as he has done
that there was carelessness on Pe-
titioners part. The Magistrate properly remarks upon
Petitioners want of Diligence in
Court. The Judge sent to the Magis-
trate only such of the Records of
the Case as appeared to him to
as appear upon the Charge,
and therefore the Magistrate was
unable to gather from them any
thing and therefore was also obliged, one,
to send the Case back to the Judge
requesting information on the subject

12. That the
That a Session Judge
whose duty is to review the proceedings
of a Magistrate

13. [illegible] from the
[illegible] upon Lord Hyde in Council

Inc. No 708/68

Calender Case No 120 of 1867. 60/32

Regina Versus. 1 Arbuthnum Pillai
2 Vedémuthu Pillai
3 Arokiamadum Pillai

Remarks.

This case has been gone into by the acting Joint Magistrate at the request of the Sessions Judge who forwarded proceedings held on the Civil Side of this Court.

It is pointed out in these Proceedings that Arbuthnum Pillai Vedémuthu Pillai and Adaikalam Pillay were on the 1865 appointed Commissioners by the Civil Court for the Year 1865/66 in accordance with a decree in D.C. No 8 of 1863 to recover from 1st Defendant in said Suit rent Paddy &c. and pay the same to the Plaintiffs. Numerous orders are referred to in the Court Proceedings nearly all of which are disobeyed or disregarded. Two Reports are also referred to 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 stolen (and formed the subject of this criminal enquiries) are

re 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
Feby 1867 appointing the 3 accused persons
Adamalam Pillai having meanwhile deceased
Commissioners for 1866/67. The Court proceeds
to point out how they 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 &
196 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 finds it
[illegible] evidence to establish a charge of
such disobedience of orders as is punish-
able under the criminal law. There is
no doubt proof of gross carelessness and
disregard of orders on the part of the Commissioners in

in discharge of the Commission to them
Civil Court entrusted to them. In the ordi-
Course they are responsible to the Civil
Court. But to establish a charge under
Section 166 or 167 I.P.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 enquiry such intention would be
presumed should actual injury be proved
should there be a complainant to prefer
the case against the accused. In the ab-
sence of such complainant or of any
evidence to show that any injury was
caused to any one it is impossible to
presume a malevolent intention. This
especially so in this case where mere
carelessness is a sufficient explanation
of the Commissioners' Conduct. The Chief
Defendant and the Chief Plaintiff in
Civil Suit (O.S. 80 of 1865) were examined
in Court and both declare that they have
suffered no injury and have no complaint
to make against the Commissioners

As to the alleged perjury under Sec-
tion 192 I.P.Code it is presumed that it
relates to the supposed fabrication of false

Returns

returns and accounts 605/30 by the Commissioners
when called on to Satisfy the Civil Court
as to the manner in which they had admi=
=nistered their trust. The check (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 Commissi=
oners 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. do comprise sums from
the Civil Court and with a view to conceal
their disobedience conceal and furnish false
accounts and returns. Now as it is impossible
to ascertain the exact amount of Paddy
that was harvested two years ago (independently
of the Commissioners own accounts) it is
open to any one to prove the falsity of
particular account. It may be stated how=
=ever that the discrepancy between the two
accounts of May 66 and October 67 points
out the Civil Courts' Proceedings has been
satisfactorily explained by Arbuthnot Pillai,
the

the Chief Commissioner (vide his Statement before the Joint Magistrate) and the 65/36
only regret is that the same explana-
-tion 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 do-
-cument 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
[illegible]
were guilty of the offence of Forgery
under Section 466 I.P. Code In none of
his communications on the subject has
he

65/38
65/37
27

the Judge referred to any document which he considers forged there being a finding no forged document in the Records this charge like the last 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 person direct that they be discharged under Section 258 of the C.P.C.

16th December 1867

/signed/ J. Hope
Ag. Sr. Magistrate

Compd
C

(True Copy)

/signed/ A.R. Whitehorn
Ag. H.R. Registrar in charge

697
25/5/68

65/38

To

The Right Honble Francis Baron Napier

Governor in Council

For Lieut Chief Justice

The Humble Petition of Sonbhuramany

Iyer late of Gumastah in the Dis-

trict Moonsiffs Court of Tranquebar

Respectfully Sheweth

That your Petitioner was

entertained in the Public Service

in 1854 and continued to discharge her

duties for the last 14 Years and has borne

a good character for Conduct and abilities

as certified to by Several of the Moon-

siffs under whom she had served

That in 1864, at the instance

of the Plaintiff in No 99 on the File of

the Tranquebar Moonsiffs Court, Defts

Paddy and attached pending

the Result of the Suit. The Ameen by

a Report praying for orders to sell the

Paddy as it was Uncut. The Moonsiff

who used verbally to give orders in

trivial matters, gave orders 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 Gumastah for deposit

in Court who, having embezzled the sum

committed for criminal

That a Copy of the Court Book
the Diary (referr) who made the Diary
entered the Ameendments of the
order thereon entering Ameendments &
other subsequent proceedings. Be
comparing the Diary as now Copied
Petitioner found the ameendments
added & made the order as the
Proceedings

