APPENDIX.

Supreme Court—Plea Side.

VI'THOBA' MALHA'RI' v. ARTHUR KING CORFIELD.

False imprisonment—Act XVIII. of 1850—*Master and servant.*

Held that an action of trespass for false imprisonment lay against a magistrate who proceeded without jurisdiction to convict a tailor charged before him under Bombay Rule, Ord., and Reg. I. of 1814 for "misbehaviour as a domestic servant;" there being no information or evidence on oath of the offence charged, as required by the Regulation, as well as by Act II. of 1839; and the plaintiff not being a *domestic* servant, or any servant within the scope of the Regulation, and, when called upon to plead, having stated that he left the service because there were wages due to him from his employer; upon which statement he was convicted without any proper investigation into the truth of it.

Held, also, that a magistrate who failed to act reasonably, carefully, and circumspectly cannot be said to have "*in good faith* believed himself to have jurisdiction," within the meaning of Act XVIII. of 1850; and consequently that he cannot claim the protection of that Act in an action brought against him in a Civil Court.

Where a legislative enactment renders a servant punishable who leaves his employer's service without due warning, a charge, under such an enactment, will not be sustainable, unless it aver not only that the accused left his employer's service without giving the required warning, but also without lawful excuse.

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THE plaintiff, in this action of trespass for false imprisonment, was a Hindú tailor or dirzi. The defendant was a Justice of the Peace and Senior Magistrate of Police for the Town and Island of Bombay. The plaint laid the damages at Rs. 600. Plea: *Not guilty.*

The plaintiff having allowed a considerable time to pass, after the suit was ripe for hearing, without proceeding to trial, the defendant moved for judgment as in case of nonsuit. The plaintiff accounted for his delay by stating that a sum of Rs. 200 had been paid to his then solicitors, Messrs. Jefferson and Rimington, by a native, as he (plaintiff) had believed on behalf of and by way of compensation from the defendant. Mr. Corfield, however, denied that any such payment was made with his authority or that he was privy to it in any manner whatsoever. Under these circumstances the Court allowed the plaintiff to proceed with his suit.

Westropp and *Reid* for the plaintiff.

William Howard (Officiating Advocate General) and *Lowndes* for the defendant.

The facts, so far as they were of importance, given in evidence on behalf of the plaintiff, at the trial before *Yardley*, C.J., and *Jackson*, J., were as follows:—

The plaintiff had been, in his capacity of dirzi, in the employment of Mr. Meason, then editor of a newspaper in Bombay. During the first six months of that employment the plaintiff worked at his own house, but during the last six weeks of his engagement he attended daily at Mr. Meason's house and worked there during the usual working hours, return-

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ing to his own house every evening. He earned altogether from Mr. Meason Rs. 113-6, and received a payment of Rs. 21-8 on account, leaving a balance of Rs. 91-14 due to him. On the 12th of June 1854, in the sixth week of his attendance at Mr. Meason's house, the plaintiff, after having made several previous ineffectual demands for payment of the balance due to him, and also on some of those occasions stated that if he were not paid he would quit the service of Mr. Meason, and on one of these occasions been told that he might go if he liked, made a final and urgent demand for payment of that balance. Mr. Meason then threatened to assault the plaintiff, who immediately thereupon left Mr. Meason's service, and on the 7th of July 1854 commenced an action against him in the Court of Small Causes to recover the balance of Rs. 91-14. The summons in that action was served upon Mr. Meason on the 10th of July, and the day fixed for the trial was the 19th of July. Up to the time of the service of that summons, Mr. Meason had not taken any proceedings against the plaintiff. But on the 14th of July he (Meason) caused his wife to write to the Superintendent of Police, whose evidence and the remarks of *Yardley*, C.J., upon the facts mentioned in it were as follows:—

Major Edward Baynes, Superintendent of Police, examined by Mr. *Westropp*.—The plaintiff was never arrested.

Mr. Westropp.—What do you mean by saying the plaintiff was never arrested? Was he not compelled to come to you by a sepoy of police?

Witness.—I mean that there was not any warrant issued for his apprehension. He was brought to me by a sepoy by my direction. I received a note from Mrs. Meason, in which she stated that she had paid up her servant's wages. I have not got the note; I tore it up immediately. It was mentioned in the note that the servant had deserted, in consequence of which I sent a sepoy to fetch the plaintiff to me. He was detained in custody all that night. Next morning I sent him to Mr. Corfield. I did not send any note with him. I sent him with a policeman. I sent him to the Fort Police Office for the convenience of Mr. Meason.

By the Court.—I had no warrant to apprehend him. He was not in custody; he was merely detained in the office. The butler of Mr. Meason who brought the note to me, said that the plaintiff had been paid up his wages. I told the plaintiff, in the presence of the butler, that it was irregular of him to have left Mr. Meason's service without notice.

Yardley, C.J., here remarked that he did not understand Major Baynes's distinction between keeping the plaintiff in custody for a whole night and a day, and merely detaining him in his office without any warrant. His lordship then asked the witness what right he had to keep the plaintiff in custody.

Major Baynes said that he had a note from Mrs. Meason, and the statement of her butler testifying that the plaintiff had left the service without notice.

Yardley, C.J., said that this was not sufficient to justify Major Baynes in keeping the plaintiff in custody.

Cross-examined by the Advocate General.—The plaintiff said that he did not receive his wages regularly.

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On the morning of the 15th of July the plaintiff was sent from the Mazagon Police Office (where he had been detained) by Major Baynes in the custody of a police sepoy to the Fort Police Office, where the plaintiff was brought before Mr. Corfield, the defendant. Neither Mr. nor Mrs. Meason was present. The native butler of Mr. Meason did attend, and presented to Mr. Corfield a note from Mr. Meason. Notice to produce that note at the trial of this action had been given to the defendant, Mr. Corfield. He did not, however, when asked for it at the trial, produce it. What he said with regard to it will be seen in the note of his evidence hereinafter contained. Mr. Corfield stated that he learned from Mr. Meason's butler (who was not put on oath or solemn affirmation) the nature of the charge against the plaintiff. The charge was then, by Mr Corfield's direction, entered in the Police Office record-book by Joseph Machado, a clerk, as follows :—

"1854, July 15th, No. 120.

"*Mr. Meason* v. *Vithobá Malhárí.*

"For misbehaviour as a domestic servant, &c. &c. &c."

Mr. Corfield did not proceed further with the case upon that day, but caused a summons to be served upon the plaintiff, while at the Police Office, to attend there again upon the 18th of July to answer the above charge. The plaintiff was re-conducted by the police sepoy to the Mazagon Police Office, whence he was eventually liberated on bail by Major Baynes on the evening of the same day (July 15th) at 8 P. M.

On the 18th of July the plaintiff attended at the Fort Police Office before Mr. Corfield, pursuant to the summons. Neither Mr. nor Mrs. Meason appeared there. But the native butler of Mr. Meason was present. No oath or solemn affirmation was administered to him, nor was he or any other witness then examined. There was a conflict of evidence at the trial of this action as to the presentation by the plaintiff, on that occasion, in the Police Office, to Mr. Corfield of an English petition. The alleged draft of the petition was produced in evidence. The writer of it (Vásudeo Nárâyan) swore to the preparation of it and of a fair copy of it, and that he gave them both to the plaintiff and a friend who accompanied him, who paid half a rupee on behalf of the plaintiff to the writer for his trouble. That friend (Ragunáth Pándurang) corroborated the evidence of the writer. The draft petition was dated 18th of July 1854, addressed to Mr. Corfield, and stated that the prosecution by Mr. Meason in the Police Office "arose from the prosecutor's grudge" against the plaintiff, in consequence of his having sued Mr. Meason in the Court of Small Causes for the balance of wages due by him to the plaintiff. The petition denied that the plaintiff had been guilty of misbehaviour as a domestic servant, and stated that his "reason for giving up the house service" of the prosecutor was the non-payment of the balance of Rs. 91-14 due to him for his wages, and that he held an acknowledgment of that debt in the handwriting of the prosecutor's wife. The plaintiff and five persons (who accompanied him to the Police Office) swore positively that, when placed at the bar before Mr. Corfield on the 18th of July, he (plaintiff) delivered the petition to a sepoy, who gave it to Ráojí Succárám, the Police Office Interpreter, and that he

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opened it and handed it to Mr. Corfield, who looked at it and appeared to read it. The plaintiff also swore that the charge was not read over or explained to him, but that Mr. Corfield said to him that, as he had stayed away without leave, he was sentenced to imprisonment with hard labour for twenty-one days; and that he (plaintiff) then said that he had witnesses in attendance and asked Mr. Corfield to examine them, but he did not accede to that request; that the whole investigation did not last six minutes; and that Mr. Corfield said that, if the plaintiff had any claim for wages, he must go to the Small Cause Court.

From a copy of the record of the conviction produced by the defendant and obtained shortly after the conviction took place, that record appeared to have stood originally as follows:—

"1854, July 15th, No. 120.

"*Mr. Meason* v. *Vithobá Malhárí.*

"For misbehaviour as a domestic servant, &c. &c. &c.

"18th July.

"Defendant admits the charge and states that he has a claim for wages.

"To be imprisoned three weeks with hard labour in the jail."

