

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	747	Press
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66-67		
Dated	8.6.1861	18

Not to be folded or roughly handled

9/9

8th June 1861.

No. 66. Read the following letter from J. W. B. DYKES, Esq., Magistrate of Nellore; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 29th May 1861, No. 26.

I have the honor to acknowledge the receipt of the Proceedings of Government, under date, the 17th instant, Judicial Department, No. 655, and with reference to the 19th paragraph of the accompanying letter from the Advocate General, beg that the Government will be pleased to ascertain for my future guidance, whether, in committing a British subject to the Supreme Court, it is the duty of a Magistrate, up country, to commit any Native accomplices to the Session Court of the District, in which the alleged offence was committed. It seems to me that to send half a case to one Court, and half to another, is not likely to conduce to the due administration of justice; but, in remarking on Case No. 34, in the last Calendar, Mr. Smith is at a loss to understand why the opposite course had been followed, and it therefore becomes necessary that a decisive opinion should be obtained on a point so likely to occur again.

2. I would also request the permission of Government to offer such explanations, as are in my power, with regard to other observations made by the Advocate General, on the mode, in which the case above referred to had been prepared by myself for committal.

3. In paragraph 5, I am found fault with, parenthetically, for describing the same witness in one case as twenty-two, in the next as twenty-four, years of age, and this discrepancy I certainly did not observe; but I have no doubt the age was described as given by the witness himself. Natives of all castes are by no means precise in their views on the subject of their age; and there being no doubt as to the deponent's identity, it does not seem to me that the discrepancy called for special observation either at the hands of myself or the Advocate General.

4. The second point on which I am found fault with, is interrupting unnecessarily two intelligent Engineer Officers, whom I had before me in support of the charges against the prisoners, and "cramming the depositions with such superfluous phrases of politeness, as you have been kind enough to give the precise purport, &c., &c., &c., will you now be good enough to give me the precise meaning you attach, &c.," all of which extreme politeness, Mr. Smith observes, is out of place in Judicial matters. Whilst my questions are commented on "as extremely leading and suggestive, and therefore eminently unfair to the person accused."

5. As regards the first of these remarks, being a supposition, it will, I trust, be enough for me to say, that it was necessary, or I would not have interrupted the Engineers, when under enquiry, by questions characterized "as extremely leading and suggestive."

* Paragraph 8. And when the nature of the inquiry is subsequently discussed,* it will, I think, be seen, that it was scarce possible to frame the requisite questions, so that they should be otherwise than leading and suggestive. Whilst, as regards "the extreme politeness," and Mr. Smith's remarks, that it is out of place in Judicial matters, I would, with all due respect to the Advocate General's views on this subject, submit, that I was following precisely the course that would be followed under similar circumstances at Home. I was examining the Acting District Engineer, and the Executive Engineer of the Range, in the presence of their Subordinates, and of my Kacheri; and I considered that I was bound to mark my sense of the official position of these Officers in the District. If an Officer of rank has to attend a Magistrate's Office at Home as a witness, he is treated with reference to his official rank and differently to others; and, although every thing that can shorten a deposition and promote the "folio" economy to which Mr. Smith refers, should of course be attended to, still it is very difficult to make Native Subordinates' writing depositions in a hurry, preserve the forms of respect, and brevity as well; and in the case of the Officers concerned, severally at the head of a large establishment, I preferred to preserve the forms of respect even at the sacrifice of brevity, and trust that in this I shall have the approval of Government.

6. In explaining why he did not prosecute on the other indictments, Mr. Smith talks of the evidence being the same,† which would certainly not hold good as regards falsification of accounts, though it might be explained by

† Paragraph 4.

Mr. Smith's previous admission, that he could not understand the case as I had put it.

Noted for the 10th 1861

Proceedings of the Madras Government, Judicial Department,
8th June 1861.

7. The facts of the Dontali case are simple enough themselves, however I may have failed in making them intelligible to the Advocate General. Towards the end of December or beginning of January last, the prisoner Shannon, then a Sub-Overseer in the Department of Public Works, and his two Native Gumastás prepared and sent in to the Executive Engineer of the Range, his monthly accounts, shewing an expenditure of certain Public moneys for certain work done, which money had not been expended, and which work had not been done. No attempt was made even to assert that the work had been done, or the money had been expended. The Executive Engineer proved the receipt in due course of the false accounts, and their bearing the signature of the Prisoner Shannon. Whilst both the Executive Engineer and the Acting District Engineer deposed, that the accounts, thus, received, could only mean that the work had been done, and the money had been expended.