4. That the acting Judge calling
this recalcitrant Petitioner while brought
arraigned upon Petitioner while brought
amended as a Witness against the
above Head Gunnastaland the Respond
that the Petitioner the Respondent
Recalcitrant & line were made the
Recalcitrant & line were made the
Proceedings & that the magis-
the Judge ordered and that he
be sent for and examined whereupon
the Judge accused him a Commit
person in the ground that this state-
ment was false and without the
least enquiry dismissed him a Liver
from his Post for perjury and Perjury
on the 8th October last & under Section
Proceedings in the Custody of the Police

5. That the next day Petitioner
was taken before the Magistrate
enquiry committed to Jail under
warrant where he remained for 5 days
in confinement and at Government Expence
nothing his usual Conviction to

be fed with meals from home
6th That without commencing the
enquiry then at least the Judge of Standing
two of the Gunnastaks who acted the same
station about the 4th day and he sent
for the Plaintiff, Defendant Ameenand
Paddy Merchants not at once, but at
his pleasure and at an interval of 5
and 10 days without sending for and of
examining Mr Shunter as desired by
Petitioner in his deposition and though
disposed to his innocence he did not get
any relief

That in consequence of the above
confinement on the 9th and 10th Petitioner
Petitioner was shut up in a cell with
3 Pariahs and from 11th to 15th voluntarily
when he was locked up all night and
he was taken out by the Police and
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 "Cumble" a coarse blanket and
an old mat. When he was sent to
the Moonsiffs Court to deliver over
his charge, he was to his great morti-
fication sent Bandeyfed and while your
Police custody and while your Petitioner
was taken to Court for enquiry, he was
severely beaten & abused and detained in
the custody of Constables and during
the enquiry the room often locked in the
Prisoners bar a place destined for Cattle
Criminals & other trash

with a drawn sword, as if he was a regular Prisoner undergoing a Sessions trial

5. That your Petitioner was even refused to be admitted to bail pending enquiry although he had asked the Judge several times both in the Jail and in Court.

That your Petitioner was shortly obliged to employ a Proctor at an exorbitant fee as Prisons and begged the Judge in vain to accept the Securities tendered

6. That Counsel was requested by his Counsel the Judge should see and examine Mr Shumacher whose deposition having verified your Petitioners statement, the Judge refused upon Petitioner in the 3d Remonstrance

7. That your Petitioner one of His Majesty's Subjects proceeded treatment never heard of before under the English Government and the Laws quite contrary to all Law, equity and practice and was put to great Indignities, hardships, loss of Caste and many Losses & Fines

8. That your Petitioner further begs to say that the acting Judge was spite in many instances changed upon Petitioner both for Forgery and Perjury before pleading on Lyon Mr Shumacher chosen authority whether upon Petitioners statements were true or false

13. That there can be no stronger Proof against your Petitioner to disprove the charge of Perjury since he did not give two contradictory statements on oath in there were no other statements opposed to his or any false statements in Petitioners deposition cannot be presumed until it was denied by Mr Shumacher.

14. That the Judge had no Power even to suspect any Petitioner of Forgery in accordance with the subsequent proceedings entered in the Diary next to the line added clearly made in reference to the Order contained in the line and as in consequence of that Order process was sent to the Ameen Paddy Sale the Sale proceeds entrusted to the Head Gunnastick for the embezzlement of which amount the said Head Gunnastick was convicted by this very Judge

15. That the enquiry was only a Departmental Conclusion which the Judge ought to have a Power most kept upon Petitioner under Peons Custody as he did on the first day and there is no law warranting the commencement of a party to sale while under departmental Enquiry which is only a preliminary measure to find out whether there

[illegible] that the acting Judge cannot
under all the above circumstances,
commit the offence punishable
under section 186 and 353 of the
Indian Penal Code. Therefore
I summon and bind down the
Complainant Ramesh Chandra Mishra
Secondly Related to take the
above depositions, documents
and exhibits into your favorable
consideration and dismissing
with him Grant him protection
under section 186 of the Civil Proce-
dure Code to proceed against the
Acting Judge accordingly
Pour Petitioner in duty
bound will ever Pray

23/3/68

[illegible]

Judicial Department

60/47 30

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following ~~letter~~ Petitions

No 666 from Arnoorthum Pillay late Renchee Cir. & the Comb. Rangadas — dy 21st March 1861

No 708 from Arbudum Pillay & Vaidiammutton Pillay. Rangadas — 24 — — —

No 697 from Subramany Iyer. — dy 23 — — —

Order thereon. 15 April 1861 No 605.

