

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1192	Press Mis.
Dated	4-8-	10/1866.

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Not to be folded or roughly handled

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To

No. 1192.

THE HONORABLE THE CHIEF JUSTICE OF THE HIGH COURT
OF JUDICATURE, MADRAS.

HONORABLE SIR,

I am directed to transmit to you the accompanying petition from one George West Newman, late Manager of the Chief Engineer's Office of the Madras Irrigation and Canal Company in Kurnool, and now undergoing a sentence of imprisonment passed by the High Court at the last Sessions on conviction on a charge of Criminal Breach of Trust, and to request that you will be so good as to favor the Governor in Council with the opinion of the Judges of the High Court on the case.

I have the honor to be,

Honorable Sir,

Your most obedient Servant,

FORT SAINT GEORGE,
4th August 1866.

Chief Secretary.

From the Commissioner of Police, to the Acting Chief Secretary to Government,
Fort Saint George; dated Madras, 12th July 1866, No. 75.

I have the honor to forward a petition, for pardon, addressed to the Right Honorable the Governor in Council by George West Newman, a prisoner in the Penitentiary, who was convicted of Criminal Breach of Trust at the last Sessions on the prosecution of the Madras Irrigation Company, and sentenced to six months' imprisonment and to pay a fine of one thousand Rupees.

2. A letter from the Agent of the Irrigation Company, to the Chief Justice, who presided at the trial, is attached to the petition. I am given to understand that His Lordship declined to move in the matter.

To

THE RIGHT HONORABLE FRANCIS NAPIER, BARON NAPIER, K. T.,
Governor of Fort Saint George, Madras.

The humble Memorial of GEORGE WEST NEWMAN, a prisoner in the Madras Penitentiary, tried at the last Criminal Sessions for Criminal Breach of Trust, convicted of the same, and sentenced to simple imprisonment for a period of six months, with a fine imposed of Rupees one thousand, failing the payment of which, a further term of imprisonment for six months is imposed.

Your petitioner was employed for upwards of five years as Manager of the Chief Engineer's Office, Madras Irrigation and Canal Company in Kurnool. On account of the reduction of the establishments your petitioner received in October 1865 a month's notice to quit the Company's service.

2. Your petitioner on the 18th November 1865, delivered over Cash and Accounts to Mr. Beaumont, then Officer in charge of the Chief Engineer's Office, and received the following receipt from that officer:—

“Received from Mr. G. W. Newman the sum of four thousand six hundred and seventy-four Rupees, and Annas ten (4674-10-0), subject to Agent's Queries which may arise after date affect-

ing the adjustment of the balance of Chief Engineer's Cash Account previous to the date of giving over charge.

CHIEF ENGINEER'S OFFICE, KURNOOL,
November 18th, 1865.

(Signed) W. C. BEAUMONT,
Officer in Charge.

On the 20th of November 1865, your Petitioner received the following Certificate —

KURNOOL, November 20th, 1865.

"I hereby certify that Mr. G. W. Newman has delivered over his accounts correctly to me, and he leaves the Company's service free from all liability, so far as the books show the same.

(Signed) W. C. BEAUMONT,
Officer in Charge."

3. The receipt for Rupees 4674 was furnished at the same time that your petitioner gave in the statement of Cash Balance produced in Court. There was a difference of Rupees 1000 between them. This could not fail to draw the attention both of Mr. Beaumont and myself, and he immediately remarked "how is this? here is a mistake;" to which I replied, "there is"; but as the money is in the box, the accounts will have to be rectified; this Mr. Beaumont alleged he had no time to do just then as he was in a hurry to go out; but added, "I have no doubt it is all right." After satisfying himself that the Cash was not missing he granted me the receipt, and told me if I would call again on Monday the 20th, he would, after being fully satisfied that the accounts were correct, grant me a certificate freeing me from all liabilities. On my waiting upon him then he gave without hesitation the certificate of acquittance entered above. Your petitioner afterwards remained in Kurnool for a week, affording thereby ample opportunity for Mr. Beaumont to have called upon him for further explanation if it were needed. Believing that the mistake had been corrected, your petitioner now went to join his family at Bangalore, where he obtained another situation in the Public Works Department at Coorg. On the 15th January 1866, when all his things were packed up to go to Coorg, and nearly two months after his leaving Kurnool, he was arrested on the charge of Breach of Trust and remitted to Kurnool for trial.

