

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 217	Press <u>Mis.</u>
Dated 12 2 - 12-1888	

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Not to be folded or roughly handled*MS*

Proceedings of the Madras Government, Judicial Department,

13th February 1866.

Read again letter from the Registrar of the High Court, Appellate Side, dated 30th January 1866, and recorded in Proceedings of 3rd February 1866.

Read also the following papers:—

No. 128. From Captain A. D. CLAY, Cantonment Magistrate of Cannanore, to the Chief Secretary to Government, Fort Saint George; dated Fort Saint George, 1st February 1866.

Having been favored with a copy of a letter from the Registrar of the High Court to your address, forwarding, for the consideration of Government, certain papers relative to a letter written by me to one Stewart, asking for a loan, I request I may be permitted to offer a few observations.

2. In the first place, I beg to observe, with reference to paragraph 2 of the Registrar's letter, that I never did borrow the money applied for, as I found out, in time, that Mr. Stewart contemplated joining Darasha in business, when I *at once* declined the loan; and secondly, I beg to remark that there was no occasion for me to offer any inducement to Mr. Stewart to accommodate me with the loan, as, on my first application to him on the subject, he at once unhesitatingly agreed to lend me the money, but said that he would not be prepared to give it to me before a certain day, which he named. When this day arrived, I wrote the letter alluded to by the High Court, and having just been informed that Darasha was about to abscond from Madras, where he was on bail, on a charge of forgery, with money that he had obtained on a Power of Attorney given him by Stewart, I mentioned that fact to Stewart, adding that I had taken, or was taking, measures for Darasha's arrest, and advising him to telegraph to Madras, and save himself from loss. If, in doing this, I was in error, I most deeply regret it, but I affirm that I acted in honesty of purpose, and in what I considered my strict duty, first to prevent the escape of Darasha, and secondly to save Stewart from a ruinous loss.

3. I have also the honor to bring to your notice that I myself wrote to Mr. Ballard, the Chief Magistrate of the District, requesting him, under the provisions of the Code of Criminal Procedure, to transfer the case from my jurisdiction to that of Mr. Garstin, the Joint Magistrate. This was done; Mr. Garstin tried the case, and Mr. Ballard, who came to Cannanore, himself reviewed the whole proceedings, and both he and Mr. Garstin expressed themselves satisfied with my explanation; and it is a matter of deep grief to me that I now find my integrity called in question.

CALICUT, January 30th, 1866.

MY DEAR CAPTAIN CLAY,

In reply to your note of the 25th, I send a line to say that I have not your letter on record (it was sent to the Joint Magistrate), but that it was on your writing to me, that it would be more satisfactory if the case of Darasha *versus* Stewart and others were transferred to another Court than your own, that I withdrew the case from your Court, and referred it to the Acting Joint Magistrate in or about September last.

Yours truly,
(Signed) G. A. BALLARD.

To Captain Clay.

*Proceedings of the Madras Government, Judicial Department,
13th February 1866.*

No. 129. From Captain A. D. CLAY, Cantonment Magistrate of Cannanore, to the Chief Secretary to Government, Fort Saint George; dated Madras, 5th February 1866.

In continuation of my letter of the 1st instant, and with reference to the remarks made by the Session Judge of Tellicherry, in his communication to the High Court, I have the honor to submit the following explanatory observations.

2. When I wrote the letter to Stewart, I had *first* received the intimation that Darasha had a Power of Attorney of Stewart's, and was about to abscond with the money he had obtained on it. I at once resolved to prevent this, telegraphed to Madras to arrest Darasha (who was on bail), and wrote the letter to Stewart; and *then remembering* that Stewart had named *that* day as the one on which he could let me have the money, I added the postscript, to save the trouble of writing another letter. I made no secret of this, but mentioned all the facts to several friends, among others to Brigadier Faunce, with whom I was on intimate terms.

3. I have the honor to submit that it is quite possible a man may, for a particular purpose, give a Power of Attorney to another, and yet not be associated with him in business—neither did it follow necessarily, that my information was correct; and I knew Darasha to be a man of notorious evil life, over whom, at this very time, were pending charges of forgery and embezzlement, and who was then on bail, on the first of those charges, preferred by his own uncle, on behalf of his father's widow, and with whom Darasha (said in his defence on his trial) was in business and I urge that it was most unlikely that I should connect him in business with a man who had been represented to me in the position Stewart had been.

4. Again, with reference to the date of that letter, it is quite true I said it was "written a fortnight or so before," but it by no means follows that it was not written even a month before. The question put to me by the Court was (I write this from memory) whether that letter was written before a certain day? I replied "yes, some time before." I was then asked, was it a week? I said, "yes, more—a fortnight or so before." I had no date to fall back on, and was obliged to use the general term of a fortnight or more.

