performance of the duties, and it it is the right to receive these emoluments as well as the right to perform the duty that has been sold for Rs. 150.

We have no doubt that such office so intimately connected wih and essential to the religious worship is not legally the subject of [393] sale. *Vencatarayar* v. *Srinivasa Ayyangar* (7 M. H. C. R., 32); *Rajah of Cherakal* v. *Mootha Rajah* (7 M. H. C. R., 210).

We, therefore, allow the injunction to go in the modified form abovementioned, and allow the plaintiff's appeal with costs and disallow the defendants' objection with costs.

NOTES.

[The office of Shebaiti right is not saleable :—(1907) 12 C. W. N., 98. *See* also (1896) 23 Cal. 645 ; (1890) 17 Cal. 557.

See the notes to (1876) 1 Mad. 235 P. C. in the 'Law Reports' Reprints.]

[4 Mad. 393]

APPELLATE CRIMINAL.

The 20th and 22nd December, 1881.

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE MUTTUSAMI AYYAR.

Madapusi Srinivasa Ayyangar	... Petr. in	No. 553,
Guntur Desikacharyar	... ,,	,, 554,
Bashkara Narasimmacharyar	... ,,	Nos. 568, 569, 570,
Tirumalai Kasturi Ayyangar	... ,,	No. 584,
Agaram Alagasinga Ayyangar	... ,,	,, 589

against

The Queen.*

Madras Act III of 1869—Departmental inquiry—Indian Penal Code, Section 172 Onus probandi—Facts to be proved.

A Collector, who, in order to draw up a report for the information of Government, holds a departmental inquiry into the conduct of a Tahsildar accused of extortion in the discharge of his executive duties, is authorized under the provisions of Madras Act III of 1869 to issue summonses for the attendance of persons whose evidence may appear to him necessary for the investigation.

In order to prove the commission of an offence under Section 172† of the Indian Penal Code, the prosecutor must show that a summons, notice, or order has been issued, and that the accused knew, or had reason to believe, that it had been issued.

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* Petitions Nos. 553, 554, 568, 569, 570, 584, 589 of 1881 against the sentences of A. Pinto, Deputy Magistrate of Chingleput, in Summary trials 18, 17, 26 and 52, Calendar Case 31, and Summary trials 21 and 20 of 1881.

†[Sec. 172 :—Whoever absconds in order to avoid being served with a summons, notice, or other proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both, or if the summons, notice, or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.]

Absconding to avoid service of summons, or other proceeding from a public servant.

To abscond to avoid the service of process, which has not issued, is no offence under Section 172* of the Indian Penal Code. Absconding does not necessarily imply change of place, but may be effected by concealment. If a person having concealed himself before process issues, continues to do so after it has issued, he absconds.

THESE seven petitions, presented to the High Court under Sections 294 and 297 of the Code of Criminal Procedure against sentences passed by the Deputy Magistrate of Chingleput, were heard together.

[394] The facts and arguments appear sufficiently, for the purpose of this report, in the Judgment of the Court (TURNER, C.J., and MUTTUSAMI AYYAR, J.) which was delivered by TURNER, C.J.

Bhashyam Ayyangar for Petitioners in Nos. 553,554, 584.

Ramachandrayyar for Petitioners in Nos. 568, 569, 570.

Gopalacharyar for Petitioner in No. 589.

The Government Pleader (Mr. *Shephard*) appeared to support the convictions.

Turner, C.J.,—A complaint having been made to the Government that a Tahsildar, while engaged in collecting the public revenue, had levied an illegal impost on the ryots for his private advantage, and had been guilty of other misconduct in the discharge of his executive duties, the Government called for a report, and the Collector, to whom the Tahsildar was subordinate, deputed a Sub-Collector to hold an inquiry.

In order to obtain information material to the investigation, the Sub-Collector issued summonses to the petitioners under the provisions of Madras Act III of 1869. When the process-server came to the village in which the petitioners resided to effect service of the summonses, the petitioners could not be found, and, it being proved that they had left their village because they apprehended summonses would be issued to them, they were charged and convicted of absconding to avoid service of process—an offence punishable under Section 172,* Indian Penal Code.

It is objected to the legality of the convictions that the Sub-Collector was not competent to issue summonses, inasmuch as the matter under investigation was not one wherein he was authorized to hold an inquiry in the sense in which that term is used in Madras Act III of 1869, and that, assuming the Sub-Collector was competent to issue summonses, the petitioners had not committed offences in leaving their residence before the summonses had issued, although they might have been induced to do so by an apprehension that summonses would be issued to them.

