M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1369 Press ~~Mis.~~

149–151

Dated 23-10 1860 ~~19~~ .

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Not to be folded or roughly handled

1369

Proceedings of the Madras Government Judicial Department,
23rd October 1860.

No. 149. Read the following letter from Mr. J. T. FISCHER, to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated Madura, 9th August 1860.

It is with no vindictive feeling that I request you to lay before His Excellency the Governor in Council the following facts, illustrative of the disgraceful conduct upon the Bench of Mr. Hodgson, the Sub-Judge of Salem, conduct which has brought his administration of the Law, (I will not say of *Justice*) into disrepute, and is fast losing his Court the confidence of the community; but it is simply as a measure of justice to myself, and in defence of my rights as a British subject. The proceedings which Mr. Hodgson on the most amazingly insufficient grounds thought fit to institute against me, and prosecuted, though unsuccessfully, with all the zealous partiality which malevolence could inspire, have compromised my character and position; and as I am not willing to be made the victim of his ignorance, imbecility, and spite, I appeal against his proceedings to His Excellency the Governor, in the hope, that my action in this matter may issue in the removal of a Judge whose conduct has destroyed all confidence in the security of innocence, and placed every man's liberty and character, at the mercy of incompetency and ill-will. I feel that so long as a Judge who has displayed (and not on this occasion only) such utter ignorance of law, such complete insensibility to the dignity and high responsibility of his position, and to the requirements of justice, and such subserviency to passions that should be unknown to the bench, is allowed to retain the power for evil which he at present possesses, it is impossible that I, or in fact any of Her Majesty's subjects of Salem, can feel secure in the possession of our character, our liberty, or our position. I am the Mootadar of Salem, and as such hold a high stake in the country; and it is a matter of the highest importance to me that I and the 5,000 ryots who look up to me as their protector, should have the fullest confidence in Her Majesty's Courts of justice in Salem.

2. Some time ago, I discovered that one of my paid servants, Ramiah, Moniagar of Yeroomapolliem, had embezzled upwards of Rupees 1,200 of the collections made by him on my behalf.

3. In consequence, on the 28th April last, I made a complaint of embezzlement to the Joint Magistrate against Ramiah.

4. On or about the 15th May, the Joint Magistrate instructed me to appear before him with my witnesses to prosecute the charge; but on the 17th I replied that as the Deputy Magistrate had arrived, and taken charge of the Talook, I supposed it would be my duty to prosecute before him.

5. Accordingly, the case was sent before Mr. Boalth the Deputy Magistrate who tried it towards the end of May, and committed it to the Sub Court on the morning of the 2nd June.

6. The Sub Judge, Mr. Hodgson, was at Salem, but did not take up the case till the 7th.

7. On that day he swore all the witnesses to their depositions before Mr. Boalth, and took the prisoner's defence; all *in my absence*. Then, at a late hour of the same day—about 6 P. M., he sent for me, and read me the prisoner's defence, and after informing me that it was a case beyond his jurisdiction, and that he must commit it to the Sessions Court, dismissed me; shortly afterwards, he again sent for me, and swore me to my complaint before the Joint and Deputy Magistrates, and again informed me that he committed the case to the Sessions Court.

8. On the 8th, *in my absence*, and *after having committed the case, and so put it out of his cognizance and jurisdiction*, he sent for one of the witnesses, asked him a few questions on this case (with which he had now nothing to do), ordered the prisoner to find bail for 100 Rupees and to go at large; and stated that he would *settle*, meaning dismiss, the case (which he had already committed) on the following Monday. He then went up the Hills to consider his next step, and there met with what determined his extraordinary course.

9. On the following day, Saturday the 9th, hearing what had taken place the previous day (it was a most extraordinary part of this Judge's proceedings, that he should have kept me, the

prosecutor, in ignorance of what he was doing) I wrote a petition* strongly remonstrating against the inconsistency of his conduct, and demanding a hearing before the case was disposed of. I sent this petition to the Hills, where Mr. Hodgson was holding his Court.

