Archives 1—10,008—6-10-76.

(1) Number of pages 36
(2) Date of repair 3-10-86
(3) Initials of the Referencer Lova

TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Public works DEPARTMENT

G.O. No. 4243 – W
~~B.P. No.~~
Press.
~~Mis.~~

Dated 6-11-1878. ~~197~~.

Not to be folded or roughly handled

4243

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

6th November 1878, No. 4,243 W.

General.

Establishment.

Read the following paper :—

No. 26. From Lieutenant-Colonel R. B. KENNEDY, District Engineer, Malabar, to the Chief Engineer, Public Works Department, dated Calicut, 24th October 1878, No. 85.

WITH reference to G.O., No. 3,741 W, of 23rd September 1878, I have the honor to forward copy of the judgment and sentence passed by Cantonment Magistrate, Cannanore, in the case of Assistant Engineer Dobson *versus* Overseer Taylor.

Lieutenant Dobson's letter No. 217, dated 19th instant.

2. It will be seen that four separate charges were framed against Mr. Taylor, viz :—

1. Criminal breach of trust by a public servant.
2. Do. do.
3. Criminal misappropriation.
4. Framing an incorrect document by a public servant with intent to defraud.

But that he was convicted of the first three counts only and sentenced to fifteen days' rigorous imprisonment and a fine of Rupees 379-12-5, in default of payment to a further period of one year's rigorous imprisonment. He was acquitted of the fourth count. The fine has been paid, and will, as the Magistrate has decided, be credited to the Public Works Department.

3. I have directed Lieutenant Dobson to consider Mr. Taylor as dismissed from the department from the date of his conviction, viz., 18th October 1878, and if I am right in that step and in naming that date I shall be obliged by your confirming the dismissal.

4. I also beg to submit a bill for Rupees 425, being the fee demanded by the Vakil who conducted the case for prosecution, and request sanction may be accorded for the payment of the same.

5. In the evidence it came out, as will be seen, that Overseer Taylor charged hire of absent coolies in his cash-book, I have therefore made a reference to Lieutenant Dobson, whether such items are entered in the accounts under head of deposits ; and if not, whether any, and what, check exists to prevent their being lost sight of.

From Lieutenant A. E. DOBSON, R.E., Executive Engineer, Cannanore, to the District Engineer, Malabar, dated Cannanore, 19th October 1878, No. 217.

I HAVE the honor to inform you that the case Government *versus* Overseer Taylor was yesterday completed and disposed of, the Magistrate having passed judgment and sentenced him to what appears to me a very mild punishment.

2. I have kept you so fully informed of all the circumstances of the case that I need not recapitulate them again here, except to say that the charges were framed by the Magistrate himself on the evidence brought forward by me, and it will then be observed that the Magistrate considered the evidence so conclusive and strong that he framed four separate charges against the Overseer and that he found him guilty of three.

3. With regard to the judgment, I would wish to make one remark, which I suppose will not be treated as contempt of court.

4. The judgment says that "matter was urged by the defendant and even by prosecution in extenuation of the offence." I am not able exactly to make out what the Magistrate is alluding to; but I suppose to a remark which I authorised my Vakil to make, viz., that we did not wish the man to receive the full sentence that could be awarded, (viz., five years), but that we wanted a sufficient punishment to be given as an example to others; but I must say that I scarcely think the punishment awarded meets the case. He is found guilty on three charges—one of them a serious defalcation—and his sentence is fifteen days' imprisonment and Rupees 379-12-5 fine, in default one year; and as he has paid the fine, which is merely repaying to Government money which he has misappropriated, he then gets absolutely nothing for the crime itself, except five days' imprisonment on each charge, making fifteen days altogether, and I do not think the sentence adequate. An Overseer in his responsible position might very well say, "well, I can embezzle as much as I like, I am not likely to get more than fifteen days;" he pays a fine, serves a short time in prison, and then comes out and enjoys his ill-gotten gains. I certainly think that he should have received at least two years.

5. I have the honor at the same time to enclose a bill from my Vakil for professional services rendered, and to request you will kindly forward it to Government for sanction. I may mention I received the greatest assistance from the Vakil (a native). He took up the case and went into it thoroughly and was very quick at grasping the points, which in so much account work were by no means easy to an outsider, and he carried on the case to my satisfaction.

6. The Magistrate's judgment (in original) is enclosed for your information.

No. 27. ORDER THEREON, 6th November 1878, No. 4,243 W.

