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MADRAS RECORD OFFICE.

Government of Madras.

Public DEPARTMENT.

G.O. No.	<i>144</i>	Press ~~Mis.~~
Dated	<i>2-2-</i>	<i>1918</i>

Not to be folded or roughly handled

10/12/36

*Proceedings of the Madras Government, Public Department,
2nd February 1869.*

Read the following papers :—

No. 17. From the Inspector General, Indian Medical Department, to the Chief Secretary to Government, Fort Saint George ; dated Fort Saint George, 5th December 1868, No. 385.

I have the honor to submit the enclosed correspondence,* in which the Superintendent General of Vaccination reports the falsifying of Returns by certain Vaccinators, and the seeming insufficiency of the law to punish such delinquencies.

* No. 1998, dated 24th November 1868, from Superintendent General of Vaccination, and two enclosures.

2. Should you see no objection, I beg that the opinion of the Law Officers of Government may be obtained as to the best mode of meeting such cases, for the guidance of the Superintendent General in future.

From the Superintendent General of Vaccination, Madras Presidency, to the Secretary to the Inspector General, Indian Medical Department, Fort Saint George ; dated Madras, 24th November 1868, No. 1998.

I have the honor to submit the following question for the consideration of the Inspector General, Indian Medical Department :—

2. In October last, the Superintendent of Vaccination reported that three Vaccinators of the Coimbatore District were guilty of submitting false returns of work executed ; on receipt of this information the Superintendent was instructed to prosecute the Vaccinators before a Magistrate, which was accordingly done, and the Superintendent reported that the Magistrate dismissed the case, as there was no clause for punishing them in the Indian Penal Code.

3. On receipt of this information I called the attention of the Magistrate to Section 177 of the Indian Penal Code ; the first clause of this Section I thought fully met the case. To this I received the accompanying letter with an appendix containing " Summary of facts alleged, and the law as interpreted by the Assistant Magistrate relating to the facts alleged," from which it would appear Government Vaccinators cannot be punished for falsifying accounts, although paid to vaccinate, and furnish a correct account of their work ; if such is the law I fear the work of this Department will be altogether untrustworthy from the way in which the Vaccinators are scattered over Districts ; their work, in many instances, cannot be depended on for the correctness of their returns.

4. I would beg respectfully to suggest that some steps should be taken to provide for so grave an offence as that of falsifying accounts, and thus rendering the work of a whole department untrustworthy.

5. Dismissal from the service with such salary due at the time was carried to the credit of the Government as a fine in the above instance ; but I beg to submit that simple dismissal does not meet the requirements of the case ; some more stringent punishment is necessary to deter others from committing the like again. I would beg respectfully to request that the Government may be urged to submit the question for an opinion from their Law Officers as to the best mode of meeting these cases for the future.

From A. WEDDERBURN, Esq., Magistrate of Coimbatore, to the Superintendent General of Vaccination, Madras ; dated Coimbatore, 17th November 1868, No. 339.

In reply to your letter of the 2nd November 1868, No. 1397, I have the honor to annex transcript of a Memorandum by the Assistant Magistrate on the subject of the charge made by the Deputy Superintendent of Vaccine against the Vaccinators.

2. Should a further than departmental punishment be required, in the interest of Vaccination, I would suggest the use of a form of contract, in reference to the preparation of Vaccination Registers, the infraction of which would render the Vaccinators amenable to a civil action, or a reference to Government on the subject of special legislation for the purpose.

*Proceedings of the Madras Government, Public Department,
2nd February 1869.*

APPENDIX.

Summary of facts alleged.

The evidence of prosecutor J. Ramiah, Deputy Superintendent of Vaccine, was to the effect that the accused, who at the time had been entertained for about a month in the Vaccine Department, had made entries in their registries, some of which entries were partly false, others entirely so. At the time of being entertained in the Vaccine Department, the accused entered into an agreement to serve for five years. The registries, which the accused in their capacity of vaccinators were required to keep, were departmental records, from which returns were prepared for the information of the Head of the Department.