At the conclusion of the case for the plaintiff his counsel, pursuant to notice, demanded the production of the record-book, containing the record of the conviction. It was produced and put in evidence for the plaintiff, and the record was then found to stand thus—

"1854, July 15th, No. 120.

"*Mr. Meason* v. *Vithobá Malhárí.*

"For misbehaviour as a domestic servant, *in leaving his master's service without warning. Witness, Butler of Mr. M.*

"18th July.

"*Prisoner* admits the charge and states that he has a claim for wages. To be imprisoned three weeks with hard labour in the jail, *and the prisoner is informed he can, if anything is due to him, bring his action in the Small Cause Court.*"

The words in italics were in alteration of, or addition to, the original record.

The issuing of a warrant by the defendant pursuant to the sentence, and the fact that the plaintiff, in accordance therewith, suffered imprisonment in the jail of Bombay for three weeks were admitted by the *Advocate General*

Subsequently the plaintiff obtained a decree in his suit against Mr. Meason in the Court of Small Causes for the balance of Rs. 91-14 and costs.

In stating the plaintiff's case at the trial of this action of trespass for false imprisonment his counsel directed the attention of the Court to Rule, Ordinance and Regulation I. of 1814, relating, as stated in its title, to the decision of "all disputes arising between masters and mistresses and any of their *household servants*, hamáls, or palanquin bearers," and to

"acts of miscarriage and ill-behaviour requiring moderate though immediate correction," of which Regulation the 2nd Article is as follows:— 1855. June 16, 19, 20, 23, 25.

"That it shall and may be lawful to and for any two Justices, *upon application made upon oath* by or on behalf of any master, mistress, or employer, against any servant whatever, touching any misdemeanour or ill-behaviour in such his or her service or employment, or in absenting themselves from their service on a false pretence, to hear, examine, and determine the same, and, on due proof thereof, to punish the offender by commitment to jail of the said town and island of Bombay, there to remain and be kept to hard labour for a reasonable time not exceeding one calendar month, or otherwise by abating some portion of his or her wages, and by discharging such servant from his or their service and employment." *Vithobá Malhári* v. *A. K. Corfield.*

And the 4th Article is as follows:—

"If any servant hired by any master or mistress depart from them before the end of his or her term, unless it be for sound, reasonable, and just cause, to be shown to two of the Justices for the town and island of Bombay, or if any servant at the end of his or her term depart from his master or mistress without seven days' warning, every servant so departing shall, on complaint made thereof by the master or mistress to two of the Justices of the town and island of Bombay, and *on due proof* thereof, be punished at the discretion of the two Justices by a fine not exceeding one month's wages, or by commitment to the jail of the said town and island of Bombay, there to be kept at hard labour for a reasonable time, not exceeding one month, or otherwise by abating some part of his or her wages."

The power given by Regulation I. of 1814 to two Justices is, by Act III. of 1841, conferred upon one Justice.

Counsel for the plaintiff contended that there was not any article in the Regulation of 1814 which authorised the punishment of a dirzi for quitting his employment. That enactment applied only to household servants (such as butlers, cooks, masáls, ayahs, &c.) and to hamáls and palanquin-bearers, who were carefully specified in the preamble, but not to an artizan such as a tailor. The plaintiff had said nothing which amounted to a plea of guilty, but had in his petition put forward a good defence. The 2nd Article of the Regulation expressly stated that the complaint should be made "upon oath;" and though in the 4th Article the words "on oath" do not occur, the meaning of the expression "on due proof thereof" is that the charge or complaint must be made and proved by the master or some one on his behalf, on oath. That there was not any information or statement on oath to support the charge; and that without such an information or statement upon oath Mr. Corfield was wholly without jurisdiction, and had demeaned himself with so much reckless negligence and injustice as to have rendered himself responsible to the plaintiff in the present action of trespass.

The Advocate General began with calling the Court's attention to the circumstance that it was trying an action of *trespass* against a person exercising a judicial office. It was not examining a conviction returned in obedience to a writ of *certiorari*. It was not hearing an appeal from a June 19.

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conviction; nor was the present an action on the case against a Magistrate for acting maliciously in exercising his admitted jurisdiction, but an action of trespass; and the only question before the Court was—"Was the defendant a trespasser? Did he exceed his jurisdiction?" But although that was the only question to be decided, no person with a legal education coming suddenly into Court and listening to the case, would have supposed it; for a whole day had been consumed in adducing evidence apparently with the sole object of colouring the facts and prejudicing the mind of the Court,—evidence not only immaterial, but wholly inadmissible on the issue raised in the pleadings. He had been much surprised at the plaintiff's counsel's opening address. It simply narrated the facts he was instructed he could prove. It did not touch on the law relating to actions against magistrates. In fact, his learned friend could not have done so without disclosing that, as the defendant acted within his jurisdiction, this action was not maintainable. Counsel had not even thought it necessary to excuse the omission of a month's notice of action which should have been given under the Act, or to contend that it was unnecessary. He had been content to confine his observations on the law of the case to a notice of Regulation I. of 1814, without hinting even that his case was, that Mr. Corfield, whilst assuming to act under that Regulation, had in fact acted without jurisdiction to entertain the complaint, or that, if he had, he was without the protection afforded to Justices by Act XVIII. of 1850. Now one of the points by which the defendant was attempted to be made a trespasser was, that a tailor, though serving for monthly wages, was an artizan and not a "servant," and therefore not within the purview of the Regulation under which the plaintiff had been proceeded against; but it was not pretended that this objection, even if it were sound, had been raised before Mr. Corfield when he tried the case. It was an objection now started for the first time. Indeed, so far was the plaintiff from urging it to Mr. Corfield, that in the petition which he says he presented he describes himself as having left the "*house service*" of his master—thus conclusively showing the view he took of his own position. The next objection was, that no evidence had been taken by the Magistrate in support of the charge against the plaintiff, and that he had been convicted on what was improperly regarded as a confession. It was further urged, that a petition had been handed in by the plaintiff to the Magistrate, who had disregarded it. Now, supposing all this to be strictly true, and admitted—nay even, supposing all that the plaintiff's witnesses had stated to be correct, the question would still remain, *Had Mr. Corfield acted within his jurisdiction or not?* If he had done so, he was not a trespasser. The question was not, whether the defendant had been more summary than others might have been—whether the excuse set up by the plaintiff for leaving Mr. Meason's service was, in the opinion of others than the Magistrate, a reasonable excuse, and should have been accepted as such, nor whether the punishment awarded was disproportionate to the offence. He (the *Advocate General*) might admit that Mr. Corfield's proceedings were open to all these questions, and still the plaintiff's case would not be advanced by it; for, as it was not imputed to the defendant that he had acted from improper motives, the case would still remain one in which a honest, though possibly grave, error in judgment had been committed by the Magistrate, in disposing of a case which had come before him in

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the due course of his duty, and which it was his province to adjudicate upon. If the question had been raised before Mr. Corfield, whether the plaintiff was a servant within the meaning of the Regulation, Mr. Corfield would have had to pronounce on that question, and to decide it one way or the other. In like manner, if the statement of the plaintiff at the bar when asked to plead to the charge, amounted, in Mr. Corfield's opinion, to an admission that the plaintiff had left Mr. Meason's service without reasonable cause, the Magistrate was legally justified in so treating it, and in determining that he need make no further enquiry; and, again, it was for Mr. Corfield, and for him only, to decide whether the fact that wages were alleged to be due to the plaintiff was or was not a reasonable excuse. The Court would hear, before the case closed, that complaints against servants for leaving their masters' service without warning were most common, and that the invariable defence was, that wages were due—a defence that must always exist where the servant had remained one day in his master's employ after the last payment of wages; and the police magistrates have found it necessary to decline accepting the excuse that wages are due as a reasonable cause for leaving service. Experience has led them to this resolve, and it is for them, and not for any one else, to determine what is, as distinguished from what is not, a reasonable cause for quitting service. Again, it must be remembered they and they only are the persons legally appointed to determine the amount of punishment to be awarded in such cases; and their experience alone can qualify any one to pronounce a decided opinion whether the punishment they award for these offences is excessive, or whether, from the frequency of this kind of delinquency among servants in Bombay, the proved inutility of mild punishments, and the extreme inconvenience to the European community—so helpless in India when deserted by their servants—it is not necessary, for the sake of example, to award what, abstractedly considered, may appear a very severe punishment. With regard to the record of the conviction of the plaintiff, which had been called for and produced from the Police Office, and the observations which had been made upon it, the *Advocate General* observed, that many charges were daily investigated in the Police Office, and that the convictions and sentences recorded were memoranda not pretending to be legal forms, which time would not allow of. But, however informally the conviction might be set out in the charge-book, it was legal in substance, and contained sufficient matter whereon the magistrate could draw up a formal conviction. Referring to the attempt made by the other side to throw discredit on the Chief Magistrate, by showing that erasures had been made in the record, the *Advocate General* observed that it was not customary for the magistrates to draw up formal convictions unless required for a particular purpose, or called for under a writ of *certiorari*. The plaintiff's counsel objected to call an officer of the Police Court to explain the history of the alteration that had been made in this record, and, by excluding such explanation, had the temporary advantage of asserting, uncontradicted, that Mr. Corfield had "tampered" with his records. The insinuation was groundless and unworthy. A magistrate had a right to amend a conviction, and was competent to supply formal defects in it, up to the last moment, before returning it on a writ of *certiorari*, and he was allowed to do so to protect himself in an action brought against him for acts done in his judicial capacity. It had even

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been contended that after one conviction had been quashed the magistrate might draw up another; and in *Chaney* v. *Payne* (*a*), where precisely this question occurred, Lord *Denman* confirmed the general principle established by former decisions in the following words:—

"The cases of *Rex* v. *Barker* (*b*), *Rex* v. *Allen* (*c*), *Basten* v. *Carew* (*d*) and *Rex* v. *the Justices of Huntingdon* (*e*) establish clearly that magistrates are not bound by the conviction first drawn up, whether it be merely a note of the conviction or drawn up in a formal manner as the conviction itself; but that they are at liberty, when called upon by appeal to return the conviction to the Quarter Sessions, or by *certiorari* into this Court, to draw up and return a more formal conviction, correcting any errors which may have existed in that first drawn up, provided the latter conviction be according to the truth and the facts of the case as proved before the magistrate."