**Document I.*

10. Shortly after on the same day I wrote him a private chit, requesting him to put off the case till Tuesday as I was asked to preside at a Meeting of the Planters on the Hills on Monday; and he accordingly did so.

11. The meeting was held; Mr. Hodgson was present; and a warm discussion took place upon a certain subject on which Mr. Hodgson took one side and Mr. Smith the Joint Magistrate and myself another. Considerable heat was displayed; and when the meeting separated, Mr. Smith and Mr. Hodgson parted with apparently no very good feelings towards each other.

12. On the next day, the 12th, Mr. Hodgson, had no sooner taken his seat upon the bench (in Salem) than he said I had been guilty of *compounding felony*, and hinted that he would prosecute me for it. Then, after a few desultory questions put to Ramiah, *but never recorded*, he distinctly charged me with compounding felony, and asked me to produce a certain document spoken of by Ramiah, and which in my petition to him of the 9th, I had referred to as having been found in my waste paper basket.

I went home for the document, and on my return asked permission to cross examine Ramiah (the case having been *re-opened*, however *irregularly*), and was permitted to do so. My questions were:

What were the contents of the document?
Whether what was stated by the prisoner was all?
Whether I on my part had given him any agreement?
Whether he had paid me any portion of the money?

13. The Judge interfered and interrupted me, displaying the greatest partiality; and put questions to Ramiah, to most of which I protested as being *leading and irregular*. Nevertheless they were put and answered; but *the answers not being such as Mr. Hodgson wanted*, he told the prisoner to consult his Vakeel, answer my questions, and then say any thing he pleased. Accordingly, he consulted his Vakeel, and then made a statement, which pleased him and pleased Mr. Hodgson, and it was recorded, and *recorded as elicited by me*. I protested against these irregularities; Mr. Hodgson said they were not irregularities; I said I was convinced from long experience of Courts that they were, thereupon Mr. Hodgson charged me with contempt of Court and said, I had no business to hold one opinion when the Court had expressed another! Such was the fine spirit of justice and fair play, displayed by this dealer with men's liberties and characters.

14. The document was then demanded from me, and I of course declined to give it in consequence of the animus Mr. Hodgson had shown against me; and Mr. Hodgson then charged me with compounding felony and demanded and received bail from me, to appear and take my trial before him as Justice of the Peace, on Saturday the 16th, the delay being for purpose of enabling the Sessions Judge to try and dispose of the charge of embezzlement which Mr. Hodgson then committed for the second and last time. I requested to be informed of the exact charge against me and the grounds of it; but Mr. Hodgson declined to state them, and said I should know "by and bye."

15. I naturally expected that this charge of compounding felony would go before another Justice of the Peace than Mr. Hodgson, but not so: he *prosecuted me* and he *tried* me, in utter defiance or ignorance of the first principles of English law and of common justice.

** Document. II.*

16. On the 13th I petitioned* Mr. Hodgson as Justice of the Peace to be informed.

1st. Who was my accuser?
2nd. What was the exact charge against me?
3rd. What were the specific grounds of it?

but received no answer.

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23*rd October* 1860.

17. On the same day Mr. Hodgson, in pursuit of evidence against me, wrote to the Joint Magistrate, signing himself Sub Judge.

18. On the 14th and 15th the embezzlement case was tried by the Sessions Judge; and Ramiah was convicted, and sentenced to two years' imprisonment with hard labor in irons.

19. On the morning of the 15th, in my absence, Mr. Hodgson went to the Sessions Judge and did all he could to prejudice him against me on the score of the charge of compounding felony; and the consequence was that when I went to Court the Sessions Judge re-examined me on this new point, but without affecting the case before him.

20. On the 16th I appeared as directed, to stand my trial. On taking his seat upon the bench Mr. Hodgson informed me that Justices of the Peace are not bound to answer such petitions as mine of the 13th that is, to inform the accused of the nature and grounds of the charge against him, and of the name of his accuser; nevertheless, he would draw out the charge and read it to me. The charge against me was not even framed! The Judge with his own hand drew up an incomplete charge which was to be filled up from the evidence to be taken on the very trial upon that charge! Surely never was grosser incompetency displayed!