THE District Engineer is authorised to disburse Rupees 425, being the fee claimed by the Vakil.

2. A report on the subject alluded to in Colonel Kennedy's last paragraph is awaited by Government. The practice is most objectionable if it exists.

3. The confirmation applied for in the third paragraph is accorded.

(True Extract.)

Colonel, R.E.
Secretary to Govt., P.W.D.

To the Superintending Engineer, Fourth Circle.
,, Examiner of Public Works Accounts.

Exd. T. D. Ryan.
Spare Copies

42~~4~~3
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GENERAL
ESTABLISHMENT.

Govt. of (1878) Madras.

PUBLIC WORKS.

To

The SUPERINTENDING ENGINEER,
FOURTH CIRCLE,
&c., &c., &c.

Dated November 6th.

Issued

Recd. Ent.

G. O., 6th November 1878, No. 4,243 W.

NOVEMBER.

Nos. 26-27.

Fee claimed by the Vakil engaged for the prosecution of Mr. Overseer Taylor for Criminal Breach of Trust.—The disbursement of the — authorised; and a report called for regarding the malpractices of the Overseer which were brought to light during the investigation of the case.

Malabar Distt. Engrs. Office
Calicut 24th October 1878.

4343
14

No. 85

From,
The District Engineer
Malabar.

To,
The Chief Engineer
P. W.
~~Roads & Buildings~~
Madras.

Sir,

With reference to G. O. No. 3741. W of 23rd. September 1878, I have the honor to forward copy of the judgment & sentence passed by Cantonment Magistrate, Cananore in the Case of Assistant Engineer Dobson — versus Overseer Taylor.

Lt. Dobson's letter No. 2174/19 Instant

2. It will be seen that four separate charges were framed against Mr. Taylor, viz:

1 Criminal Breach of Trust by a Public Servant
2 do do
3 do Misappropriation
4 Framing an incorrect document by a Public servant with intent to defraud

but that he was convicted of the first 3 Counts only and sentenced to 15 days rigorous imprisonment and a fine of Rs. 379. 12. 6, in default of payment to a further period of one year's rigorous imprisonment. He was acquitted of the 4th count. The fine has been paid and will, as the Magistrate has decided, be credited to the P. W. Department.

3. I have directed Lt. Dobson to

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consider Mr. Taylor as dismissed from the Department from the date of his conviction viz. 18 Octr. 1878 and if I am right in that step, and in naming that date, I shall be obliged by your confirming the dismissal.

4. I also beg to submit a bill for Rs. 425 being the fee demanded by the Vakeelahs conducting the case for prosecution and request sanction may be accorded for the payment of the same.

5. In the evidence it came out as will be seen, that Overseer Taylor charged hire of absent coolies in his Cash Book, I have therefore, made a refrence to Lt. Dobson, whether such items are entered in the accounts under head of deposits, and if not, whether any, & what check exists to prevent their being lost sight of

I have the honor to be
Sir,
Your most Obedt. Servant
Wm. B. [illegible] Lt. Colo.
District Engineer
Malabar

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G O No 3741 W/ 23-9-78
" " 3319 W " 20-8 —
" " 2572 W " 21-6 " " Regl.
" " 222 W " " — 77

Public Works Department
Roads and Buildings

12063

From
The District Engineer
Malabar

Dated 24th October 1878
No 85

Encls: 3

Overseer Taylor —
Reports the result of the trial of — for Criminal Breach of Trust.

Lo Acty 28-10-78
Cir 30.10.78 Retd 4-11-78

Cannanore Division Office D. P. W.

No. 217

19th October 1878

1433
21 Oct

From
THE OFFICER IN CHARGE
CANNANORE DIVISION, D. P. W.

To
THE District Engineer
Malabar D. P. W.
Calicut

Sir,

I have the honor to inform you that the case Govt. v. Overseer Taylor was yesterday completed and disposed of, the Magistrate having passed judgment and sentenced him to what appears to me a very mild punishment.

I have kept you so fully informed of all the circumstances of the case that I need not recapitulate them again here, except to say that the charges were framed by the Magistrate himself on the evidence brought forward by me, and it will then be observed that the Magistrate considered the evidence so conclusive and strong that he framed 4 separate charges against the Overseer and that he found him guilty of three.

With regard to the judgment I would wish to make one remark, which I suppose will not be treated as contempt of court.