The Advocate General would further observe, that the alleged "tampering" took place two or three days ago, and by his recommendation. In the original record the charge was simply "misbehaviour," and he had suggested that it would be only proper to add in what that misbehaviour consisted, which was the leaving his master's service without the requisite warning. As his learned friend had put in the conviction as part of his case, he was bound by it. The learned counsel then drew the attention of the Court to the law, that a conviction by a magistrate in a case where he had jurisdiction, not void on the face of it, was conclusive as to the facts therein recorded. No legal proposition was more firmly established or had been more often recognised, since the case of *Brittain* v. *Kinnaird* (*f*), where it was held that the finding of a magistrate (in a case in which he had jurisdiction) that a decked vessel of 13 tons was a "Boat," and therefore liable to seizure under the Bumboat Act, was conclusive of the fact in an action of trespass against the magistrate for the seizure. *Dallas*, C.J., in that case, said in the course of his judgment:—

"The general principle is perfectly clear, that a conviction by a magistrate who has jurisdiction over the subject matter is, if no defects appear on the face of it, conclusive evidence of the facts stated in it. Much has been said of the danger of magistrates giving themselves jurisdiction, and extreme cases have been put as of a magistrate seizing a ship of 74 guns and calling it a boat. Suppose such a thing done, *the conviction is still conclusive, and we cannot travel out of it.*" *Park*, J., in the same case said:—"All the cases from Hardress downward concur in one uniform principle, that where a magistrate has jurisdiction, a conviction by him is conclusive evidence of the facts stated in that conviction." And *Burrough*, J.:—"Since I have been in Westminster Hall it has never been doubted that where a magistrate has jurisdiction, a conviction, having no defects on the face of it, is conclusive evidence of the facts which it alleges." And *Richardson*, J.:—"Suppose the case of a conviction under the Game Laws for having partridges in his possession,—could the magistrate in an action of trespass be called on to show that the bird in question was really a partridge? And yet it might as well be urged

(*a*) 1 Q. B. 722. (*b*) 1 East. 186. (*c*) 15 East. 333. (*d*) 3 B. & C. 649.
(*e*) 5 D. & R. 588. (*f*) 1 Brod. & Bing. 432, 438.

in that case that the magistrate had no jurisdiction unless the bird was a partridge, as it may be urged in the present case that he has none unless the machine be a boat."

In a very recent case of *Cave* v. *Mountain* (*g*), also a leading authority, and which was an action of trespass against a magistrate, on the ground that he had caused the plaintiff to be imprisoned as a felon on mere hearsay evidence, *Tindal*, C.J., said:—"That the information does not disclose any *legal* evidence of the guilt of the prisoner is undoubtedly true. But at the utmost this amounts to no more than an error of judgment on the part of the magistrate, and no case can be found in which a magistrate acting within his jurisdiction has been held liable in an action of trespass for a mere error in judgment (*h*). It would be a very different case if the defendant had acted from any malicious or improper motive, or with any want of *bona fides*; in which case he would *be liable in a different form of action.*"

In *Brittain* v. *Kinnaird* the Chief Justice observed that a magistrate, even in the case supposed, is not liable to a civil action, and can only be proceeded against criminally. However, if liable to be sued at all, it is, as Chief Justice *Tindal* observed, in a very different form of action, and not in trespass. The court, then, in the present action could not re-open the question of fact, not being a court of appeal from the magistrate's decision. But the *Advocate General* had no wish to decline a discussion on the merits. He would prove that the usual course was taken in this, as in the very numerous similar cases of complaint against servants for leaving without notice, which constantly come on for adjudication before the Police Office. It would be proved that the prisoner having been put at the bar, the charge was explained and interpreted to him, that he replied that it was true that he had left his master's service, but that wages were due to him. Mr. Corfield then informed him that if wages were due, he should sue for them in the Small Cause Court. Mr. Corfield then sentenced him to three weeks' imprisonment with hard labour. It was denied on the part of the police that any petition had been presented by the plaintiff to Mr. Corfield. The clerk who enters the charge, the interpreter, two havildárs and a sepoy present on duty on the occasion, were prepared to disprove this. But even if they were in error, even if the petition had been presented, it contained nothing beyond what the plaintiff had orally stated at the bar of the Police Court, viz. that he had left his master's service on the plea that wages were due to him, (unless, indeed, the petition may be said to have put the nature of that service, "house service," beyond a doubt). Not a word appeared in the petition of the matter mentioned by counsel regarding Mr. Meason's threatening to assault the plaintiff for demanding his wages.* It merely set up as an excuse that wages were due; but, as observed, it was within Mr. Corfield's jurisdiction to pronounce whether that was a good ground of defence; and, if he were not satisfied with it as such, he was perfectly at liberty to pronounce the sentence he did. The merits of the decision, *as such*, were not matters for this Court to adjudicate upon. It was not a

(*g*) 1 M. & G. 263. (*h*) See 1 East. 563 *n.*

* NOTE.—That fact was sworn to by the plaintiff and one of his witnesses.

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court of appeal from magisterial decisions. If Mr. Corfield acted within his jurisdiction, it was not competent for this Court to sit in judgment upon him.

Yardley, C.J.—Suppose an artist were engaged to paint a portrait, and attended at a house for that purpose, and a magistrate chose to consider him a domestic servant, would his conviction be binding in an action against the magistrate?

The Advocate General replied that the question put was disposed of by *Brittain* v. *Kinnaird*. Where there was an erroneous decision by a magistrate, the proper course was to move for a writ of *certiorari*, or to appeal, if an appeal were allowed, to set it aside. The conviction, so long as it stands, is decisive of the facts therein stated. If a magistrate were so dishonest as to convict an artist under the circumstances supposed, he would be liable to be proceeded against criminally.

Yardley, C.J., remarked that it was contended on the part of the plaintiff that sleeping on the premises constituted a domestic servant, a circumstance in itself which his lordship did not think of much weight; but, in his opinion, a domestic servant was one who was engaged for the performance of ordinary household work; and he entertained great doubt if a tailor was a domestic servant.

Jackson, J., said that a servant was one hired for a regular period, and whose whole time was at his master's disposal.

The Advocate General repeated that Mr. Corfield was the sole judge to decide, when a complaint under the Regulations was brought before him, whether a given individual was or was not a servant within the meaning of the Regulation. If he decided erroneously, he was not liable to an action of trespass. Moreover, the law was clear that, until his conviction was upset, the record stating that fact was conclusive evidence that the plaintiff was a domestic servant. The evidence adduced by the plaintiff is wholly inadmissible against the conviction. But although the question whether the plaintiff was a servant under the Regulation was wholly immaterial, he would submit that Mr. Corfield's view of the matter was correct, for the Regulation did not particularise any description of servant. But he again reminded the Court that malice or improper motives were not imputed to Mr. Corfield; and if, therefore, he had acted erroneously and without jurisdiction, he was within the protection of Act XVIII. of 1850.

June 20. The Court having risen for the day, the *Advocate General* on the following morning called the Court's attention to *Mould* v. *Williams* (*i*), *The Queen* v. *Bolton* (*j*), and *Lowther* v. *Earl Radnor* (*k*).

Joseph Machado, examined by Mr. Lowndes.—I am a clerk in the Fort Police Office, in charge of the summons department. It is my duty to issue summonses, and superintend service thereof. I also call out the names of the parties. I remember the case of Vithobá Malhárí being filed on the 15th of July last. I issued a summons returnable on the 18th. The charge was "misbehaviour as a domestic servant, in leaving service, &c. &c. &c.." The three *et ceteras* have been scratched out by my assistant. I saw him do it. The words "leaving his master's service without warning" were added a few days ago by desire of the Senior Magis-

(*i*) 5 Q. B. 469. (*j*) 1 Q. B. 66. (*k*) 8 East. 113.