5. With reference to paragraphs 12 & 13 of the letter from the Session Judge, I beg to observe that, in a lengthened examination and cross examination, apparent discrepancies may appear, and words may creep in unnoticed at the time, but which are difficult of explanation after a lapse of several months.

6. Again, in reply to the last paragraph of the Judge's letter, I beg to observe that the connection between Stewart and Darasha could not have been a subject of public notoriety, *at the time my letter was written*. Had it been, I think I, as well as Mr. Garstin, the Sub-Collector, must have known of it; but I declare I did not know it, and Mr. Garstin has also informed me that he did not know it. It is quite possible the Judge may forget the exact date of *his* becoming acquainted with the fact of the alleged partnership between Stewart and Darasha.

7. And I have also to remark that Cannanore is a shipping port, much frequented by planters and others, and that Mr. Stewart might have been in Canna-

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13th February 1866.*

more from time to time, without my knowing it; and I did not know of his frequenting Darasha's house (who was in Madras, he it remembered) until *after* my letter was written.

8. I much regret that Mr. Sullivan did not favor me with a copy of his letter to the High Court, or give me any information that he considered my explanation not satisfactory, as, at this distance of time, I find some difficulty in recalling all the particulars of the case.

No. 130. ORDER THEREON, 13th February 1866, No. 217.

The foregoing papers relate to a note written some months ago by Captain A. D. Clay, Cantonment Magistrate of Cannanore, to a person named Stewart, in which, after informing the said Stewart that he had received instructions to proceed with a criminal charge against one Darasha, and advising Stewart to take some precautions to guard himself against loss, in the event of matters going against Darasha, he proceeded, in a postscript, to advert to a loan, regarding which he (Captain Clay) had been in treaty with Stewart.

2. The note in question came under the notice of the Session Judge of Tellicherry, being attached to the record of a criminal trial which was brought before that Officer in appeal, and was forwarded by him to the Judges of the High Court, together with a letter from Captain Clay, explaining the circumstances under which he had applied to Stewart for a loan, and stating that, when he wrote the note, he was not aware that Stewart was in any way connected in business, or otherwise, with Darasha, and that, as soon as he became acquainted with the relative position of Darasha and Stewart (who it appears were partners in business), he at once broke off all communication on the subject of the proposed loan.

3. In forwarding Captain Clay's explanation to the High Court, the Session Judge pointed out that the statement made in it, to the effect that, at the time the note was written, Captain Clay was not aware that Stewart was in any way connected in business, or otherwise, with Darasha, was inconsistent with the tenor of the note itself, with the terms of Captain Clay's return in which he furnished his reply to the Session Judge's precept, and also with the terms of a deposition made by him (Captain Clay), on oath, before the Acting Joint Magistrate, all of which showed that Captain Clay, when he wrote the note in question, was aware that Stewart and Darasha were so far connected in business that the former had given the latter a general Power of Attorney which empowered him to dispose of Stewart's property, while it was clear from Captain Clay's deposition that the negotiation regarding the loan was broken off only when he found that a criminal charge had been preferred by Stewart against Darasha, and that some time after the writing of the note. The Judges of the High Court, in forwarding the papers to Government, expressed their opinion that the transaction showed Captain Clay to have acted with grave impropriety.

4. Before passing final orders in the matter, the Governor in Council deemed it proper to direct that copies of all the papers should be forwarded to Captain Clay, in order that he might lay before Government any further explanation that he might desire to offer. This Captain Clay has done in his letters of the 1st and 5th instant, the first of which was written on his being furnished by the High Court

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13th February 1866.

with a copy of their letter to Government of the 30th ultimo. Neither of these letters enable the Government to regard the transaction in a more favorable light than that in which it has been viewed by the Judges of the High Court. It is clear from the wording of Captain Clay's note to Stewart that he knew, when he wrote it, that intimate business relations existed between Stewart and Darasha, and that, with this knowledge, he persevered in his application for the loan to a person who, at the time, it would appear, was residing within his jurisdiction. It is possible that Captain Clay had no improper object in informing Stewart of the instructions he had received for the prosecution of Darasha, but it was a highly improper communication, and shows great ignorance on the part of Captain Clay of his duty as a Magistrate. The circumstance that the intimation was accompanied by an inquiry regarding a loan of money to himself adds most seriously to the impropriety of the proceeding.