The prosecutor considered that the motive of the defendants, in making false entries, was to swell their list with a view to promotion. The pay of the defendants was to be at the rate of Rupees 10 a month, and was to be entirely independent of the amount of work they might do.

Remarks of the Assistant Magistrate on the facts alleged.

It will be observed that no oath was taken by the defendants, or any form of engagement entered into by them, at the time of their being entertained in the Vaccine Department in regard to the keeping of the registries; that no special law relating to the Vaccine Department is alleged; that the registries are, therefore, merely required to be kept by departmental authority; that the pay of the accused was entirely independent of the amount of work they might perform; and that, therefore, the accused did not, by means of the false entries, receive any extra fees, or remuneration.

The law as interpreted by the Assistant Magistrate relating to the facts alleged.

The defendants not being bound by oath, by any express provision of law, to state the truth, the Assistant Magistrate decided that the facts alleged did not constitute the offence of fabricating false evidence, as defined in Section 191 of the Indian Penal Code; neither did the facts alleged prove an offence punishable under Section 177 of the Indian Penal Code, the accused, in the opinion of the Assistant Magistrate, not being legally bound to furnish information, inasmuch as it would not have been illegal on their part to omit to furnish such information, that is to say (*vide* Section 43 of the Indian Penal Code) their omitting to furnish such information would not constitute an offence either as defined by the Indian Penal Code, or as extended by Act IV. of 1867 to acts punishable under any special or local law, (there being, as we have seen, no special or local law relating to the Vaccine Department,) and for the same reason their omitting to furnish such information is not prohibited by law, neither would it, in the opinion of the Assistant Magistrate, furnish grounds for a civil action. Therefore, taking the words legally bound in the sense defined in Section 43 of the Indian Penal Code, the Assistant Magistrate is of opinion that the accused were not legally bound, even by their entertainment in the Public Service, to furnish information.

If any extra fees or remuneration had been alleged to have been received by the accused by means of the false entries alleged to have been made, there would have been a *prima facie* case of cheating, punishable under Section 417 of the Indian Penal Code, and the Assistant Magistrate would have proceeded to try the case accordingly. As already stated, however, no such circumstance was alleged by the prosecution.

COIMBATORE ASSISTANT MAGISTRATE'S OFFICE,
13th November 1868.

(Signed) T. WEIR,
Assistant Magistrate.

Referred for the opinion of the Advocate General.

FORT SAINT GEORGE,
14th December 1868.
To the Government Solicitor.

(Signed) C. G. WALKER,
Under Secy. to Govt.

*Proceedings of the Madras Government, Public Department,
2nd February 1869.*

No. 18. From the Government Solicitor, Madras, to the Under Secretary to Government, Fort Saint George; dated Madras, 19th December 1868, No. 712.

I have the honor to acknowledge the Order of Government noted in the margin, with its enclosures, requesting the Advocate General's opinion as to the law for punishment of Vaccinators rendering falsified returns of their work.

Dated 14th December 1868, and made on letter from Inspector General, Indian Medical Department, to Government, of the 5th idem, No. 385.

2. I submitted the matter for the consideration of the Advocate General, and have also conferred with him thereon; and

3. I now forward a copy of his opinion on the subject, and also return the order and enclosures above acknowledged.

OPINION.

I am of opinion that the law is quite sufficient as it stands, to bring the accused to justice, without either recourse to a written contract, or the passing of a special law.

2. I agree with the Assistant Magistrate that the case is not one of cheating, and that it does not fall within Section 191. I think, however, that it clearly comes within Section 177 of the Indian Penal Code.

3. The question turns upon the meaning of the term "*legally bound*." The explanation is given of that term in Section 43. A man is "*legally bound to do*" whatever it is "*illegal in him to omit*." What is "*illegal*" is defined in the earlier clause of the sentence. It is applicable to three several things, first, to an offence; secondly, to whatever is prohibited by law; thirdly, to that which furnishes ground for a civil action.

