M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 896 Press ~~Mis.~~

76-77

Dated 9.6.1883 ~~19~~

22/21

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 9th June 1863.

No. 76. Read the following letter from W. G. McIVOR, Esq., Superintendent Government Cinchona Plantations; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Political Department, Madras, dated Ootacamund, 25th May 1863, No. 7.

It is with much regret that I am constrained to submit for the consideration of Government the following proceedings of the Sub-Judge of this station, acting in the capacity of Justice of the Peace. I would, that I could have avoided this unpleasant task; but the sacredness of justice, and its pure administration, are subjects in which your Honorable Government and the public are alike interested; and as I feel that justice has been grossly perverted, under such circumstances I would fail in a duty I owe to your Government and the public, were I to remain silent.

2. The case originated thus:—Mr. Sylk the Proprietor of the Union Hotel had a misunderstanding with Colonel White of the 17th Lancers, a lodger in Mr. Sylk's Hotel, Mr. George Robinson Sharpe, at present Acting Registrar of the High Court of Judicature, also a lodger in the same Hotel, acting as Colonel White's adviser apparently, suggested to Colonel White to file a criminal information against Mr. Sylk, because the word "graphic" happened to appear in one of Mr. Sylk's letters. The letter in which word occurred, together with the whole of Mr. Sylk's correspondence was not only quite unexceptionable, but conciliatory. Mr. Sylk came to me in deep distress, showing me a summons served upon him by the Justice of the Peace, I observed from a previous perusal of the papers that no case could be sustained against Mr. Sylk; and felt that in fact, Colonel White himself had been the aggressor in every instance, thus concluding that Colonel White, and Mr. Sharpe had calculated on Mr. Sylk's simplicity, and want of knowledge of the law, to render him an easy victim. I therefore at Mr. Sylk's request went to the Court on the day of hearing, the 1st of May. Colonel White and Mr. Sharpe having previously been informed, through Mr. Cameron, a gentleman now on the Hills, that I assisted Mr. Sylks; consequently, the moment I entered the Court Mr. LeGeyt a friend of Mr. Sharpe's in answer to an enquiry by Colonel White, as to who I was, remarked "the Deputy Judge Advocate." Mr. Sharpe and Mr. LeGeyt then began to titter and laugh, and this extraordinary conduct was continued occasionally as I suggested the questions to be put by Mr. Sylk to Colonel White. Colonel White during this time was very excited and referring to me in a loud tone in the contemptuous terms of "what has that man to do with the case," at last it became evident that the questions which I prompted tended to upset Colonel White's case. At this juncture Mr. Sharpe becoming excited and in reply to an observation made by Colonel White, referring to myself, said I would "indict him for aiding and abetting, the damned Scotch blackguard." The latter part of this expression was pronounced with emphasis, and accompanied by a motion unmistakably applying the language to myself. On the instant Mr. Sharpe was taxed with so applying it, and this he did not deny; but on the contrary proceeded to give every indication that it was so applied. The Judge Mr. Nesbitt when this outrage took place looking towards Mr. Sharpe said "am I addressing Mr. Sharpe of the Civil Service." Mr. Sharpe in reply said "I withdraw the expression from the Court," here the matter dropped so far as the Court was concerned. At this time Mr. LeGeyt urged Mr. Sharpe to apologise to me, to this Mr. Sharpe replied "I will not, I'm damned if I do." Although I specially called the attention of the Bench to this outrage; yet not any rebuke whatever was conveyed by the Judge to the perpetrator; but on the contrary, the Judge seemed to consider that no outrage or insult, however gross, merited his attention when offered to me as "a man of inferior position."

3. I proceeded to give a deposition and indictment against Mr. Sharpe on Sections 503, 504 and 499 of the "Indian Penal Code." On the trial of this indictment Mr. Nesbitt the Sub-Judge, has, I submit, exhibited a determination to frustrate the ends of justice unparalleled in the annals of the Courts of India; and in conjunction with this determination a combination has been formed, well calculated to extinguish and crush, that love of justice, and spirit of independence, which forms a necessary accompaniment of energy, and without which neither nation or individual can progress.

Judge signature

4. Mr. Grant the Collector of this District, on the following morning, called on me and begged I would accept an apology from Mr. Sharpe, assuring me that he learned from a letter which he had received from Mr. Sharpe (at the same time drawing a letter from his pocket) that Mr. Sharpe applied the words to me in a moment of irritation, and much regretted what he had done, and was willing to make an apology, he pointed out to me that it would be an act of kindness on my part to accept the apology, and let the matter drop. This I agreed to accept; and Mr. Grant left my house, stating that he would go to Mr. Sharpe and bring me the most ample apology; but it appears by the time Mr. Grant reached, the idea had occurred to Mr. Sharpe that he could shelter himself from the penalties of the law under a subterfuge; this no doubt had been explained to Mr. Grant, and this gentleman returned to me and notwithstanding his previous statement to the contrary which he said he had direct from Mr. Sharpe, informed me that Mr. Sharpe had explained, that the language was not intended for me but to some one out of Court; Mr. Grant telling me not to proceed further in the matter, and that if I did, "I would go to the wall." The correctness of this prediction the sequel has proved. It was not in fact doubted by me at the time, as I felt from the position in which Mr. Grant, Mr. Nesbitt, and Mr. Sharpe stood towards each other, that Mr. Grant must have had the best possible information, and that Mr. Grant from his position would not have unnecessarily endeavored to intimidate me.

