Public Works (1897) Department.

G.O., No. 156 W

DATED 19th January 1897

[Despatch Abstract.]

S. Dakshinamurti Sastri, Overseer, Directing, in modification of the Chief Engineer's Memo No. 405C of 23 January 1896 that — be allowed full pay for the period of his suspension from 22nd April to 6 December 1895.

[P.W. 25. / 5,000—30-11-96.]

Indexed. 21/1

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

[P. W. 40.
1,000–11-11-96]

1

DEPARTMENT.

B/ Demi-official

No. 156 W of 19th Jany 1897

PROCEEDINGS OF THE MADRAS GOVERNMENT.

READ the following

Endt. from the S. E. II Circle No. 1945 K. W. of 20-10-96, on Petition from Overseer S. Dakshinamurti Sastri of 5-10-96.
From the S. E. V Circle No. 402 W of 24-12-96.

On consideration of all the circumstances of the case, the Govt. direct, in modification of the Chief Engr's memo. No. 405 C dated 23 January 1896, that Overseer S. Dakshinamurti Sastri be allowed full pay for the period of his suspension from 22 April to 6 Decr 1895.

Cu

8/1/97

CHBB
8/1/97

S. E. II Circle
" V "
Sec. Accounts

20/1/97

Issue

14/1/97

R 15/1

Cn 11698 of 1896 – Pl. W. D.

The Hon Mr Bliss C.I.E.
The Hon Mr Grose C.I.E.

S.G.W.

Note for H.E. the Governor

His Exc's note of 16.11.96. on the note for orders flagged A, relative to the case of Overseer Dakshinamurti Sastriar.

It is submitted that the loss of part pay during suspension, & the transfer to the II Circle, were inflicted on the overseer, not so much on account of the District Magistrate's remarks on the judgment, as because the Supdg: Engr. reported that the man's conduct had been generally unsatisfactory.

In letter No 1 S.E. dated 5th January 1896. (flagged C.) the Executive Engr. Mr J. S. Wilson

The Dist. Magistrate's notes on the margin of the judgment do not, I think, strengthen the case against the accused. They are, for the most part directed against the Public Prosecutor and Sergt. Murphy. It appears to be now contended that the man was punished because the Supdt. Engineer had reported that his conduct had been generally unsatisfactory. I cannot find any report to this effect from the Supdt. Engineer although, such a report is made by Mr Wilson, the Ex: Engineer in his letter of the 5th Jan./96 Col. Campbell on 18.1.96. called for the Overseer's record, when he was informed that there was nothing against the Overseer until the present case came up. It would seem therefore ~~that~~ when Col. Campbell passed the order appealed against, it was not the general charge of unsatisfactory conduct that he had in his mind's eye. And indeed, to inflict a punishment, amounting in fact to a fine of Rs. 450, on a general ant

This means that there was nothing against the man on record in the Chief Engr's office reported that "apart from this case, his conduct has been generally unsatisfactory, & has more than once called for severe comment from my predecessor and myself"

In his covering letter no 2 W of 9.1.96, the Supdg Engr V Circle said, "I consider that the conduct of the overseer has been so unsatisfactory, that I have directed the Ex. Engr to keep him under suspension until I receive your orders"

The Supdg Engr recommended that no more than the one-fourth pay already paid to the overseer as subsistence allowance during suspension, be granted to him for the period, that he be reduced from 2nd to 3rd grade overseer, & that his suspension be continued until he leaves

and unsubstantiated charge, would have been an indefensible act

My opinion as expressed in my note of 16.11.96 remains unchanged. If there is nothing further to urge against the overseer, I think he should receive full pay for the period of his suspension.

A.GH
8.1.97

My opinion of this case is that the charge originally made against the overseer was true, but that when the case came up for trial he adopted the usual course of arranging that the W.s shd contradict one another. When however, Govt goes into Court against a man & fails to prove its case, it is generally best that the judgment of the Court should be accepted as final — & I think it must be accepted as final in this case. The man's bad character in other respects is hardly a ground for not letting him have the benefit of his discharge (it was not an acquittal) by the Magte. I accept therefore H.E.'s view —

KJ
11/1/97

JG
12/1/97

---

the Circle —

The Chief Engr however decided that as the man had been acquitted, his suspension should cease from date of acquittal, & that his reduction was unnecessary. It was also ordered that the period of suspension should count as service. His pay during suspension was restricted to the amount of subsistence allowance on account of the general bad report on his conduct, & he was warned that if any further report was received against him, he would be reduced or dismissed. Vide memo No 405 C of 23.1.96, flagged F. His transfer to the II Circle was in his own interests, for it removed him from the scene of his troubles, & gave him a fresh start elsewhere

The copy of judgment ~~which~~ originally forwarded by the District Magistrate had been returned to the Supdg Engr when the case was submitted to His Excy for orders on 11.11.96. It has now been recalled, + is submitted to His Excy for perusal. It contains marginal notes by the District Magistrate, which show to some extent how that officer formed his opinion that the overseer had not been honourably acquitted.

+ Document flagged D.

The delay in launching the case was due to the dilatoriness of the late Serjeant Murphy, supervisor, for which he was transferred to the I circle, & severely reprimanded, vide para 3 of the memo. flagged F.

Serjeant Murphy subsequently submitted an explanation on this point, but while it was under consideration, he died at Berhampore, and no orders were passed.

The Supdg Engr was asked on 19th Novr to return the copy of judgment, & he has only now done so. The delay appears to have been in the office of the Ex. Engr S. Arcot Divn.

31/12/96

W

H.E. 2/1.

I [illegible] this paper [illegible]
[illegible] but I presume
[illegible] [illegible] [illegible]
circulate the papers

8/1/97

W

It is quite within your discretion as Secretary to circulate the papers. In such case, the final draft order will be held back, & the notes only will be circulated —

8.1-97

Circulate 8/1/97

H.E. 2/1. R 7/1. R 10/1

7

Public Works (1896) Department.

CURRENT No. 11698

Order

From The Superintending Enginee
5 circle

No. 402W

Dated 24 December 1896

Received 28.12.96

Enclosures 25

Spare copies

SUBJECT.

Overseer Dakshinamurti Sastri

Returns the copy of the judgment &c in the case against overseer ——

BACK PAPERS.

G.O.	No.	Department.	Date.
4264C		P. W	19.11.96 ✓
355D		"	6.6.96 ✓
1578C		"	20.3.96 ✓
1483C		"	17.3.96 ✓
1301C		"	7.3.96 ✓
405C		"	23.1.96 ✓
4051C		"	17.12.95 ✓
3494C		"	15.11.95 ✓
2936C		"	10.10.95 ✓
804D		"	20.8.95 ✓
529D		"	6.7.95 ✓
1080W		"	7.5.95 ✓
2480W		"	14.8.88. ✓
334W		"	27-1-88 ✓
2801W		"	20-10-87 ✓
3604W		"	17-12-83 ✓

FURTHER PAPERS.

G.O.	No.	Department.	Date.

No. 540
9.7.95

8

EXECUTIVE ENGINEER, RUSHIKULYA DIVISION
REGd No.
16 FEB 98
P. W. D.

To

The Deputy Magistrate
General Duties
Tirukoilur

The bund of Imperial Tank of Sithalur and Panangal villages, Kallakurchy Taluk breached on the 21st September 1894. On the same day the monegar of Sithalur Vattam reported the fact to the Tahsildar and also to the accused S. Dakshanamurthy Sastry, Overseer of the taluk. The Tahsildar replied to the monegar that as the breach appeared to be small the work of closing it should be done by the ryots themselves and that they will be granted no remission if they sustained any loss by their failure to do so and he further informed that the Overseer was addressed in view to his making suitable arrangements.