The judgment says that "matter was urged by the Defendant & even by prosecution in extenuation of the offence." I am not able exactly to make out what the Magistrate is alluding to, but I suppose, to a remark which I authorized my Vakeel to make viz that we did not wish the man to receive the full sentence that could be awarded (viz 5 years) but that we wanted a sufficient punishment to be given as an example to others, but I must say that I scarcely think the punishment awarded meets the case. He is found guilty on three charges, one of them a serious defalcation, and his sentence is 15 days imprisonment & 379-12-5 fine in default one year and as he has paid the fine, which is merely repaying to Govt. money which he has misappropriated; he then gets absolutely nothing for the crime itself except 5 days imprisonment on each charge, making 15 days altogether & and I do not think the ~~judgment~~ sentence adequate. An Overseer in his responsible position might very well say "well I can embezzle as much as I like "I am not likely to get more than 15 "days" he pays a fine, serves a short time in prison, and then comes out and enjoys his ill-gotten gains. I certainly think that he should have received at least two years.

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I have the honor at the same time to enclose a bill from my Vakeel for professional services rendered & to request you will kindly forward it to Govt. for sanction. I may mention, I received the greatest assistance from the Vakeel (a native) he took up the case and went into it thoroughly and was very quick at grasping the points, which in so much account work were by no means easy to an outsider, and he carried on the case to my satisfaction.

in original

A copy of the Magistrate's judgment is enclosed for your information.

I have the honor to be,
Sir,
Your most obedt. Servt.
A. E. Dobson Lt R.E.

6 Executive Engineer [illegible]

COURT OF Cantt: Magistrate, Cannanore.

a/d 19/10/78

Calendar No. 239 of 1878.

2. Name of Complainant.	3. Name and description of the Accused.
Lieut: Dobson R.E. Asst. Engineer D.P.W. Cannanore.	F. W. B. Taylor Overseer, D.P.W. Kolayam Taluk East Indian

4. Charge and Sentence.

That you Fredric William Bedford Taylor on or about the 18th day of August 1878 being a Public Servant and being in such capacity entrusted with money the property ~~of Govt~~ of Government committed Criminal Breach of Trust by dishonestly converting a portion of the same viz Rs 303-2-8 to your own use and thereby committed an offence punishable under Sec: 409. I.P.C and within my cognizance

2ndly That you the said Fred: William Bedford Taylor between January and June 1878 in the Kolayam Taluq being a Public Servant and being in such capacity entrusted with money the property of Govt. committed Criminal Breach of Trust by dishonestly converting the portion of the same viz Rs 8-0-0, approximately, to your own use, in having paid the said sum to Coolies employed in your private Service and thereby committed an offence punishable under Sec: 409 I.P.C and within my cognizance

DATE OF					
5	6	7	8	9	10
Offence.	Complaint.	Apprehension or Appearance.	Commencement of Trial.	Sentence.	Explanation of Delay.
18th Aug. 78	27th Sep: 78	27th Sep. 78	2nd Oct: 78	18th Oct: 78	

3rd That you the said Fredric William Bedford Taylor between June and August 1878 at Tellicherry dishonestly misappropriated the sum of Rs 69-9- of which sum was due to coolies on account of work performed for Govt. and thereby Committed an offence punishable under Sec: 403 I.P.C. and within my cognizance—

4th That you the said Fredric William Bedford Taylor between June and August 1878 at Tellicherry being a Public Servant and being in such capacity charged with the preparation of Nominal Cooly Rolls, marked F.K.L. framed those Rolls in a manner which you knew or believed to be incorrect, intending or knowing it to be likely that you will thereby cause injury to Government and thereby committed an offence punishable under Sec: 167 of I.P.C. and within my cognizance—

The Court finds that you Fredric William Bedford Taylor Guilty of the offences specified in the 1st 2nd and 3rd Counts of the Charge and sentences you to suffer Rigorous Imprisonment for 15 days and to pay a fine of Rs 379-12-5 or in default of payment to suffer one Year's Rigorous Imprisonment under Secs 409, 409 & 403. I.P.C.—

Acquitted on the 4th Charge.

L. R. Stafford

Ag: Cantt: Magte
1st Class

Case No 239 of 1878.

Judgment.

Offence. 1st Criminal Breach of Trust by a Public Servant– Section 409. I.P.C.–

2nd Criminal Breach of Trust by a Public Servant– Section 409. I.P.C.

3rd Criminal misappropriation Sec: 403. I.P.C.

4th Framing an incorrect document by a Public Servant with intent to defraud. Sec: 187 I.P.C.

