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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Judrey DEPARTMENT

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298

*Proceedings of the Madras Government, Judicial Department,
31st March 1868.*

No. 298. Read the following letter from Mr. J. H. WILLIX, Pleader, Naggery, to the Chief Secretary to Government, Fort Saint George; dated Naggery, 10th March 1868.

I respectfully beg to request that you will be pleased to submit, for the consideration and orders of Government, the following complaint which I am necessitated to prefer against Mr. W. F. Hewetson, the Deputy Collector and Magistrate stationed at Naggery, in the North Arcot District.

The complaint has reference to the trial of a criminal charge preferred before Mr. Hewetson by a personal friend, one Mr. Winter, the Telegraph Engineer stationed at Arcunum, against his Butler, in the course of the trial of which charge Mr. Hewetson having prejudged the case abused his authority to an extent to seriously prejudice the defence, to suppress investigation, and to insult me most grossly on two different occasions under excited feeling against me for appearing before him to conduct the defence.

Situated as this station is in a distant part of the district, where the Court is being held in the Deputy Magistrate's dwelling-house, where important trials are carried on with closed doors, inasmuch as the public have no access, where there is no bar to watch the proceedings, and no press to give publicity to those proceedings, it is a matter of the utmost importance that Government should institute the strictest investigation into the circumstances connected with this complaint.

Mr. Winter, the complainant in the case, entertained a Picnic party, consisting of 28 ladies and gentlemen, at Pootoor and the Naggery Hills for three days during the Christmas holidays, and for carrying out the expenses attending the entertainment he made an advance of 80 Rupees to the Butler. On Mr. Winter's return to Arcunum the Butler prepared a bill, amounting to Rupees 153. Mr. Winter objected to sundry articles, amounting in value to Rupees 63. These articles, the Butler alleged, were purchased by him for ready money in the bazaars at Madras, Arcunum, and Pootoor, and were paid for by him without bills or vouchers; whilst, on the contrary, Mr. Winter insisted that they were *not* so purchased. On this issue Mr. Winter preferred a charge before Mr. Hewetson against the Butler for *attempt to cheat* under Sections 418 and 511 of the Indian Penal Code.

Mr. Winter, and the witnesses produced by him for the prosecution (consisting chiefly of his Inspectors, Cash-keeper and Peons in the Railway, and his private servants), having been examined the Butler was called upon to make his defence.

At this stage of the trial the Butler applied to me and obtained my assistance to prepare his defence.

I appeared before Mr. Hewetson one week before the date fixed for hearing the defence, filed my Vakalatnamah, and applied for copies of the depositions on the record.

Mr. Hewetson declined to give me the copies, and at the same time remarked that the charge against the Butler was very strong, and that so far it is clearly proved.

On the date fixed for entering on the defence, I attended and asked that the complainant Mr. Winter's deposition may be read. Mr. Hewetson first declined to do so, but afterwards acceded.

I next asked that Mr. Winter may be allowed to be cross-examined. Neither Mr. Winter nor his Vakeel objected, but Mr. Hewetson started the objection and

persisted in adhering to it. I submitted that the accused had the right, under Section 252 of the Criminal Procedure Code, to recall and examine the witnesses for the prosecution, and that I would beg that my application and the objection raised may be recorded. Here Mr. Hewetson got out of temper, and told me that if I go on speaking like that he would "turn me out of the house."

I next submitted that as the offence was founded on the presentation of the bill, which presentation was made at Arcunum, in the Wallajah Taluq, the jurisdiction laid with the 1st Class Sub-Magistrate of that Taluq, or the Head Assistant Magistrate, and asked that the point may be recorded. This also Mr. Hewetson declined to do.

Later in the day Mr. Hewetson thought better of the objection he had raised to Mr. Winter being cross examined, and permitted me to cross-examine him, and adjourned the Court afterwards for a week.

I would respectfully beg to submit to Government that I had a clear duty to perform to a client; 1st, to apply for copies; 2nd, to recall and cross-examine witnesses; and 3rd, to raise the point of jurisdiction; and I submit it was equally the duty of Mr. Hewetson to record my applications or objections, and his orders thereon. But he not only refused to record them, but for my arguing the point he wanted to "turn me out of the house," in view to intimidate me in the further part of the proceedings.