The ryots executed the repairs by putting a ring bund, and further by replacing the bund itself. The said Overseer on the receipt of the report made to him, reported the fact of the breach to me, I ordered him to submit an estimate and to close the breach or strengthen the bund (put by the villagers)

On the 13th Oct 1894 the accused (the Overseer) informed me that the work of closing the breach was given on contract to one Peria Srinivasa Iyengar and on the 29th Oct 1894 he submitted a report to me forwarding the estimate together with the bill for payment of Rs 14-0-10 thereby certifying that the work has been completely executed by the contractor, and thus induced me to believe the work was done by the P.W.D. on contract thro' Peria Srinivasa Iyengar and to pay Rs 14-0-10 to the said Srinivasa Iyengar which was disbursed to him by means of a cheque dated 14-11-94 on Kallakurchy taluk treasury. The accused never informed me that the work was done by the ryots.

By information received from some of the ryots and the village Monegar that the work of replacing the bund was done by ryots in Kudimaramat I inspected the spot on 18-3-95. the work did not appear to have been done by the P.W.D. either directly or by a contractor as the bund repaired was neither sectioned or tamped, as it ought to have been done before the Overseer signs the bill for payment of the full rate in the bill.

By further information received from certain ryots that the accused has made certain improvements to the work on the night of 30th April (when he was under suspension) I again inspected the work on the 19th May 1895 and I found that certain improvements were made as alleged.

At the time the accused was measuring the work (the pits) for the preparation of the bill, he was informed by the ryots and the Monegar that the work was done in Kudimaramat and not by any contractor. The accused with a full knowledge of these facts improperly submitted a bill, and caused a payment of Rs 14-0-10 to be made to Peria Srinivasa Iyengar. The accused has therefore committed an offence under Sections 409 and 420 I.P.C. and I hereby complain against the Overseer S. Dakshinamurthy Sastry under orders of Government sanctioning his prosecution dated 4th May 1895 No. 1080 W. that he may be dealt with according to law.

True copy
[illegible]
Supervisor

Signed [illegible]
Sub Div Officer P.W.D.

Names of Witnesses

Kuppuswamy Iyer Monegar of Sithalur and the ryots (14) who have given statements and petitions showing that the work was done in Kudimaramat and of witnesses who saw the work being done on the night of 30th April 1895 and that the accused had a knowledge of these facts.

Any witness who can give a statement as to the accused's hand writing in the measurement-book, estimate & bill.

Maistry Muthuswamy Pillay
Clerk Venugopal Pillay

EXECUTIVE ENGINEER,
Register No.
18 DEC. 96
P. W. D.
SOUTH ARCOT DIVISION.

PWE 1
~~[illegible]~~ 698
[illegible]
16.2.26

Rushikulya Divn. 11

From P. Thimothy Sergeant
Supervisor P.W.D.

Regr No. 1355 In 16.2.96

To W. D. Morgan Esq
Ex. Engineer P.W.D.
Rushikulya Division

EXECUTIVE ENGINEER,
REGR. No. 11
18 FEB. 96
P. W. D.
RUSHIKULYA DIVISION.

Thro' J. M. Lacey Esq
Sub Division Officer
Berhampore

Camp Berhampore
Dated 15 }
Desp 15 } Feby. 96.
Rec.

No. 31

Ref. D.O. No. 2356 of 4/7-2-96
Encl. 1

Sir I beg to forward herewith a copy
of my No. 570 of 9-7-95 giving the
details of the case against Betsee
S. Dakshnamurthy Sastry which I
request you will kindly forward
to Government with my explanation
of the case for which I am re-
primanded in No. 405 C. Government
of Madras dated 23-1-96. In
which statement I hope you will
therein see that I was in no way
dilatory in the case. And had
the case been transferred to the
file of a European magistrate,
or another court the judgment
might have been different.

In March 1893 when I was in
Kallakurchy Taluk, South Arcot Dist.
I received a petition from the ryots
of Sithalur village Kallakurchy,
saying that they heard the work of
closing the breach in the bund of their
tank (Sithalur) was paid for to a
contractor named Peria Streenavasa
Iyengar

Iyengar, they informed me the work was done by themselves by Kudimaramath and that the said contractor had nothing to do with it. A Petition to the same effect was given to the Tahsildar of Kallakurchy who took statements from them and forwarded them to me I filed them in court. The statements were to the effect that the work done was paid for in grain and money contributed by the ryots having lands under the tank. These payments were substanciated by accounts produced in court by the village Menegar and other ryots. I also took statements from them in presence of the Overseer S. Lakshmanamurthy Sastry. The following day I went and inspected the work accompanied by the Overseer. The closing of the breach was very roughly done and bore no semblance to what it should do if it was done by the P.W.D. as it was neither sectioned or tamped, nor was it brought up to the level of the bund on either side. The villagers again informed me in the presence of the Overseer as we stood on the bund together that they had done the work themselves. And, that when the Overseer was measuring the work, they asked why it was being measured, as they did not require payment.

When I returned to head quarters a few days after, I received a petition from the Ex. Eng. South Arcot similar to the one which I had received with his endorsement No 1319 of 11-5-95 to go at once and inspect the site of the breach, and see if it was in the same state, as when I last saw it, and report its condition. I went at once, and found it was not, as it was sectioned and tamped and the top gravelled. I reported accordingly. This was on

account of report to the Ex. Eng. that further work was done after my first inspection in March, and pits had been dug to coincide with the measurements which had been submitted by the Overseer and paid for on 17-11-94.

Orders were issued by Government in No 1080 W of 4th May '95 to prosecute the Overseer and I was ordered by the Ex. Eng. South Arcot to file a complaint against the Overseer and to arrange with the Public Prosecutor. I went to Tirukoilur, a vakil there had been acting as Public Prosecutor, and could not take up the case without orders, he gave me the name and address of the Public Prosecutor. I went to Cuddalore and saw the Public Prosecutor, on 1st & 2nd July, I gave him all the details of the case and under his instructions the accompanying copy of complaint No 370 of 9-7-95 was prepared and forwarded to the Dep. Magistrate.

On 20th July I attended court on the date appointed by the Dep. Magistrate to make a sworn statement and file the papers in connection with the case.

On 16th August the Public Prosecutor required copies of papers filed in court, I sent a telegram to the Ex. Engineer from Tirukoilur who informed me that all papers were filed in court and copies would be sent to the Public Prosecutor. In the meantime the then Overseer of Kallakurchy Taluk Muthia Pillay was directed to go to Sithalur and find out the names of people who had any knowledge of the transaction this he done, and sent me the names of 17 men. Because I done this the Dep. Magistrate was annoyed and said I should not have done it. I explained to him that it was done to save time and to ensure the witnesses being in court. As otherwise the summonses would not be served on them in time for their being in court on the day appointed.

On 28 & 29th August 95, 11 witnesses were examined in the absence of the Public Prosecutor, who sent a telegram to say he was ill and could not attend court, the case was adjourned to the 11th Sept. 95 and I was directed by the court to ask the Ex. Engineer to send the bills ~~bills~~ connected with the case as they were wanted for the cross examination of the wudders, and the Overseer's clerk as well as to the signature of Periya Streenava Iyengar on the bill. The Public Prosecutor also wanted 5 wudders, cited as witnesses. I wrote to the Dep. Magistrate and asked him to do so and at the same time sent a takeed to them to their village

On 11th Sept 95 I was examined and cross examined, my examination lasted from 11.30 A.M. to 2 P.M. and from 2.15 P.M. to 8.15 P.M. The case was then adjourned, and I was informed my further attendance was not required. I asked the Dep. Magistrate if I should be in attendance in the court when judgement was being delivered he said no, and that it rested with the Public Prosecutor. This last adjournment was made to suit the convenience of the Public Prosecutor as he had to attend a case in the Collector's court and an adjournment of 4 or 5 days would suffice. Thus twice the Public Prosecutor was not in court during the examination further examination was postponed to the 15th Oct. 95. I returned to head

head quarters via Cuddalore. I went to the Ex. Engineer Mr Wilson and told him how the case was going on and told him I was very disatisfied at the manner in which myself and the prosecution witnesses were being dealt with by the court, he said it was usual in courts. I also complained of the manner in which the Public Prosecutor was conducting the case.