4. The act of the accused is not an "*offence*" under the Penal Code, or Act IV. of 1867. There is no provision of the Penal Code applicable to it; nor is there (under Act IV. of 1867) any "*Special*" or "*Local*" law against it.

5. But I am of opinion that his act is nevertheless "*prohibited by law*," which must mean something different from the law of the Penal Code, a special or local law; as all these are included in the first clause of the sentence. I take it that "*prohibited by law*" refers to anything which is prohibited by any law. The accused is a public servant; it is his duty to "*vaccinate and furnish a correct account of his work*," according to Dr. Shortt's account. And though there is no written contract, the law implies an undertaking on the servant's part, honestly and truly to discharge that duty which he has taken upon himself. Without undertaking to say that his omission to perform that duty would "*furnish ground for a civil action*," which it is not necessary now to decide, I am of opinion that the law casts upon him an obligation correctly and truthfully to keep the accounts of his vaccinations. The question may be tested thus: suppose Dr. Shortt dismissed the accused on the ground of misconduct, in having knowingly made false returns and entries of the number of patients vaccinated by him, and that the accused sued Dr. Shortt or the Government for wages, I am of opinion that it would be a good and perfect defence to such action, to plead that he had omitted to furnish true returns, and had knowingly made false returns.

6. I think, therefore, that he was "*legally bound*" to furnish true returns, and not to falsify the returns. His case, therefore, falls, in my judgment, under Section 177 of the Indian Penal Code.

7. I understand that a form of contract has been prepared by the Government Solicitor, and sent into the Department, providing for the case of servants entering into the Vaccination Department. I do not see that any such written contract is necessary or indispensable; though a written contract unquestionably often saves much trouble and inconvenience.

17th December 1868.

(True Copy).

(Signed) J. B. NORTON,
Advocate General.

(Signed) H. J. BROCKMAN,
Government Solicitor.

*Proceedings of the Madras Government, Public Department,
2nd February 1869.*

No. 19.

ORDER THEREON, 2nd February 1869, No. 144.

The Governor in Council resolves to direct that the opinion of the Advocate General, above recorded, as to the applicability of Section 177 of the Indian Penal Code to the case of Vaccinators rendering false returns of their work, be communicated to the Inspector General of the Indian Medical Department and to Magistrates of Districts, for their information and guidance.

2. It is observed that in the case brought to notice in the foregoing papers, the Magistrate of the Coimbatore District, in forwarding to the Superintendent General of Vaccine the Memorandum of the Assistant Magistrate, Mr. Weir, on the subject of the charge perferred by the Deputy Superintendent, omitted to state whether, or not, he approved of his Assistant's proceedings in the matter. Considering that Mr. Weir has had very little Magisterial experience, His Excellency in Council is of opinion that Mr. Wedderburn would have done well to consider the question himself, especially as the Superintendent General of Vaccine had contended that the case fell within the purview of Section 177 of the Indian Penal Code, which, as is now pointed out by the Advocate General, is applicable to the offence charged. Had Mr. Wedderburn adopted this view it would have been quite competent to him to order his Assistant to proceed with the case, there having been no trial, and, consequently, no acquittal.

(True Extract).

Chief Secretary.

To the Magistrate of the Coimbatore District.

Opinion

1. I am of opinion that the Law is quite sufficient as it stands, to bring the accused to justice, without either recourse to a written contract, or the passing of a special Law.

2. I agree with the Assistant Magistrate, that the case is not one of Cheating; and that it does not fall within Section 191. I think, however, that it clearly comes within Section 176 of the Indian Penal Code.

3. The question turns upon the meaning of the term "legally bound". The explanation is given of that term in Section 43. A man is "legally bound to do" whatever it is "illegal in him to omit". What is "illegal," is defined in the earlier clauses of the sentence. It is applicable to three several things; first, to an offence; secondly, to whatever is prohibited by law; thirdly, to that which furnishes ground for a civil action.