Mr. Hewetson's dwelling-house and the Court-house being one and the same place is a matter of peculiar hardship to the community. No one is allowed to approach the house, and parties and witnesses, and even Vakcees have to stand outside in the sun or rain at a distance until they may be called. I was myself present once lately when a Constable was dragging out a respectable Vakceel by the name of Streenevasa Charry, because he was found taking shelter alongside the wall of the outer verandah under a shower of rain, and, on his appealing against this act of violence to Mr. Hewetson, he was informed that he had no business to approach the house before being called, and that he had given orders to the Constable to turn him out.

Although the law, Section 279 of the Criminal Procedure Code, deems the place in which the Court of a Magistrate is held an open and public Court, to which the public generally may have access, so far as the same can conveniently contain them, yet in the case of Mr. Hewetson's Court not only no person having business can approach the house, but important trials are held, which not only the public, nor even the friends and relations of the parties concerned, are permitted to witness or to learn anything connected with them; and the house being Mr. Hewetson's private dwelling-house, he feels always at liberty to have any person he does not wish to be present to have turned out.

During the trial of the Butler, excepting the subordinates of Mr. Hewetson and Mr. Winter, and excepting myself and the accused Butler, not a single person was present to witness the proceedings.

The Court was being held in the verandah of the house fronting the dining room. Mr. Winter, a party in the case under trial, was seen to breakfast and tiffin with Mr. Hewetson while that trial was in progress, and to hold private conferences with Mr. Hewetson from time to time, and in contempt of the Court and of

good order Mr. Winter was pacing through the verandah where the Court was sitting, smoking cheeroot and conversing with his witnesses.

Mr. Hewetson was averse to the case being defended by me from the commencement, solely because a personal friend was concerned, and being at the time in his company, and surrounded as he was by his own and Mr. Winter's subordinates he took offence at my arguing points of law or practice, and taking advantage of my solitary position he insulted me in the manner he has done.

After giving the several adjournments, yesterday the case was again called up for final examination, and Mr. Hewetson happening to be encamped at Tritany, the Court had to be held under the trees fronting his tent, in an enclosure of tats and leaves. I arrived there at 10 A. M., and found that Mr. Winter had taken up his temporary residence with Mr. Hewetson. After breakfasting together they took their seats in the enclosure at 12 o'clock. At half past 2 they adjourned and went to the tent for tiffin and resumed their seats at 4 P. M.

I must here submit to Government in detail what followed.

The witness examined (he being the last one) was a Butler of one Mr. West of the Railway. He was an important witness for the defence, as he was the person who made the purchases for the Picnic, and who gave an account of those purchases to Mr. Winter's Butler and received the money, which amount the latter charged to Mr. Winter's account, partly on which account the charge of attempting to cheat was founded. The account filed by him was a rough half sheet of paper, and in a soiled condition, in which he had noted from time to time in hasty scrawls the different items of expenditure. This account appearing to be a satisfactory evidence in favor of Mr. Winter's Butler, Mr. Winter suggested that it was a fabrication. Hereupon Mr. Hewetson and Mr. Winter conferred together, as to whether the witness may not be indicted for perjury, and between the both the Penal Code was searched and the section consulted. The witness was then ordered into custody, in view to further proceedings being taken against him.

In this stage of the trial I submitted to the Court that a statement may be taken from the accused Butler under Sections 202 and 205, Criminal Procedure Code, as he was in a position to explain satisfactorily everything connected with his account. Mr. Hewetson objected to this course and refused even to record the application.

The accused Butler had in his possession a rough Tamil account, which he had produced on a former occasion and filed in the Court; but requiring it afterwards to refresh his memory I applied to Mr. Hewetson for it, and he promised to give it. The Butler waited for it at the Court and I came away. This account was late in the evening of the same day put under cover by one of the clerks in Mr. Hewetson's office, addressed to me and handed to the Butler, which he brought and handed to me. As I did not want it I handed it back to him, and he produced it this day in the Court. Mr. Hewetson wanted to know how he got this account, and I called to his recollection that he ordered it given to him when I was present. My saying that he ordered it himself to Mr. Hewetson construed it to be "contradiction." He here loses his temper and tells me that he will "turn me out of the Court." On my remarking that he was very fond of using those words, he called to his Peons "to

*Proceedings of the Madras Government, Judicial Department,
31st. March 1868.*

Making allowance for the extraordinary ebullitions of temper of this nature, which have originated solely, as I believe, in consequence of Mr. Winter's presence, and to his having prejudiced his mind so strongly, I made my final address for the defence and left the Court.