5. Discouraged, but not discomfited, by this untoward aspect of affairs, I proceeded with the charge, from a feeling that if an insult and outrage, of this description, perpetrated as it was, in a Magistrate's Court, and in a Magistrate's presence, while that Magistrate sat upon the Bench, escaped the penalty of the law, then the criminal statutes upon which the indictment was drawn becomes a solemn farce; for when, where, and how, is the violation of these statutes to take place which can be grappled with by the law. I had not however been long in Court before I felt the correctness of the prediction, the Judge permitting the Defendant, Mr. Sharpe, during the proceedings, to heap any calumny and insult, upon myself, and my 2nd and 3rd witnesses. I will not trouble your Honorable Government with more than one expression used by the Defendant, thus in making what he called "some observations to the Court in order that the case should be dismissed," Mr. Sharpe exclaimed "the actions of the Prosecutor are no more to me than those of the vilest reptile breathing;" not satisfied with the offensiveness of the language, and the evident malice it displayed when addressed to the Court, Mr. Sharpe deliberately turning towards myself looked me full in the face, and repeats with emphasis, "the vilest reptile breathing."

6. During the examination of my witnesses, Mr. Sharpe was permitted to interfere in a most unbecoming manner, suggesting to them the answers they should give; while the Court would not permit me to proceed in the examination of Mr. LeGeyt, simply as I believe the Court saw that I was eliciting the subterfuge to which this witness had learnt his evidence; the Judge directing me to leave the evidence to the Court, and when I had done this, I discovered that the Court did not put one question to elicit from this witness the substance of his extraordinary testimony. Finding myself thus misdirected by the Bench, I made a formal application on Act II of 1855, Chapter XXX, to be allowed to cross-examine this witness, but this the Judge refused; I also wished the evidence of Mr. Grant, but this also the Judge refused.

7. Enough has been mentioned to show the manner in which the proceedings were conducted. I shall now detail the sequel faithfully, corresponding as it does with all that preceded. On the 8th instant, Mr. Sharpe came into Court and stated that he did not wish to examine the witnesses further; observing, that he had brought his defence. After some conversation, the paper being previously handed to the Judge, Mr. Sharpe was then invited upon the Bench, and there in consultation with the Judge, framed, I believe, the defence which is appended to this communication. This paper was never read in Court, and although the proceedings in themselves might be sufficient to startle ordinary men, yet that which took place afterwards is something astonishing to contemplate. This defence prepared or altered upon the Bench to suit the views of the Judge, starts with the false assertion "I plead *autre fois acquit*." "It will be in the recollection of your worship, that on Friday last, you put me on my trial for using the words

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"damned Scotch blackguard." What is to be thought of the audacity of the man, or his confidence in the bias of the Judge, who calls upon his worship seated upon the Bench to bring to his recollection a trial which never took place? But the worst feature in this subterfuge is, that of its being used by the Judge in his judgment as a cause of dismissal. The Court then proceeds to espouse the other subterfuge of the Defendant, in direct opposition to the evidence, and would have us believe, as the Defendant has stated, that he Mr. Sharpe intimated to his friend "It was then time for us to retire to our meals, and I called his attention to the fact prefacing my remark with the words in question" "(damned Scotch blackguard)" to attract his notice." I venture to think that your Honorable Government will hold, that the lowest of the low, would not demean themselves by calling the attention of a friend to any fact, by such an expression; and yet this subterfuge, repugnant to common sense, an insult to the Court, and the meanest capacity within its walls, is espoused by the Judge, contrary to his knowledge, contrary to the evidence, and I am convinced with the one sole object in view, to save Mr. Sharpe from that punishment which Mr. Nesbitt well knew he merited; and with the knowledge that he would cause to me an injury, great expense, and inconvenience, should I urge the matter further. I therefore submit for the consideration of Government, as to whether Mr. Nesbitt is not justly indictable under Sections 217 and 166 of the Indian Penal Code, for his conduct in this case. I have adopted measures with the view to present an indictment against Mr. Sharpe to the Grand Jury in Madras. And solicit the favor of Government, taking such notice of the conduct of the Sub-Judge as may be considered necessary.

8. I respectfully apologize for the length to which this communication has necessarily extended, and feel confident that I shall not incur the displeasure of Government, by applying that amount of perseverance necessary to clear the course of Justice, from the obstructions so wantonly placed in it, by those who by their oath, and office, were bound to pursue an opposite course.

No. 77. ORDER THEREON, 9th June 1863, No. 896.

His Excellency the Governor in Council cannot interfere in the matter referred to in the foregoing letter; any irregularities in the proceedings of the Officer who in his capacity of Justice of the Peace held the inquiry into the charge preferred by Mr. McIvor may be brought before the High Court, and it will be open to the Honorable the Judges to make a representation on the subject to Government if they should see fit.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Exd. T. O'Connor.

Proceedings in Calendar Case Justice of Peace File No. 2 of 1863. In the case of W.G. McIvor Esq. versus G. R Sharpe Esq:-

The Information and Deposition of Mr. William Graham McIvor taken upon oath before me one of Her Majesty's Justices of the Peace in and for the District of Coimbatore in the Presidency of Madras on the 1st day of May 1863. who on oath saith.