21. He then informed me that he had authorized the Government Vakeel to prosecute me; and I thereupon took the following objection:

"That as you have originated the charge as Sub Judge, and as such have authorized the Government Vakeel to prosecute it before *yourself*, in your double capacity of Justice of the Peace, I object to your Jurisdiction. The powers of Justice of the Peace, I hold, were given to you for very different purposes. It was yourself that originated the charge against me, therefore are you my real prosecutor, and as such an interested party within the law, and cannot try the case.

22. Mr. Hodgson differed from me and overruled the objection. Then he proposed to refer the question to higher authority; to which I replied that as he had overruled the objection, he ought to proceed with the case. He required me to withdraw the objection to enable him to proceed; I said it was unnecessary and thereupon the case proceeded, Mr. Hodgson suggesting to the Government Vakeel the questions he was to put.

23. The witnesses were examined; and throughout, the Government Vakeel was a mere cypher, seldom asking a question. The examination in chief was conducted by Mr. Hodgson. I need scarcely say that the examination was as partial and one-sided as possible. Mr. Hodgson appeared throughout a prosecutor, and endeavouring to make or to gain a case rather than a Judge trying one, he absolutely *frightened* out of one witness the confession that he did not know what a document was; threatened to commit another for contempt of Court for giving an answer to a question, perfectly reasonable and sensible and correct, but not the Judge wanted, and by playing upon the double meaning of the word "stay," endeavoured to extract an opinion from this same witness that the proceedings against Ramiah was *stopped* by me.

24. The eight witnesses were examined that day, and the case closed; and I was called upon for my defence, and time given me till Tuesday the 19th to construct it.

25. On the 19th my defence was prepared, and I went to Court. My defence was to have been taken at 4 P.M., but hearing that Mr. Hodgson had summoned the Joint Magistrate to give evidence, I went at 12 and found that what I had heard was true. *In my absence, without my knowledge and evidently intending that I the accused should have no opportunity of cross examination*, my Judge had re-opened the case for the prosecution after it had been closed for the examination of an additional witness. I submit that this of itself is sufficient to bring upon Mr. Hodgson the grave displeasure of the higher authorities.

26. Of course, I could not put in my defence that day, and it was postponed till the following, but on that day the Judge was sick, and unable to attend Court.

27. On the 21st my defence was read to the Court; instead of giving that fair hearing, which every one has a right to expect, Mr. Hodgson constantly interrupted the reader to argue points, and contested almost the whole sentence by sentence.

* Doc IV, V, VI, VII, VIII, IX, X, XI, XII.
† Doc XIII.
‡ Doc XIV.

28. I submit for His Excellency's perusal translations* from the Court Record of the witnesses' depositions, a copy† of protest with which I commenced my defence, and a copy‡ of the defence.

* Doc XV.

29. After a delay of nine days, on the 30th June, Mr. Hodgson delivered his decision,* dismissing the case on the ground that I "did not refuse to prosecute when called upon to do so."

His Excellency cannot fail to perceive that the assigned ground of this decision considerably aggravates the case against him. He himself brought this charge against me, and he had *then* in his capacity of Sub Judge (the capacity in which he prosecuted me) abundant evidence to show that I "did not refuse to prosecute when called upon to do so," no new evidence on this point was elicited on *my trial*. I beg to point to this as a convincing proof of the remarkable animus against me by which Mr. Hodgson was actuated. His charge against me was grounded or supposed to be grounded upon certain evidence that came before him as Sub Judge; his dismissal of the charge is grounded upon a fact that was most apparent in the self same evidence. I submit that nothing could more strikingly show his utter unfitness for the high and responsible position of the Bench.

30. Compounding felony is so grave a crime, and one that would so seriously compromise a man's position and character in society, that it behoved Mr. Hodgson to be especially careful before daring to bring such a charge against me. Yet the very evidence on which he charged me is the very evidence on which he acquits me! His charge is in part grounded upon my own depositions before the Sub Court, as if had I committed a crime, I would myself parade it before the Courts of Justice, the very openness and ingenuousness with which, in my transactions with the different Courts, I spoke of the events out of which Mr. Hodgson's malice has endeavoured to construct a crime, should have made him pause and reflect, and should have shown him, were he not blinded with prejudice, that nothing could be further from my thoughts than the perversion of justice. But no! he took my deposition, and out of one-half he constructed a charge, and out of the other he constructed an acquittal.

