

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1782	Press
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Dated	6-11-	19-867

27-81

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
6th November 1867.*

Read again letter from the Acting Commissioner of Police, dated 3rd, and recorded in Proceedings of the 11th September 1867, No. 1473.

Read also the following papers :—

No. 79. From the Honorable W. HOLLOWAY, Judge of the High Court, to the Right Honorable the Governor of Fort Saint George in Council; dated Madras, 22nd October 1867.

I have the honor to acknowledge the receipt of Mr. Secretary Arbuthnot's letter, dated the 11th September, transmitting a petition of one John Fennelly Adams for a mitigation of his sentence, and requesting my opinion upon the matter.

2. I regret that I am quite unable to admit that the prisoner was a more irresponsible Agent. His demeanour on his trial, and the mode in which his crime was effected, both indicated great coolness and self possession.

3. I have ascertained from the Chief Justice, who subsequently tried Yelsmore, and sentenced him to five years' imprisonment, that, on that trial, it did appear that between Yelsmore and Adams there existed the relation of official superior and inferior. If the said two prisoners had been tried before me on the same indictment, I should probably have passed a sentence of less duration by one to two years upon Adams than upon Yelsmore.

No. 80. From the Acting Commissioner of Police, to the Chief Secretary to Government, Fort Saint George; dated Madras, 29th October 1867, No. 115.

I have the honor to forward a petition, addressed to His Lordship the Governor in Council, by one J. M. Yelsmore, now a prisoner in the Madras Penitentiary, under sentence of five years' rigorous imprisonment by the High Court.

To

THE RIGHT HONORABLE FRANCIS BARON NAPIER, K. T.,
Governor in Council, Fort Saint George,
and to THE HONORABLE THE MEMBERS OF THE SAID COUNCIL.
The humble petition of JOHN MICHAEL YELSMORE,

SHEWETH,

That your petitioner was for fourteen years employed as Head Clerk in the Bond Department of the Oriental Bank, and, as will appear from the annexed testimonials, bore an unblemished character.

2. About the middle of November 1866, your petitioner was absent on leave from his work, and, on his return, he heard that inquiries were being made with reference to payment of a Bill of Exchange, which, it was alleged, had been presented with a forged endorsement.

3. On the 18th November 1866, one John Fennelly Adams, a clerk in the employ of the Oriental Bank, was arrested on suspicion, and on the 19th your petitioner was sent for by one of the Deputy Commissioners of Police, Mr. Ansell, and asked whether he would consent to his house being searched.

4. Your petitioner consented at once, and his house was searched by the Police, but nothing was found.

5. Notwithstanding, and on the 20th of November 1866, your petitioner was arrested on suspicion, and, with the said Adams, was put up for trial before Mr. Thomas George Clarke, Magistrate of Police for the Town of Madras.

6. The charge against Adams and your petitioner was carefully sifted, and your petitioner was acquitted and discharged, and the said Adams was committed to take his trial before the High Court at Madras.

7. When committed, Adams had nothing to say in his defence.

8. The said Adams was duly tried at the 1st quarterly Sessions of 1867 held at Madras, and, on his own carefully advised, deliberate, and voluntary confession, was convicted and sentenced to five years' rigorous imprisonment.

9. Neither before the Magistrate nor at his trial did he seek to cast any suspicion on your petitioner: he freely and fully admitted his own guilt, and sought punishment.

10. Two months after Adams' conviction, a letter, purporting to be written by him, and accidentally dropped, but, as your petitioner submits, advisedly put in the way of, and found and produced by, one Scott, was placed in the hands of the Police, and, on suspicion based on the contents of it, your petitioner was again arrested, and, on the 19th day of March 1867, Adams deliberately made the statement, copy of which is hereunto annexed.

11. On this statement, wholly uncorroborated, abounding in improbabilities, apparently false and fabricated, and made by one who had nothing to lose, who on his own admission (even supposing he was assisted), was the principal actor in a terrible fraud, your petitioner was committed to take his trial, was tried, convicted, and sentenced to five years' rigorous imprisonment.

