

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	1796	Press
		Mis
	429.430	
Dated	29-9-	1864.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
29th September 1864.*

No. 429. Read the following Proceedings of the Board of Revenue, dated 23rd August 1864,
No. 5,433.

Read the following papers:—

From E. G. R. FANE, Esq., Collector of Madras, dated Sydapet, 8th August 1864, No. 360.

1. With reference to the Board's Proceedings, dated 18th January 1864, No. 349, I have the honor to forward herewith a copy of the original decision of the Civil Judge of Chingleput in the case of Sawmy Naidoo, the Tahsildar of Conjeveram, and a copy of the decision of the High Court in Appeal.

2. You will perceive that the High Court have fully acquitted Sawmy Naidoo of every imputation, and have decided that his acts were entirely in accordance with law, and done under orders of his superior, and that he had been subjected to much trouble and expense entirely through the fault of the Revenue authorities.

3. I must say that on reading over the decision all parties must agree with the High Court, and as I am sure that the Board will do the same, I have no hesitation in recommending Sawmy Naidoo's case to their favorable notice; and trust that he will receive from Government such compensation as shall somewhat repay him the heavy expenses he has been put to in making a defence that ought to have been made by the superior authority from whom he received his orders.

4. Sawmy Naidoo, immediately on hearing the decision that had been come to, returned to his duties at Conjeveram, promising to send in a list of his expenses in the Suit. Waiting for this list has hitherto delayed my making this report, but I now do so having been again to-day called upon for it, and the list shall be forwarded hereafter.

ENCLOSURE No. 1.

ABSTRACT.—Copy of original Decision.

ENCLOSURE No. 2.

In the High Court of Judicature at Madras, Thursday, the fourteenth day of July, One thousand eight hundred and sixty-four.

Present.

The Honorable Mr. Justice PHILLIPS,
and

The Honorable Mr. Justice HOLLOWAY.
Regular Appeal No. 20 of 1864.

Sawmy Naidoo, Appellant, 2nd Defendant, and
Subramania Moodelly, Respondent (Plaintiff).

Regular Appeal against the Decree of the Civil Court of Chingleput in Original Suit No. 11 of 1860, on the file of the late Mufti Sudder Ameen's Court of Chingleput.

This Regular Appeal coming on for hearing, the Court delivered the following Judgment:—

Judgment.—This was a Suit brought against the 2nd Defendant, Tahsildar of Sydapet. The plaint alleges that in consequence of the Defendant mis-reporting that an order of the Magistrate of Chingleput for the removal of a portion of a building by which Plaintiff had obstructed the public road, had not been carried into effect, a further order was passed, and a portion of the Plaintiff's verandah pulled down by the order of the Magistrate. For this he seeks damages.

2. The 1st Defendant, the late Collector of Chingleput, answered that the act was wrongful, but that he was not responsible for his predecessor's order.

3. The 2nd Defendant answered that his report was true, and that what he had done was on the order of his superior, the Magistrate, who himself witnessed the execution of it.

4. The Civil Judge considered it proved that the orders of 1853 referred to had been fully carried out, and that the loss to the Plaintiff had resulted from the negligence of the Tahsildar in

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not properly examining his own records, and that the Defendant is consequently liable in damages.

5. The frame of this plaint is most singular. It is not alleged that the order passed, under which the Defendant manifestly acted, was illegal. It is not even alleged that the Defendant was actuated by any malicious motives in the matter, and he has been held liable in damages because he is supposed to have mis-stated a fact, which led to a Magisterial inquiry upon which the order of the Magistrate was passed under Act XXI of 1841. From that order the Defendant presented an appeal to the Sessions Court, which was rejected, because not presented within the period allowed for an appeal. This sufficiently explains why the act done is not impeached as illegal. It is obvious that the proceedings of the Magistrate, within his jurisdiction, would have been a sufficient answer. The notice was duly issued, and every step regularly taken, and according to the evidence of the late Magistrate, Mr. Shubrick himself, that order was executed in his own presence. There has not been an attempt to show that any thing was done in excess of the order, or that the land from which the verandah was removed was not part of the high road, and that the building of the Plaintiff was not an unlawful obstruction.

6. Conceding for the purposes of this argument, that the Defendant (Appellant) was guilty of negligence in the report made, he could in no way be liable in this action. The doctrine is clearly stated by Wild B. in *Swan v. North British Australian Company* (1) in which, however, the learned Baron must now be considered to have wrongly applied it to the facts of that case:—"The action for negligence proceeds upon the idea of an obligation on the part of the Defendant to use care, and a breach of that obligation to the Plaintiff's injury." The fallacy of the Civil Judge's reasoning arises from his confounding the wholly distinct juridical notions of injury and damage. To give rise to any action whatever there must be an injury, and an injury is simply an act which is contrary to law. Here the act was done under the authority of the law itself, and not only is it not even alleged to be other than legal, but the evidence clearly shows, if that were necessary as it is not, that the order of the Magistrate was a correct order.

