

MADRAS RECORD OFFICE.

Government of Madras.

Medical DEPARTMENT.

G.O. No.	188	Press
		Mis.
Dated	3 - 2 - 19	1886

Not to be folded or roughly handled

9/9

*Proceedings of the Madras Government, Judicial Department,
3rd February 1866.*

No. 28. Read the following letter from the Registrar of the High Court of Judicature at Madras, Appellate Side, to the Chief Secretary to Government, Fort Saint George; dated Madras, 30th January 1866, No. 7.

I am directed by the Chief Justice and Judges to forward, for the consideration of Government, the accompanying papers,* relative to a letter written by Captain Clay, Cantonment Joint Magistrate of Cannanore, requesting a loan from one Stewart, then living within the Joint Magistrate's jurisdiction.

* Original letter from Session Judge of Tellicherry, to Registrar of the High Court, dated 11th December 1865.
Original enclosures to the above Nos. I, II and III.
Original letter from the Cantonment Joint Magistrate of Cannanore to the Registrar of the High Court, dated 2nd January 1866.

2. A Magistrate who in pecuniary difficulties so borrows money necessarily impairs his independence, and in this case there is the additional fact that, in the same letter, as an inducement to Stewart to meet his wishes, the Joint Magistrate communicates, for Stewart's private benefit, a circumstance which had come to his knowledge officially. The Judges are of opinion that the transaction shows Captain Clay to have acted with grave impropriety.

3. It will be observed that Captain Clay has come to Madras and is anxious to afford any explanation which the Government may think proper to call for.

From the Session Judge of Tellicherry, to the Registrar of the High Court of Judicature, Appellate Side, Madras; dated Tellicherry, 11th December 1865, No. 156.

I feel it to be my painful duty to forward, for the consideration and orders of the Honorable the Chief Justice and Judges, the accompanying copy of a Proceedings of my Court, dated 4th instant, (Enclosure 1), disposing of Criminal Petition, No. 39 of 1865, preferred by one John William Gerard, 1st prisoner in Case No. 32 of 1865, on the Calendar of persons tried by the Acting Joint Magistrate of Malabar, appealing against the decision of that Officer, sentencing the petitioner, under Sections 411 and 414 of the Penal Code, to an aggregate period of nine months' rigorous imprisonment.

2. On the record of the case, forwarded to me by the Acting Joint Magistrate, was a letter, in the hand-writing of Captain Clay, the Cantonment Magistrate of Cannanore, without date, and marked Z, which had been filed by the 1st witness in the case, a copy of which is herewith forwarded (Enclosure 2).

3. It appeared from the record that this letter had been addressed by Captain Clay to Stewart, the 2nd prisoner in the case, but before it arose.

4. Paragraphs 25 to 31 of my Proceedings of the 4th instant (Enclosure 1) sufficiently explain the view I took of this letter, and the course which I considered it my duty to pursue with regard to Captain Clay.

5. I have also the honor to forward Captain Clay's return to those Proceedings (Enclosure 3).

6. I regret that Captain Clay should consider the remarks I made "harsh," and the course I adopted "very grievous," as it was my intention, in acting as I did, to treat him with all the consideration the circumstances of the case, in my opinion, admitted of, and, I must observe, that his explanations have not convinced me that my view of the case was "harsh," or my mode of procedure "very grievous."

7. The Honorable the Chief Justice and Judges will expect from me an opinion as to how far I consider Captain Clay's explanation to be satisfactory, and I much regret that I am unable to give a favorable opinion.

8. Captain Clay has stated (the italics are mine) "AT THE TIME that note" [the one taken exception to by me] "was written, the Cantonment Magistrate had never seen Mr. Stewart, did not know he was an East Indian, and in fact corresponded with him in terms of social equality, and was not aware that he was in ANY WAY connected in business or otherwise with Darasha. Had the Cantonment Magistrate been aware of this fact, he would most certainly never have had any communication or have conceived any idea of having any pecuniary transaction with Mr. Stewart. As soon as he became acquainted with the relative positions of Darasha and Mr. Stewart, he AT ONCE broke off ALL communication ON THE SUBJECT OF THE PROPOSED LOAN."

