M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 249 Press ~~Mis.~~

144-146

Dated 23. 2. 1861 19 .

11/12

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 23rd February 1861.

Read again letter from the Acting Civil Judge of Tellicherry, dated 29th December 1859, No. 410, recorded in Proceedings, 15th January 1861, No. 58.

Read also the following papers :—

No. 144. Proceedings of the Sudder Court, dated 4th February 1861, No. 13.

Read letters dated 28th December 1860 and 23rd January 1861, from the Civil Judge of Tellicherry, detailing the circumstances connected with the discovery by him of a defalcation in the cash chest.

1. From these communications it would appear that a report having reached the Acting Civil Judge on the 27th December, that the Shroff of his Court, Sunar Subbarow Ganesha, had absconded, he immediately proceeded to the Treasury, and found a large deficiency of cash in the chest.

2. Measures were then immediately taken to secure, if possible, the apprehension of the Shroff. Peons were dispatched by sea to Mangalore, Goa and Bombay; information was given to the Local Superintendent of Police, by whom warrants were procured and forwarded to the authorities at those places; and a message was likewise sent by Telegraph to the Superintendent of Police at Bombay. No trace of the Shroff's movements, however, appears to have been discovered.

3. The letters of the Acting Civil Judge are not very clear as to the total amount embezzled by the Shroff; but it would seem to be Rupees 8,015-5-3, this sum being said to be still due to the decree holder in original suit No. 2 of 1859, and no mention being made of any further liability.

4. At the time of this occurrence there appears to have been no less a sum than Rupees 15,794-12-10 in the cash chest. Of this amount, however, the sum of Rupees 15,336-4-0 had been recently levied in execution of the decree in the suit before mentioned, and was to have been at once paid to the decree holder; but, owing to the fraudulent delays of the Shroff, such payment was not made before the Christmas vacation.

5. The Judges thought it possible that the decree holder in question might have connived at the abstraction of the money by the Shroff; but they are assured by the Acting Civil Judge that there is no ground for such a supposition.

6. They have now considered the whole case; and, though they cannot but remark that the Court should not have been closed for the vacation without the amount due to the decree holder in question being either paid to him, or sent to the Revenue Treasury for safe custody, and that the Shroff should not have been left in sole charge of the cash chest; yet under a combination of circumstances so peculiar, as the rapid accumulation of this large amount, the simultaneous approach of the vacation, and the dishonesty of the Shroff, the Judges do not consider that the Acting Civil Judge can justly be held answerable for the sum thus fraudulently embezzled.

7. As the demand of the decree holder above referred to must be met by the Acting Civil Judge, the Judges resolve to recommend to Government that the sum of Rupees 8,015-15-3 be placed at his disposal.

8. The Acting Civil Judge will take steps to recover from the Shroff's surety the amount for which he may have rendered himself responsible.

9. With respect to the Acting Civil Judge's suggestion, that application should be made to the Portuguese Government to surrender the Shroff if found within the Goa Territory, the Judges observe that this course is not called for; and they resolve to forward for the information of the Acting Civil Judge, and communication to the Magistrate, copy of a Despatch from the late Court of Directors, dated 12th September 1810, explaining the course to be pursued where an offender may escape and take refuge in foreign Territory.

(True Extract.)

(Signed) C. F. CHAMIER,
Registrar.

To the Chief Secretary to Government.

No. 145. From G. PEARSE, Esq., M.D., Princial Inspector General Medical Department, Fort Saint George, to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 5th February 1861, No. 21.

I have the honor to report for the information of Government, that a sum of money amounting to Rupees 212-5-9, collected from the residents for dieting the patients of the Tellicherry Dispensary, which was deposited in the Civil Court Treasury for safe custody, has been stolen, and that there is very little probability of recovering it.

2. Considering the purpose for which the money was subscribed, and the care taken to deposit it in what should have been safe custody, I trust Government may see fit to order the amount to be made good, so that the Institution may not suffer.

3. The original report is enclosed for reference which is requested to be returned.

No. 146. ORDER THEREON, 23rd February 1861, No. 249.

In their Proceedings recorded above, the Judges of the Sudder Court communicate to Government a report from the Acting Civil Judge of Tellicherry, that the Shroff of his Court had absconded, and that a considerable deficiency had been discovered in the cash chest.