4. On the day of examination, Mr. Beaumont wrote demanding Rupees 1000 which sum was asserted to be missing. Believing that its deposit would simplify matters and ensure a free personal examination into the matter, and also anxious to shield himself and family from public exposure and consequent ruin, he at once forwarded a cheque for the money. Your petitioner does not regret this step as it proved his earnest desire to meet inquiry. When he discovered that this step was interpreted into admission of the crime charged against him, your petitioner at once cancelled the cheque.

5. Meanwhile, Mr. Henslowe had sent down Mr. Badham, the Chief Accountant, to represent the Company and watch the proceedings, while instituting a departmental inquiry into the whole matter. Mr. Beaumont declared to him that he had given no receipt. He further prevented Mr. Badham from attending the trial by keeping him in ignorance of the day of trial although he had promised to inform Mr. Badham on this very point. Your petitioner is empowered to state that had the Company's Officials known of the receipt granted on the 18th November, no proceedings would have been instituted against your petitioner.

6. When arrested, your petitioner was only able to discover the acquittance granted by Mr. Beaumont. The receipt had, in the hurry of one long journey, and preparation for another, been mislaid, and it was not discovered until after long and repeated search by Mrs. Newman some weeks afterwards. Not being able to produce the receipt, your petitioner did not mention it as he would thereby have laid himself open to a denial of its existence. This Mr. Beaumont had already done to Mr. Badham, and at the Madras trial he professed ignorance of it, till he had unwittingly acknowledged his signature. To Mr. Henslowe he said that he had forgotten all about it. At the close of the investigation your petitioner was committed for trial at Madras.

7. At the trial at Madras the only evidence against your petitioner was offered by Mr. Beaumont. He swore that there was a deficiency of Rupees 1000, that the books had been altered at the date of the 7th November, that the alterations covered the deficiency, and that this could only have been done by your petitioner.

8. Your petitioner would respectfully submit that there was no evidence to bring these charges home. The receipt showed a Cash Balance of Rupees 4674-10-0; that is the correct amount. Two days afterwards Beaumont gave the second certificate. Nor were the circumstances under

which these documents were given at all calculated to render mistake possible. Beaumont swore at the trial as follows with regard to the first receipt:—"I went up to the Cash Chest, and I counted the cash. I swear I counted the cash. I left my room and went to the Cash Chest and satisfied myself that the money was there." It is therefore clear that the money was counted with every care. It is equally clear that the receipt was worded and signed with equal care, since Mr. Beaumont swore that the concluding portion of the receipt, more than half of it, was written to his dictation. The amount too was written both in words and figures. With regard to the Certificate, the case is equally clear. Beaumont swore: "I saw the Cash Book before I gave this certificate." With evident reference to this he added to the Certificate before signing it, "so far as the books show the same."

9. Against all this there was but Mr. Beaumont's fresh denial, unaccompanied by a single proof, and contrary to the whole tenor of his former evidence. Your petitioner would respectfully submit that, if Beaumont's written acknowledgments at the date of the occurrence are unworthy of belief, much more so are his spoken denials months afterwards when he was fully aware that he was himself being held responsible by the Company and that his only way of escape was by proving another guilty. Your petitioner would respectfully submit that it is altogether an unprecedented thing that a man should be allowed with success to set aside months afterwards two receipts given at the time with every formality, especially when his own reputation renders it his highest interest to do so. At least equally unusual, and, with all respect be it said, equally unjust must it be for a person holding such certificates, without even a breath that they were obtained by violence or fraud, to be condemned to ruin the bitterest, and most irreparable.