9. The above has to be reconciled with the post-script to the letter itself, and with the following, in the very next paragraph of Captain Clay's return: "The Cantonment Magistrate was told on the day the note in question was written that Darasha was in possession of a Power of Attorney from Stewart, and had sold out Rupees 50,000 of the latter's, and was about to abscond with the money, &c."

10. That this was told to the Cantonment Magistrate before he wrote the letter in question is apparent on the face of that letter itself, and yet, in the post-script to that letter, so far from the Cantonment Magistrate having, "as soon as he became acquainted with the relative positions of Darasha and Mr. Stewart AT ONCE broken off all communications on the subject of the proposed loan," the loan is pressed in the postscript to the very letter in question.

11. Again the following passages occur in Captain Clay's deposition, on oath, as second witness for the Crown in the case before the Acting Joint Magistrate (the italics are mine):—

(At the 2nd search, Darasha). "Hormanjeet at once complained of missing a letter that had been written to Mr. Stewart by me, and which he said was on the top of some other papers which were in a drawer of some sort, which we were then re-examining" * * * "I had written a letter to Mr. Stewart, some fortnight or so before" (N. B., date of the 2nd search, 14th July 1865) "when Darasha was at Madras, stating that I had received information that Darasha, who I KNEW held Stewart's general Power of Attorney was going to make off with 50,000 Rupees of Stewart's, and I think I added, I had issued or was about to issue a warrant for his apprehension. I then alluded to some proposals about a loan, made long before by me to him by letter, and wound up by advising him to cancel his Power of Attorney to Darasha. Up to the time of Stewart's complaint and Darasha's arrest for poisoning, I had never seen Stewart. I had heard that he was a son of Colonel Stewart, and had no notion of his being an East Indian. All negotiations regarding the loan were at once broken off when the charge of poisoning was preferred (N. B.—This was on the 10th July 1865). While Darasha was in arrest on the charge of poisoning, Hirjee (another Cannanore Parsee) came to my house, and saying that the Parsees were determined to see him (Darasha) through his trouble, warned me that when Darasha was released on bail, my letter to Mr. Stewart would be produced against me."

12. The Honorable the Chief Justice and Judges will observe that, in this deposition, Captain Clay, on his oath, stated that when he communicated to Stewart the information about Darasha being about to abscond, "he KNEW that he (Darasha) held his (Stewart's) general Power of Attorney." The same previous knowledge on this point is clearly implied in the words of the objectionable letter itself, "as you have given Darasha powers to a great extent over your property," and I find it impossible to reconcile these passages with the statement in Captain Clay's explanations, that "at the time he wrote the objectionable note, he was not aware that Stewart was in any way connected in business or otherwise with Darasha."

13. Again it will be observed that, in his explanation, Captain Clay has stated that "AS SOON as he became acquainted with the relative positions of Darasha and Mr. Stewart, he AT ONCE broke off all communication on the subject of the proposed loan." I have already observed (paragraph 9) that this is refuted by the postscript to the objectionable letter itself, and I have shown, at paragraph 28 of my proceedings of the 4th instant, when that letter must have been

written, i. e., about the 22nd June 1865, and consequently the information of the relative positions of Darasha and Stewart within Captain Clay's knowledge; and yet I find he stated, on his oath, before the Acting Joint Magistrate, that "all negotiations regarding the loan were at once broken off when the charge of poisoning was preferred," which was not till the 10th July 1865.

14. I can only say, in conclusion, that I was myself at Cannanore from the 19th April to the 18th June 1865, during the last adjournment, and though only a temporary resident there, I was perfectly aware of the partnership between Darasha and Stewart, and that they lived together (the latter by the bye a fact admitted by Captain Clay in his deposition on oath). The connection was a matter of public notoriety, and one I more than once heard discussed publicly, with expressions of regret as to the probable disastrous results of the connection to Stewart.

I.

Extract from the Proceedings of the Session Court of Tellicherry, dated 4th December 1865, No. 46.

Read again Criminal petition No. 39 of 1865, presented by John William Gerard, 1st prisoner in Case No. 32 of 1865, on the Calendar of persons tried by the Acting Joint Magistrate of Malabar, appealing against the decision of that officer, sentencing the petitioner, under Sections 411 and 414 of the Indian Penal Code, to an aggregate period of nine months' rigorous imprisonment.

2. Read the record of the trial before the Acting Joint Magistrate in this case, received with his Memorandum, dated 17th November 1865, No. 73.