7. The allegation that, through the representation of the Defendant, Plaintiff was fined ten Rupees, seems intended loosely to suggest a case of malicious prosecution. The law on this subject is perfectly clear, the prosecution must be malicious and without reasonable and probable cause. (2) No man, even if actuated by the greatest ill-will, can be liable in an action if there was reasonable and probable cause for the prosecution; and still less where, as in this case, the conviction of the offender is conclusive evidence that there was such cause.

8. If, however, this plaint had been framed for the trespass, it is clear that the Defendant would have had a good justification. We must not be supposed to think that any negligence is imputable to the Defendant. So far as the evidence discloses, his representation appears to have been perfectly correct, and we are of opinion that he has been subjected, mainly, by the course taken by the Revenue authorities to undeserved vexation and expense. The Decree of the Court below must be reversed, and the original Suit dismissed. All costs will be paid by the Plaintiff below.

(A true Copy.)

(Signed) P. P. HUTCHINS,
Acting Registrar, Appellate side.

(True Copy.)

(Signed) E. G. R. FANE, Collector.

From the same Officer, dated Sydapet, 16th August 1864, No. 369.

1. In continuation of my letter dated the 8th instant, No. 360, forwarding the decision of the High Court in Appeal Suit No. 20 of 1864, against Sawmy Naidoo, Tahsildar of Conjeveram, I have now the honor to forward a statement of the costs incurred by him in defending the Suit both in original and appeal.

(1) XXXI L. I. Cx. & VII Hurlis and Nor.

(2) See per Patterson *Jin Turner v. Ambler* X 2 B 257.

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2. The costs incurred amount to 4,000 Rupees, which though large appears to have been absolutely necessary, as the most eminent Counsel had to be employed; first, on account of the known unscrupulousness of the Plaintiff; and, secondly, on account of the peculiar nature of the case.

3. Mr. Cunliffe, Sawmy Naidoo's immediate superior, ought to have stood the brunt of the defence; but the latter through a mistake so misrepresented the case to the former that it was concluded to allow Sawmy Naidoo alone to defend; hence Sawmy Naidoo, although conscious of having done no wrong, was placed in a very difficult position, and was put to the great expense above stated.

4. From the remarks of the High Court, Sawmy Naidoo is so honorably and totally acquitted that there could be no doubt but that his acts were perfectly legal, and that if the case had but been properly put before the Government, they would themselves have defended the Suit.

5. Such being the case, I think that they cannot now allow one of their servants to be ruined, as Sawmy Naidoo will be, unless he has his expenses paid for doing that which was perfectly legal, and therefore I have no hesitation in forwarding herewith Sawmy Naidoo's Petition, and hope the Board will obtain from the Government a favorable reply to it.

ENCLOSURE No. 1.

ABSTRACT.—Letter from Sawmy Naidoo to Collector.

ENCLOSURE No. 2.

ABSTRACT.—Memorandum of expenses incurred in defending the Suit.

1. Ordered that the above papers be submitted to Government, with reference to the correspondence noted in the margin.

Board's Proceedings, dated 4th January 1861, No. 17.
Government Order, dated 10th Idem, No. 70, R. D.
Board's Proceedings, do. 14th do. 237.
Government Order, do. 29th do. 219, R. D.
Board's Proceedings, do. 9th Feb. 1861, No. 722.
Government Order, do. 27th Idem, No. 453, R. D.
Board's Proceedings, do. 7th May 1863.
Government Order, do. 16th Idem, No. 853, R. D.
Board's Proceedings, do. 18th Jan. 1864, No. 349.

2. It will be in the recollection of Government that the case against Sami Naidu was alleged to be that whereas certain orders given in 1853 and 1856 by the then Magistrates for the removal of part of a building belonging to the Plaintiff as an encroachment

on the public road had been fully carried out, the defendant (Sami Naidu) by false representation to the effect that the former orders had not been obeyed, obtained a further order from the Magistrate (Mr. Shubrick) in January 1858 under which a further and unnecessary alteration in the Plaintiff's house was forcibly executed to his damage, and Plaintiff was fined for recusancy.