Mr. Hewetson reserved his decision to the following day, this day, and I here would respectfully submit to Government whether it is right that Mr. Hewetson should have permitted Mr. Winter to reside with him in the critical moment of considering his verdict, that is, between the closing of the defence and the delivery of his decision.

Under all these circumstances, I beg to submit in conclusion that the accused has not only been prejudiced in his trial, but that his appeal also is prejudiced, as much valuable evidence has not been brought on the record, and that I, the Vakeel of the accused, have been grossly insulted and intimidated in the performance of my duty to a client.

No. 299.

ORDER THEREON, 31st March 1868, No. 542.

The Governor in Council directs that the letter above recorded be transmitted to the Acting Magistrate of the North Arcot District, who will call upon Mr. Hewetson for an explanation of the circumstances stated by Mr. Willix.

2. Mr. Hewetson will be desired to reply categorically on the following points:—

1st.—The reason for his holding, as Deputy Magistrate, his Court in his own private dwelling-house.

2nd.—Mr. Hewetson will state whether he is provided with tents, and why, if he is obliged to use a portion of his house as an office, part attending his Court are not allowed to enter the verandah of his house. at portion of it which is used as a Court-house, as alleged by Mr. Willix.

3rd.—Mr. Hewetson's alleged refusal to give copies of the depositions on the record in the case in which Mr. Willix was conducting the defence.

4th.—Mr. Hewetson's alleged refusal to allow witnesses for the prosecution to be examined by Mr. Willix, and his repeated threats to turn Mr. Willix out of the house in which Mr. Hewetson was holding his Court.

5th.—Mr. Hewetson's alleged refusal to record the objection raised to his jurisdiction in the case.

6th.—The alleged treatment of a Vakeel named Stoeneyasa Charry.

7th.—The alleged intercourse between Mr. Hewetson and Mr. Winter during the trial of case in which Mr. Winter was prosecutor.

3. The Governor in Council desires to be informed if Mr. Hewetson has passed an examination in the Code of Law of Evidence. (Extract).

Chief Secretary.

To the Magistrate of North Arcot.

Erd, J. Tallich.

Memo for notes

It will be sufficient I submit to desire the Magt to send for the record of this case and call for any explanation from the magistrate Mr. Hewetson which may

Mr. Hewetson is a full appearing magist. I suppose the Magistrate, I believe? If, as seems to be the case, the trial of the Butler has been closed, the District Magistrate has no power of interference except on an appeal which does not

appear to have been preferred.
As a matter of discipline, for the explanation,
which I would call for, should perhaps come
through Mr. ^{J.D. Robinson} ~~Robinson~~ the District Judge. But still
no reason why it should not be submitted direct.

If it be determined to receive it through the
District Judge, the latter officer should be required to
explain how it has happened that the Deputy Comm-
r. H. — does his work in his private residence.
If Mr. H. — lives in the Bungalow at Khyber, &
he should, as of course he then draws salary
into allowance, have a tent for the accommodation
of his children and persons publicly attending
it.

But, as I understand that the Pres. Sept. 27, 1867,
determined that Pollard should be the Deputy Comm-
r., the District Judge should further explain
why Mr. Hewitt has been forced at Khyber.

Should wish to know whether Mr. Hewitt
has passed an exam. in the Code & Law of
Ceylon.

21. 3. 68.

I wd like to
see Mr. Hewitt
with his manuscript.

by A.

Yes I would call for an explanation
and let it be submitted through
the District Magistrate. I would
ask specifically for an explanation
on the points alluded to by Mr.
Phillips & especially with
reference to the public intercourse
between Mr. Hewitt and the
prosecutor Mr. West during
the conduct of the trial: —
The explanation of Mr. Hewitt
ought to be very particular

Clg. Kured

[illegible]

[illegible]

do. but after all
I next asked that Mr. Winter
may be allowed to be cross-examined
by Mr. Winter, nor his Valued agent
but Mr. Peterson started the objection
to persisting in asking to it. I submitted
that the accused had gone to
before the Criminal Process
Code to make & examine the witnesses
that they appeared to the objection raised
may be recorded. Now Mr. Peterson got
out of touch with me that if I go
speaking like that, he would "turn me
out of the house".