M.R.O. 1—20,000—16-10-12.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 872 Press Mis.

145-147

Dated 20-6-1918

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 20*th June* 1865.

Read the following papers :—

No. 145. From P. P. HUTCHINS, Esq., Registrar of the High Court of Judicature at Madras, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Madras, 28th April 1865, No. 41.

I am directed by the High Court to annex, for such notice as His Excellency the Governor in Council may deem proper, an Extract* from the observations of the Session Judge of Tellicherry, on Session Case No. 18 of 1865. The case was one of murder, and the Session Judge's remarks amount to a charge of very serious neglect on the part of Mr. Wither, then acting as Zillah Surgeon of Tellicherry, in refusing to examine the body of the murdered man, or even to have it turned over in his presence, although it was brought before him for examination within 36 hours after death.

* Paragraphs 29 to 4[illegible]

2. I am also directed to forward the accompanying translation† of the evidence of the 15th, 16th, 18th and 19th witnesses, and of Mr. Wither himself, together with an original letter‡ from the Session Judge, enclosing a copy of correspondence between himself and the Superintendent of Police.

† To be returned.

‡ Dated 14th instant.

Extract from the observations of the Session Judge of Tellickerry on Session Case No. 18 *of* 1865.

29. "The 18th witness deposes to having given over charge of the body, exactly in the con[illegible]n in which it was found, to the 15th and 16th witnesses (Constables), for the purpose of its being conveyed to the Civil Dispensary at Tellicherry; this was at midnight on the 13th February, about 24 hours after the murder."

30. "The 15th and 16th witnesses depose to having received charge of the body, for the above purpose, from the 18th, to their having escorted it to Tellicherry, to their having reached the Dispensary at 7 A. M., on the morning of the 14th, to the Doctor having just looked at the body at about 10 A. M., to his having ordered it to be taken away, to a Hospital servant having followed them and ordered them to convey the body back to the Dispensary, to their having done so, to its having been placed in a godown, to the Doctor having conducted an external examination of it again at about 4 P. M., and then ordered it to be buried."

31. "These witnesses both agree in stating that the body, when they reached the Dispensary, was rather swollen, and a little offensive, but not so much so as to prevent easy approach to it; of course by 4 P. M., matters had not improved."

32. "I now come to a consideration of the Medical evidence in this case, and I deeply regret that in doing so I shall have to express a strong and very unfavorable opinion on the conduct of Assistant Surgeon F. O. Bigg Wither, the Acting Zillah Surgeon, the more so as he has but very recently come under the displeasure of Government in another matter and department, and that his conduct in this matter will probably also be brought to the notice of Government."

33. "The evidence on the trial established that the body was taken to the Dispensary early on the morning of the 14*th February*; but I was surprised to find that the Medical Certificate on the record was dated the 2*nd March*, and was of such an unsatisfactory character that I resolved to put Mr. Wither into the box, as the 20th witness.

34. "I was much dissatisfied with this witness' replies to very simple questions, and with his demeanour generally in giving those replies. Whenever at all pressed, his memory was at

fault ; the hours at which he states that he saw the body on two occasions on the 14th February do not agree with the hours stated by the 15th and 16th witnesses, the officers in charge of it. It is evident from his own statements that his external examination of the body was of the most superficial nature, so much so that he failed entirely to see the severe contusion on the left side deposed to by several witnesses as plainly observable. The body was not even turned over in his presence, nor were the hands even untied. He gave as his reason for this very superficial examination that the body was in an advanced state of decomposition, and further stated that it was in such a state that he did not consider it to be his duty to hold a *post* [illegible]

"Under ordinary circumstances such a statement from [illegible]d man would be unanswerable [illegible]ct evidence [illegible]he body was *not* in the advanced state of decompos[illegible]d by Mr. Wither, nor was such likely to be its condition, seeing that when it was *first* bro[illegible]e Dispen[illegible]M. on the morning of the 14th F[illegible]ased had not been [illegible]r until the body reached the Dispensary it was u[illegible]n. The murder occurred at midnight of the 12th [illegible]y the murderer *by night* to deceased's house ; it was under cover the whole of the next day ; and at midnight of the 13th was conveyed *by night* to the Dispensary at Telli[illegible], so that it was at no time exposed to the action of the sun, which so much accelerates d[illegible]tion."

