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Archives 1-10,000-6-10-76

(1) Number of pages 18
(2) Date of repair 13/10/86
(3) Initials of the Referencer law

TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

P.W. DEPARTMENT

G.O. No.	4296	Press.
B.P. No.		Mis.
Dated	7. 11. 1878	197.

Not to be folded or roughly handled

Copy

GOVERNMENT OF MADRAS.
PUBLIC WORKS DEPARTMENT.

7th November 1878, No. 4,296 W.

General.
Establishment.

Read the following papers :—

No. 117. From Lieutenant-Colonel R. B. KENNEDY, District Engineer, Malabar, to the Chief Engineer, Buildings, and Roads dated Lakili, 24th September 1878, No. 70.

In continuation of my letter, No. 66, dated 16th instant, I have the honor to report that, having instructed Lieutenant Dobson to bring the case of Overseer Taylor before the Magistrate, that officer on the 16th appeared before the Sub-Collector at Tellicherry and preferred his charge.

2. I forward, herewith, the papers* connected therewith for your information, and shall be obliged by their return and orders on the subject.

* Letter from Assistant Engineer, Cannanore Range, No. 196, dated 18th September 1878, with one enclosure.

Letter from Joint Magistrate, Malabar, to the Officer in charge Cannanore Range, No. 597, dated 19th September, with three enclosures.

3. I have directed Lieutenant Dobson to keep the Overseer under suspension, and meanwhile to give him every opportunity, and full time, to produce vouchers or other proofs of the

payment of the balance still unaccounted for, and to receive any explanations he may proffer, using every means in his power to test the authenticity of such vouchers as may be forthcoming, and the truth of assertions regarding payments for which no vouchers are produced, so as to be in a position to present a complete case should the Overseer ultimately fail to account for the deficiency.

4. As I read the Sub-Collector's decision, it would appear that a conviction is rendered an absolute impossibility if (as he holds) it is absolutely necessary to prove specific use of the money by the Overseer for his own private purposes. It seems to me that it is sufficient to prove as a basis the receipt by an Overseer of a certain sum of money to be employed for public purposes, and to be accounted for; and his failure to produce a balance, or to conclusively prove his disbursements, I would submit to be sufficient *prima facie* evidence for the assumption that what he cannot account for he has misappropriated, and for the case to be sent to trial. You will observe that the Joint Magistrate does not object to insufficiency of proof that the money was public money entrusted to a public servant for public purposes, or consider that Lieutenant Dobson has failed to show that the Overseer was unable to produce the balance unaccounted for, but insists only on the want of proof that it was dishonestly misappropriated, and converted to his own use, treating the matter rather as a violation of departmental rules than as a criminal offence.

No. 117-A. From J. W. HANDLEY, Esq., Government Pleader, to the Secretary to Government, Public Works Department, dated Madras, 28th October 1878, No. 137.

I HAVE the honor to acknowledge the receipt of papers referred to me for advice relating to a charge of criminal breach of trust against Overseer Taylor in charge of Kotayam Taluk, Cannanore Range.

2. I think the Joint Magistrate was wrong in dismissing the case against Taylor under Section 147 of the Criminal Procedure Code. The facts disclosed by Lieutenant Dobson's statement establish a *prima facie* case against the Overseer which is sufficient to put him on his defence. It may be that, as he says, he will be able to account for the money if time is given him, but until he does so satisfactorily I do not see how it can be said that there is no sufficient ground for proceeding against him. I do not understand what the Magistrate means by saying that "there is nothing in the complaint to show that the money was dishonestly misappropriated, or converted to his own use by the Overseer, or otherwise fraudulently disposed of." That a man, who has received money for a certain purpose, and can neither produce it nor account for it, has converted it to his own use is certainly one of those presumptions which a Court may make under Section 114 of the Evidence Act, "regard being had to the common course of natural events, human conduct and public and private business." Of course there may be circumstances to rebut the presumption, but I do not see that any are suggested here. The dismissal under Section 147 is no bar to further proceedings, and I should advise that after sufficient time has been given to Taylor to produce vouchers for the sum unaccounted for, or to explain their non-production, if he does not produce them, or give a satisfactory explanation, the complaint be renewed with the assistance of a competent Vakil before the District Magistrate, or some other Magistrate having jurisdiction in the matter. Of course any vouchers which may now be produced must be scrutinized with the greatest care. The circumstances under which some vouchers not forthcoming at first are stated to have been produced to Lieutenant Dobson are certainly suspicious.