12. Your petitioner entreats that he may be permitted, without attacking the conduct of those who pronounced him guilty, to animadvert on the improbabilities with which Adams' statement abounds. Adams would have it believed that his motive in coming forward against your petitioner was that he was defrauded of his share of the profits of the fraud, but your petitioner submits that it is not usual for people who consent to participate in a hazardous enterprise to abstain from making any stipulation as to the advantage they are to derive; and your petitioner craves your careful attention to the fact that Adams did not, even in his statement inculcating your petitioner, show that he was to have any stipulated share of the profits; and again this alleged motive was as strongly present when Adams himself was before the Police, and when he was tried at the Sessions and convicted. How grossly incredible then, as your petitioner submits, does the motive become that Adams alleges as urging him to state what your petitioner has been convicted on!

13. The motive being shown to be improbable, your petitioner craves your forbearance while he asks you to remember that Adams mentions as another *particeps criminis* one D'Souza. Adams, in his statement, gives this man no Christian name, and although he mentions that portion of the conspiracy was concocted at this man's house, he gives no clue to his house or to his present whereabouts. What then was your petitioner to do under the circumstances? It is admittedly a hard thing to prove a negative; and was your petitioner to subpoena every person in Madras bearing the name of D'Souza, with the view to put him before Adams for identification, or into the box to deny all participation in the fraud deposed to by Adams? Your petitioner submits that greater efforts might have been made to discover this alleged *particeps criminis*, and if there were such efforts, was it not the duty of the Crown to have shown by unimpeachable evidence that such efforts had been made and their result? For this reason, that, if after reasonable efforts to find the man who had a "house" in Madras, they had been unable to find any clue to him, your petitioner submits that the reasonable inference would have been that no such person existed, and if that inference was warranted, then there was proof positive that Adams, for some diabolical purpose of his own, or under influence, the result of a morbid temperament predisposed to evil for encouraging his bent for mendacity (*sic*).

14. Adams alleges that your petitioner went to two Shroffs, one of whom was known to your petitioner, and attempted to dispose of the Notes alleged to have been stolen. How did Adams know that one was known to your petitioner? Is the inference harsh that Adams did know a Shroff that was known to your petitioner? If so, why, when before the Magistrate, was he not pressed to disclose some clue to one or other of the Shroffs? The Oriental Bank must, within ordinary dealings, have particular Shroffs with whom they deal usually. Were all these sought? Was any inquiry shown to have been made amongst them? Your petitioner appeals confidently to your Lordship's experience, and to the experience of the other Honorable Members of the Council, whether, if any inquiry had been made, and there had been a shadow of truth in Adams' statement, corroborative on this point, would not have been forthcoming *sic*. Natives are proverbially garrulous and officious,

and considering that if there were none of them were likely to get into trouble, as they had refused, according to Adams's statement, to deal with your petitioner, is it not more than probable that they would have volunteered evidence, and have gloried in what they would have considered the honor of having been the means of enabling the Bank to discover and punish the offenders in a notorious fraud? If these inquiries were made, no evidence was given of them or of the result. If they were made and proved futile, then your petitioner submits that his observations as to the inference to be drawn therefrom as to the falsity of Adams' statement, and made above with reference to the person named D'Souza, applies as forcibly here.

15. Again, Adams pretends that your petitioner dealt with some of the forged Notes by paying one to the Reverend D'Cunha, and by sending the other as a bribe to the Shroff of the Oriental Bank. Could probability reach a higher pass? How suicidal must such have proved should the shroff have used the Note! What was there to have prevented D'Cunha from dealing with or parting with the Note? Does not the dropping of the letter picked up by Scott, and made the basis of this apparently enforced confession of Adams, coupled with the remittance by post of one of the stolen Notes to the Shroff of the Oriental Bank, savour more of a designed and careful conspiracy, the concoction of a cunning mind, acting either under pressure of revenge or of mischievous insanity?

16. Your petitioner is alleged to have met Adams at Messrs. Oakes & Co.'s shop, yet no employé of Oakes & Co. was called to depose to the fact of his having been seen at the shop on that day.

17. It may be said that no contradiction was offered to Adams' statement. Save the pointing out the improbabilities, what possible means was there of your petitioner contradicting him? He vouched persons who were not produced by the Crown? He vouched times and places, and left no means of contradiction as to those times and places; for the witnesses vouched, and whom, if they had been named, your petitioner must necessarily have called, were either not named, or were the alleged "D'Souza."