While present in this Court today assisting Mr. Sylk in a Criminal charge which had been brought against him by Colonel White, in a conversation which took place between that Gentleman and Mr. Sharpe who I believe to be a Judge of Her Majesty's Courts, Mr. Sharpe addressing Col. White said referring to myself "if I were you I would indict him for aiding and abetting the damned Scotch blackguard" I consider this a wilful insult tending to provoke a breach of the Peace in a Court of Justice, and also Criminal intimidation. Mr. Sharpe apologised to the Court for the expression he had used, but did not tender any apology to myself, and therefore I make this Complaint, and I beg therefore that a Summons may be issued to him regarding this Charge. If he gives me at once an ample apology I do not wish to pursue the matter further.

(Sd) W. G McIvor

Taken by me.

(Sd) W. L Nesbitt
Justice of the Peace

I repeat again on oath what I proposed in my statement yesterday - I charge Mr. Sharpe also with having defamed me by the language used by him in Court intending to harm my reputation by lowering my character in the estimation of others that is the parties present in Court namely Mr. Sylk Mr. Dawson, Colonel White, as also of the natives present, and all who were in Court at that time - I mean also in the estimation of the general community by the repetition of what was said and in the insult offered. My witnesses are Mr. LeGeyt, Mr. Dawson and Mr. Sylk.

/s/ J W G McIvor

Taken by me this 2nd May 1863

/s/ W. S. Nesbitt
Justice of the Peace.

Charge.

1st That the Defendant did on the 1st May 1863 at Cotacammund Gillah Coimbatore in the Subordinate Court of Cotacammund, commit Criminal intimidation towards the Complainant by saying reflatively to him, in speaking to Lieut Col White, of H. M. 17th Lancers who was then present in the Court as a Complainant in another Criminal charge that if he, that is Defendant, were the said Colonel White he would indict the complainant Mr. McIvor for "aiding and abetting - the damned Scotch blackguard" referring thereby to the said Mr. McIvor, aiding and assisting Mr. Christopher Sylk who was then under trial on the charge of the said Lieut Col White and thereby committed an offence punishable under Sec: 503 of the Indian Penal Code and Cognizable by the High Court of Judicature at Madras.

2. That the said Defendant did also at the said time and place use the said language relatively to the said Mr. McIvor with the intention of insulting him intending or knowing that it would be likely to provoke him to commit a breach of the peace and thereby committed an offence punishable under Sec: 504 of the Indian Penal Code and Cognizable by the High Court of Judicature at Madras.

3. That the said Defendant did at the said time and place also by the use of such language defame the said Mr. McIvor intending that such language would harm his reputation in the estimation of others and lower him in public estimation, and thereby committed an offence punishable under Sec: 499 of the Indian Penal Code and Cognizable by the High Court of Judicature at Madras.

Cross Examination by Defendant - Reworn and re-examined. I never saw Mr. Sharpe before Friday last to my knowledge. It is possible however I may have seen him, but have not known him - nor have I ever before spoken to Mr. Sharpe nor Mr. Sharpe to me to my knowledge. Mr. Sylk came up to me with some letters which he had received from Col. White. He was in deep distress and asked me what he should do. I dictated one conciliatory letter for him. The letter was the one now shown to me dated 27th April marked E. This letter as now read is correct as to what I dictated, with one exception viz. that I think I said "I hope you will be pleased to withdraw &c." instead of merely "that you will be pleased." The words "I hope" being omitted. It was either "I trust" or "I hope". The letter was only dictated but not

drafted by me. The letter marked A now shown to me is a draft of the letter, but is not in my hand writing. It was written I think by Mr. Charles Dawson. This is the only letter in which I assisted Mr. Sylk. I am now seated in the place and position I occupied when the occurrence took place of which I have complained against Mr. Sharpe. My back was turned towards the dock. This is the position which I think I occupied - the back of the Chair I was seated on might have been between two or three inches of the dock, but I did not take notice as to the exact distance I was from the dock. Mr. Sharpe was seated where Mr. Etienne now is, and Col. White was seated somewhere near the place and position in which Mr. Short is now seated.* I swear that I heard the expression damned Scotch blackguard distinctly used. It was used with Emphasis and in a loud tone. I did not nevertheless take immediate notice of it because I feared committing myself. I was afraid to trust myself to speak at the instant of the expression. I immediately considered it applicable to myself. My reason for this was that at the moment of the expression "the damned Scotch blackguard." Mr. Sharpe was seated slightly forward in speaking to Col. White, and being turned partly round, and looked towards me. Whether Mr. Legeyt was seated forward, or back, I forget, as my attention was concentrated on the outrage I considered. I cannot say either whether Mr. Dawson or Mr. Sylk were seated backward or forward. I considered the expression damned Scotch blackguard used by Mr. Sharpe on the first day more offensive and a greater outrage than the expression used by him yesterday when he said that my actions were of no more consequence to him than those of a reptile. When Mr. Sharpe was addressing Col. White I distinctly heard the words indict," and aiding and abetting but whether he said." I will indict." or "would" indict I am not positive of. The sentence in which the words aiding and abetting were used was addressed to Col. White by Mr. Sharpe. The rest of the sentence was addressed apparently to myself from the action which accompanied it I am convinced it was addressed to myself. I think to the best of my knowledge. I did prior to this expression address the Court. It was on the subject of the case pending then I did address the Court but I cannot say how it came about that I did so, but it was I think with reference to my assisting Mr. Sylk, but this was not when I first entered the Court. I don't recollect when it was except it was some time before the occurrence I have complained of happened, but how long before it was I don't recollect. I cannot say even approximately a further reason beyond what I have above stated for considering the expression damned Scotch blackguard applicable to myself was that from the whole circumstance of the case I felt it applicable to myself and only to myself.

Sd/ W.G. Le Fevre

Taken by me 6th May 63.

