M.R.O. 1—32,000—15-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 571 Press ~~Mis.~~

35 36

Dated 19—5—~~19~~ 1857

Not to be folded or roughly handled

Fort St. George, Judicial Consultation, 19*th May* 1857.

No. 35. Read the following letter from the Honorable Company's Solicitor; to the Chief Secretary to Government, dated 2nd May 1857, No. 232.

SIR,

I have the honor to forward, for the consideration of Government, a copy of a letter dated the 15th April 1857, from Thomas Travers Sherlock, Esq., an Assistant Surgeon on the Bengal Medical Establishment, to myself.

The circumstances under which Mr. Sherlock requests Government to reimburse him the expenses which he incurred in proceeding from Calcutta to Madras, for the purpose of giving evidence, pursuant to his recognizance, against Frederick Clark, for the larceny of his Watch, and returning from Madras to Calcutta; as well as certain expenses incurred at Madras are fully detailed in his letter.

I was present during the trial of Frederick Clark for the offence in question, and am of opinion that Mr. Sherlock was a material and necessary witness for the prosecution.

The question involved in Mr. Sherlock's application is a very important one, as the orders passed upon it will form a precedent for future cases of a similar nature.

Government will perceive that the necessity for Mr. Sherlock's return from Calcutta to Madras for the purpose stated, did not arise directly from the performance of any duty imposed upon him as a servant of the East India Company, but was required for the furtherance of public justice in establishing a mere private personal wrong, (viz., the stealing of his watch) and ensuring the punishment of the offender.

In some cases, Government has sanctioned the disbursement from the public Treasury of expenses incurred by their servants in coming to Madras for the puropose of giving evidence before the Supreme Court in Criminal cases, but I believe that in all these cases the necessity for the parties proceeding to Madras to give such evidence arose directly from the performance of some duty imposed upon or entrusted to them as public servants.

One case is within my own knowledge, viz., that of Assistant Surgeon Marrett, of the Madras Establishment, Zillah Surgeon of Salem, who came to Madras in July 1855, for the purpose of giving evidence on behalf of the prosecution against George Copp, a British subject, for the murder of one Govindun, on the Shevaroy Hills. In this case the necessity for Mr. Marrett's attendance at Madras to give evidence arose from the fact of his having made a post-mortem examination of the body of the deceased, in his medical capacity of Zillah Surgeon of Salem.

It was undoubtedly very unfortunate for Mr. Sherlock that he should have been put to the inconvenience and expense of the journey in question, but looking at all the circumstances of his case, it seems to me that unless Government will be prepared in future to pay the travelling expenses of all servants of the East India Company who are required to proceed from one place to another, for the purpose of giving evidence in a Court of Criminal Jurisdiction (whether the necessity for their attendance as witnesses *do* or *not* arise from the performance of any official duty) Mr. Sherlock's application must be refused.

(Signed) J. R. BOYSON,
Honorable Company's Solicitor.

From Assistant Surgeon THOMAS TRAVERS SHERLOCK, Bengal Establishment; to J. R. BOYSON, Esq., Honorable Company's Solicitor, Madras, dated 15th April 1857.

SIR,

1. I am an Assistant Surgeon on the Bengal Establishment, which appointment I obtained in England, in July 1856, and in October 1856, I was sent out to Madras in Medical charge of a detachment of the Honorable Company's Troops, by the "Windsor."

2. I arrived at Madras in the "Windsor" on the 7th of February last, and whilst waiting for an opportunity of going up to Calcutta I put up at the Prince of Wales' Hotel on the Mount Road. On the 11th of February, I was robbed of my gold watch and chain at the Hotel, by a Mr. Clark, in whose possession on the same evening, my property was found by the Police. I was consequently detained at Madras for some time, pending the investigation of the case by

the Police, and I was ultimately bound over by the Magistrate to appear at the present Sessions, to prosecute Mr. Clark for the robbery.

3. I left Madras for Calcutta by the Steamer of the 28th February last.

4. To enable me to come down to Madras to comply with the terms of my recognizance, I obtained leave, and on the 23rd of last month, I left Calcutta by the Steamer "Ava," and arrived at Madras on the 28th Ultimo. My passage to Madras has cost me 160 Rupees.

5. The Prisoner Clark was tried this day, before the Chief Justice of the Supreme Court, and was convicted of the robbery of my watch and chain.

6. I propose returning to Calcutta by the Steamer now in the roads, and my passage back to Calcutta will cost me a further sum of Rupees 120.

7. On my applying to the Chief Justice for my expenses, His Lordship stated that he had no power to order them to be paid, but that he would be happy to recommend my claim to the favourable consideration of Government.

8. Under these circumstances, I beg the favor of your soliciting the sanction of Government for the disbursement to me of the expenses to which I have been put, viz.

Passage from Calcutta	Rupees	160	0	0
Passage back to ditto	,,	120	0	0
Expenses at Madras during the investigation before the Police and subsequent to my return to Madras	,,	100	0	0
	Rupees	380	0	0

(Signed) THOMAS TRAVERS SHERLOCK.