Madras Act III of 1869, after reciting that the revenue administration of the country is retarded, because Revenue Officers are not made competent by express provision of law to issue summonses for the attendance of persons * * * in certain cases in which it is their duty to hold investigations, enacts that Collectors, Sub-Collectors, &c., shall have power to summon **[395]** all persons resident within the district, whose evidence may appear to them necessary for the investigation of any matter in which they are authorized to hold an inquiry. It was argued that, inasmuch as the persons whom the Revenue Officers are empowered to summon are those whom they believe competent to give material "evidence," it is implied that the inquiry contemplated by the Act is an inquiry which will be followed by any adjudication.

It was suggested that the formality of the expression "authorized to inquire" implied an authority conferred by some express provision

*[*q. v. supra*, 4 Mad., 393.]

of law: and lastly that, inasmuch as by express provision of law powers are created for securing testimony in inquiries instituted into the conduct of Subordinate Revenue Officers irremoveable from office without the consent of Government, the Sub-Collector was not at liberty to avail himself of the general powers conferred by Madras Act III of 1869 to facilitate a mere departmental inquiry into the conduct of a Tahsildar.

In construing an Act conferring powers, we are bound to assume that the terms conferring the powers have been used in their ordinary sense, unless we find in the context something which warrants the inference that the terms were not used in that sense and that an artificial construction was intended.

The term "evidence," in its ordinary sense, signifies that which makes apparent the truth of a matter in question. It is no doubt more frequently applied to proof before a judicial tribunal, but it is not necessarily confined to this sense; it is used with equal correctness to express the information acquired by any person who undertakes an inquiry on any matter in question.

The term "authorized" applies to all cases in which authority is given, whether expressly or by implication. Revenue Officers are authorised, in some cases by express provision of law, in others by implication, to hold inquiries; and of these inquiries, some result in an adjudication; in others hardly of less importance as affecting the revenue administration, an adjudication is not contemplated.

We are not entitled to assume that the Legislature lost sight of this difference, and when we find a power has been conferred on Revenue Officers to be exercised for "the investigation of any matter in which they are authorized to hold inquiry," we are [396] bound to hold that the exercise of the power is not to be confined to a certain class of cases. Had such been the intention, we may assume it would have been expressed in appropriate terms, and the use of the general terms would have been avoided.

The sense in which the term "revenue administration" is used in the Regulations and Acts in this Presidency may be gathered from Regulation II of 1803, entitled "A Regulation for describing and determining the conduct to be observed by Collectors in certain cases." After reciting that the Regulation has been passed "for the purpose of defining the authority committed to Collectors," it is declared by the 9th section that Collectors have authority to superintend and control, under the orders of the Board of Revenue, all persons employed in the executive administration of the public revenue.

Where a duty is imposed on a public officer to superintend and control other public servants, authority to inquire into misconduct imputed to such servants in the discharge of their official duties is implied.

This general authority is not taken away by conferring on Collectors powers to punish summarily offences committed by Revenue Officers—Madras Regulation IX of 1822—nor by the provision in Act XXXVII of 1850 of a machinery for the formal investigation of charges brought against certain classes of public servants with a view to their removal from office.

The conduct of the Tahsildar in the discharge of his duties in the collection of the revenue was a matter in which, in our judgment, the Collector was authorized to hold an inquiry in virtue of the power conferred on him by the Regulation and an inquiry which falls within the terms of Act III of 1869.

It was not questioned that, if the Collector possessed the power to hold the inquiry, he was authorized to depute the inquiry to the Sub-Collector.

Holding, then, that the Sub-Collector had authority to issue summonses, we have next to consider what facts must be proved to establish the commission of an offence under Section 172, Indian Penal Code. The object of that section is to punish an offender for the contempt his conduct indicates of the authority whose process he disregards.

[397] We allow the contention of the Vakils for the petitioners that, in order to prove the commission of the offence, it must be shown that a summons, notice, or order has been issued. A person cannot evade a direction which has not been given. There must have been an exercise of the authority of the Court or officer competent to issue the mandatory process before there can be a contempt of that authority.