The Governor in Council directs that petitions No 666 and 708 of 1860, be referred to the Hon'ble 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

N.

Exemption

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 Judges' Court for examination. Mr Morris will also report if, as is stated, the Petitioner was detained in Jail for 58 days and whether this was by the order of the Assistant Magistrate whose Proceedings and in the Petitioners case should be submitted for the information of the Government.

3. A copy of these Proceedings will be furnished to

to the Petition of the Petitioner in which the charges of the Police Court on the Proceedings of the Assistant Magistrate and Police Constable are stated to have been false and malicious

2. Petition No 69 contains allegations against the Police Magistrate of such a nature that the Governor in Council wishes to direct the Magistrate of Langue, Mr Morris, to proceed to Pungudeo and enquire into the truth of the Allegations contained in the Petition. Mr Morris will submit, after a careful enquiry, a detailed report of the circumstances under which

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.

To the Hon'ble the Judges of the High Court of Judicature at Madras.

The Acting Civil and Sessions Judge of Tranquebar.

No. 97 of 1868.

Tiru Sorbunnaya Iyer late 4th Sumastatdar of the District Moonsiff's Court of Tranquebar.

Vs.

28th March 1868.

Petitioner

Petitioner represents that the acting civil and Sessions Judge of this station on suspicion that petitioner committed forgery by ~~entering~~ making some additional entry in the Diary & perjury by giving false statement regarding the same sent him to the Jail ~~with his~~ handcuffed without enquiring into the charges that in this state he kept him for nearly two months & at last acquitted him of the charges on the evidence of the Moonsiff under whose order he made the additional entry & released him from the Jail; that by the proceedings of the Judge are wrong & thereby he has committed offences punishable under Sections 166, 220 and 343 of the Indian Penal code.—111.

Prays that under Section 167 of civil Procedure code permission may be given to prosecute the Judge.

107 ~~Petitioner~~ Petitioner prays to proceed against

...es of disobedience,
...ury & forgery and were
...risoned for 45 days that
...lleged charges were
...ere unfounded and
...e. At present that
...e Judge had no room
...ink that they have
...mitted any offence
...ishable under any
...isions of the Penal Code
...t the Ex Judge has
...re committed the
...es punishable
...ections 220 & 343 of
...Penal Code viz
...cept when under
...prisonment for 45
...ays that under the
...stances herein stated
...may be allowed under
...367 of the Criminal
...ure to proceed against

Ex No 708 of 1868.

From Arbeedam Pillai
& Vaidianatha Pillai,
two of the Commissioners
in the Original Suit No
8 of 1863 on the file of
the Court of Tranquebar.

Recd 24 March 1868.

1 Encl &c

State that they were
appointed Commissioners in
Original Suit No 8 of
1863 on the file of the City
Court at Tranquebar &
discharged their duties
with diligence. Com-
plains that they were
unjustly dismissed by
Mr E Elliot the Acting
Civil Judge on the allega-

[illegible] Judge of Tanjore
[illegible] Defamation of Collr:
[illegible]
Solicits a copy of the
proceedings passed by the
Joint Magistrates

5805/AR

Petition No. 166.

This is one of the cases
to which reference was made a
little while ago.— The Judge of
Tanjore promoted a Complaint
against petitioner which seems
certainly of a civil nature, before
the Head Native Magistrate of
Tanjore, who convicted criminally
& in intemperate language, rejected
a plea that he could not withhold the
prisoner!— The appeal was refused
by the High Court from the Collr of
Trunquebar to Tanjore— and Mr Ford
perused the sentence finding upon
one Pantilla of evidence to support
a criminal charge.— The Petitioner
is

Petitions 605/15

No. 666 of 1868 of ——— 666

Rec'd 21st March/68 Forwarded with reference to Memorandum.

From Amoorthum Pillay, late Moochee in the Civil and Sessions Court of Trangambar.

States that on a false charge of Criminal misappropriation of Rs. 8 being the property of Government the Acting Head Asst. Magistrate of Tanjore sentenced him to 6 months rigorous imprisonment with fine of 16 Rs. under Section

No. 697 of 1868 of 23rd March 68.

Rec'd. " —do—.

From Seebrammuny Iyen, late 4th Qnnastah in the Dist. Inconsiffi's Court of Trangubar.