The accused is an East Indian and has been employed as an Overseer in the Public Works Department for the last 2½ years; he was, until his suspension, in charge of the Kotayam Taluq Cannanore Division and Subordinate to Lieut: Dobson, Royal Engineer– His Office and Head Quarters were at Tellicherry.

On the 11th September 1878 Lieut: Dobson first began to suspect the honesty of Defendant; Monthly Returns which were overdue had not been submitted, neither could the Complainant obtain answers to letters written on 5th and 9th September requiring an explanation.

On 11th idem Lieut Dobson sent an order to the Overseer's Writer requiring him to attend at the Cannanore Range Office with all the books and Accounts. On the following day the Writer reported himself at Cannanore but without the records and he informed the Complainant that he was unable to obtain them from the accused; the latter was then ordered by telegram to come into Cannanore & replied that he was unable to do so as he was sick.

On the 13th Lieut Dobson went himself to Tellicherry and arrived at the Overseer's Office at about 9 a.m., he then appeared to be in good health, a Departmental Enquiry was at once held which resulted in the disclosure of a deficiency in the Defendant's Cash Chest to the extent of about Rs 302. 2-8; the Account books, Vouchers &c were secured and the Enquiry into the Defendant's irregularities was resumed at Cannanore.

It is unnecessary here to explain the accounts, they are somewhat intricate; the accused admits the defalcation to the extent of Rs 302. 2-8 which he is utterly unable to account for, he also acknowledges that this sum was entrusted to him in his capacity of a Range Overseer. In his defence he merely urges that owing to the reckless and careless manner in which he has kept his accounts, he is unable to explain away the deficiency and he denies that he has converted any portion of it to his own use—

In support of the 1st Count of the Charge the the following facts are proved by the evidence for the Prosecution—

It was the duty of the Accused as a Range Overseer to account for monies entrusted to him by submitting accounts at stated times to the Asst Engineer; this he failed to do and in absence of proof to the contrary must be held to be evidence of dishonest intent.

The Cash book (Exhibit B) was balanced

VI

up to 9th August 1878 and written up in the handwriting of Defendant and, by his own admission, signed by him as correct; Lieut: Dobson has stated that he has no reason to believe that there was any deficiency up to that date. There are no disbursements entered in the Cash Book after 18th August and there is no evidence to show that any payments were made by Accused subsequent to that day.

By his own showing there was no defalcation up to 9th August and Defendant was suspended on 13th September, the deficiency must therefore have occurred between those two dates and although Lieut: Dobson has admitted that, in his opinion, had the accused lost his Vouchers it would have been a difficult matter for him to account for disbursements after any considerable time had elapsed, I cannot believe that so large a sum as Rs 302-2-8 could have been expended on Public Work by Defendant in 35 days without his being able to account for it, or for a fair portion of it, in some way other than on the plea set up of recklessness and carelessness in the keeping of his accounts.

The accused is, considering his salary which is Rs 60 per mensem, indebted to a considerable extent and has borrowed Rs 100 from a Maistry subordinate to him; he is a man of intemperate habits and has been extravagant beyond his means.

The manner in which the Defendant made away with the sum which he is accused of having embezzled is especially within his knowledge and the burden of proving it was properly expended is upon him; this he is unable to do and it is impossible, after perusing the evidence deposed to, to come to any other reasonable conclusion but that the Defendant acted with fraudulent intent and I am of opinion that this charge has been fully proved against him.

By the 2nd Count the Accused stands charged with having committed Criminal Breach of Trust with respect to Rs 8 or thereabouts by paying that sum to Coolies employed in his private service from funds entrusted to him for Government purposes.

The accused, who has a travelling allowance of Rs 30 a month has been in the habit, constantly, of employing Coolies engaged on the public works for the purpose of carrying his private baggage when travelling in the District; the Coolies so employed were furnished by the Maistries, and by the direction of the Overseer, their hire was charged to Government in the Coolie Rolls.

He has also supplied himself in the same manner, at Govt. expense, with grass for his pony for a considerable time. The hire of the Coolies on the occasions on which the Accused has been proved to have thus defrauded Government amounts to about Rs 8.

The evidence in support of this charge is most conclusive; there is a discrepancy between the statements of the 7th and 23rd witnesses regarding the presence or absence of a Coolie on pay day at Ivrit but it is not calculated to materially weaken the Prosecution. The Accused in his defence produces his Servant who states that he has invariably paid his master's private Coolies and charged the same in his accounts; in the face of the mass of evidence brought to bear on this point by the Prosecution it is impossible to believe this witness who is naturally biased in his master's favor, there is no reason to doubt the credibility of the Prosecution witnesses who speak to this part of the Charge and I consider this offence has been most clearly brought home to the Accused.