4. The act of the accused is not an "offence" under the Penal Code or Act 4 of 1867. There is no provision of the Penal Code applicable to it; nor is there (under Act 4 of 1867) any "Special" or "Local" Law against it.

5. But I am of opinion that his act is nevertheless "prohibited by Law", which must mean something different from the Law of the Penal Code, - a special or local Law; as all these are

GOVT. OF INDIA

PUBLIC.

To

THE MAGISTRATE OF

Do, do, do.

Dated February, 2nd.

Recd.

Encl.

G. O., 2nd February 1869, No. 144.

FEBRUARY.

Nos. 17-19.

Communicating the Assistant Magistrate's opinion as to the law for the punishment of Vagabonds rendering alleged returns of their work.

are included in the first clause of the sentence. I take it that "prohibited by Law" refers to any thing which is prohibited by any Law. The accused is a public servant; it is his duty to "vaccinate and furnish a correct account of his work," according to Dr. Shortt's account. And though there is no written Contract, the Law implies an undertaking on the servant's part, honestly and truly to discharge that duty which he has taken upon himself. Without undertaking to say that his omission to perform that duty would furnish ground for a civil action, which it is not necessary now to decide, I am of opinion that the Law casts upon him an obligation correctly and truthfully to keep the accounts of his vaccinations. The question may be tested thus. Suppose Dr. Shortt dismissed the accused on the ground of misconduct, in having knowingly made false returns and entries of the number of patients vaccinated by him, and that the accused sued Dr. Shortt, or the Government for wages, I am of opinion that it would be a good and perfect defence to such action, to plead that he had omitted to furnish true returns and had knowingly made false returns.

6. I think, therefore, that he was "legally bound" to furnish true returns and not to falsify the returns. His case, therefore, falls, in my judgment, under Section 176 of the Indian Penal Code.

I

7. I understand that a form of Contract has been prepared by the Government Solicitor, and sent into the Department, providing for the case of servants entering into the Vaccination Department. I do not see that any such written Contract is necessary or indispensable; though a written Contract unquestionably often saves much trouble and inconvenience.

/ Signed/ John Bruce Norton

Secy. Genl.

14 Decr 1868.

(True copy)

A. J. Brockman.

Govt. Secy.

No 712.

Madras 19th December 1868.

From,

H. J. Brockman.

Government Solicitor. Madras.

To,

C. F. Walker Esq.

Under Secy to Government. Madras.

Sir,

1. I have the honor to acknowledge the Order of Government noted in the margin, with its enclosures, requesting the Advocate General's opinion as to the Law for punishment of Vaccinators rendering falsified returns of their work.
2. I submitted the matter for the consideration of the Advocate General, and have also conferred with him thereon; and
3. Now forward a Copy of his opinion on the Subject, and also return the Order and enclosures above acknowledged.

I have the honor to be,

Sir,

Your Obedient Servant

H. J. Brockman.

Government Solicitor.

p.2

Re.

(Punishment of Vaccinators rendering falsified returns of their work)

(Copy)

Advocate General's Opinion

Enclosure

No 712 from Govt to Govt of 19th Decr 1868

W. A. 2222/68

1339. Comptroller's Office
17th November 1868

From. A. Wedderburn Esq.
Magistrate of Comtatore

To. The Superintendent General
of Vaccination

Sir. In reply to your letter of the 2nd
November 1868 & 1897, I have the
honour to annex transcript of a memo
by the Assistant Magistrate on the
subject of the charge made by the
Deputy Superintendent of Vaccination against
the Vaccinators.

I should a further than departmental
punishment be required, in the interest
of vaccination. I would suggest the
use of a form of Contract in reference
to the preparation of vaccination registers,
the infraction of which would render the
vaccinators amenable to a civil action,
or a reference to Government on the subject
of special legislation for the purpose.

