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1874



No. I.

To the Honourable Mr. Justice MACNAGHTEN.

SIR,

HAVING been present in the Supreme Court on Wednesday last, when Judgment was delivered in the Cause "The Honourable East India Company *versus* Sherson and Others," my attention was forcibly attracted by the strictures which fell from you, in regard to certain parts of the evidence for the Prosecution, and which tended to cast upon the evidence to which I refer, the imputations of perjury and fraud.

No person is ignorant of the respect with which opinions proceeding from a Bench of Justice claim to be received, and are indeed calculated to command: when, therefore, it unhappily occurs, as it necessarily sometimes must, that such opinions are directed against individual character, it follows, that the injury which they inflict is proportionate to the respect which accompanies them.

If this be, as it doubtless is, a self-evident proposition, the corollary is scarcely less evident—that it is the duty of any person, who may have grounds for believing such opinion to be erroneous, to oppose their influence, so far, at least, as by stating the grounds of his own conviction: to act otherwise, would be to act dishonourably. It is this feeling, strongly, I may say painfully, impressed on my mind, that has impelled me thus to address you.

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Towards the latter end of the year 1807, a few weeks only, I believe, before the cause of the late action took its rise, a circumstance, which it is unnecessary to particularize, was the occasion of my taking up my residence with Mr. Cooke, with whom, as a contemporary in the service, I had long been acquainted: so situated with respect to Mr. Cooke, it was natural that the strong doubts which he professed to entertain of the integrity of the Department in which he was an Assistant, should be communicated to me. They did, in fact, occasionally form the subject of his conversation. The substance of the fraud, of the existence of which Mr. Cooke expressed his conviction, was, — that the full amount of the daily sales of Grain was not brought to the public account.

To one who, like myself, has, and then had, from my official situation, almost daily proof of the difficulty, not to say the impossibility, of effectually controlling a Department involving both extensive custody and great detail, the non-existence of abuses — of very considerable abuses — would have been a matter of much greater surprize than their existence. The suspicions against his superior in office, which were coupled in the mind of Mr. Cooke with his conviction of the existence of frauds in the Department, I could only regret. Suspicions to which the mind has once given place are often nurtured by a variety of minute circumstances more easily felt than communicated; and it may be presumed that this was the case with regard to the suspicions entertained by Mr. Cooke. So far as I can remember of what he stated to me as the foundation of his suspicions, was the very intimate connexion which he represented to subsist between Mr. Sherson and a private servant of his, whom Mr. Cooke regarded as the principal agent in the plan of abuse which he stated to exist, cor-

roborated by what is pretty well understood by the term *Native intelligence*.

To what result, if any, these suspicions might have ultimately led, but for the occurrence of an accident (I allude to the Storm which took place in December 1807), can only perhaps, at present, be a matter of conjecture. Among other effects of that visitation, was the damage or destruction of a considerable quantity of the extensive stock of Grain then in the Public Stores; and the account which was some days after rendered by Mr. Sherson, of the loss, or of some particular portion of the loss, sustained upon that occasion (an account subsequently found to be erroneous), was, as is well known, the immediate cause, or at least the commencement, of all the proceedings which ensued. The sealing of the desk, containing, as stated at the time, the official accounts of Mr. Sherson, took place, if I mistake not, in the evening of the same day on which the account above mentioned was presented to the Grain Committee.

On that evening, it is clearly within my recollection, that I waited dinner a considerable time for Mr. Cooke, not knowing the occasion of his absence. He did not return home until between 10 and 11 o'clock; and he then told me all that had happened, adding, that he, as well as Mr. Dick, had been detained so long in the expectation of the return of Mr. Sherson, who, I think it was stated, had professedly gone in search of the servants, who had all quitted the Office. I expressed to Mr. Cooke my hope that matters had not been brought to this crisis upon weak grounds. He assured me in substance, that there was no doubt of the safety of the grounds upon which they (Mr. Dick and himself) had proceeded: he entered into some particulars, which have escaped my recollection, with respect to the nature of the accounts which had been secured.

The house in which Mr. Cooke at that time resided was the house at present occupied by Mr. M'Douall and Mr. Stewart: there was then only a ground-floor, and I slept, as was my custom, on a plain couch placed in the middle hall. On the morning following the day on which the accounts were secured, as above-mentioned, I distinctly remember that Mr. Cooke was called, and passed through the hall at an earlier hour than usual; and that when I arose, which was a considerable time after, I saw him walking in the garden in conversation with a Native. I did not at the moment pay any particular attention to the circumstance; but on Mr. Cooke's return into the house, he mentioned to me what had been the occasion of the man's visit. He had been sent, Mr. Cooke told me, to communicate with him (Mr. Cooke), on the part of the absconded servants, relative to the restoration of the accounts which had been secured: he added, that a bribe had been thrown out to him, with the privity, as he understood, of Mr. Sherson, who had remained (as he Mr. Cooke had been informed) at the house of his servant in Black Town till a very late hour.