10. If, my Lord, the case be thus, the charge of having altered the books falls to the ground. But with all humility your petitioner would refer further to the erasures as they have been brought so prominently forward in the case. They were doubtless made before his connection with the Company ceased, although altogether without your petitioner's cognizance. All the business connected with them happened on the 7th November. Your petitioner was absent on leave on the 11th, as he is easily able to prove. There was, therefore, ample opportunity to make erasures. Your petitioner's time was fully employed in a variety of ways, and the duty of writing up the Cash Book fell on Venkiah. The latter swore at the trial: "If any money was paid by anybody, the payments (were) entered. I made entries in the Cash Book at the prisoner's request. I made the entry A 1. I do not know who made the alterations. I can't remember the particulars of the entry on the 7th November. All the entries in the page in which the erasure took place they are in my hand-writing, except the erasure and the words 'Puckully for October 1865 at the bottom.'" These declarations make it clear that no erasure so clumsily done as the one in question could have escaped his attention. They escaped your petitioner's notice, because, when the book was brought to him, the totals were already made in pencil by Venkiah, and he simply inked them over without attempting to check them. Venkiah swore that this was the custom. "The Cash Book is totalled at the end of every month when the Account Current is prepared. I totalled them first in pencil and brought them to the prisoner."

11. The erasures were so clumsily done that it is impossible that they could have been made by one who knew the book was all and every day in the charge of another, and that upon their detection hung the whole future of one who, up to that time, had borne an unblemished reputation, as your Lordship will observe by the accompanying copies of Testimonials. Further, by reckoning up the total correctly, instead of passing over the cheat, it was necessarily placed in the road to detection since the comparison with the cash balance must inevitably have discovered the cheat. It is morally impossible that a person just about to leave, and, therefore, to give up his cash, could thus ensure his own detection.

12. Your petitioner would submit, with all respect, that so far from bringing the crime home to him, all the circumstances of the case point to the conclusion that Mr. Beaumont and Venkiah were cognizant of the erasures before the 18th November. Venkiah swore that he wrote up the page, and that he was in the habit of totalling them. The erasures must have been made at once, or before the 18th November, since they are included in the totals. Yet Venkiah swore that he did not discover the alterations till a month afterwards when your petitioner was out of the way and unable to refer to the books. It was further sworn that the erasures were so badly done as to demand detection. These facts point but to these conclusions—First, that Venkiah must have known of the erasures before;—Secondly, that the erasures were made by one who wished to ensure detection,

and not by one who sought to avoid it. It is not for your petitioner to say who these facts point to, but, while declaring his entire innocence, he cannot but submit that they do not point to him.

13. It is also impossible to suppose that Mr. Beaumont could possibly have permitted your petitioner to leave books that were acknowledged to differ from the Cash, unless he was conscious of the reason of the difference; nor is it possible to suppose that a whole month could have passed without the deficiency being discovered. The monthly expenditure was between four and five thousand Rupees; and if there had really been an unknown deficiency of so great an amount, the money must have run out or become so diminished as to demand notice. Further, to explain the discovery of the erasures, Venkiah swore that he was making up the Account Current for November when, on the 18th December, he stumbled on the alteration. Yet a few moments afterwards he swore—
“THE CASH BOOK IS TOTALLED AT THE END OF EVERY MONTH, WHEN THE ACCOUNT CURRENT IS PREPARED.”
It is, therefore, clear that the books were totalled and compared with the Cash on or about the 30th November, or more than a fortnight before the alleged discovery, and yet no error was announced. Why? Because your petitioner was then in or near Kurnool. Your petitioner would respectfully submit that these facts are only compatible with previous knowledge of the erasure, then and before so demanding notice.

14. Your petitioner would also submit that the Agent of the Company, Mr. Henslowe, is able to prove that on the 31st January 1866, no existence was found of the L. O. U. for 500 Rupees of Mr. Beaumont's in the Cash Chest; it is quite evident, therefore, that this sum of money must have either been made up in some mysterious manner, or the document quietly made away with. It is further proved by Beaumont's own evidence that he had lost and paid another Rupees 500 on account of the Kurnool Races in that very month of December. Beaumont stated that he borrowed Rupees 400 of one Vadasmally; but that person was not produced. Even, however, supposing this to be true, it is clear that, although already heavily in debt, Beaumont had found means to pay at least Rupees 600 just after the very time that Rupees 1000 were missing from the Cash Chest.