5. On full consideration of Captain Clay's conduct in this matter, and of all that has been urged by him in extenuation of it, the Governor in Council is clearly of opinion that Captain Clay has shown himself unfit for the responsible office of a Cantonment Magistrate, and accordingly directs that he be removed from it from this date. Captain Clay's services will be replaced at the disposal of His Excellency the Commander-in-Chief, with the intimation that the Government do not consider the circumstances of the case, though affording proof of Captain Clay's unfitness for the office of Magistrate, to be such as to disqualify Captain Clay for Military duty.

(True Extract).

Chief Secretary.

To the Honorable the Judges of the High Court.
To Captain A. D. Clay.
To the Magistrate of Malabar.
" Military Department.

Exd. J. H. Burns.

Fort St George
Feb 21st - 1866.

From

Captain Clay.

Cantonment Magistrate Cananore

To the Hon^{ble} C. J. Arbuthnot
Chief Secy to Govt.

Honorable Sir

Having been favoured with a copy of a letter from the Register of the High Court to your address, forwarding for the consideration of Government certain papers relative to a letter written by me to one Stewart, asking for a loan, I regret I may be permitted to offer a few observations.

In the first place I beg to observe with reference to para 1 of the Registrar's letter, that I never did borrow the money applied for, as I found out in time, that Mr Stewart contemplated joining Darasha in business, when I at once declined the loan - and secondly I beg to remark that, there was no

elsewhere para 1 says that the Registrar was informed that the money was taken by Mr Stewart for the purpose of joining Darasha in business.

occasions for me, to offer any
inducement to Mr. Stewart
to accommodate me with the
loan, as on my first applica-
tion to him on the subject, he
at once unhesitatingly agreed
to lend me the money, but
said that he would not be
prepared to give it to me, before
a certain day, which he named,
when this day arrived, I wrote the
letter alluded to by the High Court,
and having just been informed
that O'Connell was about to
abscond from his chambers, where he
was on bail, on a charge of Forgery,
with money that he had obtained
on a power of Attorney given him
by Stewart, I mentioned that
fact to Stewart, adding that I
had taken, or was taking, mea-
sures for O'Connell's arrest,
and advising him, to telegraph
to Macdonald, & save himself from
loss. If in doing this, I was in
error, I most deeply regret it,
but I affirm that I acted in

Judicial
No. 265 & 266.
From the Court of Magistrates of Larnard.
Dated 1st & 5th February 1866.
In Orders.

Chief Clerk's two letters do not seem to
me to put his case in a better light than
it was in before.

It is clear from his own letter I
that he knew that there were intimate
business relations between Stewart
and Davis. "As you have given
Davis to know to a great extent our
own property" - although he might
not know that they were actually
partners, and that with this know-
ledge he proceeded in his application
for the loan -

He may have had no ill design

(as if it does not appear how he
could have been any) in informing
Steward of the instructions received
for the prosecution of Davis - but
it was a highly improper communi-
cation & showed participation of
his duty as a Magistrate. That
the entimation was accompanied
by a request for the loan does not
improve the transaction.

Case: Clay is evidently in
embarrassed circumstances.
After what has occurred he
certainly cannot be retained
at Cannonau & I have from
doubt whether he ought to be
appointed a Magistrate in any other
Canton must 7/2/66 J.P.

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I concur in the view taken by Mr. - Dyce
and though willing to believe that Capt. Clay
was not actuated by any improper motives
in his correspondence with Mr. Stewart I
cannot consider him qualified to act
as Cantonment Magistrate either at
Cannonau or elsewhere.

Captain Clay's case -

Testing this matter by the touchstone which I would apply to the Civil Magistrate generally, I should consider any officer to be an unfit man for the post of Military Cantonment Magistrate, who heralded his arrival within the limits of his future jurisdiction by "making inquiry of several persons as to who would be likely to be able and willing to accommodate him with a loan of \$3000 - an equivalent, I would suppose, to about four months official salary. In the present case, the mere knowledge that this was one of Captain Clay's early acts as Military Cantonment Magistrate, ought, I think, to disqualify him for further employment at Cannanox.

But, the circumstances which surround the negotiation for this loan, between Captain Clay and Stewart,

are such as most seriously aggravate
the objections naturally arising to a
magistrate contracting a loan within
his own jurisdiction, although the lender
may not be permanently resident
within its limits. I am wholly unable
to understand how Captain Clay can
possibly have gone to the length of
settling to take a loan of \$3000 from
Stewart, without knowing of the person
more than Captain Clay now acknowledges,
apart however, from the difficulty
I reluctantly feel compelled to state
that after a very careful perusal
and consideration of the paper before
me, I am constrained to doubt
whether the declaration of ignorance
at present advanced by Captain Clay
can reasonably be accepted as a
correct representation of the whole
of the facts. With this

impression on my mind, I could
not regard a mere change of magis-
trical position as a sufficient con-
demnation of the misconduct which I
consider to be established against
Captain Clay. It is I think due to the
public magistracy that Captain Clay's
name should be removed from their
list. - 7. 2. 66 W.D.M.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read again letter from the Right Hon.
dated 30 January 1866 and recorded in Proceedings of 13 Feb. 1866.