I was informed that a hearing of the case was held in Cuddalore this I was not informed of, nor did I receive any notification of its being done.

On 12 & 13th Nov 95 I attended court again, the case was taken up by a new Dep. Magistrate the previous Dep. Magistrate had been transferred this necessitated the case being gone into again, being a recapitulation of what had already transpired. The case was then adjourned to the 19th Nov. 95. On the 19th I attended court twice, nothing was done and the case adjourned to the 23rd. On the 20th Nov. I saw the Sup. Eng. Col Rawson and the Ex. Eng. Mr Wilson, and told them about the progress of the case and asked again for its transfer to the file of a European Magistrate. I attended court on the 23rd and the case was completed. I was informed that judgement would be given in a short time. I then returned to head quarters.

A few days after I returned I was ordered by the Ex. Engineer to apply for a copy of the judgement. I done so and in reply the Dep. Magistrate asked by what authority I asked for one, I told him by order of the Ex. Engineer and also quoted the Authority by which I was entitled to claim one, to which I received neither answer or copy of Judgment. Neither have I received any communication from the court, how the case terminated, I only knew from hearsay that the Overseer was to be transferred and the information given in No. 405 C. Government of Madras P.W.D Dated 23-1-96

EXECUTIVE ENGINEER,
Register No.............
18 DEC. 96
P.W.D.
SOUTH ARCOT DIVISION.

I beg to remain
Sir
Your most obdt Servt.
P. J. Kent...
Supervisor

Ov. E. 2
~~27~~ 27/96
1165?

SUPERINTENDING ENGINEER'S OFFICE,
CHEPAUK.
7 - MAR. 96
No.........................
P. W. D. 5TH CIRCLE.

EXECUTIVE ENGINEER,
Register No.............
18 DEC. 96
P.W.D.
SOUTH ARCOT DIVISION.

EXECUTIVE ENGINEER
REG'R. No 141
18 FEB. 96
P. W. D.
RUSHIKULYA DIVISION.

898 Su

No 2377

Forwarded to E.E.

J McLaren.
Asst Eng.
16-2-96.
17

Encl. 1.

SUPERINTENDING ENGINEER
921 Su
24 FEB. 96
FIRST CIRCLE

No 2428 Encls 1

18/2 96. Berhampur.
Desd 19th

Forwarded.

H D Morgan
Ex Engr

Z

The Supg: Engineer
First Circle

No 827 G.L. Dated 27-2-96

Submitted to the Chief Engineer P.W.D. with reference to his memorandum No 405C of 23-1-96

Ex. Engr. Inch. I Circle.

OWE.3
11698/56

W. CURRENT No. ~~2127~~ E.4

11698/56

18/12 V6

Encls 2

Recd. 2.3.96

FROM A. H. Garrett Esq.
SUPERINTENDING ENGINEER
FIRST CIRCLE.

SUPERINTENDING ENGINEER'S OFFICE, CHEPAUK. 7 - MAR. 96 No. 1814 P. W. D. 5TH CIRCLE.

TO, THE CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT.
MADRAS.

EXECUTIVE ENGINEER, SOUTH ARCOT DIVISION. Register No. 1/12775 18 DEC. 96 P. W. D.

DATED 27 }
DESPATCHED 28 } February 1896
RECEIVED

No. 827 G.L.

ENCLOSURES.

SUBJECT.

Overseer S. Dakshinamurthy Sastri — Forwards letter from Supervisor Sergt. Murphy giving the details of the case against together with his explanation of the case—

[illegible]
[illegible]
[illegible]

Ch
10/3/96

No. 1301 C.of 7th March 1896

Referred to the Supdtg. Engineer 5th Circle for favour of opinion whether the explanation of Serjeant Murphy can be accepted as exonerating him from blame.

J. McW. Campbell Col. RE
Chief Engineer P.W.D.

Cn 1301
5.3.96

SUPERINTENDING ENGINEER'S OFFICE
CHEPAUK.
8 - JAN. 96
No. 1/1. Aa
P. W. D 5TH CIRCLE.

Judgment in Calendar Case No. 24 of 1895, on the file of the Court of the Deputy Magistrate of Tirukoilore.

Complainant: - Regina.

Accused: - Dakshinamurthy Sastry.

Offences: — (1) Criminal breach of trust by a Public servant under section 409. I.P.C.
(2) Cheating and thereby dishonest-ly inducing delivery of property under section 420. I.P.C.

Finding: - Offences not proved.

Order: — Discharged under section 253. C.P.C.

/Signed/ T. Raghaviah
Deputy Magistrate
6.12.95

/True copy/

/Signed/ R. Sundaresa mudelia
Depy magistrate

Serial number	Description of Accused						Date of					Explanation of delay
	Name	Father's name	Caste or race	occupation	Residence	Age	Occurrence	Complaint	Apprehension	Commencement of trial	Close of trial	
1			2							3		
C C 20 of 1895	S. Dakshinamurthi Sastri	Subramania Sastri	Brahmin	D.P.W. Overseer	Tirukoilur	24 years	29. 10. 94.	20. 7. 95	28. 8. 95.	28. 8. 95	6. 12. 95.	

1. The tank of Sithaloor village of Kalla-kurchi Taluk, which is in charge of the P. W. Department, breached on the morning of the 21st September 1894. The ryots of the village formed a ring bund at the breach and prevented the escape of water through the breach. The breach occurred at the spot of a ruined sluice of the tank. The moniagar of the village, the Second Prosecution witness in the case reported to the Tahsildar and to the accused the then D. P. W overseer of the Taluk about the breach on the 21st and 23rd idems respectively vide exhibits M and F. F. On the 23rd idem the Tahsildar of Kallakurchi, issued an order to the Revenue Inspector of Tiagadurg, in whose firka the village of Sithaloor is situated, directing him to proceed at once to Sithaloor and arrange for the closing of the breach and the strengthening of other weak points in the bund of the tank by the help of ryots and Coolies and make the ryots understand that in case they failed to render proper assistance in the matter their claims for remission of assessment would not be considered and at the same time informing the Revenue Inspector that the D. P. W. Overseer was also being addressed on the subject (Vide. Ex. N.). This takeed of the Tahsildar was by mistake addressed

to the monigar of Sithaloor (vide Ex. N.) and was accordingly received by him on the same date e Tahsildar sent a yadast (Ex. A. a.) to the ccused informing him of the breach and of the ikelihood of breaches in other parts of the bund nd requesting him to proceed at once to the illage and take such steps as were best suited.

