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MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.
CU 31/3/60

G.O. No.	599	Press
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Dated	21-3	18 60

Not to be folded or roughly handled

- No. 1. Read the following letter from CLEMENT DALE, Esq., Government Pleader, Sadr Adálat, to T. PYCROFT, Esq., Chief Secretary to Government, dated 1st March 1860, No. 43.

Paragraph 1. With reference to the Proceedings of Government, of the date and number noted in the margin, I do myself the honor of reporting for the
Proceedings of Government, 14th December 1859, No. 2912.
Public Works Department. information of the Honorable the Governor in Council, that the Petition presented to the Court of Foujdári Adálat, on behalf of the Paigasti named Narasaen, appealing against his conviction on the 8th of August 1859, by the Acting Subordinate Judge of Salem, came on for hearing this morning, when I appeared to support the conviction, but the Judges decided to cancel the sentence.

2. By their Proceedings of the 1st of December 1859, the Foujdári Adálat ordered, that pending further orders, the Subordinate Judge should "suspend the sentence passed on the Prisoner; whom he will release on security accepting his own recognizance for a moderate amount;" observing that "from the papers before them, and the arguments urged by Counsel, the Foujdári Adálat are not satisfied that the conviction of the Prisoner is supported by the evidence, and it would appear doubtful whether any real offence has been committed of which the law can take cognizance."

3. It was in the face of so decided an opinion that I had to support the conviction.

4. The Counsel for the Prisoner discreetly confined himself within the four corners of the opinion so expressed.

5. The Judges gave me a very patient hearing, but threw out observations as the case proceeded, showing they did not view the evidence, &c. in the same light I did, and in answer to my argument, that the Prisoner not having attempted to shake the evidence given by Mr. Green, either by cross examination or counter evidence, that Mr. Green's evidence must be taken as the evidence of truth; (which doubtless it was), and the Prisoner not having chosen to give any explanation of the transaction, or to call evidence to prove his assertions, he could not ask the Court to give credence to such assertions; their Honors intimated they considered Judges as the Prisoner's Counsel, and if they saw that the Judge of the Lower Court had failed in the performance of this duty, they would give the Prisoner the benefit. They further commented unfavorably on the manner in which the case had been conducted in the Subordinate Court in other respects.

6. After I had concluded my argument, the Judges criticised some alterations made in pencil in the Pygust accounts; which their Honors treated as corrections by Mr. Green, and from which they inferred that where the Prisoner's figures were not altered, Mr. Green admitted their correctness. On these points Mr. Green had not been examined; indeed, if he had it would have been irrelevant; moreover, much matter was introduced by the Head of Police, as it appears to me most improperly, but into which the Judges of the Foujdári looked critically, and by which their Honors were much influenced, although no evidence had been given regarding it in the Subordinate Court; I had not seen these Pygust accounts; and if I had, in all probability I should have directed my attention solely to the entries regarding which the Prisoner had been tried; I was, however, enabled on the spur of the moment, to point out what appeared to be fallacies and errors in their Honors' deductions; for instance, that no alteration was made in the figures introduced by the Prisoner, purporting to shew the measurements; but that the alterations were entirely in respect of figures professing to shew the numbers of coolies employed; that from the record and looking at the dates the Prisoner's measurements, (except perhaps for the Murrumboo), had not been checked when Mr. Green had the Pygust accounts before him, consequently his not having corrected those alleged measurements introduced by the Prisoner, could

Proceedings of the Madras Government, Public Works Department,
for the month of March 1860.

not be accepted as admissions by Mr. Green of their correctness. Then again I detected a miscalculation made by their Honors, as to the amount of work performed by the coolies on the 9th, shewing that if the Prisoner's statement, and Mr. Green's measurement were correct, that the coolies so far from having done a double days work; they had not done by half what it was stated before the Police could be done in a single day.

7. It appears to me as an exceedingly unsound, and certainly a very unsafe, mode of dealing with a case. Thus going into matter on which no evidence had been given.

8. There has been a doubt in my mind regarding this case; viz. whether the Prisoner had in his charge any money of Government, and whether in his account he charged as paid to the coolies the Rupees 5-3-0 named in the Indictment; my doubt has arisen from the fact, that the Prisoner had placed in his charge certain tickets which he gave to the coolies employed for their work, and in the investigation before the Police, some of the witnesses speak of having been told that the tickets would be paid on a day named. The Prisoner was indicted for having "with intent to defraud the Government of Rupees 5-3-0 fraudently charged a corresponding sum in the Station Book in excess of the actual amount due for coolies and paid by him;" now if he never had public money in his possession, and never did charge that Rupees 5-3-0 in his accounts as so much paid, he has been indicted for an offence he never committed; no explanation was offered regarding the tickets, and in arguing the case I remarked on the nature of the charge, and on such part of the evidence as proved that portion of the charge; my comments did not elicit any observation from the Prisoner's Counsel, or the Court; if the Prisoner gave the tickets for a larger number of coolies than were actually employed, that was a fraud on the Government; and one doubtless, from which the Prisoner was to derive a benefit; but that was not the offence for which he was put on his trial, nor was that the case proved.

