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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Revenue DEPARTMENT

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GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

29th August 1877, No. 2071.

Mr. Jones—Tahsildar of Wandewash.

Read the following paper:—

No. 268. From C. T. LONGLEY, Esq., District Magistrate of Salem, to the Chief Secretary to Government, dated Salem, 10th August 1877, No. 421-A.

With reference to the enclosed copy of the High Court's Proceedings, dated 20th ultimo, I have the honor to bring Mr. Jones' conduct again to notice.

2. The Government are aware that in the correspondence marginally noted, I requested sanction to prosecute Mr. D. M. Jones (now Tahsildar of Wandewash) by him when Tahsildar and Sub-Registrar of Darampury Taluq in this district in connection with a forged partition deed presented to him for registration, that the Government then considered the sanction inexpedient but ordered Mr. Jones' removal to another district. Chithambala Chetty who presented the forged partition deed to Mr. Jones for registration has now been tried, and was convicted by the Officiating Joint Magistrate (Mr. Tute) of the offence of fabricating false evidence under Section 193 of the Indian Penal Code, and sentenced to one year's rigorous imprisonment. At the trial Mr. Jones appeared as a witness for the defence, and gave evidence favorable to the accused.

3. During the examination, Mr. Jones was obliged to admit that he had pecuniary dealings with the prisoner Chithambala Chetty, when he (Mr. Jones) was Tahsildar of Darampury—vide the marginal Exhibit No. 10, and when examined with reference to this bond Jones swore positively that he had no other pecuniary transactions with Chithambala Chetty; A bond for 200 Rupees executed in favor of the prisoner by Mr. Jones on the 28th July 1871, and which was discharged on the 25th May 1872.

but on being shown a number of letters (written by him to the prisoner intimating the remittances of small sums in part payment of debts, evidently subsequent to the said bond) he retracted this statement. It has been further proved by his own admissions that when Tahsildar of Darampury he borrowed sums from others also within his official range, one of whom was his own shroff. His only explanation with regard to his being indebted to influential men in his taluq is his alleged ignorance of the rules of Government prohibiting such transactions. It is not surprising, therefore, that Mr. Jones was a tool in the hands of his creditor (Chithambala Chetty), and became a party to the nefarious act reported by me to Government.

4. It is evident that Jones pleads ignorance of the rules prohibiting pecuniary transactions (which were published in the District Gazette) simply for want of a better reason to explain his conduct as a public servant.

5. In the explanation submitted by Mr. Jones with reference to my application

"On the 22nd November 1873, the date on which No. 398 was admitted, a deed of partition was likewise presented by one Rungasawmy Chetty (a tobacco merchant). I read over the documents myself, but to make sure I sent for the Registration Gumastah who was then at home most seriously ill. He came to the office, and I found that the deed was properly drawn up and stamped here and there but not initialled, he mentioned the circumstance to me and went to his seat to fetch A and B which (by the Registration Rules) have to be filled up by the Sub-Registrar in his own handwriting and simultaneously with the endorsements on documents accepted. I wrote the usual endorsement on the mortgage deed, and returned the partition deed to be initialled. I cannot now remember if I filled up A and B at once or later in the evening; anyhow, thinking of Rungasawmy's partition deed entered through sheer oversight in 'partition' instead of 'mortgage' in Tamil."

standing, should have made such erroneous entries very time

6. Another point on which Mr. Jones

"As from 23rd November to 2nd December I was absent from the cusbah, having been on a tour in villages, I was unable to certify that this document was entered in the Register, and hence the delay, 2nd December 1876."

admit that he never made such footnote on any other document, the books themselves showing that other documents exist, the registration of which was delayed longer than E, and that in such cases no such footnotes were made.

7. Mr. Jones' explanations throughout were so false that the Magistrate concluded his remarks regarding Jones' evidence by saying "it will be for Government to consider on reading his evidence whether such a person is fit to hold his present position."