2. On the 29th idem the accused eported the fact of the breach to the first Prosecution witness (the P. W. Sub Divisional officer of Vridhachellam) his immediate Superior and, stating that the breach having occurred at the spot of an old ruined sluice whose rebuilding was under contemplation, the breach was not to be entirely closed as the same would have to be cut open when rebuilding the sluice, requested sanction for strengthening the ring bund for the rainy season. The 1st Prosecution witness endorsed on the accused's report (vide Ex. A) giving the accused option of either closing the breach or strengthening the ring-bund. In pursuance of the endorsement the accused issued an order on the twelfth of October 1894, to maistry Muthusami Pillai

first

The District magis: trates Notes

The first P. W. should have gone himself

1 Oct A. E. Les

i.e. 21 days after the breach had occurred there wa excessive dela on the part of th D P W subordinat in attending t

first Court witness directing him to proceed to the breach and close it through Contractor Sreenivasa Aiyangar of Panangal (Vide S)

The next day he reported the name of the Contractor to the 1st Prosecution witness (vide Ex. B.) On the 19th idem the first Court witness reported to the accused that the Contractor's Coolies had been working at the work for six days and that it was in progress and would take two days more to finish (Vide Ex. R). (as also Exs. T. and M. the diaries of the witness). On the 21st idem the accused went to the work spot and inspected the work which was by that time almost completed (Vide Ex. B. b. the diary of the accused and C. C. his pocket note book); he again finally inspected and measured the work on the 29th idem (Vide Exhibits B. b, C. C, & D. the measurement) and on the same day submitted the necessary estimate for the work with a covering report to the 1st Prosecution witness (vide Exs. C. c & Cz)

On the 17th of the following month the accused submitted a bill for rupees 17-0-10

in

this matter and far too much "ordering" of other people to do work for which they were res: ponsible

1 Oct A. E. Les

that is almost a month after the breach had occurred

1 Oct A. E. Les

November

1 27 A. E. Les

in favour of the Contractor, being the value of actual work done by him (Vide. Ex. C_2, C_4 and C_5) and the same was subsequently passed and Cashed by the Contractor.

3. A petition Ex. G, dated 27-1-95 was addressed by some ryots of Sithaloor village, including the 3rd, 6th, 9th and 10th Prosecution witnesses, to the Superintending Engineer V Circle. It alleged that the work of Closing the breach in the Sithaloor tank was done by labour paid for by the ryots from funds raised by subscription from among themselves in pursuance of the Tahsildar's order Ex. N. and that by a misrepresentation of facts Peria Sreenivasa Aiyangar of their village Came to be considered by the P.W.D authorities as the Contractor that actually did the work and payment of the value of the work was accordingly made to him. Ex. G_1 is a petition exactly similar to Ex. G signed by the same individuals and sent to the Executive Engineer of South Arcot. Ex. G_1 also dated 27-1-95 reached the Executive Engineer on the 1st of March 1895. Exhibit H is a third petition making the very same allegation

allegation

allegation but addressed to the Tahsildar of Kallakurchi and dated 25. 12. 94 and Containing many more signatures. It was stamped on 10. 1. 95 and reached the Tahsildar on 17. 1. 95. Exs. G and G_1 were referred to the first Prosecution witness for report (Vide. Ex. G_2 and endorsements on Ex. G_1) On receipt of Ex. H., the Tahsildar summoned the Monigar and some other ryots of Sithaloor, Conducted an enquiry vide (Ex. G. G) and forwarded Ex. H with the record of enquiry (Ex. G. G.) to the first Prosecution witness for such notice as he might deem fit (Ex. H_1). In doing this, the Tahsildar did not, in my opinion, exercise proper discretion as the subject matter of the petition Concerned a department quite different from his. He would have done better to have forwarded Ex. H itself to the 1st Prosecution witness without taking on himself the responsibility of making an enquiry in a matter in which he had not the least Concern.

I do not think the Tahsildar acted otherwise than bona fide in the public interest. It is clear that the P.W. Subordinates failed to appreciate the position

(Sd) A. Lelies

8

4. The first Prosecution witness inspected the work on 18. 3. 95 and reported to the Executive Engineer of South Arcot that from the way in which the work had been done, it was apparent that the villagers must have carried it out, that the bund was neither sectioned nor tamped and that the earth had simply been thrown on. Upon this, the sanction of Government was obtained by the Department for the prosecution of the accused (Vide Ex. L) and the accused was charged before this Court with the offences of Criminal Breach of Trust by a Public servant and Cheating and thereby dishonestly inducing Government to deliver the value of the bill to Peria Sreenivasa Aiyangar of Panangal under sections 409 and 420. I.P.C. respy.

i.e. nearly six months after the breach had occurred there was I consider egregious delay on the part of the 1st P.W in doing his duty | 1.2.5 | A.E.G.

5. On the 9th of May 1895, the Executive Engineer South Arcot received another petition Ex. J. signed by five ryots of the same village. This petition is dated 4. 5. 95 and it alleges that the accused, against whom there was a departmental enquiry at the time, went to

9

to the bund with some oddars and others of Mudianur village at midnight on 30.4.95 and sectioned the bund and sloped it so as to give it the appearance of a work done by the P.W. Department. This petition was referred on the 11th idem to the 1st Prosecution witness, who was directed by the Engineer to inspect the spot at once and report its condition. The petition reached the first prosecution witness on the 16th idem, and the spot was again inspected by him on the 18th. Ex. K. is the report made by the 1st Prosecution witness regarding this inspection. He says therein "It (measuring the breach) has now been properly closed and brought up to the level of the bund on either side of it, it has been sectioned but at too steep a slope about one to one and the top gravelled. It bears but little resemblance to what it was when I inspected it on 18. 3. 95." Again on the 28th of May last the Executive Engineer received a petition (Ex. D. D.) purporting to have been signed by two ryots

of

11° may april 95

meaning?

of Sithaloor and alleging that the accused and the Contractor Peria Sreenivasa Aiyangar enlarged the pits, from which Earth had originally been taken for the closing of the breach, and threw the earth obtained by the enlargement of the pits into a well close by on the night of the 22d idem. This petition was referred by the Executive Engineer to the 1st Prosecution witness for report, and the latter in turn forwarded it to the now overseer of Kallakurchi who reported (Vide Ex: D.D) that the petition was pseudonymous and that the allegations made therein were false.

6. Fifteen witnesses have been examined for the prosecution. The first Prosecution witness is Sergeant Murphy D.P.W. Sub Divisional officer of Vridhachellam, who inspected the work twice and who made some departmental enquiries concerning this Case. The second witness is the Monigar of the village of Sithaloor; the third witness is a ryot of the same village, the writer of petition G and G_1, the drafter of petition G_2;

witnesses 4—11 are other ryots of the same village; of these, all but the last have signed one or more of the petitions referred to above. These witnesses have been examined for proving the theory that the work of closing the breach was really done by Kudimàramat labour and not by Peria Sreenivasa Aiyangar, the Contractor nominated by the accused. Of these witnesses, the seventh, the eighth, the ninth and the eleventh profess to have also been eye-witnesses to the accused retouching the work on the night of the 30th of April 95. that is, subsequent to its first inspection by the first prosecution witness. The twelfth and the thirteenth witnesses are two addars said to be the chief of those that worked at the closing of the breach and these have been examined for proving that they were paid for their work from subscriptions raised from the ryots of Sithaloor and its hamlet Panàngal. The fourteenth witness is the clerk of the D.P.W. overseer's office

Kallakurchi

yes once for the first time nearly six months after the breach had occurred and for the second time nearly seven months after the occurrence of that event. The second visit was in consequence of the Ex Engr's urgent order
1 Sd/ a.r.b. √

Kallakurchi. He has been examined in Connection with the filing of certain Exhibits. The 15th witness is Lieutenant Load, Assistant Engineer of Cuddalore, who has been examined on some professional points touching the Construction of bunds and the closing of breaches. The Court examined three witnesses. The first of these is Muthusami Pillai, the maistry who supervised the work. He was first cited as a prosecution witness but was dispensed with by the Prosecution and subsequently examined as a Court witness. The second Court witness is the Shroff of Kallakurchi Taluk office, who deposes to the fact of the Contractor having in person Cashed the cheque issued in his favour by the 1st Prosecution witness, at the Kallakurchi Taluk Treasury. The third Court witness is an individual that accompanied the accused in his inspections of the work on the 21st & 29th of October 1894 in his capacity as volunteer and lascar respectively.