9. I regret, that I am compelled to concur with the observations which fell from their Honors the Judges, as to the way in which the case was conducted in the Subordinate Court and to remark that the evidence was elicited in a very loose and unsatisfactory manner; at the same time I am bound to say, that I consider the Subordinate Judge was quite justified, even with the evidence before him, in convicting the Prisoner. The Judges of the Foujdari Adalat were not, however, so satisfied, and have given the Prisoner the benefit of the doubt.

10. I do myself the honor of returning the papers which accompanied the Proceedings noted above.

No. 2.

ORDER THEREON, 21st March 1860, No. 599.

Communicated to the Chief Engineer with reference to the Order 14th December 1859 No. 2912.

2. The difficulties in obtaining convictions for frauds committed by the Subordinates of the Public Works Department makes it the more necessary that the District Engineers should use all possible caution in the selection of persons for employment, and should also exercise all that careful supervision over them which the Rules of the Department require.

(Signed) J. D. BOURDILLON,
Secretary to Government.

N^o 43
From Clement Dale Esquire Government Pleader Sadr Adalat
To Thomas Pycroft Esquire Chief Secretary to Government

Madras 1st March 1860

Sir,

Para 1

With reference to the Proceedings of Government, of the date and number noted in the margin, I do myself the honor of reporting for the information of The Honorable The Governor in Council, that the Petition presented to the Court of Foujdare Adalat, on behalf the Pygust named Narasien, appealing against his Conviction on the 8th of August 1859 by the Acting Subordinate Judge of Salem, came on for hearing this morning when I appeared to support the Conviction, but the Judges decided to cancel the sentence.

2. By their proceedings of the 1st of December 1859, the Foujdare Adalat Ordered, that pending further Orders, the Subordinate Judge should "suspend the sentence passed on the Prisoner, whom he will release on security accepting his own recognizance for a moderate amount;" observing that "from the papers before them, and the Arguments urged by Counsel, the Foujdare Adalat are not satisfied that the Conviction of the Prisoner is supported by the Evidence, and it would appear doubtful whether any real offence has been committed of which the law can take Cognizance."

3. It was in the face of so decided an opinion

that I had to support the conviction.

4 The Counsel for the Prisoner discreetly confined himself within the 4 corners of the opinion so expressed.

5 The Judges gave me a very patient hearing, but threw out observations as the case proceeded, showing they did not view the evidence in the same light I did, and in answer to my argument, that the Prisoner not having attempted to shake the evidence given by Mr. Green, either by cross examination or counter evidence, that Mr. Green's evidence must be taken as the evidence of truth; (which doubtless it was) and the Prisoner not having chosen to give any explanation of the transaction, or to call evidence to prove his assertions, he could not ask the Court to give credence to such assertions; Their Honors intimated they considered Judges as the Prisoner's Counsel, and if they saw that the Judge of the lower Court had failed in the performance of this duty, they would give the Prisoner the benefit; They further commented unfavorably on the manner in which the case had been conducted in the subordinate Court in other respects.

6 After I had concluded my argument, the Judges criticised some alterations made in pencil in the Sygust account, which their Honors treated as corrections by Mr. Green, and from which they inferred that where the Prisoner's figures were not altered, Mr. Green admitted their

correctness - On these points Mr. Green had not been examined; indeed if he had it would have been irrelevant; moreover much matter was introduced by the Head of Police, as it appears to me most improperly, but into which the Judges of the Tanjore looked critically, and by which their Honors were much influenced, although no evidence had been given regarding it in the subordinate Court; I had not seen these Sygust accounts; and if I had, in all probability I should have directed my attention solely to the entries regarding which the Prisoner had been tried; I was however enabled on the spur of the moment, to point out what appeared to be fallacies and errors in their Honors' deductions; for instance that no alterations were made in the figures introduced by the Prisoner, purporting to shew the measurements; but that the alterations were entirely in respect of figures professing to shew the numbers of coolies employed; that from the record and looking at the dates the Prisoner's measurements (except perhaps for the Murumbos) had not been checked when Mr. Green had the Sygust accounts before him, consequently his not having corrected these alleged measurements introduced by the Prisoner, could not be accepted as admissions by Mr. Green of their correctness. Then again I detected a miscalculation made by their Honors, as to the amount of work performed by the coolies

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8 There has been a doubt in my mind regarding this case; vizt, whether the Prisoner had in his charge any money of Government, and whether in his account he charged as paid to the Coolies the Rs 5-3- named in the indictment; My doubt has arisen from the fact, that the Prisoner had placed in his charge certain tickets which he gave to the Coolies employed for their work, and in the investigation before the Police some of the witnesses speak of having been told that the tickets would be paid on a day named; The Prisoner was indicted for having with intent to defraud the Government of Rs 5-3- fraudulently "charged a corresponding sum in the Station Book in excess of the actual amount due for Coolies and paid by him"; now if he never had public money in his possession, and never did charge that Rs 5-3- in his accounts as so much

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10 I do myself the honor of returning the papers which accompanied the

Proceedings noted above.

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Sir

Your Most Obedient Servant

Wm. A. Smith

Govt Pleader S. A.

*W. A. Smith to the Chief Engr
with 4 Engrs Dec 22*

Dec 22 December 19 of 1837
The Engineer with reference to the Chief Engr
No 599. Commenced to the Chief Engr
The difference in obtaining convictions for
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use all possible caution in the selection of persons for
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superintendence over them which the rules of the S. A. require.
Wm. A. Smith
Dec 22

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