3. I return all the papers.

No. 118. ORDER THEREON, 7th November 1878, No. 4,296 W.

COMMUNICATED to the District Engineer, Malabar, for information and guidance.

(True Extract.)

Colonel, R.E.,
Secretary to Govt., P.W.D.

* To the Superintending Engineer, Fourth Circle, with papers in original.

Edw. C. Howarth.
Spare Copies


 Supt. of Public Works
 Madras

No 70.

Malabar District Engineer's Office,
 Camp Suckley, 24 September 1878.

From

The District Engineer
 Malabar.

To

The Chief Engineer
 Roads & Buildings
 Madras.

Sir,

In continuation of my letter
 No 46 dated 16th Instant, I have the
 honor to report that having instructed
 Lieut. Dobson to bring the case of Over-
 -draw Taylor before the Magistrate,
 that Officer on the 16th appeared before
 the Sub Collector at Tellicherry & pre-
 -ferred his charge.

Letter from ap^l
 Engr. Comm. Madras
 No 198 of 18th Sept
 1878 with
 1 Enclosure
 do. from ap^l
 Engr. Comm. Malabar
 to the offices in
 Ch. Comm. Camp
 No 547 of 19th Sept
 with 3 Enclosures

I forward herewith the papers
 connected therewith for your infor-
 -mation & shall be obliged by their
 return, & orders on the subject.

I have directed Lieut. Dobson
 to keep the Overdraw under surveillance
 & meanwhile to give him every oppor-
 -tunity, & full time, to produce Vouch-
 -ers, or other proofs of the payment
 of the balance still unaccounted for,
 & to receive any explanations he may
 proffer, using every means in his pow-
 -er to test the authenticity of such
 Vouchers as may be forthcoming, and
 the truth of assertions regarding
 payments for which no Vouchers

RECEIVED
 No. 117-118

The Chief Engineer, Madras,
 is requested to forward to the
 District Engineer, Malabar,
 a copy of the report of the
 Magistrate, Tellicherry, on the
 case of Overdraw Taylor, for
 information & guidance.

are produced, so as to be in a position
to present a complete case should
the Overseer ultimately fail to account
for the deficiency.

4. ^{read} If I ~~examined~~ the sub collector's
decision, it would appear that a
conviction is rendered an absolute
impossibility, if (as he holds) it is
absolutely necessary to prove speci-
fic use of the money by the Over-
seer for his own private purposes;
it seems to me that it is sufficient
to prove as a basis, the receipt by
an Overseer of a certain sum of
money to be employed for public pur-
poses, & to be accounted for; & his
failure to produce a balance, or
to conclusively prove his disburse-
ments, I should submit to be suf-
ficient ~~for~~ prima facie evidence
for the ~~assumption~~ that what he
cannot account for he has misap-
propriated, & for this case to be
sent to trial. You will observe
that the Joint Magistrate does
not object to insufficiency of proof
that the money was public money
entrusted to a public servant for
public purposes, or consider that
Lieut. Robson has failed to show
that the Overseer was unable to pro-
duce the balance unaccounted for,
but insists only on the want of

proof that it was dishonestly mis-
appropriated, & converted to his own
use, treating the matter rather
as a violation of Departmental
rules, than as a criminal offence.

Have the honours to be,

Sir,

Your Most Obedient Servant,

Wm. W. Kennedy, Lieut. Col.