31. And having, as Sub Judge, constructed a charge, he proceeded as Sub Judge to take steps for pressing it. And here he committed a series of irregularities to which I beg to call the earnest attention of His Excellency in Council. The great irregularity, from which most of the others sprung, was that dreadful perversion of justice and right feeling, by which he proceeded to try the charge himself. His plain duty was to make the charge before another Justice of the Peace; but the only other in Salem, besides the Sessions Judge, who could not thus take up the charge, was the Joint Magistrate towards whom Mr. Hodgson had no good feeling. He therefore decided and apparently with much pleasure, upon the extraordinary step of trying it himself and prosecuting at the same time.

32. He then proceeded as *Sub Judge*, though how he could be Sub Judge in this case I know not, to summon the witness, to authorize the Government Vakeel to prosecute, and to procure information.

33. He carried his character of prosecutor with him to the bench, and maintained it throughout. The charge, in his own handwriting, drafted at the commencement of the trial, and filled up as the trial proceeded, was not even signed by the Government Vakeel.

34. The crime of compounding felony is one beyond the jurisdiction of a mere Justice of the Peace; and it was Mr. Hodgson's duty as such, merely to take the depositions, bail the accused, bind over the witnesses to appear and himself to prosecute, and finally commit the accused for a trial by a Jury of his own peers. But he was afraid of any body but himself having a finger in this elegant pie; and so resolved to be not only a Justice of the Peace, but a Supreme Court Judge also, and to dispense with the inconvenient adjunct of a Jury.

35. I trust, I have sufficiently shown how utterly destitute Mr. Hodgson has proved himself of those qualities which are not simply ornaments, but absolute essentials of the Bench, how completely he allows his passions to warp his judgment, how great is his ignorance of the very radiments of his profession. I trust, I have said sufficient to justify my assertion that the Sub

Court of Salem will fast lose the confidence of the community, if Mr. Hodgson is not removed therefrom, and that under his regime, myself and the people of Salem can have no security for our characters and positions in society. And I trust that His Excellency will be pleased to remedy this great evil, and take measures to raise the Sub Court to its proper position in the eyes of the people.

P.S.—This letter was ready a week after the sentence was passed, but it has been detained for a certified copy of the sentence which it was necessary should accompany it, and which I have only been able to obtain this day.

Referred for report to the Foujdari Adalat.

(Signed) T. PYCROFT,
Chief Secretary.

Fort Saint George,
21st August 1860.

No. 150. *Proceedings of the Foujdarry Adawlat, 6th October* 1860, *No.* 17.

Read letter dated the 9th August, addressed by Mr. J. T. Fischer of Salem, to the Madras Government, and referred on the 21st idem to this Court for report, wherein that gentleman complains that Mr. W. Hodgson has groundlessly and maliciously charged him with the offence of compounding felony, and proceeded against him in the double capacity of accuser and Judge. Mr. Fischer also draws the inference, from the manner in which Mr. Hodgson investigated the case of embezzlement out of which the charge of compouuding arose, that he is not qualified for the Judicial office he holds, and therefore prays the Government to remove him.

Read also return of Mr. Hodgson to the Precept of the Foujdarry Adawlat, dated the 30th August, forwarding a copy of Mr. Fischer's letter, and requiring Mr. Hodgson to explain his conduct in reference to the matters forming the subject of Mr. Fischer's complaint against him.