In the Supreme Court of Judicature at Madras. Crown Side.

The Queen on the Prosecution of Thomas Travers Sherlock, against Frederick Clark. } For Larceny.

I hereby certify, that the abovenamed Thomas Travers Sherlock, Esquire, attended as a Witness for the Prosecution in the Case of the said Frederick Clark, at the 2nd Sessions of Oyer and Terminer and General Gaol Delivery, holden in and for the Town of Madras, which commenced on the 15th day of April 1857, and that he gave his evidence on the same day.

(Signed) JOHN BRUCE NORTON,
Clerk of the Crown.

Crown Office, Madras,
15th April 1857.

(True Copies.)

(Signed) J. R. BOYSON,
Honorable Company's Solicitor.

Ordered that the following letter be despatched.

No. 36. From E. MALTBY, Esq., Acting Chief Secretary to the Government of Fort St. George; to the Secretary to the Government of India, dated the 16th May 1857, No. 571.

SIR,

Application has been made to this Government by Assistant Surgeon T. T. Sherlock of the Bengal Establishment for the re-imbursement of the expenses incurred by him in coming from Calcutta to Madras, to appear before the Supreme Court as a witness in a trial for larceny.

2. Mr. Sherlock arrived at Madras in February last, in the Ship Windsor, in Medical charge of a detachment of the Honorable Company's Troops, and while waiting for an opportunity to proceed on to Calcutta, was robbed of his gold watch at the Hotel where he resided, by one Frederick Clark. The Police apprehended the Prisoner with the stolen article and after an investigation before the Magistracy, Mr. Sherlock was bound over to prosecute the Prisoner at the approaching Sessions. He accordingly came from Calcutta to Madras for the purpose, in April, and the trial ended in the conviction and punishment of the accused.

3. Mr. Sherlock has now applied for the re-imbursement of his expenses as follows:

Passage from Calcutta...	Rupees	160
Passage back to Calcutta	,,	120
Expenses while detained at Madras during the Magistrate's investigation and the trial before the Supreme Court	,,	100
		380

The claim thus includes incidental expenses as well as actual travelling charges, and if the principle of defraying them from the public Treasury had been established, Government would have seen no objection to granting the application, as the amount claimed is not unreasonable and they learn from their Law Officer that Mr. Sherlock was a necessary and material witness for the prosecution.

4. But it does not appear that witnesses have hitherto been reimbursed for the expenses incurred by them in attending to give evidence on criminal trials before the Supreme Court, except in those instances where the occasion for their doing so arose from the performance of some duty imposed upon them as public servants. To grant Mr. Sherlock's application would therefore be to establish a precedent of great importance, and the Right Honorable the Governor in Council deems it proper to bring the subject before the Supreme Government, in order that the establishment of some general rule may be considered. In the opinion of his Lordship in Council, the furtherance of criminal justice, by the detection and punishment of crime is so important, that to facilitate it, all the reasonable expenses of prosecutors and witnesses, whether in the service of Government or otherwise, should be defrayed from the public funds.

(Signed) E. MALTBY,
Acting Chief Secretary.

Exd. F. Cartledge.

Judicial Depart^t.

No. 571

To

The Secretary to the Gov^t. of India

Sir,

Application has been made to this Gov^t. by Ass^t. Surgeon T. J. Sherlock of the Bengal Establishment for the reimbursement of the expenses incurred by him in coming from Calcutta to Madras to appear before the Supreme Court as a witness in a trial for larceny.

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Mr. Sherlock was bound over ~~to attend~~ to prosecute the prisoner at the approaching Sessions. – He accordingly came from Calcutta to Madras for the purpose in April, & the trial ended in the conviction & punishment of the accused. –

3 – Mr Sherlock has now applied for the reimbursement of his expenses as follows.

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Passage from Calcutta	160
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Expenses while detained at Madras during the Magistrate's investigation & the trial before the Supreme Court. –	100
	380

~~The Govt do not object to the [illegible] of this claim & they learn~~

– The claim thus includes incidental expenses as well as actual travelling charges, & if the principle of defraying them from the public treasury had been established, Govt would have seen no objection to granting the application, as the amount claimed is not unreasonable & they learn from their Law Officer that Mr. Sherlock was a necessary & material witness for the prosecution

4. – But it does not appear that witnesses have hitherto been reimbursed for the expenses incurred by them in attending to give evidence in criminal trials before the Supreme Court except in ~~those~~ instances where the occasion for their being so came from the performance of some duty imposed upon them as public servants

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Fort St. George,
10th May, 1857

5 Spare Copies -

Jud^l. Letter to Eng^d
24 Dec^r No. 31 of 1857
Para 10 -

In Off. Orms: 19^th May
Judicial 1857 Depart^t.

N^o. 571

To
The Secy: to the Gov^t. of
India

D/16^th. May 1857

~~[illegible] 1280. Com^r. [illegible]~~

C 13 May
A 14^th

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