36. "Mr. Wither has not attempted to explain why, if when he *first* saw the body on the 14th February it was in too advanced a state of decomposition for examination, he did not at once order it to be removed for burial, why did he keep it, on his own showing, until noon, but according to the consistent evidence of the officers in charge of it, until 4 P. M., and then examine it, so far as he did, and order it to be buried ?"

37. "Equally unsatisfa[illegible] Wither's explanation as to the cause of delay in granting the certificate ; he says, "because it was not applied for sooner." He, however, shortly afterwards makes the damaging admission that the body was accompanied with the usual letter requiring a certificate, but "does not *recollect*" why it was [illegible]en, "does not *recollect*" any dispute on a point of etiquette as to who was to have the c[illegible]e. Now these are matters not likely to have been forgotten, or that ought to be forgotten, or kept back by an officer in Mr. Wither's position, and when on his oath."

38. "But for the very fortu[illegible] 19th witness was able to state positively that the deceased was dead, [illegible] and his hands tied *before* he was taken from the prisoner's house, the ends of justice in this very important case would have been entirely frustrated by the useless nature of the Medical Certificate and evidence."

39. "[illegible]ly satisfied as I do from the evidence, supported as it is by probabilities and ot[illegible]cumstances, Mr. Wither's [illegible], that when the body reached the Dispensary on the [illegible] in such an advanced state of decomposition as rendered a proper examination impracticable, I consider that in the ends of justice, however unpleasant it may ha[illegible]t was Mr. Wither's duty to have conducted such [illegible] g done so was most reprehensible in a Govern[illegible]."

40. "Only at the last Sessions of this Court, [illegible]n Case 10 of 1365, the body of the deceased was exhumed four days after her death, as it was suspected she had been murdered ; and though her body was in too advanced a state of dec[illegible]on to admit of an internal *post mortem* examination, the French Medical Officer of Mahé did not hesitate to conduct a thorough external *post mortem* examination, and drew up a "process verbal" as to the [illegible] cause of death, which was invaluable [illegible]he disposal of th[illegible]and of which I took special notice in my judgment."

Extract).

(Signed, [illegible]HUTCHINS,

[illegible]rar, *Appellate Side.*

Referred to the Principal Inspector General, Medical Department, who will call upon Mr. Wither for any remarks he may have to offer.

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

FORT SAINT GEORGE,
9th May 1865.

No. 146. From F. O. B. WITHER, Esq., Acting Civil Surgeon of Guntoor, to the Deputy Inspector General of Hospitals, Presidency Division ; dated Guntoor, 19th May 1865.

I have the honor to return, herewith, the correspondence forwarded for my information, and, as requested, furnish my reply to the very serious charge of neglect of duty, brought against me by the Civil and Session Judge of Tellicherry.

I. On visiting the Civil Dispensary on the morning of the 14th February last, between the hours of 8 and 9, I found the body of the deceased man (referred to in the correspondence) awaiting my inspection. About the same time an official letter in the Vernacular language was handed to me ; this was presumed to be the usual letter, brought with the body from the District, demanding a certificate as to cause of death, and was sent away at once to be translated into English.

II. On making an external inspection of the body, I decided that it would be useless to make any *post mortem* examination, as, from its condition, I should be unable to arrive at any satisfactory conclusion as to the cause of death. The body was at first directed to be removed, but was subsequently detained, till I had made some inquires of the Superintendent of Police, relative to it. I saw this officer later in the morning, and the conversation took place as stated in his letter.*

* Letter No. 85 of 13th April 1865.

I would then have directed the body to be taken away, but *wished* still further to satisfy myself that my first impression, as to the inutility of making an internal examination, *was correct.*

III. I was unable from various causes to make this second inspection till between the hours of 12 and 1 P. M. I then satisfied myself as to the correctness of my first impression, and again noted the appearance of the head and neck, position of the rope around it, and the manner in which the hands were tied ; *from these external appearances*, I came to the conclusion that the deceased's death had been caused by hanging, but as this could not be verified by an internal examination, I could not of course give any *positive* opinion as to cause of death.