8. The Session Court to whom Chithambala Chetty appealed against the Joint Magistrate's judgment found that a partition deed was concocted by the prisoner as alleged by the prosecution, and remarked "that the explanation of the discrepancies between the entries in A and B and the Registration Book given by Mr. Jones, the Sub-Registrar, appear to me to be worthy of no credit." The High Court who reviewed the Joint Magistrate's judgment inquire, whether Mr. Jones' conduct has been brought to the notice of Government. I have accordingly laid the whole case before Government that they may decide whether Mr. Jones can be permitted to continue in the responsible post he now holds.

9. Copy of judgments of the Original and Appellate Courts in the case together with Mr. Jones' deposition and translation of the bond and letters to Chithambala Chetty, are herewith submitted.

No. 1514.

PROCEEDINGS of the HIGH COURT of JUDICATURE at Madras, 20th July 1877.

Calendar Case, No. 2 of 1877.

Regina versus Chithamballa Chetty and Shunmogum Chetty.

Section 193.

In this case the facts alleged by the prosecution are these: That in November 1873, the first accused and his brother Umbilitam Chetty were members of an undivided Hindu family and resided at Darampury, being persons of considerable wealth. The first accused was the elder of the two brothers, and in November 1873 he persuaded his younger brother Umbilitam to go on a pilgrimage to Pondicherry. During his absence on this pilgrimage he (first accused) drew up a deed of partition, purporting to have been made between the brothers, got it attested and brought it to the office of the Darampury Sub-Registrar, Mr. Jones. Meantime a friend informed Umbilitam of the fraud that was being practised on him. He came home and taxed his brother with this, and had a quarrel which they subsequently made up on the first accused pleading ignorance and saying that he had destroyed the document. The matter, as far as Umbilitam Chetty was concerned, then dropped, and in May 1874 a regular partition took place between them, and the matter, to all appearance, was at an end. In October 1876, a petition was presented to the Registrar-General against the Deputy Tahsildar and Sub-Registrar Mr. Jones, and in the course of the investigation that ensued the following facts affecting this case were brought to light: When the fictitious partition deed was made in November 1873, the first accused got frightened at the probable results of his conduct and got the second accused, Shunmogum Chetty, to execute a mortgage deed, in which the consideration was fictitious, and caused in some way or other this mortgage deed to be substituted in the Sub-Registrar's book as No. 398, whereas 398 was the false partition deed presented for registration during the absence of, and without the knowledge of, Umbilitam Chetty. On these facts the accused are charged, the first with causing a wrong document to be substituted on the books of the Sub-Registrar for the false deed of partition, intending thereby to cause the Registrar wrongly to come to the conclusion that such mortgage deed was the deed originally presented for registration. The second accused is charged with the abetment of the same offence.

The charge, and subsequent proceedings thereon. The first is that the registration of a document is not a stage of a judicial proceeding. Now a judicial proceeding is one in which evidence is or may be taken, and it is undisputed that evidence may be taken in the course of registration, and it is laid down that the offence of fabricating false evidence is confined to cases in which it is the intention of the fabricator to produce an erroneous opinion touching any point material to the result. I think, therefore, that assuming the fact to be true that the first accused caused an entry to be falsified in the books of the Sub-Registrar, he is liable under Section 193. Next, Mr. Miller objected to my taking up the case without the sanction in writing of the Registrar of the District or the Sub-Registrar; but Mr. Pritchard, the Registrar, has distinctly sworn that these proceedings were taken and instituted with his consent, and I see it nowhere laid down that such consent must be in writing. I therefore overruled the objection.