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trate, Mr. Corfield. The other part of the charge was not in my handwriting. The plaintiff was served with summons on the 15th in the office. On the 18th I saw the plaintiff in the office, at the bar. I called out his name, as well as Mr. Meason's. The butler of Mr. Meason appeared; the charge was read over and interpreted to the prisoner by the interpreter. This book was before Mr. Corfield at the time. Vithobá said that he left the service because his wages were not paid up. Mr. Corfield said to him that if anything were due to him, he might bring an action against his master in the Small Cause Court. The butler said that no wages were due to the prisoner. The butler was in the witness-box. I did not see any friend beside the prisoner. It is usual to order out witnesses when the case in which they are concerned is called. No paper or any writing was given by the plaintiff to the Magistrate; if there were, I would have seen it. I did not hear Vithobá ask Mr. Corfield to hear his witnesses, or anything to that effect. I did not hear him say that he had any witnesses.

Cross-examined by Mr. Westropp.—The friends of the prisoner might be in the court, but I did not know them. At the beginning of every case we call out to the witnesses to go out of hearing. I remember a havildár calling out to the witnesses to go out of hearing. I remember this case because no petition was presented. Since this action commenced, I told Rãojí all I knew about this case. People were talking about some petition being presented to Mr. Corfield in this matter; I told Ráojí that no petition was given to him. I will not swear positively that no petition was presented; I do not recollect to have seen any petition presented. I believe, but I am not positive, that Ráojí asked Vithobá if he had any witnesses. Mr. Meason's butler was not sworn, because the plaintiff pleaded guilty. I don't recollect if the butler was asked why his master did not attend. The summons was not paid for, because I thought the case would be entered in the "morning sheets." The complainant was not charged for the summons. I have been in the Police Office for eight or nine years. No note was produced by Mr. Meason's servant. I can't say whether there may have been a note sent to Mr. Corfield. I served the summons on Vithobá by desire of Mr. Corfield in the Police Office. I framed the charge upon the inquiries I made of the butler. The butler was sent to me by Mr. Corfield. The butler said the tailor left his master's service without permission.

By the Court.—I don't recollect if Mr. Corfield asked Vithobá in what capacity he served Mr. Meason.

By Mr. Westropp.—My salary is Rs. 25 a month. The appearance and dress of the plaintiff would not have particularly led me to believe him a tailor. He looked like a butler. He did not look like a cook.

Re-examined.—The cases in the "morning sheets" are of a trivial nature, and are not charged. This case was not in the morning sheet.

Ráojí Succárám, examined by the Advocate General.—I am interpreter to the Senior Magistrate; my duty is to interpret the charge to the prisoner, and he is called on to plead. I recollect the case of Vithobá being investigated by Mr. Corfield. The name of the complainant, Mr. Meason, was called out, when his butler, a Portuguese, came forward. The prisoner said he left the service because his master would not pay his wages. Mr. Corfield said to him that he was liable to one month's

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imprisonment, but he was sentenced to three weeks' hard labour, and referred to the Small Cause Court for his wages. I did not see any petition given to Mr. Corfield. If any petition were presented, I would have seen it. When a case is called on, the witnesses are ordered out of hearing. The usual notice was, I believe, given when this case was called on. I am not aware of Vithobá having brought any witnesses. I am sure Vithobá did not ask Mr. Corfield to examine his witnesses.

Cross-examined by Mr. Westropp.—I obtained the benefit of the Insolvent Act about a year ago. My liabilities amounted to about a lakh and a half, and my assets fifty thousand. I had a conversation with the last witness about this case on a few occasions. Vithobá was not asked if he had any witnesses. He was not asked if he had proof that wages were due to him; nor was he asked if he had any excuse for leaving his master's service; nor in what capacity he served; nor who his master was. Vithobá might have fifty friends in the court at the time without my knowing them. It is usual that cases of a trivial nature are entered in the morning sheets, and are not paid for. Nothing was said about the time when he left the service. This charge was first written by the last witness; the other alterations were made subsequently by different clerks by desire of Mr. Corfield. I don't recollect when the words "witness, the butler of Mr. M." were written. I saw the entry of the conviction in the Police Office book for the first time three or four days after the day of the trial before Mr. Corfield. That part of the entry containing the words "and the prisoner is informed he can, if anything is due to him, bring his action in the Small Cause Court," was not then in the book. It was made afterwards by Mr. Corfield, but I do not know at what time.

Counsel.—What particular reason have you for recollecting that no petition was presented to Mr. Corfield by Vithobá?

Witness.—Some time after the case occurred, discussion arose about it in the newspapers and elsewhere. I will not swear positively that the petition was not presented. I do not recollect its having been presented.

By the Court.—In the discussions which arose on the subject there was a question that a petition was presented, which struck me, because no petition was presented to Mr. Corfield; this was not a prominent part of the subject.

By Mr. Westropp.—The butler said that there were no wages due to Vithobá. The butler was not sworn. The Magistrate took down what the prisoner said; but I don't know if he took down what the butler said. The prisoner did not say what he was. I could not say from his appearance what he was. He appeared like a domestic servant. I do not think he looked like a butler; he certainly was not a cook, nor a hamál. No question was asked why his master did not attend. He did not say he was guilty, but said he left the service because his wages were not paid up.

Pándú Rágojí, a havildár, doing duty at the Fort Police Office, stated.—I was present when Vithobá Malhárí was put up at the bar on the 18th of July. I was standing near the Magistrate when he was disposing of the complaint cases. I was on duty at the time; another havildár, Shamsúdín, was on the opposite side. When Vithobá was put at the bar, the charge of having left his master's service without warning was communicated to him, and he was asked if he had done so; he replied that it was so; he gave no reason for his conduct. He was then sentenced

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to twenty-one days' imprisonment. The Magistrate told him that if any wages were due to him he ought to apply to the Small Cause Court. This was in reply to a statement from Vithobá that wages were due to him. This he said before sentence was pronounced against him. I did not see any petition presented by Vithobá to the Magistrate I was standing close to him, and if he had anything to hand up he would have done so through me. When Vithobá was being removed from the Police Office he asked me to take him up before the Magistrate, as he wished to make a statement, but this I told him I could not do. There were no friends of his present when I removed him from the bar; he wished me to convey a message to his house that he had been sentenced to twenty-one days' imprisonment. This was at 5 o'clock in the evening.

Cross-examined by Mr. Westropp.—I serve in the Police Office; petitions are presented very often in the Police Office. Vithobá did not say that wages were due to him as a dirzi; he said "Wages are due to me for this month as a dirzi." I did not observe to whom he gave his umbrella when he was put at the bar. He might have had fifty friends in court without my knowing it.

Shamsúdín Abdúl Káder, a havildár of police, and *Rámchandra Sadáseo*, also a policeman, were sworn, and tendered by the defendant's counsel for cross-examination by the plaintiff's counsel, which the latter declined.

Mr. A. K. Corfield, examined by the Advocate General.—I am the defendant in this action; I have been Senior Magistrate for the last three years and a half. I remember receiving a note from Mr. Meason. I don't know what became of it. He said in it that he was quite ready to attend whenever required. The case was investigated on the 18th of July last in the usual manner.

Cross-examined by Mr. Westropp.—I did not ask the plaintiff in what capacity he served. I did not ask him whether he left the service in the middle or beginning of the month. I knew he was a tailor in Mr. Meason's employ. I did not ask him what excuse he had for leaving the service. The charge having been interpreted and explained to him, I took down his answer as it was interpreted to me. He said he had wages due to him by his master, and therefore he left his service. He might have said a great deal more, if he had anything to say. The plea of wages is generally set up in defence by servants in such cases. I take upon myself to state that witnesses were ordered out when this case was called on. This is invariably the practice; if any witness remained in court after the usual notice, I have invariably refused to take his evidence. The story of a petition being presented to me is entirely false, to the best of my recollection. I would not swear positively to this, as it occurred nearly a year ago. [Here followed some cross-examination of Mr. Corfield as to his memory, which it is unnecessary to detail. His attention was then called to the Police Office record of the conviction, as it appeared in the book.] To the best of my recollection the part in this record regarding the plaintiff being referred to the Small Cause Court was written at the time the case was investigated. The butler of Mr. Meason was in the witness-box when I wrote "Witness, butler of Mr. M." in this record. The butler was not sworn; it was not necessary, as the plaintiff had admitted the charge. By the charge being admitted, I mean what he said when it was interpreted to him—namely, that he left the service without

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his master's permission. The charges on which persons are brought up are not fully entered in the book, but they are fully interpreted to them when they are called on to plead. I understand the Hindustání and Maráthí languages. I understood his answer before it was interpreted to me. It was not by my desire that the plaintiff was sent back to Major Baynes.

Re-examined.—In a great many cases the plea of wages is invariably set up in defence by servants.

By the Court.—The charge was not supported by anybody's oath. I had received no note from Mr. Meason before the summons was issued. His butler first informed me of the charge against the plaintiff. I had no communication with Mr. Meason on the subject except his note to me, stating that he would attend whenever called.

This closed the defendant's case.

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The Advocate General asked leave to put in a formally drawn-up conviction.

Mr. Westropp objected to allow this at the eleventh hour, the defendant having closed his case.

Yardley, C.J., said that it was too late now, after the defendant's case had been closed, to permit him to put in the proposed formal record of the conviction, and that the Court would not strain a point in favour of a technical defence.