7. The most important question in this Case is whether the Closing of the

breach

breach was done by Contractor Peria Sreenivasa Aiyangar or by Kudimaramat and, if the latter, whether the accused had any knowledge of the same either before or after submitting a bill in favour of the Contractor. If the prosecution theory that the work was executed by Kudimaramat labour be negatived by the evidence in the Case, the Case must fall. The evidence of the first Prosecution witness being not of much value by itself, if the main question as to whether the work was done by Kudimaramat or by the Contractor be proved adversely to the Prosecution. The evidence of Prosecution witnesses two to thirteen has therefore to be carefully sifted first with reference to the above two points.

8. One and all of these witnesses assert that the work was done by labour employed by the villagers and was paid for by Contributions raised from among themselves and that Contractor Peria Sreenivasa Aiyangar has nothing to do with it. Further the 3d Prosecution witness

Sreenivasa Pillai produces in Court Ex. C. a note book purporting to contain entries of collections made by the villagers for the work, the amount of work done and payment made for the same. It becomes necessary, before placing belief in the general statement of these witnesses, to ~~trust~~ test their veracity, the consistency of their evidence and the relations that they bear to each other, to the Contractor and to the accused.

9. The second witness Kuppusami aiyar, the Monigar of the village, states that he collected subscriptions and carried out the work by Kudimaramath with the help of the Karaikarans (the leading men of the village) among whom the third, the fourth, the sixth and the ninth Prosecution witnesses are included, that the accused never went to the work spot until four or five days after the completion of the work and that, when the accused first appeared at the work spot and measured the bund, the fourth and the sixth Prosecution witnesses besides himself and about twenty others of his village informed him that the work had been done by Kudimaramath and that Contractor Peria Sreenivasa Aiyangar had no concern in it and were directed by the accused

to utilize the amount sanctioned for other repairs of the same bunds. Later on his deposition this witness states, however, that the accused did go to the work spot a few days after the occurrence of the breach and before the work of closing it was begun and adds that the accused then directed him and the 4th Prosecution witness to close the breach by Kudimaramath labour. In this he is contradicted by the evidence of the 4th Prosecution witness, who denies having either met the accused before the completion of the work or having been directed by him to get the work done by Kudimaramath.

This witness in his statement dated 28.2.95 before the Tahsildar of Kallakurchi (Vide Ex. G.G) said that, if the work of closing the breach done by the ryots had had to be paid for, its cost would have been about rupees twenty, thereby implying that no payment was ever made for the work. But before this Court he states that a sum of rupees 10. 13. 0 was paid for the work; and the explanation he offers for the discrepancy is that at the time of his making the statement above referred to before the Tahsildar, he did not know the exact amount paid to the addars but learnt subsequently that a sum of rupees ten and annas thirteen was paid to them by the 3rd Prosecution witness and others only a day or two before the date of his statement before this Court. This is directly contradicted by the 3rd Prosecution witness, according to whom all payments to the addars were completed and accounts settled with them on the last day of their work. This witness further says that he saw payments being made both in kind and in Cash but did not — know to whom they were made. These two statements contradict each other and again contradict the statement that he made in the first part of his deposition that it was he that made the collections.

Sreenivasa Pillai the 3rd witness for Prosecution states that it was he that conducted the work by raising subscriptions from the ryots of Sithaloor and Panangal and by supervising the work and disbursing cooly to the addars that did the work. Ex. O is produced by this witness voluntarily. According to this Exhibit only two of the ryots of Sithaloor paid in Cash, all the rest paying in Cumbu, while in Panangal all the ryots paid in Cash. But entries even for payments in kind were made in Cash only calculating at

at the rate of 22 measures per rupee. This witness's oral statement before the Court is inconsistent with the facts disclosed by Ex. 6. and is to the effect that in both the villages subscriptions were paid both in kind and in Cash. He says payments were made to the addars as contributions were received both in grain & money. Against the rate of conversion of Cumbu into money as given by this witness there is the statement of adda Narayana Chetty the 12th Prosecution witness and one of the alleged labourers the rate of conversion according to which is sixteen measures a rupee. It has already been noted how the 4th Prosecution witness differed from the second. According to the former the accused went to the work spot only after the completion of the work for the purpose of measuring it and being then informed that the work had been done by Kudimaramat said that, sanction having been received, the Contractor must get the money and that other repairs to the bund should be carried out by the ryots themselves. — Something very different from what the second and 6th Prosecution witnesses say. — According to the Seventh prosecution witness Pandara Iroopen the Collection of subscriptions was made by the second, the third, the sixth and the ninth, Prosecution witnesses and disbursements of Cooly to the addas by the last. Against this there is the statement of many of the witnesses that both the collection and the disbursement was done by the 3d Prosecution witness alone, the statement of adda Narayana Chetty the 12th Prosecution witness that the collection and the disbursement was done by the Toti and Taliari and the 3d Prosecution witness conjointly and the statement of adda Mookan Chetty the 13th Prosecution witness that he and his fellow coolies were paid by the Second, the third, the 6th & the 9th Prosecution witnesses. There is further the statement of the same two witnesses that in Sitholoor they were paid wholly in Cumbu and in Panangal wholly in Cash against the evidence afforded by Ex. O. These two witnesses also differ as to the amount of grain and money said to have been received by them for their work. Regarding the question of the supervision of the work, there is the evidence of the third

and

and the Sixth Prosecution witnesses that the supervision was done by the 3d Prosecution witness alone. Against this there is the evidence of the Second Prosecution, according to whom the work was done under his supervision assisted by others of his village, that of the eighth Prosecution witness who says that a Circar maistry supervised it and that of ninth Prosecution witness, according to whom the Contractor was always present at the work spot during its progress and finally that of the twelfth Prosecution witness that both the 2d and 3d Prosecution witnesses got work from him and his fellow labourers. This witness contradicts himself by first saying that the maistry never appeared at the work spot and subsequently withdrawing that statement and saying that the maistry did appear at the work spot on a certain day, when one half of the work has been done and directed the Taliari to tamp the earth. Regarding the incidence of the Contribution also there is inconsistency in the evidence, some saying that there was no standard by which the subscriptions were fixed and others saying that the standard was the extent of land ~~work~~ owned by each of the subscribers.

There is next the oral evidence of the first Court witness the maistry that supervised the work. This witness says that, carrying the order of the accused to the contractor, he reached the village of Sitholoor on the 12th October 94, met the Contractor in the village and reaching the work spot where work had already been begun got the work done by the contractor's Coolies in about ten days. He stayed in the village of Panangal for over a week and supervised the work throughout its progress. He reported to the accused that the work was being done by the contractor's Coolies. He got the earth tamped as each layer was laid though he failed to section it and spread gravel at the top to a depth of three inches. No body but him got work from the addats. As long as he was supervising the work, no complaint whatever was made to him by any one that the Coolies were not the Contractor's men. He heard the objection of the ryots for the first time when it was raised before the accused on the day of the final measurement of the work. In this last statement of his, however, this witness

deliberately lies, for Ex. M. one of his diaries shows conclusively that on the day of the final measurement of the work, that is on 29. 10. 94, this witness was away at Somandargudi village supervising long grass plantation. As for his other statements regarding his presence at the work spot and his supervision of the work during its progress there can be no doubt that they are true as they are supported by exhibits T and M, diaries of this witness written and submitted to his superiors then and there and his reports (Exhibits Q & R) dated 19-10-94 in one of which he informs the accused of the progress of the work under his supervision and its execution by the contractor's Coolies and in the other of which he complains about cattle trespass on the same bund. It must here be mentioned that the maistry is no friendly witness to the accused.