District Engineer, Malabar

Recd
5 Oct 1878

N^o 4463

Referred to the
Government Pleader
for opinion.

(By order)

Wm. J. C. R. E.
Secy to Govt. & Magt.

3rd Oct 1878

Public Works Department.

From 1242520
125217
The District Engineer
Malabar

Recd 1242520

1070
Dated 21 September 1878

Enclosures 2

Overseer Taylor. — Towards
papers, connected with the
case of — for orders.

Referred

To the Govt. Pleader is original
to be returned.

Wm. J. C. R. E.

No 137

Madras

28 October 1878

From J. W. Handley Esq
Government Pleader
Madras

To Col. E. A. Ford R. E.
Secretary to Government
Public Works Dept.

I have the honor to acknow-
ledge the receipt of papers
referred to me for advice relating
to a charge of Criminal
breach of trust against
Overseer Taylor in charge
of Kottayam Taluk
Carrumone Range.

2. I think the joint
Magistrate was wrong in
dismissing the case against
Taylor under Section 147 of
the

The Criminal Procedure Code.
The facts disclosed by Lieut
Balsan's statement establish
a prima facie case against
the One seen which is suffi-
-cient to put him on his
defence. It may be that
as he says he will be able
to account for the money
if time is given him, but
until he does so satisfactorily,
I do not see how it can be
said that there is no suffi-
-cient ground for proceeding
against him. I do not
understand what the
Magistrate means by saying
that "there is nothing in the
complaint to show that the
money was dishonestly &
misappropriated or converted
to his own use by the
One seen or otherwise from
the disposal of it."

That a man who has received
money for a certain purpose
and can neither produce
it nor account for it, has
converted it to his own use
is certainly one of those
presumptions which a Court
may make under Section
114 of the Evidence Act
"regard being had to the
Common Course of natural
events human conduct and
public & private business."
Of course there may be
circumstances to rebut
the presumption but I
do not see that any ^{are}
suggested here. The dismissal
under Section 147 is not
bar to further Proceedings
and I should advise that
after sufficient time has
been given to Taylor
to produce vouchers for the
sum

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them unaccounted for
or to explain their non-
production, if he does not
produce them or give a
satisfactory explanation,
the Complaint be renewed
with the assistance of Com-
-petent Juries before the
District Magistrate or some
other Magistrate having
jurisdiction in the matter.

Of course any vouchers
which may now be produced
must be scrutinized with the
greatest care. The circumstances
under which some vouchers
- it forth coming at first
are stated to have been pro-
- duced to Agent Dobson
are certainly suspicious.

3. I return all the papers

I have the honor to

Yours faithfully

J. M. Stanley
Government House

No. 3741 D. 23-9-78
C.E. 4463. 3. 10. 78

No. 12521

Private act of
Proctor for
Commons (Lange)
for summing
breach of town
boundary act

1878
From
The Hon. Mr. J. P. G.
Dated 28th Oct
Recd
No 137

Recd 31. 10. 78
P. 11. 10. 78

No. 4296 Public Works Department.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Under date the 7th Nov. 1878
Read the following:—

From
The District Eng.
Malabar } (P.O. No 70 of 24th Sept 1878)
Govt. Pleader Madras (a — 137 — 28th Oct)

Communicated
to the District Engineer
Malabar who will act
on the advice of the Govt.
Pleader.

607 31/10

Sd/- Mr. C. S. S. S.
to Malabar with papers
in original
Sd/- Mr. C. S. S. S.
No. 4296

-12521-

Govt. of India

PUBLIC WORKS

The S C Fourth Circle

11-11

27 Nov 1878

1878/79

Mr. James Taylor.
Malabar Dist. The advice
of the Govt. Member in regard
to the prosecution of
for criminal breach of
trust, under the
S. 489 Circle for inform-
ation & guidance.

Wm. W. R. R.