3. Read again this Court's Proceedings of the 27th November 1865, calling on the Acting Joint Magistrate to state whether the petitioner, John William Gerard, had claimed to be tried as a British born subject at the time of the trial, and to explain why Captains Blomfield and Clay, were, although witnesses themselves, allowed to remain in Court throughout the trial.

4. Read Return of the Acting Joint Magistrate of Malabar, dated 1st December, No. ⁷⁷/₁₈₆₅, to the precept which accompanied the above Proceedings.

5. The Petitioner appeals from the decision of the Acting Joint Magistrate on the following grounds:—

I.—That, petitioner being a British born subject, the Acting Joint Magistrate had no jurisdiction.

II.—That the Acting Joint Magistrate moreover had no jurisdiction, inasmuch as the value of the property alleged to have been stolen was 416 Rupees, and therefore over 300 Rupees.

III.—That Captain Clay, the 2nd witness, and Captain Blomfield, the 12th witness, were allowed to remain on the bench with the Acting Joint Magistrate, to whom they were constantly passing notes, as well as between themselves, and that this was permitted notwithstanding petitioner's protest.

IV.—That the provisions of Section 125 of the Criminal Procedure Code were violated at the search of 1st witness' house, inasmuch as there were not two or more respectable inhabitants of the place present.

V.—That the admissions of Kannan, 18th witness, made to Inspector D'Cruz, 6th witness, were recorded and acted upon by the Cantonment Magistrate, in his preliminary inquiry, which was opposed to Section 148 of the Criminal Procedure Code.

VI.—That the 15th witness swore that Kannan, 18th witness, gave him the cloths as having been sent to him (15th witness) by the 2nd prisoner.

VII.—That the moment petitioner became aware that the 2nd prisoner had not sent the cloths to 15th witness, as alleged by Kannan, 18th witness, petitioner concluded they were stolen property, and volunteered the information to the Police, which rebutted any guilty knowledge on his part.

VIII.—That the first note addressed to the Inspector, 6th witness, was written in a confidential style; because if, after all, the cloths turned out not to be stolen property, petitioner was likely to get into trouble for his interference.

IX.—That the 10th witness, being a subordinate Police Officer, had to depose in the presence of his Superior Officer, the 12th witness (Captain Blomfield,) and was therefore under intimidation, and his evidence was not reliable.

X.—That the 11th witness lodged a complaint before the Cantonment Magistrate, to the effect that he had been compelled by Inspector D'Cruz, 6th witness, to swear to the cloths, for making which complaint he was suspended.

XI.—That the chest of drawers were sealed with a seal belonging to Inspector D'Cruz, 6th witness, which seal remained in his custody.

XII.—That it was in evidence that there was a light in the room in which the property was secured on the night in question.

XIII.—That the lower Court expressed itself dissatisfied with the evidence of Inspector D'Cruz, 6th witness.

XIV.—That Inspector D'Cruz, 6th witness, kept no record of his Proceedings in the present case, which, as a Police Officer, he was bound to do.

XV.—That the lower Court discredited the evidence of the approver, Kannan (18th witness), in this case, which was the principal evidence against petitioner.

XVI.—That, as regards the 2nd letter addressed by petitioner to Inspector D'Cruz, 6th witness, petitioner obtained the copper Jumboo from 1st witness, as 6th witness had requested him (petitioner) to get a Parsee's Jumboo, to assist him (6th witness) in tracing the case.

XVII.—That Prisoner's servant, the 1st defence witness, proved that the 4th prisoner (Wray) gave a carpet bag to the approver, Kannan (18th witness), which Kannan brought to petitioner's house; that petitioner found the slides, &c., in it; that he communicated this to Inspector D'Cruz, 6th witness, and sent those articles to him.

XVIII.—That Inspector McIntosh, and three other persons who could have deposed to having seen the cloths a day or two before the 1st search at the 1st witness' premises, were not examined, the lower Court dispensing with their evidence as unnecessary.

XIX.—That the 16th witness did state that he had seen the cloths at 1st witness' premises the day previous to the 1st search.

XX.—That Inspector D'Cruz gave his seal to Kannan, 18th witness, for the purpose of abstracting Captain Clay's letter to the 2nd prisoner (marked Z) from the sealed chest of drawers at 1st witness' house, and that, availing himself of the opportunity so afforded, Kannan, 18th witness, stole the cloths, &c.