IV. I would further beg to observe that I was much surprised to learn, some time afterwards, that it was in evidence that death had *only* taken place about 36 hours previous to my first inspection of the body, and had my professional opinion been asked on the subject, I would unhesitatingly have declared it to be my belief that 4 or 5 days had at least elapsed.

V. I trust that the above statement will at once prove that there was no intentional neglect or avoidance of duty on my part. I would here distinctly beg to state that it was my professional opinion that no practical conclusion could have been arrived at by making a *post mortem* examination, and consequently I did not do so.

VI. With reference to paragraph 37 of th[illegible]ract from the observations of the Session Judge of Tellicherry," I will endeavour to explain the *apparent* inconsistence of my evidence as to the *cause* of the delay in furnishing the Certificate, that "it had not been applied for," although I admitted "receiving the usual letter demanding one."

The letter referred to, [illegible] I have already mentioned as having been given to me about the time of my first inspection of the body. It was written in the Malayalum language, and, for obvious reasons, no Certi[illegible] be granted, until the English translation of this letter had been received.

VII. This translation, with the original report, was forwarded later in the day, though I cannot say at what hour, I was probably absent from my house at the time, otherwise the Certificate would have been given at [illegible] but in *all* such cases, a Police Constable calls *in person* for it. In this [illegible] however, no one *to my* [illegible]re for it, and hence it escaped my memory, until brought to my recollection by a letter from the Superintendent of Police.

Subsequent to the receipt of the translation.

On this point a misapprehension has arisen. I stated to Captain Blundell S[illegible] co[illegible] no[illegible] See [illegible]ent of Police, No. 85, of 13th A[illegible] 1—6.

VIII. I have never refused on any [illegible]ion to grant a Certificate when officially demanded, for even if the cause of death or injury, &c. is uncertain a Cer[illegible] to that effect is [illegible]y given.

IX. Referring further to Mr. Sullivan's remarks in the same paragraph (37), on my having stated in evidence before him that "I had no recollection of having disputed about giving a Certificate to an Inspector, [illegible] dispute as to etiquette in the matter," I am *quite positive* that no such [illegible] I am at an utter loss to conceive what could have originated such an impress[illegible] an occurrence had taken place, as Mr. Sullivan ju[illegible]serves, I could *not* p[illegible]*en* it.

X. I can recollect, on that occasion, expressing great disapprobation that a corpse in such a condition should not only have been brought into, but actually permitted to remain for some time, in one of the wards of a Public Hospital.

XI. It is possible too that on this occasion, viz., that of my fi[illegible]f the corpse, t[illegible] Inspector may have asked me to give him the Certificate then, but as I had not then received the translation of the letter, of course, I could not grant it *till I had*; hence may have arisen the in[illegible] that I had refused it.

This, however, is only a conjecture.

XII. I ought further to state that, on every [illegible]on, an[illegible]al letter in the Vernacular language *addressed* to the *Civil Surgeon*, was *first* brought to me or to the Dresser, and by *me*, forwarded to the Poli[illegible] for tra[illegible]

XIII. The Session Judge of Tellicherry further remarks on the u[illegible] tory manner in which my evidence was given. In reply, I can only state [illegible] I was *so astonished* at hea[illegible]rt, for the first time, that s[illegible]s had been made to the effect that not only had I disputed about giving the Certificate to an Inspector, but had also refused to give one at all, that I am aware that my answers were somewhat confused, and that I did not give my evidence in as clear a manner as I would [illegible] have done.

No. 172.

MEMORANDUM.

Assistant Surgeon Wither's explanation is forwarded to the Chief Secretary to Government, in reference to his docket dated the 9th instant. The correspondence received therewith is returned, as requested.

FORT SAINT GEORGE,
31*st May* 1865.

(Signed) R. COLE,
Princl. Insptr. Genl. Medl. Dept.