Sd/ W.S. Nesbitt
Justice of the Peace

* Note. The Complainant was first understood to say that he heard the words aiding and abetting but not indicting but he was apparently much confused at the moment, and was ultimately understood to say what is recorded.

Note. By measuring distance between the two chairs in which Mr. Etienne and Mr. Short were seated it was found to be about four feet and ½ of an inch.

The Information and Deposition of Mr. William Le Geyt A.R. Military Store Department, taken upon oath before me William Smith Nesbitt Esq: one of H.M. Justices of the Peace in and for the District of Coimbatore in the Presidency of Madras on the 2d day of may 1863 who on oath saith.

I was present in this Court yesterday. I did not hear Mr. Sharpe make use of the expression which I have just heard read in Mr. M'Leod's deposition. I heard him make use of the interjection "damned Scotch blackguard" I was not listening to know what proceeded or followed that expression. I whispered afterwards to Mr. Sharpe but I did not join in conversation with Col. White and Mr. Sharpe. I said to Mr. Sharpe you had better apologise to me old fellow. I dont suppose I was speaking seriously at the time. I have a peculiar way of addressing people sometimes. I was chaffing Mr. Sharpe, I think I heard Mr. Sharpe in addressing Col. White say "I will indict him for aiding and abetting". I think the language used by Mr. Sharpe was an offence against the Court. I mean as regards the "damned Scotch blackguard". I am an acquaintance of Mr. Sharpe. I have known Mr. Sharpe a month on the 30 last month. I cannot say whether I ever heard Mr. Sharpe mention Mr. M'Leod's name directly by name or by inference as having assisted in any way Mr. Sylk in the Case then before the Court. I do not either remember ever having heard Mr. M'Leod's name mentioned in Mr. Sharpe's presence with reference to this case. With regard to the Statement above recorded that I heard Mr. Sharpe say "I will indict him for aiding and abetting" I am only Certain as to hearing the words "aiding and abetting" used, but not as to the "I will indict him"

Taken by me

1st/ William Le Geyt
Dy Asst. Supt. of Stores.

1st/ W.S. Nesbitt
Justice of the Peace

The expression recorded in my previous deposition that I said to Mr. Sharpe he had better apologise to me meaning myself is Correct. That is what I said to him and not that he should apologise to Mr. M'Leod.

When Mr. Sharpe used this expression I did not see him turn his head or direct his eyes towards Mr. M'Leod. Mr. Sharpe did not then appear agitated or irritated or shake with anger, considering I was not looking at him I did not see him. I should imagine I should have seen it if this had taken place. I was then seated next to Mr. Sharpe.

I was present when Mr. M'Leod entered the Court. I heard Col. White then ask who it was but I did not hear Mr. Sharpe make any reply to it. I replied to it, and said the Dy Judge Advocate.

I was speaking in an allegorical manner as I have explained before in saying this, I only came on that day to the Court for the purpose of passing an hour. After I made this remark Mr. Sharpe and myself began to titter to ourselves. The expression Dy Judge Advocate was no sarcasm I was only chaffing with Mr. Sharpe I did not take any part in assisting Mr. Sylk. I am not at liberty to say whether Mr. Sharpe took any part in assisting Col. White. I am perhaps not a Scotchman. immediately after Mr. Sharpe had used the expression Damned Scotch blackguard I got up and said I am a Scotchman. My reason for doing this was

I am a kind of Mongrel.

[s/] W Legeyt
D.A.A.G. of Stores

Taken by me this 5th May 63.

[s/] W. S. Nesbitt
Justice of the Peace

The information and deposition of Mr Christopher Sylk, Botacammud, taken upon oath before me William Smith Nesbitt Esq: one of H.M. Justices of the Peace in and for the District of Coimbatore in the Presidency of Madras on the 4th day of May 1863. who on oath saith.

Examined by Mr Le Mr Le Poer. I was in Court on Friday the 1st of May in pursuance of a Summons which was taken out against me by Colonel White on a Criminal Charge of intentionally insulting with intent to provoke a breach of the peace. I was anxious to have an adviser and asked my friend Mr Le Poer to be in Court which he did. Mr Sharpe was also in Court at the time and appeared to be advising Col. White. He appeared to be addressing Mr Sharpe, and Mr Sharpe him. At a certain stage of the proceedings allusion was made to a letter which I had written and in which I was aided by Mr Le Poer. The letter to the best of my recollection was the one dated 27th April 1863 marked E now shown to me. I cannot say positively that allusion had been made in Court to Mr Le Poer having assisted me in writing this letter but I know the letter was alluded to Mr Le Poer was advising me what to say with reference to this letter. About this time Mr Sharpe became very irritated. I noticed him thus, and he

observed

observed "he ought to be indicted for aiding and abetting the damned Scotch blackguard". I heard this expression myself the whole of it. When Mr Sharpe used these words he turned partly round in the direction of Mr Mr Poer. Mr Dawson was sitting beside me when this was said and stood up, and appeared very much agitated and looking towards Mr Le Poer said Mr Le Poer you must not stand such an insult, you must appeal to the Court for protection. A little while after Mr Le Poer did get up, and walking towards the bench he said I must appeal to the Court for its protection, and will presently depose to the abusive language made towards me by Mr Sharpe. In the meantime my case was proceeded with. I don't recollect any Conversation taking place between Mr Le Geyt and Mr Sharpe. I heard Mr Sharpe say addressing the Court I have withdrawn the expression from the Court, but I will not apologise to him. I think Mr Sharpe meant by him Mr Le Poer I think Mr Sharpe meant Mr Le Poer when he said I would indict him. The words damned Scotch blackguard were uttered with emphasis. Mr Sharp shook and was agitated when he used this expression as if he was in great anger. When Mr Sharp used this expression his head was partly turned in the direction of Mr Le Poer. I am not aware that there was at the time any other Scotchman in the room, and no one else was then aiding me except Mr Le Poer. I do not think there was any other person to whom the language applied. Mr Dawson taxed Mr Sharpe with using the language to Mr Le Poer. He did not however ask Mr Sharpe directly whether he said this to Mr Le Poer. Mr Le Poer did not prior to