15. Your petitioner would further submit with all respect that the result of a stringent departmental inquiry concerning the matter was that Beaumont was suspended, his security seized, and representations made to the Directors that he should be dismissed. On the other hand, although your petitioner was then a convicted prisoner, Mr. Badham, a Superior Officer of the Company, thought himself justified, as soon as the verdict was pronounced, in coming up to your petitioner, and, in the face of the whole Court, expressing his deep sympathy with your petitioner, as he was convinced your petitioner was the victim of an unjust and mistaken verdict. When it is remembered that Messrs. Henslowe and Badham were the real prosecutors of the case, since if Beaumont had not prosecuted your petitioner, they would have prosecuted him; this fact obtains great importance.

16. Without further trespassing on your Lordship's valuable time your petitioner would respectfully submit that even if Beaumont had borne a good character, if he had had no deep interest in your petitioner's conviction, if the books had been kept by your petitioner, and not by Venkiah, if your petitioner had not given in the statement of accounts, if he had fled from Kurnool, if he had not been prepared to deposit Rupees 1000 as a guarantee of his readiness to stand inquiry, if his character were indifferent and his amusements expensive—even if Beaumont had not been embarrassed and had not suddenly become rich—if he had not indulged in horse-racing and drunkenness, if he had remained to face inquiry instead of stealing away from his post as he has just done leaving his debts unpaid and his large security in the hands of the Agent, if he had not added words of caution in both receipts, there would have been no evidence that your petitioner had been guilty of the crime charged against him. But when the reverse of all this has been proved, it is abundantly manifest that your petitioner is necessarily innocent.

17. Messrs. Henslowe and Badham were present in Court as witnesses and could have given very important evidence, but the Barrister into whose care the defence was given was so certain of there being no evidence to convict, that he did not think it necessary to call these gentlemen, and your petitioner fears that he has consequently suffered great injury.

18. Your petitioner earnestly prays that your Lordship will, in consideration of all these facts, grant him a free pardon as the only remaining remedy for the great injustice under which he is suffering.

And your petitioner will ever pray.

(Signed) G. W. NEWMAN

Madras, 11th July 1866

From F. H. HENSLOWE, Esq., Agent and Manager, Madras Irrigation and Canal Company, to the Chief Justice of Her Majesty's High Court of Judicature, Madras; dated Madras, 22nd May 1866.

IN RE NEWMAN.

Being in possession of certain facts bearing upon the above case, which did not come out in the course of the trial, but which appears seriously to affect its merits, I venture to request that your Lordship will be pleased to give me an opportunity of laying them before you, in order that should you become convinced that justice has not been done, such steps may be taken as you may direct for remedying the evil which your Lordship may deem to have flowed from such miscarriage.

2. The conviction, I think, I may venture to say, rested entirely upon the evidence of one witness, Beaumont. The credibility therefore of that one witness became the most vital element in the case; and if the Jury had had before them conclusive evidence that Beaumont was not the witness of truth, they could scarcely have returned the verdict which they brought in.

3. I have been earnestly appealed to by the family of the unfortunate prisoner on his behalf, and as the Company which I represent appears more or less in the character of prosecutor, I have deemed it to be my duty to yield to their entreaties and to represent to your Lordship the circumstances to which I have alluded, subject to such proofs as I may be able to adduce in support of my statement.

1st.—Immediately on receiving a report of the deficiency of Rupees one thousand (25th December), I wrote to Kurnool for a copy of the acquittance, which I assumed Beaumont must have given Newman upon receiving from him the Cash and Accounts. But instead of receiving the said copy, I received a letter from Mr. Beaumont in which he merely informed me that he had given a certificate “to the effect” that Mr. Newman had handed over charge of the Company's Cash correctly, and the Company had no claim upon him. Beaumont made no allusion whatever to the receipt which he had given.

2nd.—Mr. Badham, Chief Accountant, shortly after proceeded to Kurnool with instructions from me to investigate the case. That gentleman questioned Beaumont, when the latter asserted that he had given no other receipt to Newman except the Certificate; upon being taxed immediately after the trial with this statement, he admitted it, and made the incredible excuse that “he had forgotten it.”