The evidence on which the 3rd and 4th Counts of the Charge, which may be considered together, are framed goes to show that the Defendant misappropriated public money to the extent of Rs 69. 9. 7 this amount being wages which should have been paid by him to certain Maistri

VI

and Coolies who happened to be absent when pay was issued.

The Exhibits F. K. L. are ~~working~~ Original Coolie Rolls prepared by Maistries under the direction of the Overseer and submitted by him to Lieut: Dobson as paid in full, whereas it is proved by most satisfactory evidence that a sum of about Rs 69.9.9 was still due on these rolls to Maistries and Coolies who made repeated applications to the Accused for payment. The Defendant is unable to explain this deficit except on the grounds that he has been careless in the keeping of his Accounts and I therefore can only presume that he has converted it to his own use. He however shows, and Lieut Dobson vouches for the truth of his statement, that it has been the usual custom to return Absentee Coolies as "Paid" in the Nominal Coolie rolls and to pay them their wages on the first convenient opportunity, the money being in the meantime secured in the Overseer's Cash Chest, the rolls being forwarded as early as possible to expedite business.

As this is the case, the charge of preparing incorrect documents with intent to defraud under Sec: 167 cannot stand, for there is no evidence to prove that the accused had any dishonest intention with regard to the sum in question when he prepared the Coolie Rolls F. K. L, I therefore acquit him on this Count.

4243/12

I have convicted the Prisoner on the 1st: 2nd and 3rd Counts of the Charge and sentenced him to Rigorous Imprisonment for 15 Days and also to pay a fine of Rs 379. 12- 5; in default of payment to a further period of one year's Rigorous Imprisonment.

The fine if levied to be credited to the Public Works Department.

In passing the comparatively lenient Sentence I have taken into consideration matter which has been urged by the Defendant and even by the Prosecution in extenuation of his offence — He is a young man and has most undoubtedly been led astray by unprincipled companions. Under the circumstances the punishment awarded is I think sufficient.

A Defence Witness, a Contractor's servant, has asserted that the Defendant paid him on his master's account, on 11th August 1878, about Rs 35 for Articles furnished for Public Works. There is no entry to this effect in the Cash Book neither can Defendant produce the Contractor's Receipt for the money alleged to have been paid. Should the Defendant be able to procure the necessary Vouchers, & an opportunity will be given him for the purpose, the fine will be accordingly reduced by that Amount or in default of payment an equivalent portion of the alternative

VIII

punishment be remitted.

Cawnpore
18th October '78.

Sd/. W. R. Sheffield
Ag. Cantt. Magte.
1st Class.

A true copy

W. R. Sheffield
Ag. Cantt. Magte.
1st Class.

No 12053/7

4213

Rec'd 13/10/78

Cannanore 12th October 78.

Memo:

Assist. Engineer Ver: Taylor.

	Rs
My fee for 80 days in this case	400 - " - "
Bandy hire during the trial	25 - " - "
Total Rs	425 " "

[illegible] Cannanore

Pleader

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4243/17 Genl

No. 4243 W Public Works Department.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

UNDER date the 6th Nov. 1878.

Read the following :—

From the Dt. Engineer Malabar — } D. Lr. No. 85 dated 24th October 1878.

The District Engineer is authorized to disburse Rs. 425, being the fee claimed by the Vakil.

2. A report on the subject alluded to in Colonel Kennedy's last paragraph is awaited by Government.

The practice is most objectionable, if it exists.

17

3. The confirmation applied for in the third paragraph is accorded.

EAT 29/10

~~Honble H Wellesley~~

S. Engr 4th Circle

~~Supg Engineer~~

Exe Pr Scott

Desp. 20-11.78

17

To Actg 29-10-78 [illegible]-11-78
28-10-78 Ditto 4-11-78

4243
18

18

12063

Govt. of [1878] Madras,

PUBLIC WORKS

To The S E Fourth Circle

5/11

6 Novr 12438

Nos. 16 & 27

Fee claimed by the Vakil employed for the prosecution of Mr Overseer Taylor for Criminal breach of trust. The disbursement of the ——— authorized; & a ~~further~~ report called for regarding the ~~fr~~ mal-practices of the Overseer which were brought to light, during the investigation of the case.

Entd in Regr

[illegible]-10-78 [illegible] 4-11-78