Mr. Westropp, for the plaintiff, then proceeded with his general reply, and said that his learned friend the *Advocate General*, on behalf of the defendant, had observed that the plaintiff's counsel had judiciously passed over the legal difficulties in his case; and he (the *Advocate General*) named, as the first obstacle, the want of proof of one month's notice to the defendant, previously to the commencement of the action, of the plaintiff's intention to institute it, as required by the Statute 24 Geo. II. c. 44; but the *Advocate General* gracefully waived that objection, for which he was entitled to due credit, as the objection, though formal, might have proved a serious one if the Court refused permission to the plaintiff to prove the service of the notice after his case had been closed. The fact of its having been served had not come to the knowledge of the plaintiff's present professional advisers until after the *Advocate General's* speech. He (Mr. *Westropp*) had intended to argue that the notice was unnecessary. True, there were two decisions to the contrary in the Supreme Court at Calcutta, *Griffin* v. *Deatker* (*l*) and *Harrowell* v. *Trower* (*m*); but in neither of the reports of those cases are there any reasons given for the decision; and the Statute had certainly not been extended in direct terms to India. The *Advocate General* had, however, relied on the conclusiveness of the conviction, and said that if it were regular upon the face of it, and alleged facts showing a sufficient jurisdiction in Mr. Corfield to entertain the case, it was a bar to an action of trespass, and must be treated as incontrovertible verity. In support of this proposition the *Advocate General* had led the Court over a wide field of decisions, through which he (Mr. *Westropp*) had no intention of following him. He would only name two cases, to show that if a Justice of the Peace falsely assumed jurisdiction, the Court would not allow his conviction to operate as a bar. One was an old case, *Terry* v. *Huntington* (*n*), in which Chief Justice *Hale* said

(*l*) Morton Rep. 360. (*m*) Clarke's Addl. Rules p. 51.
(*n*) Hardress R. 480.

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that the judgment is no estoppel if the matter be not within the limited jurisdiction of the party pronouncing it, and that if the limited jurisdiction be exceeded, that does not take away from the jurisdiction of the superior courts. The other case, *Welsh* v. *Nash* (o), is more modern. Lord *Ellenborough* there said that the Justices cannot make facts by their determination in order to give to themselves jurisdiction contrary to the truth of the case. The Justices had there declared an old road which had been widened to be a new road. Mr. Justice *Lawrence* observed that the Justices cannot give themselves jurisdiction in a particular case by finding that as a fact which is not the fact. Here the conviction is said to have found that Vithobá Malhárí was a domestic servant, and as such left his employment without warning, and that he admitted such to be the case; all of which was contrary to the fact. But supposing the *Advocate General's* proposition to be true, that a conviction apparently regular and valid, and within the jurisdiction of the Justice, was conclusive in an action of trespass brought against him by the party convicted, then the question arose, Did this conviction fall within that description? So far from such being the case, it was remarkable for the absence of every requisite form which a conviction should possess. A conviction should be under the hand and seal of the magistrate; that being the only mode of authenticating it as a record.

Yardley, J.:—That is an error of a kind which if it stood alone we should allow to be amended.

Mr. Westropp placed no particular stress upon that omission, but named it as one amongst many. The others were, that the places where the complaint was made and the offence committed were not specified, as is necessary, in order to show that the Magistrate was acting within his jurisdiction. The omission of the name and style of Mr. Corfield, and that he was a Justice of the Peace for the town and island of Bombay; the omission of the name of the informer, and of the time when the offence was committed; the omission to state the summons; were all fatal defects in the form of the conviction, as shown by Mr. Paley in his work on Convictions. But it was also defective in substance. When he (Mr. *Westropp*) opened the plaintiff's case, he treated the conviction as resting upon the 2nd Article of Rule, Ordinance, and Regulation I. of 1814, because, according to the copy of the conviction in the plaintiff's possession, it was for "misbehaviour as a domestic servant" only. Since that copy was obtained, the conviction had been altered by adding the words "in leaving his master's service without warning." Those words, it seems, were added by the advice of the *Advocate General*, a fact which for the first time came to the knowledge of the plaintiff's present advisers during the speech of the *Advocate General*. But there are other alterations which he did not advise, and which should be referred to before he (Mr. *Westropp*) concluded his reply. The alteration made on the advice of the *Advocate General* was an attempt to bring the conviction under the protection of the 4th Article of the Rule, Ordinance, and Regulation I. of 1814; but the result was to make it more unsustainable even than it was before. That Article created two offences: one was—"If any servant hired by any master or mistress depart from them before the end of his term, unless it be for some reasonable and just cause;" the second was—"or if any servant, at the end of his term, depart from his master or mistress without seven days' warning." The conviction was uncertain,

(o) 8 East. 349.

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because it did not allege whether the departure of Vithobá Malhárí was "before the end of his term," or "at the end of his term;" therefore the offence charged was not brought within the terms of the enactment. The second fatal defect in point of substance was, that the departure of Vithobá from his employment was not stated in the conviction to be without reasonable or just cause. In Seth Turner's Case (*p*) a conviction of a miner, because "he absented himself from his said service, and did thereby then and there neglect to fulfil the same, contrary to the form of the Statute," was held to be bad for that omission. It is particularly to be remarked, that the Statute in that case said nothing about just or reasonable excuse for absence. But Lord *Denman*, Chief Justice, said—"It is essential that there should be on the face of the information something on which the Justices may convict. Now to complain merely that the party absented himself from his service, is to charge no offence, unless it be added that this was done without leave or lawful excuse." And *Patteson*, J., said—"It therefore comes to this; whether it is necessary to negative lawful excuse. I think it is, and that the absence must be shown to be wilful or without lawful excuse. As the information is framed, it would have been proved by showing that the prisoner had stayed away because he had broken his leg."

The charge, moreover, should have been made upon oath: Paley, 3rd Ed., pages 32, 44; Act of the Legislative Council, II. of 1839, within which this case is brought by Act III. of 1841, and Rule, Ord., and Reg. I. of 1814, Articles 2 & 4. Without an information upon oath the Magistrate is wholly without jurisdiction. He (Mr. *Westropp*) then said that these authorities proved that it was utterly hopeless for Mr. Corfield to attempt to shelter himself behind a conviction so radically defective both in form and substance. The very passage cited by the *Advocate General* from the judgment of *Burrough*, J., in *Brittain* v. *Kinnaird* admitted that the conviction, in order to be conclusive, must be free from defects on the face of it. And *Chaney* v. *Payne*, also cited for the defendant, showed that an action of trespass for false imprisonment may be successfully maintained where the conviction is informal, or invalid on its face. What, then, were the facts of the case, stripped of all technicalities? Mr. Meason, being deeply indebted to his tailor, resents being asked for payment, and offers violence. The tailor remonstrates, and threatens to quit the service. Mr. Meason says, "Very well, go." Mr. Meason was probably but too happy to rid himself of a dunning creditor; but the tailor brings his action in the Small Cause Court for his wages. The hearing of that suit being imminent, Mr. Meason writes to Major Baynes, and causes him to arrest the tailor. Now the evidence of Major Baynes, it must in fairness be admitted, exonerates Mr. Corfield from all complicity in that arrest, however illegal and improper. But Mr. Meason also writes to Mr. Corfield, who afterwards caused the dirzi to be summoned before him. For what occurred on the trial in the Police Office only can Mr. Corfield be held responsible. Even assuming his recollection of the case to be perfect, and the story of his own witnesses to be true, there is amply sufficient to condemn him. The charge is said to have been read over and interpreted to the plaintiff, and the mystical three *et ceteras* fully expounded. He was then asked what he had got to

(*p*) 9 Q. B. p. 91, and see *Ex parte Geswood*, 17 Jur. 1163.

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wages due to me." The butler of Mr. Meason, the nameless informer in the record of the conviction, no doubt fully primed by his master, denied that any wages were due; but he was not put upon oath, and it was, to say the least, taking a very great liberty with truth, to describe that butler as a witness—a description introduced by way of amendment, and most certainly not by the advice of the *Advocate General*. Mr. Corfield thinks proper to enter the statement of Vithobá as an admission of guilt in his book, and forthwith sentences him to three weeks' imprisonment with hard labour. Now Vithobá's statement was in truth a plea of not guilty, and not a plea of guilty; and no opportunity was afforded to him of establishing his defence, the truth of which was afterwards proved in the Small Cause Court. The *Advocate General*, indeed, gravely asserts that the non-payment of wages being the usual defence, is uniformly and properly disregarded at the Police Office. He (Mr. *Westropp*) would be greatly astonished to hear the latter branch of that proposition affirmed by this Court. Were that good law it would decide that, even though the master should break his part of the contract, the servant would still remain bound to perform his part,—truly one-sided justice. The preamble of the Regulation of 1814 shows that such a defence is clearly within the policy of that enactment. But look at the case as proved by the plaintiff's witnesses, not one of whom wavered in his testimony, even when subjected to the rigorous and searching cross-examination of the able counsel for Mr. Corfield. They have clearly established the preparation of the petition, which states that the prosecution was instituted by Mr. Meason because the plaintiff had sued him for his wages in the Small Cause Court. What was more natural than that Vithobá should cause that statement of his defence to be prepared in the interval between the service of the summons upon him and his defence on the following Monday in the Police Office? The person who suggested and paid for the petition; the person who prepared it; the friends who saw Vithobá bring it to the door of the Police Office; and those four who saw him eventually present it have clearly and fully proved those facts. Who are most likely to have a vivid and abiding impression of the presentation of a petition? Not the judge and the officials of a court where many such papers are weekly presented or offered in evidence. Could your lordships—could the counsel or solicitors—could the interpreters venture to swear to the papers put in evidence in any suit a twelve-month ago in this court, unless there was some note or very particular reason for recollecting them? Routine blunts the powers of observation. Is not the man whose case was on trial, and are not the friends who accompanied him, and whose visit to the Police Office was probably an isolated one, much more likely to recollect truly and exactly the occurrences on that day? Not one of the witnesses on behalf of Mr. Corfield ventured to swear positively that the petition was not presented to him. He (Mr. *Westropp*) must except the police havildár, but would not trouble the Court with any comments upon his evidence, which was not in the slightest degree trustworthy. He (Mr. *W.*) would have paid as little regard to the evidence of the platoon of policemen whom his learned friend, the *Advocate General*, had paraded in the box, but upon whom the counsel for the plaintiff did not bestow a question. Neither José Machado nor Ráojí Succárám, the Interpreter, venture to swear positively that the petition was not presented to Mr. Corfield, but only that they did not recollect its having been presented.

