

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

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211-212	
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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
22nd June 1863.

No. 211. Read the following letter from W. G. McIVOR, Esq., Superintendent Government Chinchona Plantations; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Political Department, Madras, dated Ootacamund, 13th June 1863, No. 17.

I have the honor to solicit the favor of your being good enough to submit for the consideration of Government, the desirableness or otherwise of removing George Robinson Sharpe, Esq., from the high judicial position he now holds as Registrar in Her Majesty's High Court of Judicature at Madras, pending the trial of the charges brought against him in that Court, for the outrages perpetrated by him, in the Court of the Subordinate Judge at Ootacamund, on the 1st and 5th of May 1863, as per Appendix marked A.

2. I regret much to trouble the Government upon this subject, and in fact it was never my intention to do so, but from the communication in the Appendix marked B, C, I cannot divest my mind of an impression that an influence has been brought to bear in Madras in order to close against me the avenues to the High Court of Judicature. My Attorney Mr. Ritchie on his perusal of the papers forwarded me a legal opinion, in which a natural and in fact an unavoidable conclusion was arrived at; subsequently Messrs. Ritchie and Shaw against the spirit of my instructions, obtained and forwarded to me the unsolicited opinion of Mr. Branson, marked C, the object of this opinion viewed in connection with Messrs. Ritchie and Shaw's letter, and the spirit in which they are drawn, I feel as only intended to discourage me in my endeavours to obtain justice.

3. The great complications attached to this case by the conduct of the Sub-Judge here, Mr. Nesbitt, in his endeavours to shelter Mr. Sharpe from the penalties of the law. The fear that Mr. Sharpe's high judicial position may enable him still to bring an influence of a like nature to bear upon the case, and as I am convinced that your Honorable Government will hold that viewing the outrage Mr. Sharpe has been guilty of in an open Court of Justice, and himself a high judicial functionary, renders it incumbent that to him, should be conveyed the most certain punishment, for his violation of that law which he was specially bound to respect and maintain.

APPENDIX A.

Substance of the matter on which the indictment is to be drawn. To be put in legal form by Messrs. RITCHIE and SHAW, and presented to the Grand Jury.

1. That George Robinson Sharpe Esq., at present Acting Registrar of the High Court of Judicature, Madras, did on or about the 1st May 1863, at Ootacamund, Zillah Coimbatore, in the Subordinate Court of Ootacamund, commit Criminal intimidation towards the complainant William Graham McIvor, by threatening (in speaking to Lieutenant Colonel White, of Her Majesty's 17th Lancers, who was then present in the Court, as a complainant in Criminal charge) that he the defendant "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. C. Sylk, who was then under trial on the charge of the said Lieutenant Colonel White, and thereby committed an offence punishable under Section 503, of the Indian Penal Code.

2. That the said defendant Mr. G. R. Sharpe, did also at the said time, and place, use the said language with reference 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 Section 504, of the Indian Penal Code.

3. That the said defendant Mr. G. R. Sharpe, did at the said time and place, also by the use of such language defame the said Mr. McIvor, intending or knowing that such imputations, would harm his reputation, lower him in public estimation, and injure him in his profession or calling, and thereby committed an offence punishable under Section 499, of the Indian Penal Code.

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4. That the said defendant Mr. G. R. Sharpe, at the same place, on or about the 5th May 1863, while on his defence of charges framed on the above threat, imputations and language, did falsely, and maliciously speak of the plaintiff, the following words "the action of the prosecutor are no more to me than those of the vilest reptile breathing," the defendant then paused, looked the plaintiff Mr. McIvor full in the face, and repeated with emphasis "the vilest reptile breathing," thereby intentionally insulting the plaintiff, intending or knowing it to be likely that such would provoke him to commit a breach of the peace, and thereby committed an offence punishable under Section 604, of the Indian Penal Code, and cognizable by the High Court of Judicature at Madras.

(Signed) W. G. McIVOR.

Substance of the matter on which the Plaint is to be drawn; and put in legal form by Messrs. RITCHIE and SHAW.

Action for slander and defamation—damages to be laid at 20,000 Rupees.

1. That the defendant George Robinson Sharpe, Esq., now Acting Registrar of the High Court of Judicature at Madras, did, on or about the 1st May 1863, at Ootacamund, Zillah Coimbatore, in the Subordinate Court of Ootacamund, falsely spoke and published of the plaintiff, the following words, that is to say, "I would indict him for aiding and abetting the damned Scotch blackguard," knowing or having reason to believe that such imputations and language would harm the reputation of the plaintiff, lower him in the estimation of others, impair, and injure him in his profession or calling.