8. The Prisoner Shannon, asserting that the money, though entered as paid for work done, was in reality, and in accordance to the practice of the Department, intended to be paid, as an advance for work to be done, in an ordinary case, would have been left to prove his statement; but, as regards the accounts of the Public Works Department, this course could not be followed. I was well aware that irregularities did exist in regard to entries in the Public Works accounts; and until I had taken parol evidence as to the precise meaning attached to the accounts in question, according to the present practice of the Department, I could form no opinion as to the Prisoner's guilt. Under ordinary circumstances, the written documents would have been left to speak for themselves. As regards the Public Works,

* Paragraph 15 of Mr. Smith's remarks. it appeared to me parol evidence in respect to those accounts was indispensable.*

9. The case came to light because a dispute arose, when the alleged advance came to be divided. And the prisoner Shannon, then wrote to Captain Ritherdon, to get back the monthly accounts, in which the false entries had been made, because in looking over his accounts, he had discovered a mistake in them; whilst Captain Ritherdon deposed, that before he got this letter, he had already received a complaint informing him that the money had not been paid; and under these circumstances, it would scarcely be possible to conceive a clearer case of falsification.

10. In the case in which Mr. Smith prosecuted, it was alleged that all the work paid for, had been duly executed, duly paid for. Here, no attempt was made at such justification. It was proved that false accounts had been sent in; it was proved that the defence that the prisoner would probably put forward at his trial was utterly false. And the proof was supported by a letter from the prisoner himself to the Executive Engineer, in which he carefully conceals the

whole dispute as to the division of the advance as proved by his own witnesses, and requests that the accounts may be sent back to him, because he had discovered a mistake.†

† I have not the letter by me to give the exact words.

11. The Advocate General has grave doubts of the guilt of the Prisoner Shannon, although an old hand in the Department, he had nevertheless, in the case which was tried, paid away three times what a piece of work, which he had just inspected, should have cost; whilst in the indictments dropped, he is proved by the Officers of his own Department to have wilfully and deliberately falsified the Public accounts. And as regards this legal opinion, I beg to submit for the consideration of Government, whether, coming from the Advocate General, its publication is calculated to promote the interests of the Public Service.

12. In the 16th paragraph of his letter, the Advocate General accuses me of putting a question to the Prisoner on a supposed admission, which the Prisoner never made; and there the Advocate General stops. Bringing this grave accusation against a Magistrate, I would respectfully submit, it was the duty of the Advocate General to be more explicit, and support his assertion by quoting the question to which he refers.

Proceedings of the Madras Government, Judicial Department,
8th June 1861.

13. In supposing that the Prisoner was not cautioned before being allowed to make any statement,* Mr. Smith is mistaken. The Prisoner was most carefully warned, that any thing he said might, and would be made use of against him, if necessary; and I must likewise deny, that his statements consist entirely of answers to my cross examination. When he proceeded to inform me that the accounts of the Department were mere forms, I of course required the Prisoner to explain himself, and the gist of his explanation—of his examination, or cross examination as Mr. Smith calls it—was, that when all the accounts had been falsified, when all the forms provided to secure the due payment of the Public money had been set at nought, and the Inspecting Officer visited the work and detected the fraud, he, the Inspecting Officer, Mr. Shannon considered, would come to him, the Prisoner, for an explanation and be satisfied.

14. In the 18th paragraph, Mr. Smith observes, lastly, that though the Subpoenas taken out by the Prisoner on the 13th April, were forwarded by the Sheriff in due course, I made no reply apparently for many days. As regards the receipt of the Subpoenas and their being immediately served so far as possible, I have already reported; † and as regards any further steps to be taken by me in the matter, I can

only state, I was not aware of them. I am not aware that it is usual to acknowledge the receipt of Subpoenas. As soon as served, I returned them, and in thus returning them, I believed, I had done all that was required of me. If I could have saved either Captain Greenaway, Captain Ritherdon, or Mr. Smith, from inconvenience, it would have been a pleasure to me; and neither in this, or any other way, would I have grudged exertion to obtain convictions in cases, that so closely affect the public interests, as those now under discussion.