18. It is easy for one whose whole prospects are blasted, who has nothing to gain or lose, to make charges and assertions; but it is hard that an unimpeachable character for honesty and veracity, maintained unblemished for fourteen long years, should be blasted by such assertions, wholly uncorroborated, though mischievously circumstantial, and showing only to such as care to scrutinize them the most satisfactory evidence of being cunning concoctions to serve some diabolically revengeful purpose, or the effusion of a morbidly excited mind, naturally injurious, but cruelly perverted.

19. Your petitioner craves your forbearance for intrenching so on your time; but he has lost the best years of his life, and the hope of future advancement; and the sentence pronounced has rendered his wife and four children paupers. This must plead as his excuse, and he prays that, exercising the royal prerogative of pardon or remission, vested in your Excellency in Council, your Lordship and the Honorable the other Members of Council will, under the circumstances, and taking into consideration the fact that the Jury who convicted your petitioner recommended him to mercy, pardon your petitioner, or remit a portion of the sentence that has been pronounced on him, in pursuance of a verdict obtained on the uncorroborated testimony of a convicted felon.

And your Petitioner will, as in duty bound, ever pray.

MADRAS,

28th October 1867.

(Signed) J. M. YELSMORE.

Copies of Testimonials of Character.

This is to certify that John M. Yelsmore served in our office as a temporary clerk for about a month, during which time he conducted himself well and afforded us satisfaction.

BEACH, 12th December 1850.

(Signed) PARRY & Co.

I hereby certify that Mr. J. M. Yelsmore has been employed in the Madras Establishment of this Corporation for a period of nearly five years, during which I have had ample opportunity of judging of his merits and capabilities, and I hesitate not to say that I am highly satisfied with

the manner in which the several duties assigned to him have been performed. In the event of his leaving this establishment, he will do so with my regret, but as I understand he has another and more lucrative appointment in prospect, I can highly recommend him to those requiring his services.

ORIENTAL BANK CORPORATION,
MADRAS, 18th August 1858.

(Signed) A. GARRARD,
Agent.

Mr. J. M. Yelsmore has been employed for eleven or twelve years in the Oriental Bank Corporation at Madras, and I can speak highly of the zeal, honesty, and attention with which he discharged the very responsible duties assigned to him during six years in which I was Agent of the Corporation there.

ORIENTAL BANK CORPORATION,
COLUMBO, ————

(Signed) J. MOIR,
Assistant Manager.

STATEMENT.

Madras. The deposition of Nicholas John Fennelly Adams, of Madras, East Indian, taken to Wit. on oath in the presence of the prisoner John Michael Yelsmore.

The said Nicholas John Fennelly Adams saith as follows:—

I was employed as a Clerk in the Oriental Bank situated on the 1st Line Beach, Madras. Mr. Burnes is Assistant Accountant at the Bank. I was employed up to 17th November 1866. I belonged to the Bill of Exchange Department. I know John Michael Yelsmore, now present: he was employed as a Clerk in the same Bank; he belonged to the Bond Department. I have looked at the exhibit now marked B in red ink. I made a Memorandum of outstanding Drafts or Bills on the 31st October 1866; there being some mistake in the book, the balance did not agree for upwards of a week. I asked the assistance of several clerks, so as to rectify the mistake; they complied with my request—even then the mistake was not discovered. I then asked the prisoner Yelsmore to assist me; he readily complied with my request; he examined the outstandings of the different branches, and more especially that of the Mauritius Bank. Notwithstanding his exertions to trace the mistake, he proved unsuccessful. The day on which he examined the books, he told me that there are certain old Bills outstanding, and that we may come in possession of some money by making out a false document, and, for the said purpose, I was requested by the prisoner to procure a blank Bill of Exchange, and which I did by tearing out the third Bill of Exchange, No. 708, from the blank book corresponding with the blank Bills of Exchange now marked A. I gave the blank Bill to the prisoner, and it is the identical one now marked B in red ink. He took it and placed it in his waistcoat pocket. The same evening he told me that we shall fill up the blank Bill or Draft the following morning. I went to his house in the evening; at the time there was a person named D'Souza in the house; the prisoner requested D'Souza to call over the following morning on account of some business; the prisoner told me also to come; I went and met D'Souza in the prisoner's house, then this Draft B, which was blank, was brought by the prisoner and placed on the table, and D'Souza filled up the body of the draft, leaving only the signature blank, but the endorsements on the back, viz., E. Mallac and Co., and the others in Tamil, the one in Telugu, and the last, "W. Franandez", were all written by D'Souza, at the request of the prisoner. The last endorsement, "W. Franandez," was not written on the same day, but in the following morning at D'Souza's house. The prisoner took the paper to him. I went with the prisoner at the time, but the day before this the prisoner took the forged Draft to the office after forging the signatures of Messrs. Arbuthnot and Perwick; he asked a peon, named Punchum Sing, an employé in the Bank, to get some one to cash the draft. He consented to do so, but on the following morning he called at the prisoner's house, and told him that the party whom he intended to bring to cash the draft declined the offer, and it was after this the last endorsement "W. Franandez" was written by D'Souza. This was done to enable some of us to cash it. I was then instructed by Yelsmore to take the draft to the Shroff Streenevassiah, with the plea that it belonged to a friend of mine who is away on some business and left the Draft with me to cash. I declined to take the Draft directly to the Shroff's Department, whereupon the prisoner told me that he

