

C. 19: April 1872 R. 20: April 1872

No 265-266

Renewal of
Court Fees Stamp

Despatched

Hon Mr. Justice

Committee box

When the draft rules
passed by all the
members of the
Committee

They were passed
by the Hon Mr. Justice

C. 19: April 1872 R. 20: April 1872

671

Proceedings of the Madras Government, Revenue Department,
25th April 1872.

No. 266. Read the following letter from the Government Solicitor, to the Acting Secretary to Government, Fort Saint George; dated Madras, 10th April 1872, No. 154:—

With reference to the Order of Government, dated 30th May 1871, No. 951, I have the honour to state, for the information of Government, that having had several interviews with Mr. Cherry, the Assistant Conservator of Forests, and having obtained from him all needful information relative to the intended prosecution of Veerasawmy Pillay, late an Overseer in the Forest Department, I considered it advisable for the interests of Government, in the absence of the Advocate General, to submit the necessary papers to Mr. Handley, the Government Pleader, for his opinion on the whole case, and I accordingly did so, and also conferred with him thereon, and I now forward herewith a copy of his opinion.

3. I have marked on the Government Pleader's Brief a fee of Pagodas 40 or Rupees 140, being the usual fee payable to Counsel for advice on a case in conference, and request the sanction of Government for payment of such fee.

OPINION.

I HAVE carefully re-considered the whole facts relating to the proposed prosecution of Veerasawmy, late an Overseer in the Forest Department, in conference with the Government Solicitor and Mr. Cherry, Assistant Conservator of Forests, and with the information furnished by the latter gentleman, I am of opinion that there are almost insuperable difficulties in the way of a successful prosecution. A most important witness, the Sub-overseer who was on the spot at the time of the alleged part performance of Van Ingen's contract, has since died, and the case must now rest chiefly on the evidence of the two cart contractors, Daly Venkata and Oonapah. The statements which these men now make to Mr. Cherry are not quite in accordance with their former statement, and give the impression that they are very likely to break down in cross-examination. The case is rendered more difficult by the fact that, if there was fraud at all, it is almost certain that both Turnbull and VanIngen were parties to it, and yet the former cannot, under the circumstances, be included in the prosecution, and it seems impossible, as pointed out in the former opinions of Mr. Norton, Mr. Mayne, and myself, to bring the fraud home to the latter.

2. If it is decided to proceed with the prosecution, I think the best course will be to charge Veerasawmy with abetting Turnbull in criminal breach of trust by receiving the cheque for Rupees 2,000 for no consideration, leaving the question of Van Ingen's contract to be raised, as of course it will be, by way of defence. It will be necessary, of course, to anticipate this defence, and to adduce evidence to prove that no work was done under the contract, and that Veerasawmy and Turnbull knew this at the time of the drawing the cheque.

Van Ingen must be called for the defence, and probably Turnbull will also be brought forward, and their cross examination may help to shew the fraudulent nature of the whole transaction. One very strong fact against the contract with Van Ingen

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25th April 1872.*

having been a bonâ-fide one, is that at the time it was made Turnbull had actually entered into contracts with the two cartsmen beforementioned, under which the whole amount of timber comprised in Van Ingen's contract would have been carted at much lower rates, and these men declare that all the timber that was carted to the Goundry depôt was carted by them under these very contracts; all this should be established as clearly as possible.

3. With regard to the place of prosecution, it may be either where the cheque was drawn, or where Veerasawmy did any of the acts constituting the abetment. The cheque purports to be drawn at Manantody, but it seems probable that it was in fact drawn at Madras. However, I think the scene of the offence may safely be laid at the former place, as no objection can well be raised by the defence on that head without admitting the falsity of the transaction to some extent; the acts constituting the abetment, viz., passing the cheque, &c., were committed in Madras, the prosecution can therefore be instituted either in Madras or in the Wynaud. For many reasons the latter seems preferable. The witnesses would mostly be residents in that district, and it would probably be more convenient for the officers of the Forest Department. Besides, the previous enquiry before the Commissioner of Police in Madras having resulted in the discharge of Veerasawmy, is perhaps a reason for not bringing forward the case here, if possible to avoid it.

4. As there may be some difficulty in framing the proper charge, I subjoin a form of charge which appears to me to be sufficient for the guidance of the Forest Department in case it is decided to proceed with the prosecution.