We shall now consider the evidence as bearing on the case for the prosecution. It is undisputed that no deed of partition was executed with the consent of, or by, Umbilitam Chetty in November 1873, or that no such document was presented for registration with his sanction. It is also undisputed that a mortgage deed appears in the books of the Sub-Registrar as No. 398, purporting to have been registered on the 2nd December 1873 and presented on the 22nd November. Now as to the fact of the partition deed having been made on the 23rd November or thereabouts, we have the following testimony: The third witness, the gumastah of the brother and a decidedly hostile witness. He swears that by the direction of Chithambala Chetty he prepared a deed of partition; that four men, viz., second accused, Govind Chetty, Mundipuchiappah Chetty and Pear Umballa Chetty went in with first accused; that subsequently he was called in and they all attested the document. He gives a full account of the contents of it, but says when he saw it, it did not bear the signature of Umbilitam; that a deed purporting to have been executed by Umbilitam should not have been signed by him did not strike him as strange, although the document was duly attested by witnesses, as Chithambala Chetty said the signature of his brother would subsequently be attached to it. This witness was so clearly hostile that it was with difficulty any answer could be obtained from him. Whilst on his evidence I must notice the irregular conduct of the prosecution in having, during the pendency of the case, carried this witness before another Magistrate during my absence, and then in the absence of the accused reading over to him a certain statement made by him before the Collector, and making him attest its genuineness. I have disregarded this document entirely in considering the case, as I do not think the proceedings adopted in obtaining it were either legal or fair to the accused. This is the sole direct evidence of the execution of this partition deed, but we now come to a mass of indirect testimony bearing very strongly on this point. We have first of all Exhibits H and G written, and by the

post-marks undoubtedly written at this time, conveying a warning to Umbilitam as to what was going on, the result of which was the immediate return of Umbilitam, and we have also his evidence of the confession of the first accused to him. This evidence is strongly borne out by exhibit W, a letter written in great agony of mind by the first accused and a subsequent answer from his friend in Exhibit R. It is quite clear from these two documents that something was going on, and the contention of the prosecution is that that something was the preparation and subsequent presentation for registration of the fictitious partition deed. The learned Counsel for the defence, Mr. Miller, laid great stress on the fact that the defence called the witnesses supposed to have attested this document and not the prosecution, but from their evidence it is clear that the creatures of the first accused, nor was it likely that they would be willing to do so, which would render them liable to stand in the dock along with the accused. We now turn to the evidence disclosed by the Registration returns. From Exhibits A and B we find that a document No. 398, purporting to be a partition deed, was presented for registration on the 22nd November, and the proper fees were collected on it, and that the property was situated partly in Salem where these brothers' property lies. On turning, however, to the register we find 398 to be a mortgage deed presented for registration on the 22nd November, but not registered till the 2nd December, bearing, however, an extraordinary endorsement that registration was delayed owing to the absence of the Sub-Registrar, an endorsement warranted by no section of the Registration Act, and suspicious in itself. When questioned about this mortgaged deed on the first day of giving his evidence, the third witness, whom I have already noticed as a hostile witness, stated that there was no entry in the books with regard to this, but on a subsequent day produced Exhibits 3 and 5, manifestly concoctions, to show entries with regard to this. One of the entries, however, show that the money on it was paid on the 30th November, and as the document was not returned till the 18th December, we have the additional suspicion that all this trouble and this extra footnote was made on a document thus practically worthless. Now, if the original 398 was a partition deed, which has disappeared, and not a deed of mortgage, we have a strong confirmation of the evidence of the third witness of Umbilitam, and a clear explanation as to what was going on to cause G, H, W and V to be written. We shall now consider the defence set upon this point. The chief evidence will, of course, be the Registering Officer Mr. Jones, and his explanation briefly amounts to this: On the 22nd November he received this mortgage deed (a short one of a few lines); that on the same day he received another deed, a partition deed admittedly genuine from Rungasawmy; that he returned the partition deed to the first accused, and his entries in the register were as follows:—