2. The Court closed for the Christmas holidays on the 24th, and on the 27th, the discovery was made. The Sudder Judges remark that the Court should not have been closed for the vacation without the amount levied in execution of the decree in Suit No. 2 of 1859, Rupees 15,794-12-10, being either paid to the decree holder, or sent to the Revenue Treasury for safe custody, and that the Shroff should not have been left in sole charge of the cash chest. Under a combination of circumstances so peculiar, however, as the rapid accumulation of this large amount, the simultaneous approach of the vacation, and the dishonesty of the Shroff, the Judges do not consider that the Acting Civil Judge can justly be held answerable for the sum fraudulently embezzled.

3. His Honor in Council will not dissent from the conclusion, and the money stolen will accordingly be made good by Government. At the same time he cannot but observe that when so large a sum was known to be in the custody of the Shroff, and not paid away on the 24th December, some blame must attach to the Acting Civil Judge for not having ascertained that the money had been transferred to the Revenue Treasury, before the Court was shut for the Christmas holidays.

4. The arrangement existing at Tellicherry, in regard to the Court Cash Chest, is a singular, as well as an objectionable one. According to the usual and regular course the Court Cash Chest is in charge of the Sheristadar; and the Shroff, a low paid servant, merely performs the usual duties of a Shroff. The Sudder Court are requested to adopt measures to correct the present faulty state of matters in this respect at Tellicherry and wherever else it may obtain.

5. Resolved that the Collector of Malabar be authorized to place at the disposal of the Civil Judge of Tellicherry the sum of eight thousand two hundred and twenty-seven Rupees and eleven Annas, to enable him to meet the claims of the Decree holder, and to replace the amount belonging to the Civil Dispansary. It is clear however that this latter sum should not have been lodged in the Court Treasury—and the Government desire that for the future no monies may be deposited there, except such as may be placed there for Judicial purposes. If necessary for safe custody collections on account of the Civil Dispensary may be lodged in the Revenue Treasury, but in a separate box, and not with the Government Cash.

Levied under Decree in suit No. 2 of 1859.....*Rs.*	15,336	4	0
Already paid to the Decree holder ..... „	7,320	14	9
Due to him..... „	8,015	5	3
Belonging to the Civil Dispensary at Tellicherry..... „	212	5	9
Rupees	8,227	11	0

6. The Sudder will report hereafter if any part of the amount embezzled by the Shroff be recovered from his sureties.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

(No. 13)

Proceedings of the Sudder Court,
4th February 1861.

Read letters dated 28th December 1860 and 23rd January 1861, from the Civil Judge of Tellicherry, detailing the circumstances connected with the discovery by him of a defalcation in the cash chest—

1 From these communications it would appear that a report having reached the Acting Civil Judge on the 27th ultimo that the Shroff of his Court Dec.r. Sunar Subbarow Ganesha had absconded he immediately proceeded to the Treasury, and found a large deficiency of cash in the chest—

2 Measures were then immediately taken to secure if possible the apprehension of the Shroff—Peons were dispatched by sea to Mangalore, Goa and Bombay, information was given to the local Superintendent of Police, by whom warrants were procured and forwarded

to

to the authorities at those places; and a message was likewise sent by Telegraph to the superintendent of Police at Bombay. No trace of the Shroffs movements, however, appears to have been discovered.

3. The letters of the Acting Civil Judge are not very clear as to the total amount embezzled by the Shroff; but it would seem to be Rs. 8,015—5—3, this sum being said to be still due to the decree holder in original suit No. 2 of 1859, and no mention being made of any further liability.

4. At the time of this occurrence there appears to have been no less a sum than Rs. 15,791—12—10 in the cash chest. Of this amount, however, the sum of Rs. 15,336—4—0 had been recently levied in execution of the decree in the suit before mentioned, and was to have been at once paid to the decree holder, but, owing to the fraudulent delays of the Shroff, such payment was not

not made before the Christmas vacation.

5. The Judges thought it possible that the decree holder in question might have connived at the abstraction of the money by the Shroff, but they are assured by the Acting Civil Judge that there is no ground for such supposition.

6. They have now considered the whole case, and, though they cannot but remark that the Court should not have been closed for the vacation without the amount due to the decree holder in question being either paid to him, or sent to the revenue treasury for safe custody, and that the Shroff should not have been left in sole charge of the Cash chest, yet under a combination of circumstances so peculiar, as the rapid accumulation of this large amount, the simultaneous approach of the vacation, and the dishonesty of the Shroff, the Judges do not consider that the Acting Civil Judge can justly be

be held answerable for the sum thus fraudulently embezzled —

7 At the demand of the decree holder above referred, he must be met by the Acting Civil Judge, the Judge resolves to recommend to Government that the sum of Rs 8015-15-3 be placed at his disposal

8 The Acting Civil Judge will take steps to recover from the sheriff's surety the amount for which he may have rendered himself responsible —