2. That the said defendant Mr. G. R. Sharpe, did at the same place, on or about the 5th of May 1863, while on his defence of charges framed on the above threat, imputations, and language, falsely and maliciously spoke of the plaintiff the following words, "the action of the prosecutor are no more to me than those of the vilest reptile breathing," the defendant then paused, looked the plaintiff Mr. McIvor full in the face, and repeated with emphasis "the vilest reptile breathing," thereby intentionally insulting the plaintiff, and knowing or having reason to believe that such imputations would lower him in the estimation of others.

NOTE.—The above words, i. e., "the vilest reptile breathing" although spoken in a course of justice not being fair comments upon the evidence or relevant to the matter in issue; but spoken with express malice, I hold they are actionable. Should you, however, differ with me in this respect they must nevertheless form a part of the plaint, as this is a point upon which I must have the decision of the Court.

OOTACAMUND,
10th June 1863.

(Signed) W. G. McIVOR.

For information of Messrs. Ritchie and Shaw,
Solicitors, Madras.

APPENDIX B.

MADRAS, 3rd June 1863.

DEAR SIR,

Yourselves *versus* SHARPE.

Enclosed is the opinion of Mr. Branson on the case submitted to him on your behalf. It differs very much from the opinion of our Mr. Ritchie furnished to you some time back, but as our professional rules require us to submit to the opinion of Counsel even when they clash with our own, we must in pursuance thereof advise you to desist from all further measures against Mr. Sharpe.

W. G. McIVOR, Esq.,
Ootacamund.

We are, &c.,
(Signed) RITCHIE & SHAW.

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APPENDIX C.

I am clearly of opinion that no Civil action can be maintained in this case. Verbal slander is actionable only where it imputes the commission of an indictable offence; or when it affects the party in his trade or occupation and special damage is the result. Here the alleged slander does not impute any offence known to the Criminal law, and it is not suggested that it applied to Mr. McIvor in his business or occupation or that any special damage resulted, nor indeed could any such suggestion be made.

I have no doubt whatever, therefore, that Mr. McIvor would fail in any Civil proceeding that he might institute, and I advise him against adopting any such course.

2ndly. As to Criminal proceedings no doubt the terms of Section 499 of the Penal Code are wide enough to grasp almost every thing; but reading Sections 499 and explanations No. 4 together I very much question whether it was intended that the Penal Code should apply to mere abuse.

But granting that it does. The defendant Mr. Sharpe has most distinctly declared that he did not use those terms to Mr. McIvor, but to another, and that other says they were addressed to him. Putting the better evidence out of the question for a moment, Mr. Sharpe's defence is, not simply not guilty, but he actually in so many words says I did not intend to apply the offensive words to you, and I did not so use or apply them.

What more can Mr. McIvor require? and what under such circumstances would be the result of any further proceedings—a great deal of ridicule, that is certain. But would the trial necessarily result on a conviction. It is impossible to say that there is no chance of an acquittal. But granting a conviction, what would be the punishment? It may be imprisonment or fine or both. There is the possibility of a nominal fine.

Upon the whole I think it open to doubt whether mere abuse is "defamation" under the Penal Code, and under the circumstances of this case it is impossible for me to say that an indictment would necessarily result in a conviction.

I therefore do not advise any proceedings by indictment against Mr. Sharpe.

(Signed) J. W. BRANSON.

(True Copies.)

(Signed) W. G. McIVOR.

1st June 1863.

No. 212.

ORDER THEREON, 22nd June 1863, No. 975.

The request contained in this letter is wholly inadmissible, and the Government are surprised that it should have been made by Mr. McIvor.

(Signed) J. D. SIM,
Secretary to Government.

Exd. T. McMostry.

Judicial Dept.

N^o 1295.

From Mr. W. McVern Potacamund.
dated 13 June 1863 N^o 17.

For orders

The application is preposterous &
I would like to see the person in the fewest
possible words that it cannot be
accorded to. JF.

This most preposterous and ill' M'Vern
should be told to go away with his
work.

W. D.

N^o 975 — 22 June 1863.

This is hardly strong enough

MD

JP

The request contained
in this letter is wholly inad-
-missible and the Government
are surprised that it should
have been made by Mr. McSw.

L. R. S.

Mr. H. E. McSw. super