It is certainly most incredible that any gentleman, especially a gentleman of Mr. Sherson's understanding, should commit so egregious a folly as to offer a bribe to another with whom he was at issue; but you will observe that this was a communication from one Native through another. Mr. Sherson might have been totally ignorant of the matter, yet Mr. Cooke might have been told that Mr. Sherson was privy to it. What Mr. Cooke may have stated in his evidence I know not, never having seen or heard either his or any other of the evidence; but I should presume that he stated merely that of which he had been informed.

I perceive, Sir, that you treated this matter of the bribe

as a foolish imposture; fabricated for the occasion. Of the fact of a bribe having been offered with the privity of Mr. Sherson, I, perhaps, entertain as great a doubt as yourself; but of the fact of Mr. Cooke's having *been told* that the offer thrown out to him was thrown out with Mr. Sherson's privity, I did entertain none. My information, it may be said, came only from Mr. Cooke — True; but I cannot conceive it possible that he invented the story for the occasion, and related it to me for my amusement — for, motive at that time he could have had none. He could scarcely have foreseen at that time all that has since taken place. He could not have anticipated the prosecution which has so recently terminated; still less could he have seen that conjuncture of circumstances which has rendered a casual communication made to me one morning, now upwards of six years ago, an instrument of perhaps no inconsiderable consequence to his future reputation. I question, indeed, whether the perusal of this Letter (of which I shall, of course, furnish Mr. Cooke with a copy) may not be the first circumstance to recal to his own recollection the communication which I have related.

Not having been present in Court during the Pleadings, I know not the particular circumstances in the evidence which may have given colour to the imputation of perjury; but I could gather, from what fell from the Bench at the time of delivering Judgment, that it was on the point of evidence relative to the alleged offer of the bribe that the imputation rested. I have stated what I know on this subject.

With regard to the fraud, you appeared to believe that the abstraction of the Shroff's account was either *a story of the same complexion as the story of the bribe; or that, if the Shroff's accounts were really gone, their concealment rested with those concerned in the late Prosecution.*

All I know on this point is, that the loss of certain accounts (I cannot undertake, at this distance of time, to specify their nature) was regarded—I ought rather, perhaps to say, appeared to me to be regarded—by those concerned in the late Prosecution, as a great disappointment. I have heard regret expressed on this subject, and I cannot conceive any motive which could then have existed for acting an assumed part before me; nor, if such had been the case, do I think that I should have been deceived by it. You will observe, Sir, that what I have stated is founded only on what I know, or rather on what I learnt, at the time of the commencement of the proceedings: *from that time to the time of the delivery of the Judgment in Court on Wednesday last, I am totally ignorant of what has passed, either on the side of the Prosecution, or on that of the Defence.* I have never seen the bill, nor any of the depositions or affidavits on either side; *neither did I hear the pleadings.* Farther, as regards Mr. Cooke in particular, I will declare, that from the time that the subject was taken up by the late Government, on the Report of the Grain Committee, to the present hour, it is not within my recollection, that I have ever held any communication with him on the subject. I do not know, even, that it has at any time since been a subject of conversation between us, for it was always to me a most unpalatable subject.

It follows, from what I have here said, that it is quite out of my power to form a correct judgment as to how far the information which I have afforded does or does not meet the several imputations which may have been advanced against those concerned in the Prosecution, and against Mr. Cooke in particular. Be this as it may, in stating the circumstances, of which it fortuitously happened to me to be in possession, I have discharged a

duty which I considered to be obligatory on me. In whatever points it may be defective, it is for those concerned to endeavour to work out their own justification.

You will perceive, Sir, that what I have related bears only on the question of the existence of abuses in the Department. The belief of their existence does not appear to have been wholly removed from the mind of the Chief Justice; nor is it a belief of which the minds of many others could be easily divested: as I have remarked before, the wonder would be, if abuses had not existed.

The implication of Mr. Sherson in the abuses, forms an entirely distinct question. *It does appear that the attempt to implicate him has totally failed*; and I should be sorry, even in my own mind, to refuse to him the full benefit of what, I believe, is *generally considered a complete and honourable acquittal*.