this

this time address Mr Sharpe either directly or in-
-directly. Mr Mc Ivor indicated Mr Sharpe in saying
to the Bench that he wished to repose regarding the
insult which had been offered to him. Mr Sharpe
did not say that the language which he had used
was not applied to Mr Mc Ivor.

Taken by me

/S/ Christopher Sylk

/S/ W.S. Nesbitt
Justice of the Peace

The information and Deposition of Mr Henry
Royal Dawson of Ootacamund taken upon oath
before me William Smith Nesbitt Esq: one of His
Mis Justices of the Peace in and for the District of
Coimbatore in the Presidency of Madras, on the
4th day of May 1863. who on oath saith. On Friday
the 1st Instant, I came to this Court as a Spectator
and with no intention of taking
any part in the proceedings. While
a case was being proceeded between Col. White &
Mr Sylk. Col White remarked that from what
he knew of Mr Sylk he felt sure he had been
aided and assisted in the correspondence. A
Gentleman who I afterwards heard was Mr Sharpe
remarked he would indict him for aiding and
abetting the "damned Scotch blackguard" at the
same time directing his eyes towards Mr Mc Ivor.
I was as this time seated and immediately rose
and told Mr Mc Ivor that the epithet was directed
to him and that he should claim the protection
of the Court. Mr Mc Ivor appeared and felt very
much confused as no doubt he was, and did not
claim the protection of the Court instantly, but
did

did so the moment he could recover himself-
In the meantime Mr Sharp addressing the Court
requesting to withdraw the offensive expressions
he had used. A Gentleman sitting on his left said
in an under tone you had better apologise to him.
This had reference to Mr Mc Ivor. Mr Sharpe re-
-plied I will not, I am damned if I do. I afterwards
ascertained that the Gentleman's name was Le Geyt. I
brought the subject to the notice of the Court at the
time; I also pointed out the Gentleman who had
used the language and stated that the language
was applied to Mr Mc Ivor the only Scotchman
I believed in the room. when I stated that the
language was applied to Mr Mc Ivor Mr Sharpe did
not deny it. There could be no mistake in the
application of the epithet was much as the im-
-mediate preceding Conversation bore Mr Mc Ivor's
admission that he had assisted Mr Sylk in draft-
-ing a Certain letter. This language preceded the
remark made by Col White and which drew
forth Mr Sharpe's epithet. This Conversation was
between the Court. Col White and Mr Mc Ivor. When
Mr Sharpe used the expression his eyes were
directed towards Mr Mc Ivor and the words damned
Scotch blackguard were pronounced with an
Emphasis. with the intention that the words
should have their full force and meaning. I
Considered undoubtedly that they were applied
to Mr Mc Ivor. when Mr Mc Ivor called for the
protection of the Court Mr Sharp did not pwe any
Contradiction or explain that the words were
used to any one else. We did not, deny that

they

they applied to Mr McIvor, nor did he do so when requested by his friend to apologise to Mr McIvor. When Mr Sharpe retracted from the Court the Expression he had used he did not to the best of my belief rise from his seat nor did he do so from the time he entered the Court till he left it. There was not at this particular time when the Expression was used any one else assisting Mr Sylk except Mr McIvor. I did not observe Mr McIvor address Mr Sharpe either directly or indirectly prior to the time that this language was used. When Mr McIvor entered the Court Col White enquired of Mr Sharpe who Mr McIvor was as he was a stranger to him - The reply was given in an under tone, but I did not hear it owing to the bustling at the time between Mr Sharpe and his friend, but Col White did not join in this.

By the Court - I cannot say whether I drew the Courts attention to what Mr Sharpe had said before the Court itself asked what was the matter or not, but I lost not a moment in doing so. The Court at the same moment addressing Mr Sharpe asked if it was addressing Mr Sharpe, of the Civil Service.

Taken by me

/ Sd/ W R Dawson

/ Sd/ W. S. Nesbitt
Justice of the Peace

The Complainant being unable to attend in Court grants permission that the 3d witness Mr W R Dawson be examined by the Court in his absence.

Re-sworn

Re-sworn. I am now seated in the position and place which I occupied when Mr Sharpe used the language which has been complained of by Mr McIvor. Mr Sharpe was also seated where he now is and Mr LeGeyt was seated between us where Mr Rangles now is. Mr McIvor was seated where Mr Renrick now is, and Mr Sylk was seated where Mr Allardyce now is on my left hand. I heard the language used by Mr Sharpe whilst he was conversing with Col White who was seated where Mr Witherspoon now is. I was looking at Mr Sharpe at the moment the words complained of escaped from him - From the position I occupied I could see Mr Sharpe look at Mr McIvor. I saw Mr Sharpe from behind Mr LeGeyt as he Mr LeGeyt was seated somewhat leaning forward at the time, and his eyes were directed at Mr McIvor. I am not able and decline to answer the question whether Mr Sylk from the position he occupied, could see Mr Sharpe or not. I am not competent to answer this as my eyes were directed to Mr Sharpe and not to Mr Sylk.