15. Fully impressed with the importance of the cases against the Prisoner Shannon and his two accomplices, I took great pains with their preparation. For the unsatisfactory result of my labors as regards the issue of the trial and the Advocate General, I can only express my regret. But as regards the Advocate General's letter under reply, in favoring me with instructions applied for in paragraph 1, I beg that the Government will be pleased further to excuse my placing that letter on the records of the District, under my charge, if the explanations now offered be deemed satisfactory, and the Government further consider that the interests of the Public Service are not likely to be advanced by doubts from the Advocate General of the guilt of a man, who, in a position of trust, has avowedly falsified the Public Accounts.

No. 67.

ORDER THEREON, 8th June 1861, No. 747.

The Magistrate of Nellore is informed that when European British subjects and Natives are charged with the commission of the same offence, the circumstances of the case should be reported to the Court of Foujdaree Adawlut, and their instructions obtained, whether the Natives should be committed with the Europeans for trial by Her Majesty's Supreme Court or whether the former should be tried by the Sessions Court of the District.

2. The Government think it unnecessary to follow Mr. Dykes through the explanations which he has tendered. They are not wholly satisfied with the manner in which he conducted the inquiry in the case of the Sub-Overseer Shannon, but under all the circumstances they will not require that the extract from the Advocate General's letter, forwarded with the Order of Government of the 17th ultimo, No. 655, be placed on the records of the Magistrate's Office.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. T. O'Connor.

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Vom. 1861. 18. 1861. 18. 1861. 18. 1861.

N^o 26

Nellor Magistrate's Office
29th May 1861.

From

J. W. B. Dykes Esq^r.

Magistrate of Nellor.

To

J. Spence Esq^r.

Chief Secretary to Government.

Fort Saint George.

Sir,

I have the honor to acknowledge
the receipt of the Proceedings of
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with reference to the 19th Paragraph
of the accompanying letter from the
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the Advocate General, certain for my future guidance, whether
the Government is committing a British Subject
have been.
Yours truly
J. W. B. Dykes

General.

The second point, on which I am found fault with, is ^{unnecessarily} interrupting two intelligent Engineer Officers, whom I had before me in support of the Charges against the Prisoners and "cramming the Depositions with" "such superfluous phrases of politeness," "as you have been kind enough to" "give the precise purport, &c., &c., &c." "will you now be good enough to" "give me the precise meaning you" "attach to," all of which extreme politeness, Mr. Smith observes, is out of place in Judicial matters. Whilst my questions are commented on "as extremely leading & suggestive," & therefore eminently unfair to the person accused.

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I would also request the per-
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I have the honor to be
Sir,

Yours most Obedient Servant.

J. B. De Rer
Magistrate.

Encl. C. A. Mc

Read letter from Mag of Sullivan - 29 Mar, 1861 N^o 26

Order Mercon 8 June 1861. No 747.

The Major States of Union
is informed that when
European British & sub-
jects and natives,
are charged with the
commission of ~~the~~ ^{sum}
offence, it is recommended
of the case should be
reported to the Council
of Foreign Affairs - Advan-
ced, and their restric-
tions obtained, when
the natives should
be committed with
the European for trial
by ^{H.M.} the Supreme Court
in which the former
should be tried by the

NR

Wats

3/11/19

Session Court of
N District.

2. We yet think it unnecessary to follow Mr Dyke, the R explanations which he has given. They are not wholly satisfactory with R matter in which he conducted R inquiry in the case of the Sub Str.

See Shannon, but
under all the cr.

- circumstances they
will not require that

Retract from H

Advocate for the letter

pro^u with $\mathcal{H}$ order of

~~Int. of the 17' Ultram. R. 658~~

to place on the

May 1 of Bureau Sup. 8/6/88
Mas' Office

Joseph Edward
Judicial 1861 &c &c

No. 747.

Readings of the
Medias Conto.

28 June 1861.

Obiding instructions
to the Magistrate of a Village
relating to the Committee of
Cases in which both Complaint
and Notices are concerned.

66067