XXI.—That Constable Raman Nair, who was on guard over the house of 1st witness on the night in question, was not examined.

XXII.—That the evidence of Captains Clay and Blomfield was not receivable, as they were present in Court during the whole trial.

XXIII.—That the evidence of the 8th witness, a subordinate of the 2nd witness, was also valueless.

XXIV.—That it was not established that the cloths were not in the chest of drawers at the time of the 1st search.

6. Before disposing of this appeal, I considered it necessary to pass my Proceedings of the 27th ultimo, No. 43, calling upon the Acting Joint Magistrate for explanation and information as to the 1st and 3rd and 22nd grounds of appeal.

7. In his return to those Proceedings of the 1st instant, No. $\frac{77}{1865}$, the Acting Joint Magistrate has stated, as regards the 1st ground of appeal, that the prisoner Gerard did not advance the plea of his being an European British subject in the present trial, and that if he had, it would not have been admitted by him, the Acting Joint Magistrate, as he was aware, from Gerard's own admission (extract forwarded) in another case, that his father was descended from Dutch parents, and his mother from German.

8. This appears to me to be sufficient notice of the 1st ground of appeal.

9. As regards the 3rd and 22nd grounds of appeal, the Acting Joint Magistrate has observed that the Superintendent of Police, Captain Blomfield, the 12th witness, was conducting the pro-

secution; that he, the Acting Joint Magistrate, had no reason to suppose that Captain Clay's evidence could be required after the 27th September; and that he, the Acting Joint Magistrate, overruled the objection of the prisoner Gerard to Captain Blomfield and Captain Clay being present, on the ground that Officers holding Her Majesty's Commission were not likely to depose to any facts not within their own knowledge, nor to be influenced in any way by what other witnesses might depose to; that any person may conduct his own case in Court and yet give his evidence as a witness therein, without its weight being in any way affected thereby; and that the evidence given by these two officers did not affect the prisoner Gerard, and that his objection thereto was impetinent and irrelevant.

10. This last opinion, the Acting Joint Magistrate was not called upon to offer to the Appellate Court, and I am unable to concur with him in the soundness of the ground on which he permitted these two officers to remain in Court throughout the trial.

11. With regard to Captain Blomfield, as he was conducting the case, there would have been no objection to his remaining in Court to watch it, provided he had been first examined himself; but, as regards Captain Clay, I cannot but consider that the Acting Joint Magistrate erred in judgment in allowing him to remain with him on the bench during the trial, after the prisoner Gerard's protest, looking to the facts that the case had been taken out of Captain Clay's hands, under Section 36, Criminal Procedure Code, and transferred to the Acting Joint Magistrate by the Magistrate of the District, and also that there were features on the face of the case connected with Captain Clay, which were likely to call for future explanation from that officer.

12. Officers holding Her Majesty's Commission are, for all that, *human*, and the annals of Military Criminal Justice would support the contention that they are not always as infallible in the matter of evidence as the Acting Joint Magistrate presumes. I make this remark without any personal application.

13. In the present instance, the protest of the prisoner Gerard should have been recorded, and the grounds for overruling it should also have appeared on the record.

14. Moreover, as regards the remark of the Acting Joint Magistrate that the evidence given by these two Officers did not affect the prisoner Gerard, I observe that considerable stress is laid by the Acting Joint Magistrate, in his judgment, as regards the proofs against Gerard, on facts throwing suspicion on him (Gerard), and deposed to by Captain Blomfield.

15. The question, after all, as regards the evidence of these two officers, recorded as it was, is one rather of *weight* than of *admissibility*, and after the Prisoner Gerard's formal protest, he is entitled to the benefit of any deficiency of weight which may attach to their evidence.

16. Having made these preliminary remarks, I shall now proceed to dispose of the appeal on its merits.

17. The real points for determination in this case are:—

1st.—Whether *any* theft at all was established by the evidence in this case?

2nd.—Was there any evidence of the property alleged to have been stolen having passed into the exclusive possession of the prisoner Gerard?

3rd.—If so, has it been proved that he knew, or had good reason to know, that such property was stolen?

4th.—Has it been proved that he assisted in the concealment of such property?

