

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1535	Press
<i>285-287</i>	~~Mis~~
Dated 30. 9. 1918	

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
30th September 1867.*

Read the following papers:—

No. 285. From the Registrar General of Assurances, to the Chief Secretary to Government, Fort Saint George; dated Negapatam, 23rd August 1867, No. 126.

I have the honor to submit, for the orders of Government, the accompanying letter, No. 40, of the 14th instant, from the Registrar of Cuddapah, with the enclosures accompanying it.

2. Under the Government Order, No. 998, of the 26th June 1866, the sum of Rupees 588 was placed at Mr. Ward's disposal, for the purpose of making up 14 almirahs for his own office and the offices of the Sub-Registrars. A carpenter at Cuddapah, named Cox, who had been previously employed in doing other work for the Cutcherry, and who had done it satisfactorily, undertook to make the almirahs, but, as he required an advance of Rupees 300, he was called on to nominate a surety. He accordingly produced Noah Smith, the Jailer, and a formal instrument having been drawn up, by which Cox and Smith bound themselves jointly and severally to make good all liabilities, the instrument was registered, and Rupees 300 advanced to Cox in the Sub-Registrar's Office.

3. Cox delivered the almirahs, but they were so defective that Mr. Ward refused to receive them, and as the parties would not come to terms, he brought an action against them in the District Moonsiff's Court, and obtained a decree for the amount. In the meantime, however, Cox left Cuddapah, and the almirahs, when sold, realized only Rupees 233-6-0, which was insufficient to cover the advance of Rupees 300 and the costs of the suit. Under these circumstances, Mr. Ward, finding that the Jailer would not enter into any arrangements to make good the balance due, although he was, in his opinion, well able to do so, and considering that he had acted fraudulently in coming forward as Cox's surety, obtained an order from the Court to attach the person of the Jailer.

4. At this stage, however, the Collector has interposed his authority, and insists that the Court should be moved to withdraw the warrant against Noah Smith, and to relieve him from all responsibility, on the ground that he is a poor man. Mr. Ward, as the Collector's subordinate, has accordingly moved the Court to recall the warrant, and asks how he is to recover the balance due.

5. The various steps above referred to, viz., the giving of the contract, the institution of the suit, &c., have been taken by the Registrar without any communication with me, and as the question now at issue is one between the Registrar and the Collector, it seems desirable that it should be submitted to Government.

From T. G. WARD, Esq., Registrar of Assurances, Cuddapah, to the Registrar General of Assurances, Madras; dated Cuddapah, 14th August 1867, No. 40.

I have the honor to forward, for your consideration, copies of correspondence which has passed between me and the Collector of Cuddapah, regarding an action, which, as Registrar of Assurances, I had caused to be brought against S. Cox, the Contractor who undertook to supply the fourteen almirahs required for the Registration Department, and who failed in his contract, after receiving an advance of Rupees 300, and against N. Smith, Jailer, who stood as Mr. Cox's surety for the due execution of his contract, and to solicit your early instructions thereon.

2. The circumstances under which I instituted the action are mentioned in my letter to the Collector, and do not need recapitulation here. The almirahs, which, on my moving the Civil Court,

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were attached and sold by auction, realized Rupees 233-6-0 (net) leaving of the amount of the decree Rupees 159-10-0 to be recovered, of which Rupees 115-6-0 form part of the advance made on behalf of Government and interest thereon, and Rupees 44-4-0 advanced from private funds for Law charges, to save correspondence. The Contractor, S. Cox, has left the District subsequently to the institution of the action, and the surety, N. Smith, declines to make any arrangement for the payment of the balance of the decree amount.

3. The Collector now insists, on the ground that N. Smith is a poor man, and should not be called upon by me to meet the liability, though assumed of his own free will, that the Court be moved to withdraw the warrant against the defendant's person, and to relieve him of all responsibility.