9 With respect to the Acting Civil Judge's suggestion, that application should be made to the Portuguese Government to surrender the sheriff if found within the Goa Territory, the Judge observe that this course is not called for; and this resolve to forward for the information of the Acting Civil Judge, and communication to the Magistrate, Copy of a despatch from the late Court

Bill Costow

LS

Duplicate

4

Whereas in and by an act of Parliament passed in the Twenty third year of the Reign of Her Majesty Queen Victoria entitled an act for punishing Mutiny and desertion and for the better payment of the army and their Quarters It was among other things enacted that whenever any sentence of penal servitude heretofore or hereafter passed upon any offender by any Court-Martial holden in the East Indies, or in any other part of Her Majesty's Foreign Dominions or elsewhere beyond the Seas is to be carried into execution for the term specified in such Sentence or for any shorter term or when sentence of death passed by any such Court-Martial has been or shall as aforesaid be commuted to penal servitude the same shall be notified by the officer commanding Her Majesty's Forces at the Presidency or station where the offender may come or be, or in his absence by the Adjutant General for the time being to some Judge of one of the Supreme Courts of Judicature in the East Indies, or the Chief Justice or some other Judge as the case may be in any part of Her Majesty's Foreign Dominions who shall make order for the penal servitude or intermediate custody of such offender and upon any such order being made it shall be duly notified to the Governor of the Presidency if in the East Indies or to the Governor of the colony if in any of Her Majesty's Colonies or to the person who shall for the time being be exercising the office of Governor of such Presidency or Colony, who on receipt of such notification shall cause such offender to be removed or sent to some other Colony or place or to undergo his Sentence within the Presidency or Colony where the offender was sentenced or where he may come or be as aforesaid in obedience to the directions for the removal and treatment of Convicts which shall from time to time be transmitted from Her Majesty through one of Her Principal Secretaries

Secretaries of State to such Presidency or Colony, and such offender shall according to such directions undergo the sentence of penal servitude which shall have been passed upon him either in the Presidency or Colony in which he has been so Sentenced or in the Colony or place to which he has been so removed or sent and whilst such Sentence shall remain in force shall be liable to be Imprisoned and kept to Hard labour and otherwise dealt with under such Sentence in the same manner as if he had been Sentenced to be Imprisoned with hard labour during the term of his penal servitude by the Judgment of a Court of Competent Jurisdiction in such Presidency or Colony or in the Colony or Place to which he has been so removed or sent respectively And Whereas Private George James Bryant Regimental Number Three hundred and Nine in Number Two of Captain Alfred John Fitz Gerald's Company of Her Majesty third Battalion Sixtieth Rifles was Tried by an European General Court-Martial holden at Wellington on the Second Day of January One thousand Eight hundred and Sixty one and found Guilty upon the following charge - For having at Wellington on or about the Fifteenth of December One thousand Eight hundred and Sixty, used violence to Number twenty Seven Color Sergeant William Thomas Kethro Third Battalion Sixtieth Royal Rifles by striking him with his clenched fist on the mouth he the said Color Sergeant William Thomas Kethro being his superior officer and then and there in the execution of his office - And Whereas the said Private George James Bryant was Sentenced by the said European General Court-Martial to Suffer Penal Servitude for the term of his life. And Whereas a notification in writing of the aforesaid Conviction and Sentence of the said Private George James Bryant hath by His Excellency Lieutenant General Sir Patrick Grant the Commander in chief in the said Presidency been

made to me The Honorable Sir Adam Bittleston Knight officiating Chief Justice of the Supreme Court of Judicature at Madras aforesaid pursuant to the directions in the said Act contained. It is therefore ordered by me that the said Private George James Bryant be removed and sent as soon as conveniently may be to the Penitentiary at Madras as the place of intermediate custody of and for the said Private George James Bryant there to remain in custody until duly removed to such place as The Honorable the Governor in Council may be pleased to appoint and signify for the said Private George James Bryant for the residue of the term of his aforesaid Sentence Given under my hand at Madras in the East Indies this fifteenth Day of February in the year of our Lord one thousand Eight hundred and Sixty one.

Cp. J. P.

John D'Allayne.

Clerk of the Crown

A True Copy

John D'Mayne

Clerk of the Crown.

Abstract Department

No 197

From the Principal Inspector General
Medical Depart.
Dated 5 February 1861.

No 41.