18. As regards the first of these points, it was admitted on all hands that, up to the time that Kannan the approver came forward with his story, that the theft had taken place between the searches, although D'Cruz was actually in possession of the property, he and the Superintendent of Police were so clearly of opinion that no theft had taken place, that they endeavoured to get the first witness, Darasha, to receive the property back.

19. The Acting Joint Magistrate has distinctly recorded his disbelief of Kannan's story, and there is no evidence to any other theft.

20. As regards the second point, there is no evidence whatever against the prisoner of the property having passed into his exclusive possession. The 15th witness stated that he (15th witness) had received the property from Kannan, and the defence witness stated also that he

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received the Carpet bag from Kannan, and placed it in the prisoner Gerard's room while he was absent. It is true that Kannan denied all this, but his evidence had already been rejected as false and unreliable.

21. The Acting Joint Magistrate has, in my opinion, given too much weight to the letters P. and Q. D'Cruz has not attempted to explain *why* he went to the prisoner Gerard *at all* for information: it was quite possible that Gerard might, when questioned, have given D'Cruz such information as was in his power regarding the property, and it was very natural that having given such information, he should be anxious that his name should not appear as the informant to the Police. The willingness with which he gave the information, his application for a Constable to go to Mercara, &c., I must say, impress me with an amount of good faith quite inconsistent with the conclusion that he was the thief, or the receiver, or the abettor in the concealment of the property.

22. In the absence of any evidence of theft, and I am strongly impressed by the record that no theft ever did take place, and in the absence of any reliable evidence whatever that the property alleged to have been stolen ever passed into the exclusive possession of the prisoner, or that he passed it to any one else for concealment, I do not consider that the letters P and Q are sufficient for his conviction, and I therefore reverse the decision of the Acting Joint Magistrate.

23. The conviction of the prisoner, both under Sections 411 and 414 in the same case, was clearly illegal, inasmuch as the latter Section would only apply to cases where there has not been such a possession as would support an indictment against the party accused as a receiver under Section 411.

24. The case is a most mysterious and unsatisfactory one; and that there has been foul play somewhere, I have not a doubt. I quite concur with the Acting Joint Magistrate that had the Cantonment Joint Magistrate and the Police generally adhered to the procedure prescribed by law, instead of coming into Court with *verbal* orders, diaries not recorded, &c., &c., this case would never have reached its present dimensions.

25. I much regret that, in disposing of this appeal, a matter has come before me judicially on the record which requires serious notice.

26. I allude to the letter Z filed by the 1st witness, addressed by the Cantonment Magistrate, Captain Clay, to Stewart, the 2nd prisoner in the present case, who was, at the time it was written, the partner of Darasha, the 1st witness in this case.

27. The letter in question is not dated, but it opens by informing the addressee that Captain Clay had "just received" instructions from the Session Court of Tellicherry to proceed with the charge against Darasha (the 1st witness in the present case, and the prisoner in Session Case No. 36 of 1865), at that time the addressee's partner in business.

28. The Proceedings of the Session Court referred to by Captain Clay bear date the 21st June 1865, and their receipt was acknowledged on the 23rd idem, so taken in connection with the words "just received," the date is pretty well fixed.

29. I cannot conceive any thing more reprehensible than this *private* communication of the orders of a higher Court to the partner of the accused, and the postscript to the letter shows that Captain Clay was in financial communication with that partner, even at the very time he was aware of the critical position of Darasha.

30. The result has been most disastrous, as regards Captain Clay's official position, for very shortly after that letter was written the tables were *twice* turned, Darasha being charged before Captain Clay with having attempted to poison Stewart, and Stewart again being charged with having robbed Darasha, and it is not to be wondered at that Darasha, who had got possession of the letter Z, protested against Captain Clay trying the case which forms the subject matter of this appeal.

31. It is evident that this matter cannot be left in its present state, in justice either to the public service, or to Captain Clay himself; but, before forwarding a copy of these Proceedings to the High Court, I resolve to afford to Captain Clay an opportunity of making any explanation that he may wish to offer. It will be open for Captain Clay to afford, or withhold, information or

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explanation, as he may see fit. Whatever he does furnish will, however, have to be given in writing, and will be submitted to the High Court, who will be at liberty to make such use of it as it may deem proper.