4. Although the matter has no connection with any Department over which the Collector has control, still, considering our relative positions, I have thought it necessary to request the Civil Court to recall, for the present, its warrant against the defendant, although it is not clear, if the surety is relieved of responsibility, how the Rupees 159-10-0 is to be reimbursed to Government and myself, pending the receipt of your orders.

From H. G. SMITH, Esq., Collector of Cuddapah, to T. G. WARD, Esq., Deputy Collector of Cuddapah; dated Cuddapah, 12th August 1867, No. 509.

The District Moonsiff of Cuddapah having sent me notice to confine the Jailer Noah Smith as a civil debtor at your instigation, on account of a debt which seems to have occurred by his standing security for 300 Rupees, the price of some almirahs to be supplied to your office, and which were found not to be sufficiently good, I have the honor to inform you that, unless some arrangement can be come to, the Jailer will be confined and your conduct investigated.

From T. G. WARD, Esq., Registrar of Assurances, Cuddapah, to the Collector of Cuddapah; dated _____

I beg to acknowledge the receipt of your letter, dated 12th instant, No. 509, and, in reply, beg to state that I am not aware of having in any way acted wrongly in the case in which I sued Cox and Smith. What I did in the case was done to recover the money due to Government and the law charges which I had paid from my private funds, and was in accordance with law and justice. However, should you deem it necessary to investigate my conduct in this case, I respect-fully beg to state that I shall gladly stand the test, in the confidence that I shall be exonerated from all blame to your entire satisfaction.

2. The facts of the case are as follows:—The Government having sanctioned Rupees 588 for making 14 almirahs, for use in the several Offices of the Registration Department in this District, the Registrar General called upon me to report if I could get the almirahs made up in Cuddapah.

3. As Carpenter Cox had in former occasions made certain cash-chests for remitting treasure from the Taluqs to the Huzoor, and from the Huzoor to Madras or other Districts, at a lower rate than the amount estimated for by the Engineer's Department, or than that originally asked by the Native carpenters, I thought it advisable to offer the work to him, and as he undertook to supply the almirahs, and asked for an advance of 300 Rupees, I refused to give him the advance unless he could nominate a good surety. Carpenter Cox named the Jailer Smith, and, as I believed the latter fully competent to stand surety for the amount, I consented to admit him as such.

4. The Instrument that was executed was signed by both Carpenter Cox and Jailer Smith, binding themselves either jointly or individually to make good all liabilities that they may incur from the infraction of the conditions of the Bond. The parties further attended the Sub-Registrar's Office at Cuddapah, and had the Instrument registered, when the money (Rupees 300) was paid to Carpenter Cox in the presence of the Sub-Registrar, Bhikanesing Hazari.

5. On inspection of the almirahs, I found them so defective that I at once rejected them, as I considered that I should be liable to encure, if nothing more serious, from the Registrar General.

6. I desired Carpenter Cox to refund the amount for which he became liable, and take back the almirahs, but this he declined to do; Jailer Smith also refused to come to any terms. Under

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the then existing circumstances, I had no alternative but to bring a suit against Carpenter Cox and Jailer Smith in the Moonsiff's Court. The late Moonsiff, before passing a decree, inspected the almirahs, to satisfy himself that all the defects pointed out existed. Before the almirahs were sold, Carpenter Cox left Cuddapah for Madras. The sale proceeds of the almirahs not being sufficient, I had no alternative but to move the Court to attach the person of Jailer Smith on account of the balance of money that was due to Government.

I must here add that, throughout my whole proceedings, I was very considerate towards the Jailer Smith. Before I instituted the suit, I wrote to Jailer Smith if he were prepared to pay the amount for which he and Carpenter Cox were liable. I had hoped that he would have come to some terms, but this he did not do.

After the Decree was passed in my favor, I was at liberty to move the Court, in the first instance, to attach the property of Jailer Smith, and to sell them by public auction, in satisfaction of the balance due, but I refrained from doing so, as I did not wish that he should have been put to such straits. I moved the Court to attach Jailer Smith's person, believing that he would have come to some terms, and with this supposition I desired my Vakeel to intimate to the Moonsiff that I was prepared to assent to any fair arrangement which Jailer Smith was inclined to make, but from what has transpired it is evident that he has made no attempt to do so.