Proceedings of the Sudder Court
Dated 4 February 1861

For Orders

The Secretary Bengal Govt
Recommended by Court
That he be kept a few days
longer than the custody
of the Mofl & the Jail Surgeon

Re Tea

24 — Tobias Clarke Merk
Agents to the Ass. L. J. for
West Kerry, attached, and
the Money had been Paid
Over to the Treasury
before the Court Dated Merk
to this Date Sixty Pounds —
The Assessment existing
at Tobertooney to appeal to
the Court Cash Cost in Pursuance

as Clerk as the Act directs
Now Dudle Comert the Clerk
Clerk is the Charge of the
Messengers & the Police
a Low Sheriff Lieutenant Treasury
Justices the Attached Notes
Ja Merk — Letters were
Delivered Superintendents
Proved Lea asked for or the
Court — or Justices it would
Justices of the Peace of the
Ja Merk

Proceedings of the Madras Govt.
Read a Gen letter 29th Dec. 59 No. 410. from the Actg Civil Judge
of Tellicherry Recorded in Pro. 15th Jany 61 No. 58.
Read Proceedings of the
Sudder Court ____ Enter 4th Feb. 61 No. 13.
Read also letter of the
Principal Inspector
Genl. Medl. Dept. ____ 5th do ____ " 21.

Order. 23d February 1861. No 219.

In their Proceedings recorded above, the Judges of the Sudder Court communicate to Govt. a report from the Acting Civil Judge of Tellicherry that the Shroff of his Court had absconded, & that there had been discovered a considerable deficiency had been dispooked in the Cash Chest.

2.

2. The Court closed for the Christmas holidays on the 24th & on the 27th, the discovery was made. The Sudder Judges remark that the Court should not have been closed for the vacation without the amount levied in execution of the decree in Suit No. 2 of 1859 (R15,744:12:-0) being either paid to the decree holder, or sent to the Revenue Treasury for safe custody — and that the Shroff should not have been left in sole charge of the Cash Chest. Under a combination of circumstances so peculiar, however, as the rapid accumulation of this large amount — the simultaneous approach of the vacation — & the dishonesty of the Shroff — the Judges do not consider that the Acting Civil Judge can justly be held answerable for the sums fraudulently embezzled

3. ~~In this conclusion~~ H. M. in Council will not dissent from the ~~concurs~~ conclusion — & the money stolen will accordingly be made good by Govt. But, when

At the same time he cannot but observe that when so large a sum was known to be in the custody of the Shroff, and not paid away on the 24th ~~Nov.~~ Dec. some blame, ~~M. J. in Council is of opinion~~, must attach to the Acting Civil Judge for so not having ascertained that the money had been transferred to the Revenue Treasury before the Court was shut for the Christmas holidays.

4. The arrangement existing at Tellicherry in regard to the Court Cash chest, is a singular, as well as an objectionable one. In ~~all Courts~~ the Court Office, the Cash chest is in charge of the Sheristadar, & the Shroff, a low paid servant, merely performs the usual duties of a shroff. The Sudder Court are requested to adopt measures to correct the present faulty state of matters in this respect at Tellicherry and wherever else it may obtain.

According to the usual and regular course

5. Resolved that the Collector of Malabar be authorised to

suspension possible to place at the disposal of the Civil Judge of Tellicherry the sum of Eight Thousand Three Hundred & Seventy Seven Rupees & Eleven Annas, to enable him to meet the claims of the decree holder, & to replace the amount belonging to the Civil Dispensary — It is clear how. — can that this latter

Levied under Decree in Suit
No. 2 of 1859 —— 15,336..4..
Already paid to the
Decree holder — 7,320..14..9.
Due to him —— 8,015..6..3.
Belonging to the Civil
Dispensary at Tellicherry —— 212..5..9.
Rs. 8,227..11..

6. In reference to this deposit, the Principal Inspector Genl. Medl.

and he further desires that in the future no money may be deposited there - except such as may be placed there for judicial purposes - If necessary for safe custody collections on account of the Civil Dispensary may be lodged in the Treasury in a separate box, and not with the Sub Court —

6. The Judge will report hereafter if any part of the amount ordered to be refunded by the Sheriff be recovered from his sureties.

Medl. Dept., is requested to state under what arrangement the funds belonging to the Dispensary had been placed in the hands of the Sheriff of the Civil Court.

The Judge Court -
With Encls. returned.
" Civil & Sessions Judge of Tellicherry
" Collector of Malabar.
" Principal Inspector Genl. Medl. Dept.
With Encls. retd.
" Civil Auditor - for information.
" Acct. Genl.

Medl. 23-2-61.

Judicial 8. 1861 Dept.

No. 249

Proceedings of the
Madras Government

Dated 23 February 61

Ext. 227 to 263

Passing orders
on the case of Bezzla-
ment in the [illegible]
Court

144 to 146