Against him, the accused made a report on the very same day on which this work was finally measured, that he submitted a false bill for removal of silt (vide Exhibit E. E.) Again on the 9th December of

This maistry's evidence is to my mind of no value. He was evidently trying to shield the accused and is stated to have "deliberately lied".
15/8/ A.E. Cs

Ex Engr's Notes
He at one time made a statement directly contradictory to his present evidence.

??

His diaries and reports might have been equally false: 18/9 A.E. Cs

Ex. Er's Notes
I don't think any reliance on the maistry's statement whether for or against

D.W's Notes
If so this is in the maistry's favour
18/9 A.E. Cs

Ex Er's Notes
Not the only report against this maistry the accused in more than one letter accused the Sub Dn officer [illegible] [illegible] this mai

of last he was handed up by the accused for insubordination and drunkenness (Vide Ex. V) and finally dismissed on the strength of the accused's report (Vide Ex. X) though he has afterwards been re-entertained. This evidence is therefore in favour of the accused only so far as he is hampered by records filed in the case whose genuineness he cannot question. Even under these circumstances he is off his guard in saying that he was present at the final measurement of the work and forgets his own entry in Ex. a. The statements of this witness that are prejudicial to the accused have to be taken with caution wherever they are not supported by records. Lastly there is the tenuring of Exhibits G, G, & H to be considered. The petitioners say in one and all of these exhibits that the work was done under the management of the Monigar.

Second prosecution witness

No doubt, most of the Prosecution witnesses two to thirteen agree in saying that the Contractor did neither supervise the work nor pay the Coolies, that the work was done by Kudimaramath and that it

D.M.'s notes
a serious mistake in my opinion, dismissed maistries should never be re-employed.
/sd/ A.E.C. CS

quite so

E.E.'s notes
M's statement was entirely wrong.

it took on the whole to finish including interruptions. It is very easy to make these broad statements. But the truthfulness of these witnesses can be ascertained only by the consistency or otherwise of their evidence regarding the details and other circumstances connected with the same. Viewed, therefore, in the light of the extreme inconsistency in the details of the evidence of the Prosecution witnesses pointed out above, their general statements deserve very little credence and I have no hesitation in holding, that they are untrue, that Ex. O is an account got up for the occasion and that the allegation, that the work of closing the breach in question was done by Kudimaramat, is completely false.

10. The allegation that the accused was, on 29 October 94, informed that the work had been done by Kudimaramath comes up next for consideration. Here again we have the general statement of the Resolution Prosecution witnesses that the allegation

E.E.'s notes
The statement made before the Tahsildar were more likely to be correct than those made months afterwards

D.M.'s notes
rather too bold
/sd/ A.E.C.

I do not agree
/sd/ A.E.C. CS

allegation is true. We have also the evidence of the maistry, the 1st Court witness, in support of the same, belied, however, by his own diary, Ex .. . Some discrepancies in the evidence of the Prosecution witnesses with regard to this point might be noticed. The account of the second and the sixth Prosecution witnesses regarding the reply said to have been given by the accused to their objection differs from that given by the 4th Prosecution witness. The maistry who professes to have been present with the accused at the final measurement of the work, says that the second witness was not there at all at the time; and the 3rd Court witness who accompanied the accused in the capacity of his lascar declares that no such contention was then raised by any of the ryots present and that neither the monigar, the second Prosecution witness, nor the maistry, the 1st Court witness, was present at the spot. Again in Exs. G, G, and H, the mahazar sent to the Superintending

Engineer

E.E.'s notes

The magistrate states in other place that the maistry is proved not to have been present. His statement therefore can hardly be considered as discrepancy in the evidence

??

Engineer V Circle, the Executive Engineer South Arcot and the Tahsildar of Kallakurchi respectively, no mention whatever is made of this. If the contention had really been raised by the petitioners before the accused on 29-10-94 it is quite unlikely that they would have omitted to mention it in these Exhibits. The accused did not personally supervise the work in its execution and the maistry reported to him that the contractor's men were doing the work. He had, therefore, no reason to suspect that the work was not done by the contractor's men unless his attention was drawn to the matter. The knowledge that the work was done by Kudimaramath cannot consequently be ~~inspected~~ imputed to the accused. All the above facts have no weight to be attached to the contention that the accused was on the day on which he finally measured it informed that the work was done by Kudimaramat and it must be dismissed as unworthy of credence.

22

E.E.'s notes

He should have himself inspected the breach as soon as reported.

E.E.'s notes

This is the Magistrate's view

11. The matter dealt with in Ex. J. has next to be considered. This document, a petition preferred by five of the ryots of Sithaloor village to the Executive Engineer, says, as already pointed out, that the accused repaired to the work at midnight on the 30th of April 95 with some oddars and others of Moodiyanoor village and retouched it so as to give it the appearance of having been done by the Public Works department. Witnesses seven, eight, nine and eleven speak to this point. There again their broad statement is worthless, if uncorroborated by reliable, detailed and circumstantial evidence.

12. Witnesses 7, 8 and 9, 11 and another by name Gnana Mudali are said to have gone to the spot on the night in question in two batches. The seventh witness for Prosecution, Pandara Mooppan says that, on the night in question, he came out of his house and saw the 8 witness, Palani Mooppan, seated on his pial. Both of them went together to their fields and slept each in his field. The seventh witness first saw

a

a light near the broken sluice and drew the attention of the eighth witness to the same and both went to the sluice and found there four persons working with spades, two on each side of the bund. A fifth was holding a lantern. There was besides a crowd in which the seventh witness recognised none. He also saw there the ninth and the eleventh Prosecution witnesses and one Gnana Mudali standing together and was told by Perumal Mooppan, the ninth witness, that the accused, the second Prosecution witness, and oddars were working. Earth was being lifted from below and thrown on the bund. Returning from there he watered his field and the eighth witness watered his and ~~so~~ they returned home separately. Against these statements of the seventh witness we have those of the eighth witness thoroughly inconsistent with them. According to the 8 witness, he awoke the 7 witness on the night in question from his bed and took him to his field. The 7th witness did not irrigate his own field. Both of them irrigated the field of the eighth witness alone. Both lay down in one and the same field. This witness got up first and saw a light near the ruined sluice and awoke the 7th witness and both went to the sluice. One odda was holding a lantern and three were levelling the earth on the bund. No fresh earth was taken from below. Tamping was done. He ~~saw~~ the ninth and the eleventh witnesses and Gnana Mudali there as also the accused and an Edayar of Mudiyanur. He and the 7th witness returned home together. This witness further says that that was the only day on which he ever went to irrigate fields at night. Coming to the ninth and the eleventh Prosecution witnesses who with Gnana Mudali are said to have witnessed the scene in another batch, we have the ninth witness Perumal Mooppan saying that he went to water his fields that night and met the 11th witness and Gnana Mudali on the way, that all the three reached the sluice observing

a

a light and there met the 7th and 8th witnesses and were all talking together for about half an Indian hour. The accused, four oddas and a Moodiyanur adayar were there. The accused and the Moodiyanur Edayar measured the land with a tape, two of the oddas brought earth in baskets and the two others levelled the top surface with spades. No tamping was done. He stayed there till the accused, the Edayar and the oddas left the spot. The seventh and the eighth witnesses first took leave of him, the eleventh witness and Gnana Mudali soon afterwards and he alone remained there the whole of that night to water his field and that of the 11th Prosecution witness. This story, it will be seen, is different in many respects from the account given either by the seventh or the eighth witness. This witness stayed till the accused and the labourers left the place, but does not speak of any gravel work having been then done.