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Their obvious bias was ludicrously manifested. Machado would fain induce the Court to believe that Viṭhobá the tailor resembled a butler, although admitting that he was a Hindú, and dressed as such, and that he, Machado, had never seen a Hindú in the capacity of butler. Ráojí, the Interpreter, did not confirm the resemblance to the butler, nor did he see any resemblance in the plaintiff to a cook or a hamál, nor to anybody in particular except "a domestic servant." These two worthies were thus anxious to bring the unlucky tailor within the words of Rule, Ordinance, and Regulation I. of 1814, in appearance at least. What trust can the Court repose in the testimony of these witnesses, who daily tremble in the presence of Mr. Corfield, whose very means of existence depend upon his supreme will and pleasure, and whose chief and guiding rule of conduct is a lively sense of his future favours? Mr. Corfield himself did not venture to affirm positively upon oath that the petition was not presented to him. He did, indeed, say that he believed the story of its presentation to be a pure fabrication. But there is a circumstance in this case which proves beyond question how fallacious is the memory of that gentleman. In the entry of the conviction in the Police Office book, after the words "To be imprisoned three weeks with hard labour in the jail," occur, plainly in a differently-coloured ink, the words "and the prisoner is informed he can, if anything is due to him, bring his action in the Small Cause Court," another addition for which the learned *Advocate General* was not in anywise responsible. Now Mr. Corfield has sworn that he did not exactly know when they were written, but to the best of his recollection the latter words were written at the same time upon which the former words were written, namely, the day on which he tried and sentenced the plaintiff. But Ráojí, the Interpreter, admitted having seen the book four or five days after the trial, and that the latter words were not then in it; and of this he spoke with certainty, and is completely borne out by the aspect of the book. Ráojí also said that he knew not when that entry was made. He (Mr. *Westropp*) would not speculate much upon what was the reason of the subsequent introduction of those latter words by Mr. Corfield. He may have then had a lingering recollection of the statement in the petition as to Mr. Méason's motives for the prosecution of the dirzi. It may have occurred to him that the case had been carelessly disposed of, and that some precautionary measures were necessary in order to make things look a little more square. Strange it was that Mr. Corfield should have now forgotten the making of this manifest addition for some particular purpose. His lapse of memory on such a point at all events proves to demonstration the utter worthlessness of all his recollections in the case. What trust could be placed in them after such an example of obliviousness as this?

It is clear that a dirzi or tailor does not fall within the description of servants contemplated by the Regulation of 1814. Household servants are those named in the preamble, and the expression "any servant" used in Article 4 must mean any servant of that description: *Kitchen* v. *Shaw* (*q*). A tailor is an artizan, not in any sense a servant. Is any person who contracts to perform work during a certain number of hours in the day to be considered a servant? Is a visiting governess or is a tutor a servant? There has been, it is said, an instance of an eminent

(*q*) 6 Ad. & E. 729.

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sculptor being employed at a yearly salary by a noble lord; could the sculptor be denominated or punished as a servant? A fair test as to the existence of the relation of master and servant here is—whether or not the plaintiff was bound to give up his whole time to Mr. Meason. It is evident that such was not the case. The plaintiff, after leaving Mr. Meason's house every evening, might have worked for any person who pleased to employ him.

The errors of Mr. Corfield in this case are inexcusable, and are therefore not cured by Act XVIII. of 1850, which only protects excusable errors: *Lang* v. *Gubbins*, reported in the note to the case *In re Foy*, in 1 Taylor and Bell's Reports (*r*). The same doctrine prevailed in *Calder* v. *Halket* (*s*). If ever there were a case of culpable negligence, this is one. The non-attendance of Mr. Meason as a witness, and the petition of Vithobá, ought to have rendered Mr. Corfield doubly vigilant. Instead of being so, he records as a confession that which is no confession; he accepts, as a contradiction of Vithobá's statements that wages were due to him, the unsworn testimony of Mr. Meason's butler; he does not ask whether Vithobá had any witnesses; he never asks how long it is since Vithobá had left his employment. He finally, without having any jurisdiction over him as a tailor, convicts him of an act for which he had every reasonable justification, an act constituting no offence at law, and sentences him to three weeks' imprisonment with hard labour. Mr. Corfield having thus by his careless disregard of law suffered himself to become minister of the vengeance and dishonesty of Mr. Meason, cannot be permitted to say that he acted *bonâ fide*, and ought now to be compelled to compensate the plaintiff for the injustice and indignity he has met with at his hands.

Cur. adv. vult.

June 25.

YARDLEY, C. J.—This is an action of trespass for false imprisonment brought by Vithobá Malhárí, a Hindú tailor, against Mr. A. K. Corfield, Senior Magistrate of Police for the town and island of Bombay. The trespass complained of, is an imprisonment for three weeks with hard labour, to which the plaintiff was sentenced by the defendant under Rule, Ordinance, and Regulation I. of 1814 (*t*). It is necessary that I should make particular allusion (1) to the title, (2) to the preamble, and (3) to the body of that enactment. That enactment is thus intituled:—

Rule, Ordinance, and Regulation for vesting any two of Her Majesty's Justices of the Peace with power to decide in all Disputes arising between Masters and Mistresses and any of their Household Servants, Hamáls or Palanquin Bearers, and for empowering either of the Magistrates of Police to decide summarily Acts of Miscarriage and Ill-behaviour, requiring moderate though immediate Correction."

The preamble is as follows:—

"Whereas it has been found expedient to place the various descriptions of household servants, hamáls or palanquin-bearers, in the employ of the European and native inhabitants of this island, under certain regulations, whereby they may be rendered amenable for any acts of misdemeanour or

(*r*) P. 228. (*s*) 2 Moore's Ind. Appeals 293.
(*t*) Since repealed by Act XIII. of 1856.

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misconduct towards their employers, and at the same time be secured from any loss of wages or ill-treatment on the part of their employers."

The body of the Act is divided into two titles. Title I. contains Regulations with respect to servants, &c. Article 1 of that title empowers Justices of the Peace to entertain complaints respecting wages, and to award payment of any sum in respect thereof not exceeding one month's wages. Article 2 is as follows:—

"That it shall and may be lawful to and for any two Justices, upon application made upon oath by or on behalf of any master, mistress, or employer, against any servant whatever, touching any misdemeanour or ill-behaviour in such his or her service or employment, or in absenting themselves from their service on a false pretence, to hear, examine, and determine the same, and, on due proof thereof, to punish the offender by commitment to the gaol of the said town and island of Bombay, there to remain and be kept to hard labour, for a reasonable time not exceeding one calendar month, or otherwise by abating some part of his or her wages, and by discharging such servant from his or their service and employment."

It is to be observed that these two Articles seem to apply to all the descriptions of servants mentioned in the preamble, but that is not the case with the 3rd and 4th Articles. The 3rd Article relates to the misconduct of masters and mistresses; it prohibits masters, &c., from discharging servants before the end of their term, and subjects such masters, &c., to a fine of Rs. 20 for disobedience to this Article. The 4th Article relates to the misconduct of servants; it is as follows:—

"If any servant, hired by any master or mistress, depart from them before the end of his or her term, unless it be for some reasonable and just cause, to be shown to two of the Justices for the town and island of Bombay; or if any servant, at the end of his or her term, depart from his master or mistress without seven days' warning; every servant so departing shall, on complaint made thereof by the master or mistress to two of the Justices of the town and island of Bombay, and on due proof thereof, be punished, at the discretion of the said two Justices, by a fine not exceeding one month's wages, or by commitment to the gaol of the said town and island of Bombay, there to be kept at hard labour for a reasonable time not exceeding one month, or otherwise by abating some part of his or her wages."

It is to be recollected that all proceedings taken by masters under Article 2 are thereby required to be "upon application made upon oath." The words "on due proof" are to be found in the 4th Article, and must, I think, be taken to mean such proof as is contemplated by Article 2, namely, proof upon oath; and even if there had been no previous language in the enactment requiring that the Justice should take information upon oath, those words "on due proof" would, I am much inclined to think, be sufficient to require him to take information upon oath in complaints under Article 4. I need not inform the defendant or his advisers that nothing but testimony upon oath is due proof. The second title of the enactment applies to hamáls and palanquin-bearers. Upon a careful review of the whole of this Rule, Ordinance, and Regulation, I am clearly of opinion that it was not intended that it should apply to any other servants than household servants, hamáls and palanquin-bearers.

