

Appellate Jurisdiction (a.)*Criminal Petition No. 24 of 1868.*

SUBHARA'YA MUDALI.....Appellant.

A prisoner who was about to be committed to the Session Court presented to the Magistrate a list of witnesses whom he desired to have summoned to give evidence on his behalf at the trial, and on being asked by the Magistrate why he desired to summon the witnesses, the prisoner declined to state his reason.

Held, that the Magistrate was at liberty to decline to summon the persons named in the list on the prisoner declining to satisfy him that they were material witnesses; but the Magistrate ought to have fixed the amount which he considered necessary to defray the cost of the attendance of the persons named, and intimated to the prisoner his readiness to issue summonses on that amount being deposited.

The High Court called for the record for the purpose of seeing, whether any of the persons named in the list were likely to be able to give material evidence.

A PPEAL on behalf of the prisoner against the sentence ^{1868.} March 2. of the Session Court of Chingleput. The prisoner was C. P. No. 24 charged under Sections 193 and 181 of the Penal Code with of 1868. having given false evidence in a stage of a judicial proceeding, and also made a false statement on oath to a public servant who was authorised by law to administer such oath. It appeared that in the course of a judicial inquiry conducted by the Acting Sub-Collector of Madras under the provisions of Regulation 1X of 1822 upon a complaint which had been made against the Tahsildar of Conjeveram, the prisoner was examined as a witness and made certain statements which were found to be false.

The following is an extract from the Calendar of the Session Court :—

“ When the Acting Joint Magistrate had completed the preliminary inquiry in this case, and was about to commit it to this Court, the prisoner tendered to the Acting Joint Magistrate a list of witnesses whom he demanded should be summoned as witnesses for his defence before this Court. This list includes the names of the Acting Joint Magistrate and his Sheristadar, and nearly all the Gomastas and Clerks in his establishment, the Acting Session Judge and his Court Sheristadar and some Peons on his establishment, the District Munsifs of Conjeveram

1868.
March. 2.
C. P. No. 24
of 1868.

and Caranguli, and several Clerks in their Courts, the Chingleput Taluq Police Inspector, Head and Deputy Constables, some Vakeels of the High Court in Madras, and Clerks of the Collector's office at Sydapet. The Acting Joint Magistrate then, very properly exercising the discretion vested in him by Section 228 of the Criminal Procedure Code, called upon the prisoner to state why he desired to summon those witnesses, and the prisoner refused to state his reasons. Before this Court he explains that he wanted to examine them all to show that the Acting Joint Magistrate entertains enmity against him. The Acting Joint Magistrate declined to summon the witnesses named by the prisoner. Prisoner admits that he did not produce any money to defray the expenses of the witnesses he wanted to have summoned, but says he was ready to do so if called on by the Acting Joint Magistrate. There is nothing to shew that the inquiry was not conducted by the Acting Joint Magistrate with the most perfect fairness and regularity."

The prisoner appealed on the grounds that the conviction was not justified by the evidence and that the prisoner was unable to establish his defence by reason of the refusal of the Acting Joint Magistrate to issue summonses for witnesses to give evidence on his behalf.

Miller, for the Appellant.

The Court delivered the following

JUDGMENT:—There is no validity, we think, in the legal objections taken first, that the statement of the prisoner was not made in a judicial proceeding, or before a public servant authorised to administer an oath within the meaning of the Sections on which the charges are framed; and secondly, that the materiality of the statement to the matter of the inquiry before the Sub-Collector does not appear.

We are also of opinion that the evidence now on record in the case is quite sufficient to support the charge of the wilful falsity of the prisoner's statement in the inquiry. But it is urged that the prisoner has been unjustly denied the opportunity of examining witnesses in

his defence by the refusal of the Committing Magistrate and Session Judge to issue summonses to the persons named by the prisoner. We must see that there is no just ground for this objection, for if there is, we must afford the proper redress.

1868.
March 2.
C. P. No. 24
of 1868.

The Magistrate (entertaining the opinion he did) was clearly at liberty to refuse to summon the persons named in the list presented at the close of the inquiry before him, on the prisoner's declining to satisfy him that there were grounds for believing that they were material witnesses. But he ought at the same time to have fixed the amount which he considered necessary to defray the cost of the attendance of the persons named, and intimated to the applicant his readiness to issue summonses on that amount being deposited, and so far as we have at present the means of knowledge that may have been done. Further, we cannot say that the Session Judge acted in any way improperly in declining to entertain before the trial the prisoner's petition with reference to the refusal of the Magistrate, or in not issuing summonses in the course of the trial.

Therefore had nothing appeared before the Court as to any of the persons on the list being likely to give material evidence, except the prisoner's general statement, we should have thought that no ground had been shewn for the Court's interference. There are, however, statements of the 5th witness for the prosecution relating to Mr. Burnell and Somasoondra Chetty, an employé in the Collector's office, which it is contended in fairness entitled the prisoner to the testimony of those witnesses.

Without for a moment supposing that there is the least foundation for the imputations made by the prisoner, we think it necessary, to a satisfactory determination of the objection, that the deposition of the 5th witness should be returned to the Court, and that at the same time the Court should be informed whether the Magistrate intimated to the prisoner his readiness to issue summonses on a certain amount being deposited for the necessary expenses of attendance as required by Section 228 of the Criminal

1868.
March 2.
 C. P. No. 24
of 1868.

Procedure Code, as also of the reasons of the Session Judge for not permitting summonses to any of the persons named to be issued on the trial.

The record must be called for, but it is not necessary to require an English translation of more of it than the deposition of the 5th witness for the prosecution.

[Note.—Upon the further hearing of the case, the High Court directed the evidence of one of the persons named in the list presented by the prisoner to be taken and returned to the Court, and upon a consideration of the whole case the conviction was affirmed.]

Appellate Jurisdiction (a)

Special Appeal No. 6 of 1868.

GNA'NABHA'I.....*Special Appellant.*

C. SRI'NIVA'SA PILLAI.....*Special Respondent.*

A voluntary transfer of property by way of gift, if made *bonâ fide*, and not with the intention of defrauding creditors, is valid as against creditors.

The Hindu and English Law on the subject discussed.

1868.
May 1.
 S. A. No. 6
of 1868.

THIS was a Special Appeal against the decree of R. Davidson, the Officiating Civil Judge of Tanjore, in Regular Appeal No. 255 of 1866, reversing the decree of the Principal Sadr Amin's Court in Original Suit No. 5 of 1865.

Srinivâsa Châriyâr, for the Special Appellant, the second defendant,

Sanjiva Row, for the Special Respondent, the plaintiff.

The Court delivered the following

JUDGMENT:—This is a suit by a judgment creditor to invalidate a voluntary transfer of certain Government securities of the value of rupees 25,000 made by the judgment debtor to his wife (the 2nd defendant,) and to establish the plaintiff's right to take such securities in execution. The material facts found by both the Lower Courts are that the plaintiff obtained a decree in a suit brought in 1859 for the amount of a simple money bond executed by the 1st defendant in May 1858, and that

(a) Present: Scotland, C. J. and Collett, J.