This

Exhibits
× while he was ~~there~~?
it might have been
done before or after

This is inconsistent with the report made by the 1st Prosecution witness after inspecting the work a second time (Vide Ex. K). Against the evidence of this witness and that of the seventh and eighth witnesses there is further the evidence of the 11th witness Rama Muppan. According to this witness, after supper on the day in question, he found the 9th witness seated on his pial; he and the ninth witnesses went to their fields talking together and, noticing a light at a distance, went to the sluice and found the accused, four oddars and a certain Udayar of Mudiyanur levelling and tamping the bund. They also found there the seventh and the eighth witnesses with whom, however, the did not talk. In cross examination this witness — completely breaks down. He says he × noticed a light and some people doing something but did not care to see well He saw the accused then for the first time but did not see him clearly. He only supposed that the accused was there and also supposed that the

× E.E.'s notes
This is most likely to be the true statement of what he saw

the Mudiyanur Udayar was there. Gnana Mudali was not seen by him anywhere that night. The ninth witness returned home first but he remained there till dawn. It is evident from all these that the evidence of the witnesses that profess to have witnessed the accused's tamping with the bund on the night of the 30th of April 95 teems ~~on~~ with the discrepancies. The witnesses knew so far as to say that they went to the spot at a particular hour on a particular day and found the accused, four oddars, and a certain Udayar of Mudiyanur, there. This is all these witnesses were prepared to say, but when they were cross-examined about other circumstances connected with their visit they sadly failed. Their evidence cannot be held to establish in the least the allegation against the accused regarding the retouching of the bund. Further the accused was not at all likely to have acted in the way alleged in Exhibit J. The bund had already been

~~32~~ 50

been on the 18° of March 95 inspected by the 1st Prosecution witness and no advantage could possibly be gained by the accused by retouching it subsequent to the inspection.

13. Contractor Peria Srinivasa aiyangar and the Sixth Prosecution witness Chinna Srinivasa Iyengar are Cousins with long standing enmity between them. They belong to opposite factions in the village. The latter wanted to charge the former with embezzlement of Public monies as a monigar and give evidence against him in a criminal case. There is ill-feeling between the Contractor and the second, the third and the ninth Prosecution witnesses also. The fourth witness declares in plain words that none of the ryots of Sithalone or Panangal that were present in and about this Court on the day of his giving his evidence were friendly towards the Contractor. The third Prosecution witness, who is said to have taken a prominent part, in the execution of the work and in the

[illegible]
In which the accused was Concerned

~~36~~ 51

the writing up of petition G, G1 and H is a man convicted for criminal offences more than once. Prosecution two to thirteen witnesses are as a whole poor ryots without much status to lose. The above circumstances go to ~~stand~~ shew that the illfeeling between the Contractor and the Sixth Prosecution witness is deep, that most if not all of the Prosecution witnesses two to thirteen belong to the faction of the 6th Prosecution witness and Consequently ready or at any rate prone to scheme against the Contractor. The antecedents of the third Prosecution witness speak for themselves. He is a man liable to be unscrupulous and quite reckless of consequences and he admits having had convictions for forgery, theft and minor offences.

14. The evidence of the first Prosecution witness and its bearing on the case must be considered. This witness knows nothing personally as to

23.12. / Superintending Engineer 5 Circle to whether the work was done by Kudimaramath or by the Contractor. He was asked to make enquiries concerning Exs. G and G1. He inspected the bund on the 18th of March 95 and reported the result of his inspection to the Executive Engineer. Again on receipt of Ex. J. with the Executive Engineer's endorsement thereon he made a second inspection of the work on the 18th of May 95 and reported the result ~~of his inspection to the Executive~~ ~~Engineer. Again on receipt of Ex. J. with the Executive Engineer's endorsement thereon he made a second inspection of the work on the 18th of May 95 and reported the result~~ likewise. The evidence of this witness is relevant only so far as it describes the state of the work on the 18th of March 95 as the same was taken by this witness as the index of the truth of the allegations made against the accused in Exhibits G and G1. The question therefore arises whether if the work really was as described by the 1st Prosecution witness on 18.3.95 it could have been done properly as first

N.B

19.12.95

first proposed by the accused and as billed for. There is also the other question as to how far weight can be attached to the evidence of this witness regarding the state of the work on 18.3.95. Many considerations arise in regard to these points. In his report regarding his first inspection the first Prosecution witness is highly vague. He does not specifically state therein that he said no gravel on the top of the bund. Before the Court he first says he does not remember having seen gravel on the top of the bund at the time of his first inspection and strengthens by again saying that he can positively say that no gravel was found. In his report, regarding his second inspection he makes specific mention of gravel. To rebut however, the inference that would naturally be drawn by the evidence of this witness that he found no gravel at the top of the bund on 18.3.95, there is the oral evidence of the 1st Court witness the maistry, who supervised the work and the entry in Exhibit P. the bill submitted by him to the accused for the work done. In this bill there is a separate entry showing 80. cft of gravel as having been spread on the top of the bund. The amount of gravel given here differs from that given by the accused in the bill submitted by him (Exhibit C_2) by only 8. cft. There is also the evidence of the 3rd Court witness who was in company with the accused during his inspections of the work both on 21.10.94 and on 29.10.94. The latter witness states that at the inspection on 21.10.94 only earth work was found to have been completed and that the accused directed the contractor to spread gravel on the top. In support of this statement of this witness there is an entry in the pocket note kept by the accused and written in the usual course of business (Exhibit C. C) against the same date and to the same effect. This witness further says that on 29.10.94 gravel was found spread

and

Eighteen

Might have been false. Left implys Sworn evidence goes to prove this

and measurements of the same taken and this is supported by entries in the measurement Book Exhibit D.

15. The date on which the work in question must have been completed is 25.10.94 (Vide Exhibit P, the bill submitted by the maistry to the accused) and it was inspected by the 1st Prosecution witness for the 1st time on 18.3.95.

N.B

There was thus a clear interval nearly 5 months between the date of the completion of the work and the date of its inspection by the 1st Prosecution witness and in this interval the village of Sithalore is said by the 2nd Prosecution witness the monigar to have had plenty of rain and the same witness says that the bund in question has always been open for cattle, men and carts. The gravel was put on the top of the work when it was quite wet and the work was evidently thrown open for foot and cart traffic, the moment it was completed. There is therefore nothing strange in the first prosecution witness's failure to observe gravel on the top of the bund and to find the work having the appearance of not being tamped and sectioned at his first inspection. The gravel might have partly sunk into the wet earth on which it was put aided by the weight of the traffic and partly washed down by the rains that fell in the interval. The work must have also been badly cut up and diminished somewhat in height. The evidence of the first Prosecution witness regarding the state of the work on 18.3.95 even if believed in toto cannot be said to be irreconcilable with the supposition that the work was done as billed for.

E.E.'s Notes
If tamped it would not have disappeared entirely

E.E.'s Notes
There was almost no rain from November

E.E.'s Notes
How is the fact of the difference between the two inspections accounted for. Some work was no doubt done in the interval & if so why ~~was~~ it was not billed for.

16. Regarding this question the professional evidence of Lieutenant Lord the 15th Prosecution witness must be considered side by side with that of the 1st prosecution witness.

The

The 1st prosecution witness says that at the time of his 1st inspection the work was neither sectioned nor tamped and that he easily thrust his stick into a depth of 2½ feet. Lieut. Lord says that though an earth work such as a bund might have been properly tamped and sectioned it would have after an interval of 5 months of rain and cart & foot traffic been greatly damaged though retaining some signs of sectioning & that even in cases where the earth is not tamped it would be impossible after the lapse of the interval above~~pres~~described to force a stick into a great depth and if the stick did go in, the cause would be the non-consolidation of the earth. Consolidation is a natural process by which each layer of earth settles itself over the one below apart from the artificial process of tamping, and

Ex. S. Notes.