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It appears in evidence that the plaintiff was taken before Mr. Corfield, and was charged with misbehaviour as a domestic servant in leaving his master's service without warning. Mr. Corfield was aware that the plaintiff was a dirzi or tailor; and the first question arising in this case is, whether the tailor is a servant within the description of "household servant," or a servant at all. Now I am clearly of opinion that, even though hired by the week or the month, he is not a servant any more than a carpenter taken into a house to work at a salary for a given time, or than a seamstress, paid by the month or by the week, as in England. We are clearly of opinion that a tailor is not a household servant, (and I am of opinion myself that he is not a servant at all,) and, therefore, that the case was not one within the jurisdiction of the Magistrate. The very first thing required is that the person charged comes within the description of persons contemplated by the Act, namely "household servants, bamáls or palanquin-bearers." Upon the general view of the Statute I think that there should be an information upon oath, and that if the Justice proceed to hear the case without a complaint upon oath, he has no jurisdiction, and, therefore, I am of opinion that in the present case the defendant acted without jurisdiction. But it has been argued that this Court has no power to enquire into these facts, inasmuch as it is said that the conviction is conclusive evidence of the facts which it finds, and that those facts show a jurisdiction in Mr. Corfield to entertain and decide upon the case; and that accordingly the conviction constitutes a complete bar to an action of trespass against the Magistrate. In support of this view a great number of authorities were cited, the principal of which is the case of *Brittain* v. *Kinnaird* (*u*), generally known as "the bumboat case;" *Queen* v. *Bolton* (*v*), and other cases; but there is a numerous class of cases showing that a magistrate cannot give himself jurisdiction by finding that to be a fact which is not a fact; as in that very case of *Queen* v. *Bolton*, Lord *Denman* says, "The magistrates cannot, as is often said, give themselves jurisdiction merely by their own affirmation of it." But the short answer to this objection as to the incontrovertibility of the conviction is, that in fact there is nothing here that can be properly called a conviction,—that which has been so called being merely a loose memorandum of what passed at the Police Office. But it has been said that inasmuch as it has been the practice in Bombay not to draw up a formal conviction at all, that memorandum is conclusive. Now I am of opinion that no such weight or solemnity is to be attached to it. I will refer to it in order to show what degree of weight is to be attributed to it. It is as follows :—"1854, July 15, No. 120. *Mr. Meason* v. *Vithobá Malhárí.* For misbehaviour as a domestic servant." Afterwards "in leaving his master's service without warning" were added, not from any improper motive, but with the advice of counsel. These words were added eight or nine days ago, and were substituted for three *et ceteras*, which originally occupied their place. Then come the words "Witness, butler of Mr. M." On the opposite page is written, "18th July. Prisoner admits the charge, and states that he has a claim for wages. To be imprisoned three weeks with hard labour in the jail; and the prisoner is informed, if anything is due to him, he can bring his action in the Small Cause Court." It is observable that it is not stated in this memorandum

(*u*) 1 Brod. & Bing. 432. (*v*) 1 Q. B. 66.

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that there was any information upon oath, nor could such a statement with propriety have been introduced into any formally drawn-up conviction founded upon this memorandum. I am sure that the defendant's counsel will not contend that any such averment could properly have been so introduced.

The Advocate General.—Of course not.

Yardley, C. J.—I am perfectly certain that the learned counsel would not have advised any such proceeding; therefore, even supposing that a formally drawn-up conviction had been put in evidence in this case, the radical defect would, in point of fact, still remain, that there was no information upon oath. This memorandum is inaccurate in one respect: it contains the words, in Mr. Corfield's handwriting, "Witness, butler of Mr. M." Now Mr. Corfield must perfectly well know that no person can be truly described as a witness who does not give his evidence upon oath. Every casual bystander might just as well be denominated a witness as in this case the butler of Mr. Meason. I should have been very much better pleased, therefore, if he had omitted those words. Really this so called "conviction" is no conviction: it is a loose and inadequate memorandum; and, therefore, cannot be considered at all as falling within the cases cited with reference to the incontrovertibility of convictions, qualified as the doctrine on that subject is, in the manner already stated, by Lord *Denman*. This is, then, the first ground on which we hold that Mr. Corfield had no jurisdiction.

If the plaintiff had been a servant within the Regulation of 1814, the Magistrate could not have proceeded without information upon oath. The 1st Article over-rides the whole of the Regulation, and requires that the application should be made upon oath. It is not to be expected that the Legislature is to go on repeating it in every section. Moreover, our attention has been called by the counsel for the plaintiff to an Act of the Legislative Council of India, No. II. of 1839, which requires that in all cases in which offenders may be punishable by fine, according to the provisions of any Act heretofore passed or which hereafter shall be passed by the Legislative Council, the magistrate is required to receive proof of the commission of the offence upon oath; and that Act becomes applicable to the present case by reason of Act III. of 1841, which empowers one magistrate to act in cases falling within Rule, Ordinance, and Regulation I. of 1814, which authorises the infliction of a fine upon a servant guilty of the offences contemplated by Articles 2 and 4 of that Regulation. Therefore that alone would have rendered an information upon oath necessary.

I entirely acquit Mr. Corfield of having anything to do with the first arrest; that is to say, there is no evidence of his being concerned in it. If it were illegal, he is not responsible. Therefore, it would be quite irrelevant if I were to expatiate upon the conduct of Mr. Meason, or upon anything which occurred until the plaintiff was brought before Mr. Corfield. But from that time I hold, and do most distinctly hold, that he had no jurisdiction to proceed in this case without information upon oath, and in so proceeding it is the same thing as if Mr. Corfield had met the plaintiff in the street, and had asked him if he had left his master without giving warning, and the plaintiff answering that it was true he had left

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because wages were due to him, and Mr. Corfield were then and there forthwith to commit him to gaol. Now a defence is set up that, inasmuch as the plaintiff had admitted his guilt, it was unnecessary to call witnesses, but it is a perversion of language to assert that what the plaintiff did say amounted to an admission of guilt; and it was well illustrated by my learned brother, in the course of the argument, when he observed that when a man accused of arson were to say—"It is true I burnt the house but I did so by accident," that might as well be called confession of guilt. The plaintiff did either of two things, upon the charge being read over to him: he either presented the petition, or he said much the same thing as what was in the petition, namely, that he left his employment because wages were due to him. To us it seems, therefore, immaterial to consider whether or not the petition was presented. On the one side there is a strong body of positive evidence in favour of the presentation of the petition; on the other side there is a somewhat weak body of negative evidence against it. The Preamble of the Act declares it expedient that servants should be rendered amenable for any acts of misdemeanour towards their employers; but the Preamble also declares it expedient that they, at the same time, should be secured from *any loss of wages* or ill-treatment on the part of their employers. This Regulation is, therefore, not one-sided; it is conceived in a spirit of perfect equity. On the one hand it compels servants to perform their duties; but on the other hand it compels dishonest or disreputable masters to pay their proper wages to their servants and not to ill-treat them. How, then, can Mr. Corfield or his professional advisers say that there was any confession at all in this case, when the plaintiff alleged as his reason for departing from his master's service the non-payment of wages? There was no further investigation in this case after the plaintiff made that statement, and Mr. Corfield entered it in his book as an admission of guilt; therefore he did not hear the case at all. I was amazed when the counsel for Mr. Corfield merely asked him, when in the witness-box, whether the usual mode of proceeding in the Police Office was adopted in this case. All that I have got to say is, that if such be the usual mode, the sooner the system is changed the more it will be for the safety of the public and of the Magistrate.

Now comes what is the most debateable point in the case. Is the Magistrate protected by Act XVIII. of 1850, entitled "An Act for the Protection of Judicial Officers"? It is as follows:—

"No Judge, Magistrate, or Justice of the Peace, Collector, or other person acting judicially, shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction; provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially, shall be liable to be sued in any Civil Court for the execution of any warrant or order which he would be bound to execute if within the jurisdiction of the person issuing the same."

At first sight this Act would seem to include almost all mistakes that a magistrate could make. The question whether or not Mr. Corfield is protected by it turns altogether upon the expression, "provided that he

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at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of." If there had been an information duly sworn before Mr. Corfield, and if he had entered upon the case circumspectly, diligently, and carefully, and had given the plaintiff the opportunity of calling any witnesses whom he wished to call, and if, after having done all these things, he had been of opinion that the plaintiff should be convicted of the charge, I have no doubt that Mr. Corfield would have been protected,—that is to say, if his error had been one in which a reasonable and a careful man might have fallen. And that construction seems quite in accordance with the case of *Laing* v. *Gubbins* before Sir Lawrence *Peel*, C.J., which has not been reported at length, but a summary of which has been given in a note to the case of *In re Foy* in 1 Taylor and Bell's Reports. Sir Lawrence *Peel* is reported to have held that the words "in good faith" were equivalent to *bonâ fide*, and that this Act in fact protected excusable errors only, and should not be extended to inexcusable errors. No higher authority,—I say it without affectation,—could be cited upon the construction of an Act of the Indian Legislature. If this had been tried by a jury I should have left it to the jury to say, whether the Magistrate had acted reasonably, circumspectly, and carefully; and I should have added, that a man could not be said to have so acted unless he tried to avoid error. Did Mr. Corfield take this precaution? Without wishing to use any but the most measured language, I am clearly of opinion that he acted precipitately; consequently he cannot be said to have acted reasonably, carefully, and circumspectly, and therefore he is not entitled to the protection of this Act.