I have the honour to be
Sir
Yours most Obedt Servt

Alfred W. Wedderburn
Magistrate

798 2105

Recd 1868 11/17
From Mr. A. Wedderburn
The Court to be
to the Under Secretary
to Government,
Madras

Dated 19th Dec 1868
Recd 19th Dec 1868

12/12

1868 11/17
1868 11/17
1868 11/17

Forwarded to the
Magistrate's Office for
his own perusal
of Vaccinators rendering
falsified returns of their
work.

25/11/68
1868 11/17
1868 11/17

18

Public Department

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letters.

From the Supr. Genl. Ind. Med. Dept. H.E. 5th Dec 1868 No. 385.
— Government Solicitor — 19 — — 712.

Order thereon 2nd July 1869 No. 146

The Governor in Council
resolves to direct that the
opinion of the Advocate
General, above recorded
as to the applicability
of Section 177 of the Indian
Penal Code to the case
of Vaccinators rendering
false returns of their
work, be communicated
to the Inspector General
of the Medical Department
and to Magistrates of
Districts

N.

M.A.

W.D.

No. 793.

Report for the
Session of the
Advocate General
in Dec 1868
H.E. 5th Dec 1868
H.E. 5th Dec 1868

Public. 1868 Sept
From 2nd July 1869. —
From the Inspector General
Indian Medical Dept.
No. 385.
11 Dec 68.
No. 2155
3 Dec 68.
No. 2223.

Advocate General

Sept 14/3

No. 2155. H.E. 5th Dec 1868

Advocate General

17

No. 2155. H.E. 5th Dec 1868

Request opinion
of the Law Officer of
Govt being returned
as to the best mode
of dealing with
Vaccination failures
return
Referring

District, for their informa-
tion and guidance.

2. It is observed that
in the case brought to
notice in the foregoing
papers, the Magistrate
of the Tanjore District,
in forwarding to the
Superintendent General
of Vaccines the Memo of
the Assistant Magistrate,
Mr. Weir, on the subject of
the charge preferred by
the Deputy Superintendent,
omitted to state whether,
or not, he approved of
his Assistant's proceedings
in the matter. Considering
that Mr. Weir has had
very little Magisterial
experience, His Excellency
in Council is of opinion
that

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letters from

The Inspector General, Indian Medical Department
(Here enter 5th December 1868 N^o 385)

The Government Solicitor
(Here enter 19th December 1868 N^o 712)

Order thereon December 1868 N^o

Ordered that a copy of the
Advocate General's opinion be furnished
to the Inspector General, Indian
Medical Department.

Ag

~~Mr. Weir~~
The undersigned to the Subj: of the recent
General of Vaccination, Mr. Weir, in connection with
young Assistant, it was, I think, incumbent on
the District Magistrate, to state whether
or not he approved his Assistant's proceedings
deduct, as there had been no trial and
consequently no acquittal, he might
have directed the case, especially
where the S.G. vaccination had
pointed out § 177 of the P. Penal
Code which is now pointed out
by the Advocate General as applicable
to the offence charged. —
I think this opinion by
Mr. A. S. should be
circulated to the
#

To
The Inspector General, Indian
Medical Department

Oct. of 1863

Public

Receipt of
you

Dated 2 Feb } 1863
Recd.

G. O. 28 Feb 1863 No. 144

Nos. 17-19

P. N. 291

Among the 230. Seal's Office
as to the law for the purpose
of the 230. Seal's Office
being satisfied with
their work

~~№~~ 1998

The Superintendent Genl of Vaccine
Madras Presidency

The Secretary Inspector General
Indian Medical Department
— Fort St George

I have the honor to submit
the following question for the consideration
of the Inspector General Indian Medical
Department.

the Superintendent reported that the Magistrate dismissed the case as there was no clause for punishing them in the Indian Penal Code.