would be in conversation with the Shroff, and Direct his attention in some waywardly manner, and I should at that time take advantage of the opportunity and present the Draft in the manner I was instructed. I did present the Draft to the Shroff. I asked him to write in English the Tamil and Telugu signatures, which is usually done in the office. He did so, and at the same time put his initials. After this, I took the Draft to my desk, passed the necessary entries for it by making out the outstanding slip, marking the date on which the Draft was paid, and the name of the last endorser. These entries were made by me in the exhibit now marked C. I then took the Draft to Mr. Burnes to be duly discharged for payment. At the time I presented it for payment, I told Mr. Burnes that it was the third Bill of Exchange, and at the same time I mentioned to him that old Bills were very frequently presented for payment. Mr. Burnes was at the time in the Agent's room, who took the Draft and was looking at it, when, just at that time, Yelsmore came into the room, and drew the attention of the Agent to some Government Securities. The Agent then handed the draft to Mr. Burnes, who passed it for payment. After this I took the Draft with several others to the Shroff, who paid me the money, Rupees two thousand, viz., Rupees two hundred in Silver, and one thousand eight hundred in Currency Notes. As directed by Yelsmore, I brought the money and Notes to my desk, and after a while I took and delivered all into his hands. He rolled it up in a red silk handkerchief, and placed the bundle in his drawer. All this took place on Thursday the 15th November 1866. He told me that he was going away on leave that day at 2 o'clock in the afternoon, on the pretence of his child being sick, and I know that he left the office on that day, taking with him the money; and he also mentioned to me that he applied for leave with the intention of getting sovereigns in lieu of Notes. He desired me, on that same evening, to call at Messrs. Oakes & Co.'s, as he would wait for me there, so to go home with me. I did as I was requested. I met him at Oakes'. I accompanied him home. On our way, he mentioned to me that he had gone to the Evening Bazaar for Sovereigns, and, as it was a large sum, the man declined to give them to him; but another Shroff told the man that he knew him, Yelsmore, to be a respectable man, and might be entrusted with the Sovereigns he wanted. Upon this he, Yelsmore, was afraid that this man might come up as a witness against him. He left the place on the plea that the price asked was too high, and that he could get them at par value if he would wait till the English Mail came in. I declare, upon my oath, that I did not receive one pie from Yelsmore, or from any other person directly or indirectly connected with this transaction. I do not know whether D'Souza received anything from Yelsmore in this transaction. On the evening of the 15th November 1866, the Peon Punchum Sing was directed by Yelsmore to go to my house. The Peon came, I handed a Currency Note for one hundred Rupees to him, which was given to me by the prisoner for that purpose. This was given to him, because he was aware of the object we had in view. I do not know the number of the Note, nor was anybody present when I gave the Note to him. On Sunday, before I was made a prisoner, Yelsmore requested me to go in search of D'Souza, so as to get him to write a Tamil letter to Streenevassiah the Shroff, enclosing one of the hundred Rupee Notes, stating, at the same time, that the other Notes were all burnt. After the information given by him to the party who drew the money, the hundred Rupee Note was to be disposed of as he liked. I found D'Souza, and whilst in conversation with him Yelsmore came, and I heard him give D'Souza the same directions. After this I did not see D'Souza. On Sunday, the 18th November, I was taken up by the Police, but before I was made a prisoner, to the best of my recollection it was the day before, he, Yelsmore, begged of me not to state anything against him, as he would in all probability lose his situation, and be brought into trouble. I am now induced to make this statement, because Yelsmore did not give me any share of the money which he promised, and also because he has made me suffer for his acts, as he was the instigator, and because, after my conviction and in Jail, I wrote to him and he returned my letter unopened. I state further that the prisoner told me that he had given one 100 Rupee Note to the Priest D'Cunha, because he was indebted to him. He also mentioned to me that he was afraid that the Note he gave the Priest might be sent to be changed, and that he asked either the Sexton or Catechist to obtain the Note, or bring it

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6th November 1867.

to him when the Priest wanted silver for it. After Yelsmore was taken up by the Police on the 1st occasion, and released on bail, he told me that he got back the Note from the Priest.