I decline to answer the question as to whom the remark was by Col White that from what he knew of Mr Sylk, he felt sure he had been aided and assisted in the Correspondence

was

was addressed, in as much as it has not emanated from the Court.

/S./ P. R. Dawson

Taken by me 5th May 1863

/S./ W. S. Nesbitt

Justice of the Peace

The Judgement

Sentence in Cal: No. 2 of 1863. on the file of the Justice of the Peace.

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The Defendant Pleads.

1st Autre fois acquit inasmuch as he was once tried having been questioned as to what he had said regarding the language imputed to him, and having admitted the more offensive expression was allowed to withdraw it, and retire from the Court.

2d Not Guilty.

Defendant admits having used the more offensive expression, but says that it was said in a Chaffing tone to the 1st witness who was seated beside him, and that it did not apply to the Prose=cutor. He has handed in a written defence in which he Comments on the defectiveness of the evidence for the prosecution, and specially on its incompleteness as a legal chain of testimony.

The charge consists of three counts, Criminal intimidation, using insulting language with intent to provoke a breach of the peace, and defamation. The 1st and 3d Counts are apparently based inferentially on the 2d Count, unless therefore the 2nd Count is proved the 1st and 3d are not tenable. With regard to the 2d Count, the utterance of the more offensive part of the expression is proved, as indeed it is admitted by defendant; but that it was applied to the Prosecutor, the evidence is not sufficiently conclu=sive.

Having after a full consider=-ation of the Case come to the conclusion that

that the evidence is not sufficient to prove that the language used on the occasion in question by the defendant was intended to apply to the Prosecutor, and to convict him of the same, and Consequently that there is not sufficient ground for holding him to bail to take his trial before the High Court of Judicature at Madras, on any or either of the Charges, I must, and do direct that he be discharged under Section 225 Act XXV of 1861.

11th May 1863. (Sd) W. Nesbitt
Justice of the Peace

1. I plead "Autre fois Acquit." It will be in the recollection of your worship that on Friday last you put me on my trial for using the words "d-d Scotch blackguard," in as much as you asked me whether I did use them or not. I admitted the fact, and was permitted by you to withdraw them, and to leave the Court.

2. I plead "not guilty"

3 There are 3 questions to be considered and answered in the affirmation before the charge can be said to have been sustained:

I. Did I make use of the language imputed to me?

II. Did that language apply to prosecutor?

III. Does the use of such language, if applied to prosecutor, amount to an offence under any of the Sections quoted in the Charge?

4. As regards 1st Question, prosecutor swore that the language used was "If I were you I would indict him for aiding and abetting." His 1st witness, who was the person seated next me heard no more than the words "d-d Scotch blackguard." used interjectively. The 2d Witness says the words used were "He ought to be indicted for aiding and abetting the d-d Scotch blackguard" while 3d asserts that I said I would indict him for aiding and abetting &c.

5. That I used the words "damned Scotch blackguard." I do not deny, but I do deny that they had any connection whatever, or were used together with any expression of mine, as to aiding and abetting. They were addressed to prosecutor's 1 witness (Mr Le Geyt) as he admits in a chaffing tone, and were responded to by him in the same strain. It was then time for us to be returning to our meals, and I called his attention to the fact prefacing my remarks with the words in question to attract his notice, and however strange such language may appear to a person unaccustom=ed to our ways, It would not appear so to any one who had been even for a day in our society in the same Hotel, and heard our arguments as to the Scotch nation, and our imitation of the various dialects of that Country. I myself pronounced the words "damned Scotch blackguard" in that of Aberdeen.

6. As regards 2nd question viz:- "Did the language used (whatever it may have been) apply to prosecutor." The prosecutor 1st of all swore that the words were used by me while addressing Colonel White, while in cross examin=ation he swore that they were addressed to himself. We at first assigned no reason for consider=ing that the words referred to himself, but his 2 and 3 witnesses, whose depositions were given 3 days

days later, and he himself also cross examination on a later day, were better provided. The 2 witness says in one place "when Mr Sharpe used these words he turned partly round in the direction of Mr McGoon" i.e. that I turned round while speaking, but in another place he says "when Mr Sharpe used this expression his head was partly turned in the direction of Mr McGoon" i.e. that it was so turned before I commenced speak=ing. The 3 witness curiously enough makes the same contradiction except that instead of the expression "turning the head" The 3 witness says "directing the Eyes" It must be borne in mind that at the time of this alleged turning the head &c 2 witnesses addressing a third party (Colonel White) sitting in an opposite direction and that between myself and prosecutor there were interposed Mr Le Geyt, Dawson, and Sylk, who effectually pre=vented my seeing the prosecutor from the time he entered the Court until he rose & advanced towards the bench. It must also be remembered that prosecutor's 1st witness (Le Geyt) who was seated next to me and separated me from Sylk, and Dawson, denies that I either turned my head or directed my eyes to prosecutor, or that I became very irritated was agitated or shook as the 2 and 3 witnesses present. I must here also remind your worship of the great discrepancies between the

the Statement of prosecutor and his 3 witness (Dawson) as to the position of the chairs of Colonel White and prosecutor, the former advancing prosecutor's chair at least 3/4 of a yard from the Dock & making it almost directly face the door, while the latter placed it parallel with the dock, and but 2 or 3 inches advanced. I would also point out how the same parties differ as to how they came to see me for the one (Dawson) says that he "saw me from behind Mr. le Geyt who was seated some what leaning forward" while the other (prosecutor) says it was I who was seated slightly forward It must strike everyone as surprising that all eyes should have happened to be directed towards me at the same time, and there is no doubt that it is an actual impossibility that Sylk, Dawson, and prosecutor, sitting in the same line, could have seen me simultaneously.