3 On receipt of this information I called the attention of the Magistrate to Section 177 of the Indian Penal Code - the

the 1st clause of this section I thought fully met the case, to this I received the accompanying letter with an appendix containing "Summary of facts alleged and the law as interpreted by the Assistant Magistrate relating to the facts alleged," from which it would appear Government Vaccinators cannot be punished for falsifying accounts, although paid to vaccinate and furnish a correct account of their work, if such is the law I fear the work of this Department will be altogether untrustworthy from the way in which the Vaccinators are scattered over Districts, their work in many instances cannot be depended on for the correctness of their returns.

4 I would beg respectfully to suggest that some steps should be taken to provide for so grave an offence as that of falsifying accounts and thus rendering the work of a whole Department untrustworthy.

5 Dismissal from the service with such salary due at the time was carried to the credit of the Government as a fine in the above instance, but I beg to submit, that simple dismissal does not meet the requirements of the case, some more stringent punishment is necessary to deter others from committing the like again. I would beg respectfully to request that the Government may be urged to submit the question for an opinion from their law-

law officers as to the best mode of meeting these cases for the future.

I have the honor to be
Sir
Your Obedt^l Serv^t

John Hortham Surgeon
Asst General of Vaccine

Appendix -

Summary of Facts Alleged.

The evidence of Prosecutor J. Ramiah Deputy
~~Sub-Inspector of Vaccine~~ was to the effect that
the accused was at the time ~~in the~~
for about a month in the vaccine Department had
made entries in their registries, some of which entries
were partly false, others entirely so. At the time of
being entertained in the vaccine Department the accused
entered into an agreement to serve for five years. The
registries, which the accused in their capacity of vaccinators
were required to keep, were departmental records, from
which returns were prepared for the information of
the Head of the Department.

The prosecutor considered that the motive of the
defendants in making false entries was to swell
their list with a view to promotion. The pay of the
defendants was to be, at the rate of Rupee 10 a month,
and was to be entirely independent of the amount
of work they might do.

Remarks of the Assistant Magistrate

On the facts alleged -

It will be observed that no oath was taken by the
defendants or any form of engagement entered into by
them at the time of their being entertained in the vaccine
Department in regard to the keeping of the Registries; that
no special law relating to the vaccine Department is alleged
that the registries are therefore merely required to be
kept by departmental authority; that the pay of the
accused was entirely independent of the amount of
work

they might perform, and that therefore the accused did not by means of the false entries receive any extra fee or remuneration.

The Law as interpreted by the Assistant Magistrate relating to the facts alleged.

The defendants not being bound by oath by any express provision of Law, that they did not commit the offence of fabricating false evidence, as defined in Section 191 of the Indian Penal Code, neither did the facts alleged prove an offence punishable under Section 177 of the Indian Penal Code, the accused in the opinion of the Assistant Magistrate not being legally bound to furnish information in as much as it would not have been illegal on their part to omit to furnish such information, that is to say, ~~vide Section 43 of the Indian Penal Code, which prohibits~~ to furnish such information would not constitute an offence either as defined by the Indian Penal Code, or as extended by Act IV of 1864 to Acts punishable under any Special or Local Law (there being as we have seen no Special or Local Law relating to the Vaccine Department) and for the same reason their omitting to furnish such information is not prohibited by Law, neither would it in the opinion of the Assistant Magistrate furnish grounds for a civil action. Therefore taking the words legally bound in the sense defined in Section 43 of the Indian Penal Code, the Assistant Magistrate is of opinion that the accused were not legally bound even by their entertainment in the Public Service to furnish information.

If any extra fee or remuneration

had been alleged to have been received by the accused by means of the false entries alleged to have been made, there would have been a prima facie case of cheating punishable under Section 417 of the Indian Penal Code, and the Assistant Magistrate would have proceeded to try the case accordingly. It ~~is~~ stated, however, no such circumstance was alleged.

Coimbatore Assistant Magistrate
Office 13th November 1868 3

Signed J. W. Wier,
Magistrate

True Copy

M. C. C. C.
Magistrate

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