And the following letters
from Capt. W. J. Lambourne
Magistrate of Tanjore
dated 1st and 5th Feb. 1866.

Order thereon - 13th February 1866 No. 217.

The foregoing papers relate
to a ~~letter~~^{note} written some months
ago by Captain A. D. Lambourne, Magistrate of Tanjore
to a person named
Stewart in which, after
informing the said Stewart
that he had received in-
structions to proceed with
a criminal charge against
one Paracha and advising
Stewart to take some pre-
cautions to guard himself
against loss in the event
of matter going against
Paracha, he proceeded in

[Handwritten signatures and initials]

a postscript to advert to a loan regarding which he (Captain Clay) had been in treaty with Stewart.

The ~~letter~~^{note} in question came under the notice of the Session Judge of Tellicherry being attached to the record of a criminal trial which was brought before that officer in appeal and was forwarded by him to the Judges of the High Court together with a letter from Captain Clay explaining the circumstances under which he had applied to Stewart for a loan and stating that when he wrote the ~~letter~~^{note}, he was not aware that Stewart was in any way connected in business or otherwise with Paracha and that as soon as he became acquainted with the relative position of Paracha and Stewart (who it appears were

partners

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partners in business) he at once broke off all communication on the subject of the proposed loan.

In forwarding Captain Clay's explanation to the High Court, the Session Judge pointed out that the statement made in it to the effect that at the time the note was written, Captain Clay was not aware that Stewart was in any way connected in business or otherwise with Paracha, was inconsistent with the tenor of the note itself, with the terms of Captain Clay's return in which he furnished his reply to the Session Judge's precept, and also with the terms of a deposition made by him (Captain Clay) on oath before the Acting Joint Magistrate, all of which shewed that Captain Clay when he wrote the note

note in question was aware
that Stewart and Darasha
were so far connected in
business that the former
had given the latter a
general power of attorney
which empowered him to
dispose of Stewart's property
~~while~~ ^{while} it was clear from
Captain Clay's deposition
that the negotiation re-
-garding the loan was
broken off only when he
found that a criminal
charge had been preferred
by Stewart against Darasha
and that some time after
the writing of the note.

The Judges of the High
Court in forwarding the
papers to Government
expressed their opinion
that the transaction
showed Captain Clay to
have acted with grave
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Before passing final
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Governor in Council deemed
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in order that he might lay
before Govt any further explana-
-tion that he might desire to
offer. This Captain Clay has
done in his letters of the 1st and
5th Instant, the first of which was
written on his being furnished
by the High Court with a copy of
their letter to Govt of the 30th Ult.
Neither of these letters enable the
Govt to regard the transaction
in a more favorable light than
that in which it has been viewed
by the judges of the High Court.
It is clear from the wording of
Capt Clay's note to Stewart
that he knew, when he wrote it,
that intimate business relations
existed between Stewart and
Darasha, and that with this
knowledge he persevered in
his application for the loan to
a person who at the time was
residing within his jurisdiction.
It is possible that Captain Clay
had no improper object in
informing

informing Stewart of the instructions he had received for the prosecution of Dinaiah, but it was a highly improper communication and showed great ignorance on the part of Capt Flay of his duty as a Magistrate. The circumstance that the intimation was accompanied by an enquiry regarding a loan of money adds most seriously to the impropriety of the proceedings.

On full consideration of Capt Flay's conduct in this matter and of all that has been urged in extenuation of it, the Governor in Council is clearly of opinion that Capt Flay has shown himself unfit for the responsible office of a Cantonment Magistrate, and accordingly directs that he be removed from it from this date. Capt Flay's services will be replaced

replaced at the disposal of the Excellency the Commander-in-Chief with the intimation that the Govt do not consider the circumstances of the case, the want of finding proof of his fitness, nor the fitness for the office of Magistrate to be such as to disqualify him for military duty.

G. A.

He Avails the Judge of the High Court
Captain A. B. Flay despd 13/2
Magistrate of Malabar
Military Department. } despd 13/2

Industrial 186 . Department.

No. 277.

PROCEEDINGS OF GOVERNMENT.

Dated 15 January 1885

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29 Feb.
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