1. The Judges observe that Mr. Fischer's great charge against Mr. Hodgson is that his prosecution of him was to Mr. Hodgson's own knowledge an unfounded one, and therefore an act of malevolence. The circumstances that presented themselves to Mr. Hodgson, on which he took action, appear to be these: On the trial of Ramiah for breach of trust towards Mr. Fischer, in embezzling certain sums of money, it transpired that the charge was preferred on the 28th April, and the warrant issued on the 30th; that on the 2nd May Mr. Fischer received a bond from the accused, he being then in custody; that Mr. Fischer after taking the bond sent the prisoner on with a note to the Joint Magistrate, Mr. Smith; and that no proceedings towards carrying on the prosecution were held up to the 17th May. Mr. Hodgson inferred that in consideration for the bond, the prosecution had been suspended for the interval (such being also the statement of Ramiah); and this it appeared to him constituted the offence of compounding felony. Upon this he instituted proceedings, as Justice of the Peace, against Mr. Fischer. Afterwards, doubting whether the circumstances justified such a charge, he asked the Foujdarry Adawlat to solve his difficulty; and on receiving their reply, to the effect that the charge would not hold "as Mr. Fischer did not decline to prosecute when the case came on for trial," Mr. Hodgson immediately on this ground dismissed the case.

2. The explanation now submitted by Mr. Hodgson appears to the Judges generally satisfactory, though they are still of opinion that he acted erroneously in taking up the charge of "compounding felony" against Mr. Fischer *proprio motu*, on the grounds stated. There was, apparently, no evidence that Mr. Fischer at any time engaged to abandon the prosecution instituted against Ramiah, in consideration of any re-imbursement by the latter of the sum embezzled; and in the absence of any such proof of consent or engagement on the part of Mr. Fischer, the charge of compounding could not be sustained. Admitting that he was responsible for the delay of some days, pending the enquiry before the Joint Magistrate, such delay was wholly insufficient to complete the offence with which he was charged.

3. While, however, it appears to the Judges, as above stated, that the course taken by Mr. Hodgson, as Justice of the Peace, was not strictly justified by the facts before him; and that he would have acted with better judgment if he had abstained from instituting the charge against

Proceedings of the Madras Government, Judicial Department,
23rd October 1860.

Mr. Fischer, a perusal of the statements of the respective parties and of the evidence, has convinced the Judges that Mr. Hodgson acted in perfect good faith, and solely from a sense of duty. The charge of wilful perversion of justice, and abuse of judicial powers, which Mr. Fischer has urged in his address to Government, seems to them to be wholly destitute of any valid or tenable foundation.

4. The Judges consider that they ought not to dispose of these papers, without offering some remark upon a passage in Mr. Hodgson's explanation, paragraph 7, from which it would appear that while the charge of "Breach of Trust" was pending before the Joint Magistrate, Mr. H. G. Smith, the latter received a note from Mr. Fischer, then prosecutor in the case, which he afterwards declined to produce, although expressly called upon to do so by Mr. Hodgson; and this refusal was repeated in his formal deposition before Mr. Hodgson on the 19th June. On this the Judges would remark that if the note was of a private character, as Mr. Smith admits, it was highly improper for him to receive such a communication from the prosecutor in a case of felony then pending before him in his official capacity; and that his refusal to produce it was calculated to afford ground for unfavorable surmise as respects the nature of its contents.

5. The Judges think it worthy of note, considering the character attributed to this communication, that Mr. Fischer and the Joint Magistrate avoid describing its contents; while the fact that it was delivered to the Joint Magistrate by the Deloyet who was in charge of the prisoner Ramiah, justifies the presumption that it was connected with the official enquiry then before that officer. The examination of the Joint Magistrate on the subject of the suspension of the prosecution after reception of the said communication, the Judges consider unsatisfactory.

(True Extract.)

(Signed) C. F. CHAMIER,
Registrar.

To the Chief Secretary to Government.

No. 151. ORDER THEREON, 23rd October 1860, No. 1,369.

The Government resolve to forward a copy of the Proceedings of the Court of Foujdarree Udalut above recorded to Mr. J. T. Fischer in reference to his letter under date the 9th August last.

2. These Proceedings sufficiently explain Mr. Hodgson's conduct. It seems extraordinary that he should have conceived, that Mr. Fischer was open to the charge of having actually compounded felony, when the alleged felon, or party accused of a breach of trust, was there on trial before him, and Mr. Fischer himself conducting the prosecution. The Subordinate Judge exhibited great want of judgment, but the Foujdarree have, in the opinion of Government, rightly relieved him from the imputation of having been actuated by malicious feelings towards Mr. Fischer.