Represents that the Acting Civil and Sessions Judge on the supposition that petitioner committed forgery by making some additional entry in the Diary & perjury by giving false statement regarding the same sent him to the Jail handcuffed without enquiring into

Section 466 of the Indian Penal Code; that the said sum of Rs 8 was not the property of the Court but it was due to him for papers supplied to the Vakil employed by him & that nothing more. Subscribing there. with relief of Proceedings connected with his case, praying for permission to prosecute the said Magistrate for having furnished him wrongfully with false charges.

&c

No 708 of 1860 &c.

Rec.d 24th March/61

From Arbudam Pillai and Vaideamuttoo Pillai, two of the Commissioners in the Original Suit No. 8 of 1863 on the file of the Court of Tranquebar.

State that they were appointed Commissioners in Original Suit No 8 of 1863 on the file of the Civil Court of Tranquebar & discharged their duties with deligence. Complain that they were unjustly dismissed by Mr. Elliot the Acting Civil Judge on the alleged charges of disobedience, perjury & forgery and were imprisoned for 45 days though the alleged charges were proved.

&c.

&c. &c. &c. Tranquebar

into the charges that in case shall be right time for merely summoning and at last acquitting him of the charges on the evidence of the witnesses under cross the Accused is under which he made the adoption and ordered him from the Jail. That the proceedings of the Judge are wrong and thereby he has committed offence punishable under Sections 166, 220 & 221 of the Indian Penal Code.

Prays that under the Section 89 of Civil Procedure code Commission may be given him to demand the Judge. No

Peter 697. 48

Prisoner an alien.
Pleaders.

Peter Pretorius, J. time, dis-
closes an unpleasant state
of affairs. — Peter was a
Transvaler, & by order of
the Chamberlain, where court is
held, was taken as
prisoner, under these cir-
cumstances, to the Chamberlain's
office, where, on a search, the
latter found in a diary, the letter
which gave the interpretation. —
Having examined these documents, came up
in a case — and Peter was
the 2nd doctor under rules
the judge [illegible] charge
adopted him 53 days in jail
and at last asked the
Chamberlain & found that his
statement was correct!
Yet to say he was treated
worse than an utterly de-
graded criminal: Taken and
handcuffed for relieving
nature — taken to Court handcuffed

Peter 697.

Prisoner an alien.
Pleaders.

Peter Pretorius, J. time, dis-
closes an unpleasant state
of affairs. — Peter was a
Transvaler, & by order of
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prisoner, under these cir-
cumstances, to the Chamberlain's
office, where, on a search, the
latter found in a diary, the letter
which gave the interpretation. —
Having examined these documents, came up
in a case — and Peter was
the 2nd doctor under rules
the judge [illegible] charge
adopted him 53 days in jail
and at last asked the
Chamberlain & found that his
statement was correct!
Yet to say he was treated
worse than an utterly de-
graded criminal: Taken and
handcuffed for relieving
nature — taken to Court handcuffed

Prisoner an alien.

ungrounded and false.
Held that the Judge
should not remand him
but have committed any
offence punishable under
any section of the Penal
Code and that the Judge
was therefore com-
pelled to discharge
the offence punish-
able under Section 220.
of the Criminal Procedure
Code of Natalia Penal Code
in leaving Natal there within
the confinement for 48 days.

Held that under the cir-
cumstances herein stated they
may be allowed under Section
157 of the Criminal Procedure
Code against the Civil Judge
for false & defamation of
character — damages
of the decision subject of the Court
may be had.

Memo for order.

Send days Ld Lauderdale
& more Letts home
before. —
Ld Lauderdale's case
Ld Lauderdale's case
Ld Lauderdale's case

Irish yesterdays council
Shane received these papers

See the records of the cases,
with their opinion as
to the conduct of the
Ecclesiastic Judge and
Appellant Magee, in
the matter to which

Ld Lauderdale's case

Ld Lauderdale's case

Ld Lauderdale's case

60/47

It seems very desirable
that a mandamus
should be taken to
from the High Court to

I would direct the Sheriff
to the High Court
to the case of
Sheriff Court
the engrossed
the case of

that there is no
general
impute
Effects have been
serious
to the

605
553

Private

Negapatam
Feb. 24. 1868.

605/50

My dear Mr. Phillips

I send Papier had been in Madras I should have written this letter to you in advance. I address it to you as the Senior Member of Council.

I have just spent three days in Tranquebar, and have found the Christian Congregation there in the greatest trouble.

Fifteen native Christians, holding various offices in and about the Court of the Civil and Sessions Judge have recently been dismissed. I need not describe the loss, the sorrow, and the dismay, which such proceedings must necessarily have brought on

605
553

Bud. 1868 Department.

No. 605

PROCEEDINGS OF GOVERNMENT.

Feb. 924.
" 994

DATED 15th April 1868

105 412