(Signed) N. J. F. ADAMS.

Taken on oath at Madras aforesaid, this 19th day of March 1867.

Before me,

(Signed) T. G. CLARKE,

Justice of the Peace.

Madras } The Supplemental Deposition of Nicholas John Fennelly Adams, an East Indian
to *Wit.* } of Madras, taken on oath in the presence and hearing of the prisoner John Michael Yelsmore.

The said Nicholas John Fennelly Adams saith as follows:—

With reference to my deposition, dated 19th March 1867, I state the letter now produced and shown me, marked G, was written by me, addressed to Mr. Yelsmore, the prisoner. I did not despatch it, because I had not an opportunity. I had it underneath my bed. When I was removed to the convicts' ward, I lost the letter. I and Scott were in the same ward for nearly a week. I had no conversation with Scott about Yelsmore. I did not mention to him that Yelsmore was implicated in this forgery. He asked me in what case I was brought in, I said in a false charge of two thousand Rupees. I do not know how Scott got possession of the letter.

(Signed) N. J. F. ADAMS.

Taken on oath at Madras aforesaid this 21st day of March 1867.

Before me,

(Signed) T. G. CLARKE,

Justice of the Peace.

No. 81. ORDER THEREON, 6th November 1867, No. 1782.

The Governor in Council declines to modify the sentences passed upon the prisoners Nicholas John Fennelly Adams, and John Michael Yelsmore.

(True Extract).

Chief Secretary.

To the Honorable W. Holloway.

" Commissioner of Police.

Exd. J. H. Burns.

Jud. DEPARTMENT.

No. 2287.

From The Honorable W. Holloway

Judge of the High Court.

Dated 22nd October 1867

FOR ORDERS.

Although Mr. Justice Holloway says that if the two prisoners had been tried by him on the same indictment it is probable he might have given Adam a year or two less than Yelsmore the judge does not say that the sentence pronounced on Adam is more severe than the return of the case in this. I am reluctant to disturb sentences especially about a early period. I will put on a order deciding

to modify the sentence. If the person
is very far from the subject
might be considered a couple of years
hence. N

I concur

W.D.

W.D.

Referring to the order
on Adams' case, I would
decline to interfere in
any way in this case of
this Petitioner W.D.

I have kept this order
late but Adams' case
reached me & I did today
1200 W.D.

I would not remit
any portion of the
sentence on the
more Adams

This Petition should be sent
together with a similar one
from the Prisoner Adams, as
the Hon. Mr. Holloway has
recorded some remarks on
in circulation. It seems
scarcely necessary to ask
Mr. Holloway for remarks on
this memorial, as the justice
seems to be no doubt
whether or not the guilt of
the two men and if I
remember right, suggested
that a remission of Adams
sentence might be desirable
but only because he was the
tool of the present memorialist
the Prisoner Gelsmore.

W.D.

might as I said
elsewhere be considered
hereafter after
considerable part of
the sentence has
elapsed. N

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT:

Read again letter from
the Ag. Commissioner of Police
dated 3^d, and recorded in
Proceedings of the 11th Sept. 1867.
N^o 1473

Read also the following
letter the Honble W. Holloway
Judge of the High Court.

From the Commissioner of Police

Here enter 22^d Oct. 1867.
" " 29 " " N^o 105.

Order: 6th Nov. 1867 N^o 1782.

The Governor in
Council declines to modify
the sentence passed upon the
Prisoners, Nicholas John
Funnell, Adams, and
John Michael Gylemore.

FR.

W.D.
L.H.

To the Hon. W. Holloway
Commr of Police, desd 13/11

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Ind. 1867. Department.

No. 1782

PROCEEDINGS OF GOVERNMENT.

Dated 6th Nov 1867

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