7. The 2 witness further attempted to connect the use of the language with prosecutor as follows "at a certain stage of the proceedings allusion was made to a letter, which I had written and in which I was aided by Mr. Mc. Doo" leaving it to be implied, that allusion was also made in Court to the fact of prosecutor's assistance but when directly questioned on the point he was

Compelled to

compelled to admit that he could not depose positively any such allusion having been made. The letter selected from correspondence by this witness appears to me indicative design on his part, for being threatened himself for writing another letter, and not wishing to drag Mr. Mc. Doo into that charge, he selected one of the very mildest description. This design however overreaches itself, for it is a palpable absurdity that I should have suggested an indictment for aiding and abetting in the composition of such a mild & (as prosecutor calls it) Conciliatory letter.

8. The 3 witness says." The immediate preceding Conversation (i.e. immediately preceding my alleged use of the language complained of) was Mr. Mc. Doo's admission that he had assisted Mr. Sylk in drafting a certain letter" and adds" This Conversation was between the Court, Colonel White and Mr. Mc. Doo" I never heard anything of the sort, and the Statement carries I think its own refutation with it, for our Judges are not in the habit of entering into Conversation with private individuals in which capacity alone was prosecutor present in Court on the occasion.

9. The 2 and 3 witnesses further seek in answer to prosecutor's questions to connect the language with prosecutor by saying that he was the only person then assisting Mr. Sylk. Your worship must however have observed the incorrectness of this for Mr. Dawson from the commencement of the trial

until

until I left the Court was constantly making observations, and it was he who suggested to Mr Sylk to plead "justification" It must however be clear to your worship that even were this true i.e. had prosecutor alone been assisting Mr Sylk at his trial, it would never have occurred to me to suggest an indictment for aiding and abetting, which must be prior to, or contemporaneous with the commission of the offence by the principal, else every lawyer who assisted a prisoner in his defence would be liable to indictment.

10. The same witnesses seek to connect the language with the prosecutor on the ground that he was the only Scotchman present. This was denied by parties then in Court, but even granting it to be the case, what must the language necessarily apply to a person then in Court, seeing that the witnesses admit that it was addressed to Colonel White, and that the person spoken of was spoken of in the third person. Before also this argument can be used, it is necessary that prosecutor should prove three things. Viz

1st That he is a Scotchman 2 that I whom he had neither seen nor spoken to (as he himself is compelled to admit) knew him to be such, and 3 That no other Scotchman was present. But there is not a particle of evidence to any one of these points.

11. Stress is also laid upon the fact that I did not at the time deny that the language referred to prosecutor. I suppose that the reason why I did not do so must be well known to your worship, viz that being well acquainted with Courts I did not deem it proper to enter into altercation with a third party, more especially after such conduct was forbidden as was done by your worship, on the occasion in question. The 3 witnesses discern that Mr Le Geyt requested me to apologise to prosecutor, but that Gentleman has fully explained what he did say to be chaff.

12. The evidence against me consists to me of the statements of 2 witnesses, both of them intimate friends of prosecutor, and of whom 2 in person, and the sons of the other, are admitted to have taken part in writing the "conciliatory letter." of which prosecutor speaks in his deposition. This witness may I think fairly be presumed to be inimical to me as having taken part in assisting Colonel White in his case against Mr Sylk. Their evidence appears to me contradicted in every particular that is material by Mr Le Geyt, an officer and Gentleman, upon whom not the slightest suspicion of bias can rest, and who as sitting next to me has much better opportunities of both seeing and hearing what occurred. It is also a most remarkable feature in this case that prosecutor has not called as a witness the person to whom the alleged language was addressed, but has only called 2 witnesses, who

both appeared with their evidence written out in their hands, your worship will also remember that when this was objected to by me, prosecutor at once referred to a Section in a book which he imagined contained the law applicable to the case. This fact alone speaks volumes as to the concert existing between prosecutor and his 2 and 3 witnesses. In Criminal cases the guilt of the accused must be proved beyond a doubt. Is this the case in the present instance? Is it impossible that my words were addressed to any body except the prosecutor? why even he himself did not the language to himself until urged to do so by a third party (Dawson) This awkward fact having been seen by your worship, of course did not admit of denial, and therefore it is sought to be explained by 3 witness by saying that prosecutor appeared and felt (how could Dawson find out his feelings?) very much confused, your worship observed on Tuesday last the passion into which prosecutor threw himself when I made an observation which gave him offence. Yet you are now required to believe that the same person remained perfectly calm, when he heard, what he himself admits to be, a more offensive expression directly addressed to him, Granting even that the language alleged was used by me with reference to prosecutor it still remains to consider the 3d question viz. "Does the use of such language amount to an offence"? The 1st Count charges me with Criminal intimidation.