3. The Collector, Mr. Cunliffe, who was since with Sami Naidu, when reporting the institution of the suit, stated that the orders of 1853 were shown to have been duly carried out by certain reports by the local Head of Police, and that Plaintiff's statement that the order of 1856 had been carried out was supported by an endorsement given by the District Engineer in March 1858. He therefore held that the proceedings of Sami Naidu could not be justified, as, by making an incorrect representation of facts, he induced the Magistrate to issue an order beyond the requirements of the public service and which imposed a heavy pecuniary loss on the Plaintiff, and he proposed that Sami Naidu should be left to his own resources to defend the suit from which he (the Collector) applied successfully to be removed, as not responsible for his predecessor's acts.

4. The Civil Judge of Chingleput who eventually decided the original case, found that the orders of 1853 and 1856 had been carried out to the full extent of their original intention, and that Sami Naidu by his failure to ascertain the facts, had been grossly negligent of his duty as Tahsildar, and been the means of subjecting Plaintiff to much loss and inconvenience. He accordingly awarded damages cast against Defendant. Copy of his Judgment is in the collection of printed papers forming Enclosure 2 to letter dated 8th August 1864. The pleas

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in defence seem to have been that the reference to the Order of 1853 was altogether irrelevant, as all that Defendant had done was to report, in 1853, to Mr. Shubrick that the order he (Mr. Shubrick) had given in 1856 had not been carried out; the consequence of which was fresh orders from Mr. Shubrick who also personally superintended their execution, and that the District Engineer's endorsement in no way whatever proved that the encroachment on the public road had been removed as ordered by the Magistrate, but merely that obstacle for carrying a drain as approved by the District Engineer no longer existed.

5. The High Court on appeal have found in favor of the Defendant Appellant on the ground raised in the defence and entirely acquit him of misconduct or negligences. They also rule that he was in no way liable to be sued for carrying out the Magistrate's order, and find no reason to think that that order was an improper one.

6. The acquittal certainly appears to the Board to be full and complete in every respect, and as Sami Naidu is entirely absolved from all blame, they recommend that the whole costs of the litigation which otherwise would fall on him be borne by Government, as there is no doubt that had the facts as found been put before the Board and Government originally, the Tahsildar would have been defended at the public cost.

7. Sami Naidu comes of a highly respectable family from which several excellent public servants have been derived, and the Board are glad to know that after so much anxiety and expense he has succeeded in clearing his character from all imputation of blame in this matter.

No. 430.

ORDER THEREON, 29th September 1864, No. 1,796.

Miscellaneous.

1. The Government are glad to find that Sami Naidu's acts in the case referred to have been shown to be justifiable. As some compensation for the annoyance which he has undergone in the prosecution of this suit they authorize the reimbursement to him of the sums which he has expended in conducting his defence and which amount, according to the statement submitted, to Rupees 4,002-7-2.

2. The Board will report how this charge is to be met.

(True Extract.)

(Signed) J. D. SIM,

Secretary to Government.

To the Board of Revenue.
„ the Accountant General.
„ the Civil Paymaster.

Exd. T. O'Connor.

Revenue Department

No. 1796.

*Proceedings of the Madras Government
Under date the 29th September 1864*

*Read the following
Proceedings of the Board
of Revenue.*

*Recommending that the
expense incurred by Sami
Naidu Tahsildar of Conjeveram
in Regular Appeal No. 20 of
1864, should be borne by Govern-
ment, as he has been acquit-
ted by the High Court from
all blame in the matter.*

*(Here enter 23rd August
1864 No. 5433)*

*For Order,
It seems to me that
more than fair under
the circumstances.*

*The Government
are glad to find that Sami
Naidu's acts in the case
referred to have been shown
to be justifiable. As some
compensation for the an-
noyance which he has un-
dergone in the prosecution
of this suit they willingly
authorize*

authorize the reimbursement

to him of the sum which

he has expended in conduct

ing his defence and which

amount according to the

statement submitted to

B. 4002-7-2.

2. The Board will
report how this charge
is to be met.

gk

14- To the Board of Officers with 3 encls. Dated 29th Sep
3. The Accountant General
3. The Civil Engineer

Certain expenditure incurred
by Sami Naidi, Tahiti
for by Engineer and other re-
sulting to him.

Chgo. No. 136-137
10-1-61
435-36
27-1-61
350-391
27-2-61
200-201
16-5-63
— 29 Aug/64-14 Nov. 324.
No. 29 & 30.

Revenue of the District
of San Juan de los
Rios.

— No 1796.

Of the Madras Port
of 29 Sept/64.

from the day to the 10th
of Dec. of 24 Oct/64.
Chgo. 2819.

Sanctioning the
Remittance to
San Juan de los Rios, Tah.
under Consignment of
No 1002-7-2 for purchase
of the suit against
him in the High Court.