I do not entirely agree with this opinion of Lieut Lord. The homogneity of the soil could be fairly well tested and if tamping were done the difference would be perceptible even after a considerable interval. In this case though there was probable rain after the work was done it cannot have been long and its effect in consolidation the earth cannot have been great.

θ 22.

Consolidation cannot be expected to fully take place when the earth is not well watered and not subjected to pressure. But in this case both the conditions have been fully satisfied by rain and traffic for a space of nearly 5 months and consolidation could not but have taken place. It is therefore hard to reconcile the statement of the 1st Prosecution witness that he was able to force his stick in with the evidence of the 15th Prosecution witness. As regards sectioning the 15th Prosecution witness says that the lowest sectioning from a professional point of view would be two to one and not below. But in this case the accused provided for a section of not more than one to one (vide his takid to the maistry dated 12-10-94. Ex. S.) This can hardly be called sectioning viewed from the standard of Lieut Lord. But the accused did not profess to do the work at a section of two to one. In

his first report to the 1st Prosecution witness Ex. A, the accused clearly says that the work was not to be a complete one. His exact words are "the breach is not to be entirely closed up as the same would have to be cut open in rebuilding the sluice" and his proposals were not objected to. According to the directions of the accused contained in Ex. S. there can only be a slope without which no earth work is done by even unprofessional men and there is no reason to suppose that in this case the slope required by the accused in Ex. S. was not given and that the accused did not find the same at the time of the final measurement, especially as the work stood over the head of a sluice.

17. Further the evidence of the 1st Prosecution witness regarding the state of the work on 18. 3. 95 cannot be

accepted in toto. This will be apparent from the following. His report to the Ex. Engineer regarding his first inspection (Ex. F.) is exceedingly vague. He makes no mention about gravel or about the height of the work, or about his having been able to thrust in his stick to a great depth. He gives no definite reasons for holding that the work had neither been tamped nor sectioned — apart from the question whether it is possible to make such a positive ~~arrangement~~ assertion after such a long interval of rain and traffic. In his oral evidence before the Court this witness is not certain about the absence of gravel on the work at his first inspection. He says that the length of the work was about 10 or 15' while the actual length of it is forty four feet.

They were [illegible] added. He made [illegible] definite statement to the effect that he did not consider that the work had been tamped and sectioned.

not having ~~measured~~ measured it, he could hardly be expected to give an exact length.

This

This inspection of the work was evidently not as close as could be desired. It is important that this witness says that he has nothing to complain regarding the measurement of pits, which represent the amount of earthwork done.

N.B

18. There is lastly another circumstance which needs mention. The accused hears of the breach from the Monigar of the village inspects the spot without loss of time, reports to his Superior about the nature of the repair he proposes in plain words, sends the maistry to the spot on receiving sanction for carrying out the repair with a takid to the Contractor, hears from the maistry that the Contractor's men are working goes to the work-spot and finding the earth work finished directs gravel to be spread and inspects the work a second time and

measures it, enquires about the Maistry's allegation that silt was removed and rejects it as untrue. and on the very same day reports about the Maistry's conduct to his superior vide Ex. E.E. This Exhibit is very important as showing that the accused did in no way countenance the Maistry and consequently could not have colluded with him for fraudulent purposes. If under the above circumstances the accused did really find any serious draw-back in the work, there is every reason to believe that he would have then and there brought it to the notice of his superiors.

19. The main allegation against the accused that the work was done by Kudimaramath and that the accused knew of the same while submitting the bill in favour of the Contractor have been shown to

that is the Crucial ~~proof~~ ~~[illegible]~~ ~~[illegible]~~

× × 2 8

be false. The uncorroborated evidence of the 1st Prosecution witness which cannot after all be called accurate & consistent about the unsatisfactory state of the work on 18.3.95 cannot be held in view of the long interval that elapsed to prove that the work was not done as billed for. Much less does it form any evidence of dishonest intention on the part of the accused. The contention that the accused tampered with the bund has been proved to be absolutely !!! unfounded. The strong array of enemies against the Contractor in the village of Sithalore and Panayal in which figure some of the Prosecution witnesses easily explains the origin and cause of Exs. G. G_1, H and J. Exhibit J is

E's Note

To an unprejudicial observer the evidence on this point would in spite of the discrepancies seem to prove that on the night in question certain persons were actually working on the bund at the site of the breach that the accused was one of them.

is nothing more than an ill conceived trick of the villagers to strengthen their case when they ~~said~~ saw that they entangled the accused unwillingly in their efforts ~~were~~ to wreak their vengeance against their contractor. This view is further strengthened by the fact that in the 1st three petitions Exs. G. G1, and H. no mention whatever is made of the accused - The records filed in the case amply prove that the accused action in the ~~m~~atter of this work was throughout fair & plain.

20. Under the above circumstances I hold that the charges of Criminal breach of Trust by a Public servant and Cheating brought against the accused have not been established and consequently discharge ~~d~~ him under Section 253

253. C.P.C.

|Signed| T. Raghaviah 6.
Deputy Magistrate

|True Copy|

|Signed| R. Sundaresa Mudr.
Deputy Magistrate

6.12.95.

Dist. Magistrate's notes.

Forwarded to the Ex. Engineer for favor of perusal & return. I have made a few marginal remarks.

2. I am by no ~~the~~ means confident that there has not been a failure of justice in this case but doubt whether after this lapse of time, a retrial would not again end abortively.

3. The main reason for this result appears to have been the extreme dilatoriness of the 1st Pros. witness, the incompleteness of his original

48 66

original report and his evidence as a witness. I am of opinion that notice should be taken departmentally of him as also of the accused who has not been honourably ~~acquitted~~ acquitted. and of the maistry who should, I think, be dismissed & not reemployed. He appears to have been dismissed once before

(Signed) A. E. Castle Stuart
Stuart.
Ag. Collector & Dist. Magistrate
16 Dece - 95.

(True Copy)

SUPERINTENDING ENGINEER'S OFFICE
CHEPAUK.
21 MAR. 96
No.
P. W. D. 5TH CIRCLE.

EXECUTIVE ENGINEER,
Register No.
18 DEC. 96
P. W. D.
SOUTH ARCOT DIVISION.

?

Pub E.T.5
~~[illegible]~~/96
11658/96

J Wilson
5/1
Executive Engr
South Arct.

27.12.

No. 402 W.

67

SUPERINTENDING ENGINEER'S OFFICE,
V CIRCLE, MADRAS,
Chepák, 24 December 1896.
Despd 26

From
Lieut Colonel C. C. Rawson R.E.
SUPERINTENDING ENGINEER,
V CIRCLE,

To
THE Chief Engineer,
Public Works Department

SIR,

Enclosures. 2

With reference to your No. 4264C dated 19 November 1896, I have the honour to return enclosed, the copy of the judgment in the case against Overseer Dakshanamurti Sastri, with the District Magistrate's remarks thereon, received with your No. 1578.C. dated 20 March 1896, and the late Serjeant Murphy's appeal bearing your endorsement No. 1301 C dated 7 March 1896.

I have the honour to be
Sir
Your most obedient Servant
C C Rawson
24/12/96
Lieut Col. R.E.
Superintending Engineer 5 Circle

23.12.96

1,000—25-2-96.

From

THE SUPERINTENDING ENGINEER,
V CIRCLE,

To

THE

Dated } 189 .
Recd.

ENCLOSURES.

No.