Charge.—That whereas T. N. Turnbull, being a public servant, to wit, an overseer in the Forest Department in charge of the Wynaud forest, and in such capacity entrusted with dominion over property, to wit, with the power of drawing Government money by means of cheques, did on or about the 6th January 1869, at Manantody, commit criminal breach of trust with respect to that property by drawing a cheque for Rupees 2,000 on the Tahsildar of Manantody in favor of the said Veerasawmy Pillay, and handing over the same to him for no legal consideration, the said Veerasawmy Pillay did on or about the said 6th January 1869, abet the commission of the said offence by the said T. N. Turnbull, by receiving and negotiating the said cheque, and has thereby committed an offence punishable under Sections 109 and 409 of the Indian Penal Code.

9th April 1872.

(Signed) J. W. HANDLEY,
Government Pleader.

(True Copy.)

(Signed) H. G. PRICHARD,
Government Solicitor.

No. 267.

ORDER THEREON, 25th April 1872, No. 671.

Forests, No. 10.

ORDERED to be communicated, with copy of the Government Pleader's opinion, to the Conservator of Forests, with instructions to take immediate steps, in communication with the Government Solicitor, for

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25th April 1872.*

the criminal prosecution of Veerasawmy Pillay, late Forest Overseer in Wynaud, before the District Magistrate of Manantoddy, on the charge framed by Mr. Handley. Major Beddome will in due course report the result.

2. Payment of the fee proposed to the Government Pleader is sanctioned, as it is understood that this was pre-arranged by the Government Solicitor with the Officiating Chief Secretary. The Government do not, however, find that any fee was paid on previous occasions in this case for the opinions given by the Advocate General or Government Solicitor.

(True Extract.)

Officiating Chief Secretary.

To the Conservator of Forests.
,, Government Solicitor.
,, Board of Revenue.
,, Accountant-General.

High Court House
10th March 1872
My dear Mr. Hamilton

I have seen Mr. Cherry (who
has been sent here by the Conservator
of Forests to give me all the requisite
information) twice with reference
to the intended crime just promotion
of Kerasamony Pillay under the
name of Government 16th of
Jan 7 last No 159 under depart-
ment, but find there are so
many difficulties in the way
of the intended promotion that
I should like to have a conference
with Mr. Hamilton, in the absence

Mr. Hamilton
10th March 1872

58
No. 154. of 1872

Madras 10th April 1872.

From H. G. Richard
Government Solicitor, Madras.

To D. F. Carmichael Esq^r

Acting Secretary to Government
Madras.

Sir,

With reference to the Order of Govern-
ment dated 30th May 1871, N. 967, Revenue
Department, I have now the honor to state,
for the information of Government that having
had several interviews with Mr Cherry the
Assistant Conservator of Forests and having
obtained from him all needful information
relative to the intended prosecution of —
Veeraswamy Pillay late an overseer in the
Forest Department, I considered it advisable
for the interests of Government, in the absence
of the Advocate General, to submit the neces-
sary Papers to Mr Handley, the Government
Pleader, for his opinion on the whole case and
I accordingly did so, and also conferred with him

thereon

6A

ms. 126. 126.

1. N. 101. 1000000

the house to state,

ix. Not being the

Forrest's Creek (New)

2/11

Opinion

I have carefully reconsidered the whole facts relating to the proposed prosecution of Venuesamy late an Overseer in the forest Department, in Conference with the Government, Solicitor and Mr Cherry Assistant Conservator of Forests, and with the information furnished by the latter gentleman I am of opinion that there are almost insuperable difficulties in the way of a successful prosecution. A most important witness the Sub-overseer who was on the spot at the time of the alleged part performance of Van Ingen's Contract has since died, and the case must now rest chiefly on the evidence of the two Cart Contractors Saly Venkata and Conapali. The Statements which these men now make to Mr Cherry are not quite in accordance with their former Statement and give the impression that they are very likely to break down in Cross examination. The case is rendered more difficult by the fact that, if there was fraud at all, it is almost certain that both Turnbull and Van Ingen were parties to it, and yet the former cannot under the Circumstances be included in the prosecution and it seems impossible, as pointed out in the former opinions of Mr Norton, Mr Mayne and myself, to bring the fraud home to the latter.

Sp

14 January 71 No. 203-204
 30 March - 393/94
 26 January 72 - 341-113.

Permanence 1872. D 1097.
 17. 1253.
 The Government & Solicitor
 of Madras
 The Assistant Secretary to Govt.
 Madras

Added 10th
 Dec 11/73 April

Records
 1874.
 Descriptive.

Herewith a copy of the
 Government of Madras opinion
 dated 9th April 1874
 to the intended prosecution
 of Venuesamy, former
 Sub-overseer of the
 Government of Madras.

80d 671-86 April 1872

No 266

C 170 April 72. No 24. April 1872.