That the existence of a summons, notice, or order is necessary to constitute the offence is shown also by the terms of the concluding provision, "If the summons, notice, or order is to attend in person or by agent, or to produce a document in a Court of Justice," the punishment for the offence may be enhanced. It is not then sufficient to show that a person apprehending that a process will be issued has absconded. He may do so in the hope that his absence will deter the Court or officer from issuing the process, and he would not be guilty of the offence contemplated by Section 172, Indian Penal Code.

But the term "abscond" is not to be understood as implying necessarily that a person leaves the place in which he is. Its etymological and its ordinary sense are to hide oneself; and it matters not whether a person departs from a place or remains in it, if he conceals himself; nor does the term apply only to the commencement of the concealment. If a person, having concealed himself before process issues, continues to do so after it has issued, he absconds.

It remains to be considered whether to support a conviction it must be shown that the accused knew that the process had issued. The section declares him liable to punishment if he has absconded "in order to avoid" service. The absconding must be with a purpose. This, in our judgment, implies that the absconder knows, or at least has reason to believe, the process has issued. He may, as we have suggested, abscond to avoid the issue of process, and this would not be an offence punishable under Section 172, Indian Penal Code. When he knows, or has reason to believe, that it has issued, he may be unwilling to show contempt of the authority of the Court or officer who has issued it, and may comply with it, or so conduct himself that service may be **[398]** effected; but he can hardly be said to be guilty of contempt of authority if he does not know, and has not reason to believe the authority has been exercised, nor to be absconding to prevent the service of a process, if he does not know, nor has reason to believe, that it has issued.

We shall now proceed to apply these principles to the facts of the several cases before us.

In petitions numbered 553, 554, and 584 (Summary trial Nos. 18, 17, and 21), the Magistrate has required the accused to prove that they did not know the summons had been issued. In the view we have taken of the provisions of Section 172, Indian Penal Code, the burden lies on the prosecutor to prove knowledge and not on the accused to disprove it. There was, moreover, no sufficient evidence to prove such knowledge. The convictions are quashed and the fines, if levied, will be refunded.

In Petition No. 568 (Summary trial No. 26), the conviction in respect of the summons directing the attendance of the petitioner on the 24th October

cannot be sustained, inasmuch as no *place* is mentioned in the summons at which the petitioner was bound to attend. The conviction and sentence are quashed.

In Petitions Nos. 569 and 570 (Summary trial No. 25 and Calendar case 31), inasmuch as we have held the Sub-Collector had power to issue summonses, we must affirm the convictions in respect of the disobedience to the summonses issued to secure the attendance of the petitioner on the 10th August and 1st September. The convictions and sentences in these cases are therefore affirmed.

In Petition No. 589 (Summary trial No. 10), we cannot interfere with the conviction for any defect of law. We have found that the Sub-Collector had power to issue summons, and it follows that he had also power, when the witness attended, to direct him to stand by in case his evidence was required on other points than those on which he had been examined. The conviction is therefore affirmed and the petition dismissed.

Ordered accordingly.

NOTES.

[This case does not apply to absconding to avoid arrest under a *warrant*:—2 C. L. J., 625; P.R. 28 of 1890.]

[399] APPELLATE CIVIL.

The 6th January, 1882.

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE MUTTUSAMI AYYAR.

Gopalaratnamayyar and others.....(Second, third, and fourth Defendants), Appellants

and

Bupala Narasimma Nayudu and others, Representatives of Venkatasami Nayudu, deceased Plaintiff.....(Supplemental Plaintiffs) Respondents.*

Civil Procedure Code (Act VIII of 1859, Sections 182, 188, 189—Suit by Commissioner to recover his wages from party applying for his appointment but not ordered to pay costs of suit.

Where a Commissioner was appointed by a Court under Section 180 of Act VIII of 1859 to take accounts at the request of the plaintiffs, and his costs were not prepaid under Section 182, and the defendant was by the decree ordered to pay the costs of the suit, but the costs of the Commissioner were not entered in the decree:

Held in a suit by the Commissioner against the plaintiffs for remuneration for his labour that the plaintiffs were liable.

IN Suit No. 25 of 1874, in the District Court of Trichinopoly, the second and third defendants, by their next friend, the fourth defendant, sued the first defendant for partition of family property.

On 25th November 1875 the District Judge, under Section 180 of Act VIII of 1859, appointed the plaintiff as Commissioner, and directed him to take and

* Second Appeal No. 480 of 1881 against the decree of F. Brandt, District Judge of Trichinopoly, confirming the decree of C. Suri Ayyar, District Munsif of Trichinopoly, dated 18th March 1881.