7. Jailer Smith has, I firmly believe, the means to pay the money due, if not the whole at once, at least by monthly instalments. When he first came forward as surety for Carpenter Cox, I firmly believed he would have kept to his engagement, as he is in the receipt of a good salary, or, otherwise, I should not have admitted him. From his present conduct, I cannot help but coming to the conclusion that he had, with fraudulent intent, and to assist the Carpenter Cox, come forward to be surety.

8. Jailer Smith is a pensioner in the receipt of a military stipend of Rupees 18 and odd per month. His present post of Jailer, on a salary of Rupees 75 per mensem, makes his income Rupees 93, out of which if he were to arrange to give Rupees 30 per mensem, to liquidate the balance due to Government, the remainder, Rupees 63, would keep him and his wife in comfort. In fact, previous to last year, when he received only 50 Rupees as Jailer, making his total income Rupees 63, he and his wife were very comfortable. I speak this from personal knowledge. I do not see what hardship he and his wife can be put to now on Rupees 63. His plea of poverty is nothing more than an attempt to defraud the just dues of Government.

9. As you are pleased to express a wish that arrangements should be made with Jailer Smith, I beg to state that I have been always willing, and am so still, if he would only declare his intention to do so.

10. However, as you have been pleased to take the matter in hand, I respectfully beg that you will be pleased to use your influence to induce Jailer Smith to come to terms. I have no interest in having him confined: my only object is to recover the balance due to Government. A word from you to the Jailer will have more effect than all that the law can do to make him pay.

P. S.—I would further observe that if Jailer Smith permits himself to be confined, rather than make some arrangement for paying the demand against him, he would forfeit his salary in the Civil Department for the period that he is kept in durance (six months), amounting to Rupees 450, or nearly treble the amount of the demand, besides being still liable after discharge for the decree amount.

Referred to the Collector of Cuddapah, who will report the circumstances under which he called upon the Registrar of Assurances to relieve the Jailer from the liability assumed by the latter as security for an advance made by the Registrar to the Carpenter Cox.

PORT SAINT GEORGE,
29th August 1867.

(Signed) R. S. ELLIS,
Acting Chief Secretary.

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30th September 1867.

No. 286. From H. G. SMITH, Esq., Collector and Magistrate of Cuddapah, to the Chief Secretary to Government, Fort Saint George; dated Cuddapah, 16th September 1867, No. 31.

With reference to the Honorable Mr. Ellis' endorsement as per margin, requesting me to explain why I ordered a certain decree of the Cuddapah Moonsiff to be quashed, I have the honor to state:

I never did anything of the sort, the matter being briefly as follows:—

Some months ago, the Registrar General of Assurances ordered the Registrar, Mr. Ward, to get some almshouses made for the use of his office, to the value of Rupees 588, allowing an advance to be made of Rupees 300. To do this work Mr. Ward employed a most ignorant man, and got Noah Smith, the Jailer, a most industrious honest man, to be security for the due performance of the work. This person Mr. Ward describes as being a proper security, although he is notoriously poor, and was poorer having only his Chelsea pension and a Jail allowance. His property would not be worth more than 100 Rupees, and if he lost the Jail he would only have his pension, which is not transferable for debt. Smith told Mr. Ward, at the time of signing the bond, that he was a poor man, and had no money, but he was told by the Carpenter that all was right, as no money would be wanted; moreover, Mr. Ward made him sign a bond to pay a penalty conjointly with the carpenter, and made him a co-partner in the business, quite contrary to all rules. The carpenter having failed, legal proceedings were taken against my Jailer without ever letting me know, and, to my surprise, a few days ago the Moonsiff sent me some money with an order to treat my Jailer as a civil debtor, upon which I sent for Mr. Ward, and told him I considered his conduct exceedingly reprehensible in every way, and impudent, in not letting me know about the Jailer's straits; that if his conduct came to the notice of Government, he would receive great censure. I advised him to pay the money, and that, meanwhile, I would ask the Moonsiff to withdraw the warrant for a few days, which he did when calling on me a day or so afterwards. Altogether, I consider Mr. Ward's conduct most reprehensible, but, as I have nothing or little to do with him in this Department, I did not thoroughly investigate the matter.