2. If it is decided to proceed with the prosecution I think the best course will be to charge Veerasawmy with abetting Turnbull in Criminal breach of trust by receiving the cheque for Rs 2,000 for no consideration, leaving the question of Van Sugen's Contract to be raised, as of course it will be, by way of defence. It will be necessary of course to anticipate this defence and to adduce evidence to prove that no work was done under the Contract and that Veerasawmy and Turnbull knew this at the time of the drawing the cheque. —

Van Sugen must be called for the defence and probably Turnbull will also be brought forward and their Cross examination may help to shew the fraudulent nature of the whole transaction, one very strong fact against the Contract with Van Sugen having been a bona fide one is that at the time it was made Turnbull had actually entered into Contracts with the two Cartmen before mentioned under which the whole amount of timber comprised in Van Sugen's Contract would have been carted at much lower rates, and these men declare that all the timber that was Carted to the Goundry depot was carted by them under these very Contracts. All this should be established as clearly as possible. —

3. With regard to the place of prosecution it may be either where the Cheque was drawn or where Veerasawmy did any of the acts constituting the abetment. the Cheque purports to be drawn at Madras but it seems probable that it was in fact drawn at Madras. However I think the scene of the offence may safely be laid at the former place as no objection can well be raised by the defence on that head without admitting the falsity of the transaction to some extent. The acts constituting the abetment, viz. passing the cheque &c were committed in Madras. The prosecution can therefore be instituted either in Madras or in the Mynaud. For many reasons the latter seems preferable. The Witnesses would mostly be residents in that District and it would probably be more convenient for the Officers of the Forest Department. Besides the previous enquiry before the Commissioner of Police in Madras having resulted in the discharge of Veerasawmy it perhaps is more convenient to bring forward the case here, if possible to avoid it. —

4. As there may be some difficulty in framing

framing the proper charge I subjoin a form of
charge which appears to me to be sufficient,
for the guidance of the Forest Department
in case it is decided to proceed with the
prosecution.

Charge.

That whereas T. H. Turnbull being a pub-
lic servant to wit an Overseer in the Forest
Department in charge of the Wynad forest
and in such capacity entrusted with domi-
-nion over property to wit with the power of
drawing Government money by means of
Cheques did on or about the 6th January 1869
at Manantody, commit Criminal breach
of trust with respect to that property by draw-
-ing a cheque for Rupees 2000 on the Tahsildar
of Manantody in favor of the said Veerawann
Pillay and handing over the same to him for no
legal consideration the said Veerawann Pillay
did on or about the said 6th January 1869 abet the
Commission of the said offence by the said T. H.
Turnbull by receiving and negotiating the said
Cheque and has thereby committed an offence punish-
-able under Sections 109 and 409 of the Indian Penal Code.

9th April 1872.

(J. H. G. P.)
J. H. G. P.
Government Advocate

/s/ J. W. Handley
Government Pleader

I do not think the Govt should undertake
a persecution which the Govt Meade says
is attended with insuperable difficulties
We have at a great expense caught
the big rogue - and had better not
be satisfied with this result -

W. E.

I should be inclined to try
our power in a human form

A. J.

W. 1253/72
Oct 1872

Chelmsford in letter from
the Secretary of the
to Govt. Chelmsford, dated
10th April 1872, at 12/54.

R.D.

No 671

Proceedings of the Madras Govt.
Under date the 25th April 1872

Recd the following
letter from the Govt.
Solicitor

Forwarding copy of the
Govt Pleader's opinion of 9th inst.
relative to the intended prose-
cution of Verasami Pillai
late an Quesser in the Forest
Dept, Wynad &c. —

H. C. 10th April 1872
No. 154

Ordered to be com-
municated with copy
of the Govt Pleader's
opinion to the Conser-
vator of Forests with
instructions to take
immediate steps in com-
munication with the Govt.
Solicitor for the crimi-
nal prosecution of
Verasami Pillai, late
forest Quesser in
Wynad

REVENUE DEPARTMENT.

No. 1353

From The Government Solicitor, Madras

Dated 10th April — 1872.

FOR ORDERS.

I would say the between.
this at Madras City in
the Government of Mysore.
I would say one of that
and also by the way in the
that I would say to you
every part of the land

1872

Report before the Dr.
Majr of Manautong.
on the charge framed
by Mr. Handley. Ma-
jor Beddome will
in due course report
the result. -

2. Payment of the
fee proposed to the
Govt. Pleader is sanc-
tioned as it is re-
commended that this
was prearranged by
the Govt. Solicitor
with the Offg. Chief
Secretary. The Govt.
do not however find
that any fee was paid
on previous occasions
in this case for the
opinions given by

12A
the Advocate Genl
or Govt. Solicitor. -

E.A.

- 1. To the Conservation of Forests, 25 April
- 4. The Govt. Solicitor
- 14. The Board of Revenue
- 6. The Revenue Board

E.A.