32. A copy of these Proceedings will be sent with precepts to the Acting Joint Magistrate of Malabar, and to the Cantonment Magistrate of Cannanore, for their information and guidance. The former Officer will at once send a warrant to the Jailer at Tellicherry for the release of the prisoner John William Gerard, and an order will be sent from this Court to the Superintendent of the Jail to suspend the sentence *ad interim*.

(True Extract.)

(Signed) A. W. SULLIVAN,

Session Judge.

(True Copy.)

(Signed) A. W. SULLIVAN,

Session Judge.

II.

Z

Copy of a letter from Captain Clay to Mr. Stewart.

DEAR SIR,

I have just received instructions from the Session Court of Tellicherry to proceed with the charge against Darasha, and as the charge is a very serious one, I think it right to give you this notice, as you have given Darasha powers to a great extent over your property, and I think it would be as well if you took some precautions to guard yourself from loss, in the event of matters going against Darasha. I hear, *privately*, that he has drawn a large sum of money (I presume yours), and has bolted from Madras.

Your's faithfully,

(Signed) A. D. CLAY.

P. S.—Will it be convenient to you to let me have that cheque for Rupees 1000 on Madras? And, I shall be glad to know when I could see you with reference to the loan I wish for.

(Signed) A. D. CLAY.

III.

(L. S.)

SESSION COURT.

To

THE CANTONMENT MAGISTRATE OF CANNANORE.

Herewith, you will receive an Extract from the Proceedings of the Session Court of Tellicherry of this date, to the orders contained in which you are required to conform, returning this Precept so executed, or good and sufficient reason why it has not been executed, and what you may have done in pursuance hereof, within eight days from and after its receipt.

Given under my hand, and the seal of the Session Court of Tellicherry, this 4th day of December 1865.

(Signed) A. W. SULLIVAN,

Session Judge.

MEMORANDUM.

The Cantonment Magistrate has the honor to acknowledge the Precept from the Session Court, together with the Proceedings, dated 4th December 1865, and to state for the Court's information as follows:—

1. With reference to the letter written by the Cantonment Magistrate to Mr. Stewart, alluded to by the Session Judge, in paragraph 26 of the Proceedings, the facts are these:—In June, on

being confirmed in his present appointment, the Cantonment Magistrate wished to borrow a sum of money, 3000 Rupees. He inquired of several persons as to who would be likely to be able and willing to accommodate him (being persons not permanently residing in the Cantonment), and was informed that a Mr. Stewart, a Coorg Planter, the son of a Colonel Stewart, who was then in Cannanore, was in the habit of advancing money, and would probably oblige him. Accordingly, the Cantonment Magistrate wrote to Mr. Stewart on the subject, who, in reply, stated his willingness to advance the money required. Several notes passed between the Cantonment Magistrate and Mr. Stewart on the subject, the last of which is the one referred to by the Court. At the time that note was written, the Cantonment Magistrate did not know he was an East Indian, and in fact corresponded with him in terms of social equality, had never seen Mr. Stewart, and was not aware that he was in any way connected in business or otherwise with Darasha. Had the Cantonment Magistrate been aware of this fact, he would most certainly never have had any communication, or have conceived any idea of having any pecuniary transaction, with Mr. Stewart. As soon as he became acquainted with the relative positions of Darasha and Mr. Stewart, he at once broke off all communication on the subject of the proposed loan.

2. In reply to paragraph 29, the Cantonment Magistrate can only repeat that he was not aware that Mr. Stewart or Darasha were partners, or in any way connected in business. The Cantonment Magistrate was told, on the day the note in question was written, that Darasha was in possession of a Power of Attorney from Stewart, and had sold out Rupees 50,000 of the latter's, and was about to abscond with the money; and the object of the Cantonment Magistrate in writing to Mr. Stewart was to give him the opportunity of telegraphing to Madras, and saving himself from loss, and the Cantonment Magistrate was not aware that he was in any way acting improperly, in at the same time informing Mr. Stewart that orders had been received from the Higher Court to re-open the forgery case.

3. In conclusion the Cantonment Magistrate begs respectfully to express his regret that the Session Court did not give him the opportunity of explanation, before recording the censure of the Court, in terms which appear harsh, and which the Cantonment Magistrate feels very grievous.

CANNANORE,
8th December 1865.

(Signed) A. D. CLAY,
Cantonment Magistrate.

(True Copy).