The remaining question is the amount of damages for the wrong and the indignity inflicted upon the plaintiff. He is entitled to reasonable and temperate damages, not only for the illegal imprisonment and hard labour which he has undergone, but also for the indignity which he has suffered. We have assessed the damages at the sum of Rs. 501.

JACKSON, J.—After the elaborate judgment of the Chief Justice I do not think it necessary to enter into this case at any great length. What are the admitted facts? The plaintiff was brought before Mr. Corfield on a charge of misbehaviour as a domestic servant,—for leaving his master's employment without warning. He was called upon to plead, and his defence was that wages were due to him, and remained unpaid. This appears to us to be a good defence; but it was not so considered by the Magistrate, who, without making any other enquiry into the defence, entered it as a plea of guilty. It was also admitted that no information was taken upon oath, and that no witness was examined. There are other facts in the case which are not admitted. The first of these is, that the charge was not read out to him as it now stands in the book, as there were three *et ceteras* in the place now occupied by the words "for leaving his employment without warning." It is also contended on behalf of the plaintiff that a petition was presented by him to Mr. Corfield, in which he clearly set up his defence, and this statement is supported by affirmative testimony which, in our opinion, is of more value than the mere negative testimony of others who say they do not recollect the presentation of this petition. The latter facts, however, are not very material, as the admitted facts of the case are sufficient.

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What is the result to be deduced from these facts, and what are the merits of this case? First, the charge of leaving his master's employment without warning is not a charge necessarily involving any criminal offence, and is perfectly consistent with his complete innocence of any crime. In Seth Turner's Case (*w*) it is clearly laid down that a mere charge against a servant of absenting himself from his employment is not sustainable, unless it allege that he did so without lawful excuse. Mr. Justice *Williams* says, "I always thought that the law was properly laid down by Lord *Mansfield* in *Rex* v. *Corden*, that if the fact as charged may be consistent with the innocence of the prisoner, no offence is charged;" and this is the view taken by the Legislature in framing this Regulation I. of 1814, under which Mr. Corfield has proceeded; for the offence defined by that Regulation is not that of a servant absenting himself without leave, but of a servant absenting himself without "reasonable and just cause." The charge as now entered in the book is not that of an offence punishable at law; and there was, therefore, a want of jurisdiction in the Magistrate proceeding on such a charge. He was also without jurisdiction, because he proceeded, as is admitted, without an information upon oath. Mr. Justice *Williams* shows how material it is that there should be such an information. He says: "It is argued that the information is merely a notice given to show what is to be proved; but that is not so; it is the foundation of the conviction, inasmuch as it is what gives the Magistrate jurisdiction, and that is the reason why it is examined so strictly." So then we find in fact that there was not only no charge of a crime, but also no information upon which the jurisdiction of the Magistrate could be founded.

The Magistrate then called upon the plaintiff to plead, which he did; and the questions arising on that plea are, What was the effect of it? and Was the Magistrate justified in entering it as a plea of guilty? If the plea which he did give were true, it seems to me a perfect answer to the prosecution. [His Lordship here read the 4th Article of Regulation I. of 1814.] That Article contains the words "unless it be for some just and reasonable cause." Was it not a sufficient answer for the plaintiff to make to the charge of leaving his employment without warning, that he had not been paid his wages due to him? A servant is not bound to serve unless he is paid. To hold otherwise would be to reduce servants to the condition of slaves, and the Regulation is careful in this respect to protect servants, by inserting the words "unless it be for some just and reasonable cause." The defence was perfect, and it was a most extraordinary step on the part of the Magistrate to convert it into a plea of guilty.

It appears, then, that a great wrong has been perpetrated; and, if so, there must be an appropriate remedy. Counsel for the defendant says that an action of trespass is not that remedy. I shall refer to that point hereafter.

On the question, whether or not the plaintiff was a person falling within the description of persons contemplated by Regulation I. of 1814, it was relied upon in the argument on behalf of the defendant that the words used in Article 2 were "any servant whatever;" and that in point of fact the Regulation is applicable to all servants. This is not so: for

(*w*) 9 Q. B. 91.

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the true construction is that Article 2 applies to all the servants contemplated by the Preamble; and then the Regulation is divisible under two heads, the first consisting of the 3rd and 4th Articles, applying to household servants; and the subsequent Articles applying to the other servants mentioned in the Preamble and Article 2, namely, palanquin-bearers and hamáls. The defendant relies on the 4th Article, and the question is, therefore, whether or not the plaintiff can be considered a household servant. I observe that I have been reported as saying that a *domestic* servant was one hired for a regular period, and whose whole time was at his master's disposal; but I intended to apply and did apply that definition to a servant *simpliciter*, and not to a household or domestic servant merely. But in this case it is also necessary that a servant charged under Article 4 should be concerned in household affairs. It seems to me that this dirzi was not within that class of servants, if a servant at all; for, although he was hired for a regular period, it seems that his whole time was not given to his employer, and that he did not live in Mr. Meason's house. The mere circumstance that he sat as a tailor in the house for a certain number of hours a day, did not, I think, make him a *household* servant within the meaning of this Regulation. But then the counsel for the defendant says that the plaintiff is bound by the finding in the conviction that he is a domestic servant. It is true that he was charged as a domestic servant, but his admission with respect to that was only incidental. But in fact there is no conviction in this case; that which has been put in evidence is merely a memorandum in the Magistrate's note-book, to which it is impossible to ascribe the force and effect of a conviction, which is a regular record of the proceedings. It would be impossible to attribute to this memorandum any weight, for it is clear that it contains a serious mis-statement in describing Mr. Meason's butler as a witness, and implying that he was examined in support of the charge.

On the whole case we are clearly of opinion that the plaintiff did not fall within the scope of Regulation I. of 1814, and that Mr. Corfield proceeded without jurisdiction, not only because the plaintiff was not a domestic servant, but because no criminal offence was laid to his charge and no sworn information was taken against him; which are clearly laid down in Paley on Convictions, and other authorities, as the necessary and indispensable foundations of a conviction.

But it is said that the proper remedy is not by an action of trespass. I would refer on that point to the observations of Mr. Justice *Ashburton* in the case of *Morgan* v. *Hughes* (*x*), where he says that "where the immediate act of imprisonment proceeds from the defendant, the action must be trespass and trespass only;" and in that case, which was an action on the case against a Justice of the Peace for maliciously granting a warrant without any information, upon a supposed charge of felony, it was held that the action should have been in trespass, and that case would not lie.

According to my view, the defendant is not within the protection of Act XVIII. of 1850. I was counsel in *Laing* v. *Gubbins*, in which Chief Justice *Peel* gave an elaborate judgment, unhappily not reported; but the substance of it is correctly stated in the note quoted by my learned brother. That case decided that if the conduct of the Magistrate was not

(*x*) 2 T. R. 231.

bonâ fide within the legal meaning of that term, the Magistrate could not be protected by this Act. If all that appeared against Mr. Corfield in this case was that he had erroneously construed this Regulation I. of 1814, —if in all other respects his proceedings had been regular,—I am not prepared to say that he would not have been protected by this Act of 1850. It would be hard that a Magistrate should be held liable upon the mere ground of his misconstruing a Statute. But in this case he has proceeded on a charge which imputed no crime to the plaintiff, without any information, or the examination of a single witness upon oath, has carelessly entered a valid defence as a plea of guilty, and has inaccurately entered on his proceedings that a witness was examined. I cannot, therefore, say that he has acted with what the law regards as *bonâ fide*. Of course I do not mean to impute to the defendant that he felt any positive malice towards the plaintiff, whom he probably never saw before in his life, but what I mean to say is that where there is such irregularity, negligence, and inaccuracy, as is found to exist in this case, the law will not permit the defendant to say that he acted *bonâ fide*.

Agents for the plaintiff Messrs. *Jefferson & Rimington*, and afterwards at the trial Dr. *Dallas*.

Agents for the defendant Messrs. *William & Lawford Acland*.

NOTE.—This Report of the leading case at this side of India on Act XVIII. of 1850, has been mainly taken from a very correct report which, immediately after the trial, was published in the form of a pamphlet by the *Bombay Gazette* Press. The judgments were taken down *verbatim* in short hand, and the present Editor can vouch for their accuracy, which he has been informed on good authority has been acknowledged by the learned Judges who decided the case. The substance only of the opening address and argument of counsel for the plaintiff is here given, as also of the evidence for the plaintiff; but the address of defendant's counsel is given in full, as also the evidence for defendant, partly because the Editor was himself one of the counsel for the plaintiff, and partly because the question, whether a Magistrate or Justice of the Peace is protected by Act XVIII. of 1850, is so completely dependent upon the facts proved, and a right appreciation of them, as to remove any objection to the publication, with the same fulness as evidence is given in the Reports of State Trials, of the evidence adduced on behalf of the defendant.—ED.