3. The remarks made by the Foujdarree on the conduct of the Joint Magistrate, Mr. Smith, appear to the Government to be such as the occasion called for.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. S. T. Augustin.

Judicial Department.

The proceedings of the Foujdaree Udalut sufficiently explain Mr. Hodgson's conduct - and relieve him, justly, I think of Mr. Fischer's charge of being actuated towards him by malice -

The want of judgment displayed by Mr. Hodgson was great - with the man before him, under trial, and Mr. Fischer carrying on the prosecution - it is difficult to imagine how he could have deemed the crime, alleged against Mr. Fischer to have been actually committed - That Mr. Fischer, was ready to compound with R. had he got his own terms, seems pretty evident - The notice taken of Mr. Smith's conduct by the Foujdaree Udalut is such as he has fairly incurred. —

(Signed) W. M.

The Jurisdiction of the J. C. to Chancery
& Plaine the Body now conduct — &
Value Juin for Ely, Steak of the
Jr. charge of being actuated towards
Juin & malice —
The Counsel for Body must Disregard
& Jud. — the Great — why, the
Counsel Juin, undoubtedly, & the Jr.
Counsel Juin — it is
very by the Jurisdiction — it is
different — to unofficial Jour Counsel
Jave demand the Crime alleged
against Jud. — to Jave been actually
committed — Jud. — Jud. —

Judicial Office

Received by the
Commissioners of
Revenue Drivers &c.
Foy dance Roads,
dated October 1850,
No 17.

Pro. 28th Oct.

Jud. 6th 1860 Depart.

No.

Proceedings of the Foujdarry Adawlat.

Dated 6th } October 1860.
Recd 8th }

Pros 7.

No. 1656.

Reporting on the letter addressed by Mr. G. F. Fischer of Salem to the Government, and referred to this Court, wherein that Gentleman complains that Mr. Hodgson has groundlessly and maliciously charged him with the offence of Compounding Felony, and proceeded against him in the double capacity of accuser and Judge.

Feb. 1829.

Ready to be laid before the Nizamut Adawlut for their consideration.

The Petitioner labours under the Suspicion of having wilfully and falsely accused Mr. Fischer of the crime of Compounding Felony.

The Petitioner has failed in proving the charge preferred against Mr. Fischer.

W. Dy
E. Ch

C 9 Rs
R 13 - " -
C 13 - "
R 18 "

150.

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Judicial Departt

№ 1329.

From Mr J. T. Fischer.
Dated 9th August 1860.

For Orders.

This letter & its enclosures
should be sent to the Foreign
Agent - for report -

18

Judicial Dept.

Bo. of the Madras Govt.

Read the following papers.

Herald 10/60.

From Mr J T Fischer
9 August 1860 —
Proceedings 7th & 8th
1860 —
Order thereon, 23d Octr. 1860 No 1369.

The Petitioner has forwarded a copy of the proceedings of the Court of Sessions Madura when he received Mr J T Fischer in reference to his letter under date the 9th August last —

2— These proceedings sufficiently explain Mr Hodgson's conduct — It seems extraordinary that he should have conceived, that Mr Fischer was open to the charge of having actually committed felony, whom the Magistrate, or

party accused of a
breach of trust, was
then on trial before
him, and Mr Fischer
himself conducting
the prosecution — The
Subordinate Judge
exhibited great want
of judgment, but the
Foujdaree has, in
the opinion of first, eighty
thousand times more
imputation of having
been actuated by
malicious
feelings towards Mr
Fischer —
3 — The remarks made
by the Foujdaree on the
conduct of the Dinil
Magistrate Mr Smith
whereon the first of the

such as the allegation
called for.

JP.

Mr Fischer — with
copy of Proc of 7th.
& Enclos retd.
Foujdaree Record
with Enclos retd.
} Desp. 26th

Exhibits Index — with proc of 7th noting exn.

Pro: of Oct.

Judicial 1860 Defendts

No. 1369.

Proceedings of Govt.

Dated 23rd October 1860 -

F.C. 1812.

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