3rd.—Although he knew that Mr. Badham's desire and duty were to investigate the case at Kurnool, he carefully abstained from letting him know when the preliminary examination came on, though he had the night before promised to do so, and he knew that Mr. Badham, though occupied on duty, kept within reach purposely.

4th.—He informed Mr. Badham that Newman had spontaneously made the offer to give a Cheque for Rupees one thousand on the morning of the 1st February; yet in Court he swore the reverse.

5th.—With reference to the case of suspension for drunkenness upon the report of Newman, (24th July 1863,) Beaumont swore he was unjustly suspended; whereas the facts are as follows:—Having entered the office in a state of intoxication and gone to sleep in his chair, Newman, his subordinate, reported him to Colonel Cotton; but it appears that his immediate superior, Mr. Brunton, subsequently came into the office and found him asleep, and upon Beaumont's appealing against the sentence of a month's suspension passed by Colonel Cotton, Mr. Brunton on the 26th and 27th July wrote as follows:—

“Mr. Beaumont's offence was flagrant; I could not ask that it might be passed over without some decided mark; yet I have no objection to urge Mr. Beaumont's previous attention, and desire to please in mitigation of the Chief Engineer's sentence.”

“On Friday the 24th, Mr. Beaumont came to office in some degree under the influence of liquor and fell asleep in his chair, in which state I found him when I returned from the Chief Engineer.”

4. In March, Beaumont gave over charge of the office and the cash to Mr. Lowe, in whom I have perfect confidence, and who would not and could not for his own security have received as part of the Company's Cash, any L. O. U.'s signed by Beaumont notoriously in needy circumstances; the latter must, therefore, in the meantime have found means to replace Rupees 500, besides meeting his losses at the races in December. I have before me Mr. Lowe's Certificate of the cash Balance, dated 31st March (after Beaumont had given over charge), which quite satisfies my mind that Beaumont had withdrawn his L. O. U.

5. I need hardly say that, at this distance from Kurnool, it was impossible for me to direct the measures to be adopted in reference to the defalcation; this naturally fell into the hands of Mr. Latham, the Chief Engineer, and I feel satisfied that, had he seen the receipt which was produced in Court, and the existence of which Beaumont had denied, he would not have thought of instituting a Criminal Prosecution.

6. For my own part I ought to add that I have all along held Beaumont responsible for the money, and I detain his security deposit accordingly. Against this act of mine he appeals to the Directors.

7. Inasmuch as Newman was able to produce a clear and carefully drawn up document, under Beaumont's hand, fully exonerating him from the misappropriation of the Rupees one thousand in question, a document on which he might well found his hope and expectation of instant acquittal, and that the Jury permitted that solemn document to be set aside by Beaumont's extraordinary statement that "it must have been an error."

8. The Jury must have placed unbounded reliance upon Beaumont's veracity and credibility before they could give such fatal weight to a mere assertion, and I venture to submit, for your Lordship's consideration, whether they could possibly have attached such weight to his word had they been aware of the facts which I have now submitted.

9. I, therefore, pray your Lordship to reconsider the circumstances of the case with a view to laying it before the Right Honorable the Governor, as one deserving of clemency, or that your Lordship will take such other steps in the matter as may, in your opinion, meet the justice of the case.

Ed. T. Cartledge.

Judicial Dept

No. 1192.

To the Honble the Chief Justice of the High Court of Judicature. Madras.

Honble Sir,

I am directed to hand out to you the accompanying Petition from one George West Newman, late Manager of the Chief Engineer's Office of the Madras Suez Canal & Navigation Co. and Company, in Kurnool & now undergoing a sentence of imprisonment passed by the High Court at the last Session on conviction on a charge of Criminal Breach of Trust & to request that you will be so good as to favor the Governor in Council with the opinion of the Judges of the High Court on the case.

Fort St. George
14th August 1883

45-40

1866
To the Honorable Secretary of the
War Department
Washington

Dear Sir,
I have the honor to acknowledge
the receipt of your letter of the
10th inst. in relation to the
above subject.

Very respectfully,
Your obedient servant,
John A. B. [Signature]
August 14, 1866.

I am, Sir, very respectfully,
Your obedient servant,
John A. B. [Signature]

Received

1866
[Faint handwritten notes and stamps at the bottom of the page]