How is defined in Section 503, and that definition shows clearly that the main ingredient in the offence is the use of a threat, what then does prosecutor himself say was the threat used by me? It is said to have been contained in the following words addressed to a "third party" "If I were you I would indict him for aiding and abetting" It is clear in the 1st place that had it been my intention to threaten prosecutor, I should have addressed him direct and not through another person, and it is equally clear in the 2 place that the words do not amount to a threat at all for 2 reasons 1st because, intimated an intention of doing any thing whatever, until an impossible contingency had occurred, viz- until I became Colonel Whitehead and 2 because what I do intimate an intention of doing does not amount to an injury in the legal sense of the word, it being competent for an individual to Criminally prosecute another without inflicting "injuria"

Another important ingredient in a charge of this nature is the intent of the threatener, but prosecutor is unable to show any possible object I could have in view in intimidating him who has never seen nor spoken to me.

It must be remembered that prosecutor's 1st witness heard no such language as prosecutor charges me with, and that

2d

as prosecutor consented to withdraw his charge, did I apologise to him, but anxious (as I naturally was) to avoid publicity in the matter of my having used an oath in a court, my Conscience would not allow me to admit (what was not the fact) that the words did apply to prosecutor and thus escape the inconvenience which this trial has cost me.

It is certain that the 3 Questions which (as I said above) must be answered by your worship in the affirmative, before the charge can be heard to have been sustained, must each, and all of them be answered in the negative, and the charge dismissed.

It is necessary that I should add the names of witnesses whom I shall require to be summoned on my behalf, should the case not be finally disposed of here. Viz--

1 Mr W. S. Nesbitt of the Civil Service, now Sub Judge Ootacamund and 2 Colonel R White H. M. 17th Lancers.

(Signed) G. R. Sharpe

Filed in open Court this 8th May /63

8. 5. 63.

(Signed) W. S. Nesbitt
Sub Judge as Justice
of the peace.

True Copy of Copies

W. G. McIvor
Supt Govt Cha Plantation

Prog 9 June 1863
Oc No 896.-

Judl Prog
No 1122

Judicial Department

No 1122

From the Superintendent Government Chincho-
-na Plantation - Ootacamund.
Dated 25th May 1863

For Orders

These papers tend to show - what has been pretty clearly established without them - that Mr Nesbitt is quite unfit for his present post. If the Ootacamund Court be made a full Civil & Session Court he will of course be removed - and should the Govt of India decline to sanction the proposed incidental arrangement, and the Sub Court be continued Mr N. should I think not be allowed longer to preside over it - There need be the less scruple in removing him now that under recent rules he can retire on a small pension - But it will not be well

to move in this behalf until we have
the reply of the Supreme Govt. to our appli-
-cation for the pay of the C & S Judge.

As to the matter more immediately brought
before us by Mr. McDon I do not see how
he can interfere. If ~~[illegible]~~ a party
be convicted by a Justice of the Peace,
an appeal lies I believe to the High Ct.
on its original side, and they may
be moved for a writ of Certiorari to call
up & review the proceedings – But an
acquittal in a Criminal case is final –
Or if a Justice of the Peace in a commit-
-table case refuses to commit I do
not perceive how the Govt. can come down
upon him – Any irregularities in his
proceedings may be brought by the party
~~aggrieved~~ affected before the High Court – If
they think proper to quit the control

Files in open Court ...

8. 5. 6...

Oct. No 896.

Ind. [illegible] No 1122

of the Justice of the Peace on this occasion;
it is open to them to represent his doings
on that account to Govt. if they see fit – but
if Govt. have power at all to interfere
in such matters it should be very rarely
exercised & only on very strong grounds.

There is this further reason why
they should not do so in the present
case as it seems from the conclusion
of Mr. McDon's letter that he has adopt-
-ed measures for the indicting Mr. Sharpe
at Madras – and should the indict-
-ment come to be tried before the High
Court Mr. Nesbitt's proceedings will
probably come under its review & he
may possibly be summoned as a
witness. I should doubt whether
such an indictment could be sustain-
-ed but I hear that Mr. McDon con-
-templates a Civil Action also – Mr

and it will be open to the Honorable ...
... representation on
... if they should

harpers defiance, and indeed his whole conduct seem very extraordinary. But Mr. McIvor does not complain to Govt of him as he has resolved to get work with him other ways.

JP

Mr Nesbit must of course, so indeed that has been settled for some time. I have had more than one occasion to question his capacity, & he is evidently unfit to be trusted in any judicial capacity — I think the papers should (if such a course be usual or correct) be submitted to the Supreme Court — I do not think much better of Mr Sharpe than of Mr Nesbit, and Mr Lefeyt is abominable. Even with the rest a more disgraceful trio can seldom have met together — however the two, Mr Sharpe & Mr Lefeyt may be left to Mr McIvor.

WD

8
(92)

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the Superintendent Government Cinchona Plantations.

(Here enter 25th May 1863 No. 7)

Order thereon 9th June ~~May~~ 1863 No. 896

His Excellency the Governor in Council cannot interfere in the matter referred to in the foregoing letter. Any irregularities in the proceedings of the Officer who in his capacity of Justice of the Peace held the enquiry into the charge preferred by Mr. McIvor may be brought before the High Court and it will be open to the Honorable the Judges to make a representation on the subject to Government if they should see fit.

cannot the papers be sent by the Govt to the Judges
WD

JP

[signature]

To

Mr. W. G. McIvor - [illegible] 10

Pro: India

Judl. 1863. Department.

No. 896.

Proceedings of Government.

F. No. 1295

Dated 9 June 1863.

Declining to interfere in matter referred to in the letter from the Supdt. Govt. Chinchona Plantations regarding the irregular proceeding of the Sub Judge at Ootacamund.

76-77

C. 30 May 63
R. 5 June