No. 147. ORDER THEREON, 20th June 1865, No. 872.

The papers above recorded relate to a charge of neglect of duty preferred by the Session Judge of Tellicherry against Assistant Surgeon Wither, lately acting as Zillah Surgeon of Tellicherry, in refusing to examine the body of a murdered man, which was brought to him for examination.

2. After a careful consideration of the papers which have been laid before Government, including the explanation afforded by Mr. Wither, the Governor in Council can come to no other conclusion than that the charge preferred against that officer has been fully established, and that he has been guilty of very gross neglect of duty. It is clear that the body, when Mr. Wither first saw it, was not in such a state of decomposition as to prevent its being examined, at all events externally; indeed, he did examine it, after a fashion, some hours later; but when it was first brought to him, he did not even take the trouble of having the corpse turned round. His explanation of the delay in giving the Certificate is unsatisfactory, and his proceedings throughout the case are most reprehensible.

3. Assistant Surgeon Wither having lately been removed from Tellicherry to a distant station, as a punishment for his conduct in another matter, the Governor in Council will abstain on this occasion from doing more than directing that he be informed that the Government view with very grave displeasure the neglect of duty of which he has been guilty in the case which forms the subject of the present correspondence. The Principal Inspector General of the Medical Department will exercise a careful supervision over Assistant Surgeon Wither's performance of his duties in his present appointment. Mr. Cole should have made some remarks on Assistant Surgeon Wither's letter, when forwarding it to Government, and not have simply passed it on under an endorsement.

(True Extract).

Acting Secretary to Government.

To the Honorable the Judges of the High Court,
with enclosures returned.

" Principal Inspector General, Medical Department.

Exd. J. H. Burns.

[redacted]

[redacted]

Kindly consider the above remarks
Dr. W. – might perhaps be pursued
by being read to Lake Chargé Whi-
Lapen at work on the Chart in
hyperd. but he seems to have
Lakelle perspectival drawing in them
last. don't think the arrangement of
hieroglyphics on the sixth mem of their
work.

WDK

Ignite upon – the opinions expressed
Dr W. indeed but I should not think
out the subject
groundless as
Dr. W. – both

and

to

2 In

Dr. W.

and

upon

and direct the

answer

[redacted]

F. P. No. 52. 53
6. 12. 64

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following

From [illegible] Registrar Supreme Court, Madras, dated Fort 21st April 1865. 4

" Assistt Surgeon H. C. Bidie, Chl Inspr Genl. Mil. Depts " 19th May 1865

Order thereon. 20th June 1865. A 2.

The papers above
peruse for a charge of murder
preferred by the Police Inspector
of Pallicherry against A
purporting to be Witness, Lately A
Clerk Bureau of Police
ing [illegible]
of a murder
brought to him for examination
2 After careful consider-
ation of the papers which have
been laid before Government
including the examination afforded
by Mr Witther, the Government
Council

Council can come to no [illegible] clusion than the charge preferred against that Officer has been [illegible] established and that he [illegible] [illegible] neglect [illegible] clear to the body when Mr. Wells [illegible] [illegible] position [illegible] being examined [illegible] events externally [illegible] after a question [illegible] [illegible] which he [illegible] take the trouble of the [illegible] the [illegible] of the delay [illegible] and this proceeding [illegible] having been [illegible] conduct [illegible]

in another matter the Governor in Council will abstain on this occasion from doing more than directing that he be informed of the Government view [illegible] sure he has [illegible] which [illegible] present [illegible] will [illegible] over [illegible] remittance of [illegible] should have made on [illegible] when forwarding and [illegible] might be [illegible] under an endorsement.

To the Honorable the Judges of the High Court with enclosures [illegible] Med. Depot — Desp. 27/6

6

Judicial 1865. Department.

No. 872

Letter from Chief Com Gen 23.5.65

PROCEEDINGS OF GOVERNMENT.

Dated 20th June 1865

Censuring Dr Withers late Acting Assistant Surgeon of Tellicherry for refusing to examine the body of a man dead on which was brought to him for examination.

145 R 14