(Signed) A. W. SULLIVAN,
Session Judge.

From Captain A. D. CLAY, Cantonment Magistrate, Cannanore, to the Registrar of the High Court; dated Madras, 2nd January 1866.

With reference to the remarks made by the Session Judge of Tellicherry, in the Proceedings of the Session Court, under date 4th December 1865, and with my reply thereto, I have the honor to request you will do me the favor of laying before the Honorable the Judges of the High Court the following explanation on a few points which may not have been made sufficiently clear in my reply to the Session Court of Tellicherry. In the first place, I beg to observe that I did not know that Mr. Stewart was carrying on trade, or business, at all, in Cannanore, either with Darasha, or with any one else, or alone on his own account, at the time I wrote the letter commented on by the Session Court. There was not then, nor has there been since, to my knowledge, any shop, or other place of business, kept by Stewart, or Darasha, either separately or conjointly, and I did not receive any intimation of their being partners, or in any way connected in business or otherwise, until after the letter in question was written; and instantly on becoming aware of the fact, I at once broke off all negotiation with Mr. Stewart.

2. I beg also to observe that, at the time my correspondence with Stewart was in progress, Darasha was on bail in Madras, and the first thought that struck me, on hearing that he had a power of Attorney from Stewart, was that he would use this Power to draw out Stewart's money to enable him to abscond, and it was as much to prevent his doing this, as it was to enable

Stewart to take measures to save himself from loss, that I gave Stewart notice that the forgery case was to be re-opened. This case, I may here remark, was one with which Stewart was *in no way concerned, either directly or indirectly*, and had occurred several months before the transactions now under review took place.

3. The one great reason that I applied at all to Stewart for the loan was that I was given to understand that his property and residence was at Mercara, and that he was *not* a resident of Cannanore, and was not, therefore, subject to my jurisdiction as a Magistrate. If reference is made to my evidence before Mr. Garstin, it will be seen that I was offered my letter back, on certain conditions, which I refused.

4. I wish also to bring to notice that Mr. Garstin, the Sub-Collector and Joint Magistrate, has informed me that he was not aware that any partnership existed between Stewart and Darasha, and further that, to the best of his belief, no license was ever taken out by Stewart, or Darasha, as general dealers, in wines, &c., as would have been done had the Firm ever really existed.

5. I have come to Madras chiefly to be able to afford the fullest explanation, personally or otherwise, should the Honorable the Judges still consider further explanation necessary, and I beg you will bring to their notice my anxiety to clear myself of the slightest imputation on my integrity. That an unfavorable impression *may* have been produced I admit, but I affirm, on my solemn word of honor, that I stated the exact facts of the case in my reply to the precept of the Session Court.

No. 29. ORDER THEREON, 3rd February 1866, No. 158.

Before passing final orders on the matter referred to in the foregoing papers, the Governor in Council directs that copies of them be furnished to Captain Clay, in order that he may lay before Government any further explanation that he may desire to offer.

(True Extract).

Chief Secretary.

To Captain A. D. Clay, Cantonment Magistrate of Cannanore,
on leave at Madras.

To the Honorable the Judges of the High Court.

Mrd. J. H. Burns.

62

Judicial

N^o 222

From
The Registrar of the High Court of Judicature
at Madras - 4 30: January 1866.

For Orders.

The papers - except the letter from
the High Court - I have to send
to Capt. Clay for any further
explanation that he may
desire to offer. JJS

I do not see any real necessity for
further explanation from Captain Clay.
who, it seems clear, has submitted to the
High Court what he has thought was
deficient in the exculpatory statement he
laid before the Special Judge of Sikkim.
Still, the statement will do no harm and
Captain Clay may like to repeat his say.
31.1.66 very well WJ

18 74
Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter
from the Registrar of the High
Court.

Here enter 30th January 1866. No. 7

Order thereon 3rd February 1866. No. 150.

Before passing final orders
on the matter referred to in the
foregoing papers, the Governor
in Council directs that copies
of them be furnished to Capt.
Clay in order that he may
lay before Government any
further explanation that he
may desire to offer.

To Capt. A. D. Clay
Commandant Magistrate of Cannaure
on leave at Madras } despatch
To the Hon'ble the Judges of the
High Court. }

List of 13 Feb

Medical 1866. Department.

No. 158.

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