No. 287. ORDER THEREON, 30th September 1867, No. 1559.

The Governor in Council considers that the Collector of Cuddapah was not warranted in interfering in any way with reference to the warrant obtained by the Registrar of Assurances for the incarceration of Noah Smith, the Jailer, beyond advising the latter to make some arrangement for satisfying the decree in execution of which the warrant in question had been issued. The Collector must abstain from further interference in the matter.

(True Extract).

Chief Secretary.

To the Registrar General of Assurances, with two enclosures, returned.

„ Collector of Cuddapah.

Exd. J. H. Burns.

Judicial DEPARTMENT.

No. 186-207

From

the Registrar General of Assurances,
Cuddapah.

Dated 23rd Sept 1867.

FOR ORDERS.

The Jailer is in receipt of nearly 100 Rs. a month as public allowance, and has certain movable property which, in the estimation of Mr. Ward, the bestest description, may represent Rs. 300. He was therefore a very substantial surety in Mr. Ward's opinion, for the sum of Rs. 588 which Mr. Ward was called on to expend for public purposes. I am unable therefore to understand on what grounds the Gov. Mr. H. G. Smith, designates the Jailer as a poor man. But whether poor or rich, it was quite beyond the province of the Collector & Moonsiff of Cuddapah to interfere in any manner with the action of

the law, under which, as the result of
a civil suit between Mr. Ward &
Mr. Saylor, it had been found necessary
to give process for the attachment of
the person of the latter officer.

Should the removal in civil custody
of the Saylor, be productive of inconvenience
in respect of the Saylor under his charter,
the Court would have been a reasonable
desire of advising him to take advantage
of the fair terms for payment
which Mr. Ward had offered.

I cannot agree with the Court that
Mr. Ward's was an unreasonable
on the contrary he seems to me
to have acted throughout prudently
and in a very businesslike manner
19 Sept 67

W.D.

I know this North Smith well
He was my companion and

100 years and is as Mr. Smith
describes him - a very honest
altho not a very wise man -
As I know he was at least
to stand security for the Court.
- for the he owner of court
which he considers as of his
own act - and the Collector is
not here in the field in any
way, beyond at the outside
advising the S to make arrangements
- for payment of the money.

I do not see that Mr. Ward
was to blame - He might have
- can - altho not legally bound
to do so - as with him communicating
- could with the Collector before taking

Key terms measure of profit
his. I enter into I will.

JP

Refer to the Collector of Cuddalore, who will report
the circumstances under which he called upon
the Registrar of assurances to relieve the sailor
from the liability assumed by the latter as
security for an advance made by the Registrar
to the carpenter Cox.

[Signature]
Registrar of Assurances.

Int. of Regt
27 Aug 1867

Dr 1/2 28/8. Ret 2/8/9.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter:-

From the Hon. General of Assurances. } Here enters 23 Aug 1867.
No 126.

Magte of Cuddapah — 16 Sept. — 1867.

Order thereon 30 Sept 1867 No 1539.

The Governor in Council considers that the Collector of Cuddapah was not warranted in interfering in any way with reference to the warrant obtained by the Registrar of Assurances for the incarceration of Noah Smith the jailor beyond advising the latter to make some arrangement for satisfying the decree in execution.

execution of which the
warrant in question
had been issued. The
Collector must abstain
from further interference
in the matter.

237-38
26-6-67

To the Reg: Genl of Assam
with a P.O. returned
despatched
Collector of Lushai