Registration matters; yet, at an interval of three years, he can remember this unique circumstance and took such an intense interest in his partition deed that he mechanically wrote out partition instead of mortgage, collected partition fees instead of mortgage fees, and allowing his imagination to carry him still further, entered the property as belonging to Salem instead of Penagram, Salem not being his sphere of action; and to crown the absurdity of his story, made all these entries with regard to a mortgage deed executed by an intimate friend of his. I have not the least hesitation in saying that I consider Mr. Jones' evidence a tissue of falsehoods from beginning to end. He lied as to his indebtedness to the first accused; he spoke falsely as to his utter ignorance of Registration Rules, a man who had been at the work for 7 or 8 years; and he crowned his fabric of falsehood by asserting his ignorance of rules prohibiting him involving himself in pecuniary transactions with persons residing in his range. It will be for Government to consider on reading his evidence whether such a person is fit to hold his present position. This being the case, I hold that the original 398 was a partition deed. That Rungasawmy's deed was not presented on the 22nd, but on the 3rd December, as appears on the face of it; and that the mortgage deed was substituted either by Jones or his gunastah. For in his re-examination he blames him (forgetting his statement that it was his own oversight), and holding this I consider it a strong corroboration of the story for the prosecution that the first accused fabricated this partition deed and added to his fabrication by causing it to be withdrawn and mortgage deed substituted on the register. With regard to the mortgage deed its truth or falseness is a subject on which there is every room for doubt. My own idea is that the deed was executed and witnessed; the evidence is conflicting as to whether the property mentioned in it is that of the second accused. There is nothing to show complicity in this transaction of the registration on his part, and I accordingly acquit him. I convict the first accused and sentence him to one year's rigorous imprisonment.

(Signed) A. TUTE.
Officiating Joint Magistrate.

With reference to the observations recorded in the concluding portion of the Officiating Joint Magistrate's judgment, the High Court desire to be informed whether any steps have been taken to bring the conduct of Mr. Jones to the notice of Government.

(True Extract.)

(Signed) T. WEIR,
Acting Registrar Appellate side.

On a careful consideration of all these papers, the Government can come to no other conclusion than that Mr. Jones did originally receive the pretended partition deed and levied the fee due on a document of this nature; and that he subsequently, in order to screen the fabricator of the false deed (a wealthy soncar in his, Mr. Jones', official range, to whom he had incurred pecuniary obligations), registered, in substitution for and under the same "number" as the false partition deed, another deed but of mortgage—the particulars of which did not however correspond with those of partition deed as recorded.

2. There seems no room for doubt that Mr. Jones' attempted explanation of the entries is false throughout; and it is admitted by him that he has repeatedly violated the standing order of Government, prohibiting public servants from having pecuniary transactions with persons with whom they are liable to come into official relations. The imperative necessity for such a rule could not be more strongly illustrated than by the present case.

3. Mr. Jones was, at the time he acted as above described, and still is, holding the important and responsible position of Tahsildar and Taluq Magistrate; and the Governor in Council, holding the view he does of his conduct, and having regard to the nature of the offence which he considers him to have clearly committed, and the defence which has been attempted, deems him unfit to be retained in the public service and directs his immediate dismissal.

(True Extract.)

D. F. CARMICHAEL,
Chief Secretary.

To the District Magistrate of Salem.

- " Revenue Department.
- " Collector and Magistrate of North Arcot.
- " Officiating Inspector-General of Registration.
- " Honorable the Judges of the High Court, for information.

Exd. W. H. French.

203979.

Govt. of 11877) **MAJORS**

JUDICIAL.

To THE DISTRICT MAGISTRATE OF

SALEM.

Secy, Dy, &c.

Dated August, 30th.

Issued

Recd.

Post.

G.O. 29th August 1877, No. 2071.

AUGUST.

NO. 268-269.

Mr. Jones—Tribunal of Wanchewah. With reference to certain circumstances brought to notice by the District Magistrate of Salem, Mr. Jones considered with to be retained in the public service, and his immediate dismissal directed.

203979.

Commissioner of the
Roads & Works
Salem.