If the matter had rested with the acquittal of Mr. Sherson, I should have been silent, whatever censures might have been passed on the *conduct of those who, as it has appeared, ventured, with very insufficient grounds, on a measure so injurious to the individual who was its principal object*. I should have thought the censures *deserved*; but, Sir, in the present case, weakness has been aggravated into guilt: such, at least, is my sincere opinion. In interposing, as I have done, in the behalf of Mr. Cooke, I may possibly be thought to have gone farther than was necessary. If I have, it is because he does appear to me to have laboured, and to still labour, under very peculiar disadvantages. Every Member of the Government by whose authority the Prosecution was instituted, every Member of both the Grain and Examination Committees, save one who is professedly Mr. Cooke's opponent, is either dead or absent. The Advocate General, who recommended and undertook the Prosecution,

did not remain to carry it through*. To all these disadvantages might be superadded, the eminent ability, and the almost personal interest, which, I am informed, and even readily believe, was displayed by the Learned Counsel for the Defence. I say, Sir, that considering all these circumstances, the situation of Mr. Cooke does appear to me to be peculiarly unfortunate, and to be entitled to every consideration which can, with justice, be had for it.

It is perhaps scarcely necessary for me to add, that I shall be ready, at any time, to make affidavit, if required, with respect to the circumstances which are stated in this Letter.

I have the honour to be, Sir,

Your obedient Servant,

(Signed)

W. WAYTE.

Madras, 12th April 1814.

* Why was not the Prosecution commenced before Mr. Sherson left India? He remained there from the 10th February to the 23d of October 1808, after he was suspended from office. Yet no Prosecution was commenced against him until the 15th July 1809, when a Bill in Chancery was filed against Mr. Sherson, who was then in England on account of ill health.

No. II.

To W. WAYTE, Esquire.

SIR,

I YESTERDAY evening received your Letter, dated the day before; and, although I acknowledge it, I beg of you to understand, that I do not recognize your right to correspond with me upon such a topic. I am willing to believe that your motives for addressing me, although you do not divulge them, are not disreputable to yourself.

It appears, however, that you had communications on this subject with Mr. Cooke previous to the commencement of any proceedings against Mr. Sherson: and, although your interference at present cannot be accounted for to your credit, you not having urged an argument in support of your friend, or stated a reason in defence of your obtrusion upon me, I shall not infer that you were an abettor of Mr. Cooke's projects, or an accomplice in his proceedings, whatever were the motives which excited him into action, or whatever impression his conduct may have stamped upon public opinion.

I hesitated as to the propriety of answering your Letter. The mode of your address is unusual between you and me; and when you say, "*In interposing, as I have done, on the behalf of Mr. Cooke,*" you must excuse me for thinking that you have not been happy in conveying your meaning; for *I will not believe that you presumed to write authoritatively to me*: I shall not, therefore, resent it by a contemptuous neglect of your Letter, although, in writing an Answer, I think it due to you to suggest, if a defence be necessary for him, that it ought to be very different from yours. Indeed, from the interest you take in his character,

it might have been hoped that you would have withheld the pernicious application of your advocacy from his case, and have been contented to forego, for his advantage, the gratification of a controversy.

It is not, however, from any desire to interpose between Mr. Cooke and your exertions, that *I now tell you, a part of your statement seems not quite consistent with that which has already been sworn to by him*; and I could wish, therefore, (either for his sake or your own, *as the interest may chance to result,*) to dissuade you from verifying your Letter upon affidavit, although I doubt not but you are, as you say, ready to do it.

This is not a matter of mere indiscretion. It is (in my opinion at least) absolutely unjustifiable to adduce on behalf of another, without his previous assent, arguments which must tend to his crimination, and *assertions which he has falsified already*; but this is between you and Mr. Cooke; and, although his judgment may lead him to condemn, his gratitude, I trust, will induce him to pardon it.

You have most grossly misapprehended my sentiments, in supposing that I “treated the matter of the bribe as a *foolish imposture.*” I do not, however, dispute the correctness of any of those circumstances which you state with relation to that event; but my motives are not varied by your very minute detail of local particulars. I think as I did; although I doubt not but that Mr. Cooke and you, about the end of 1807, resided in the house at present occupied by Mr. M'Douall and Mr. Stewart; although “there was then only a ground floor;” and although “you slept, as was *your custom,* on a *plain couch,* placed in the middle hall.”

If, indeed, Mr. Cooke did reject a bribe, I have your authority for saying, *that he did not do so without deliberation*; and, admitting, as you admit, the *incredibility* of

the story, as it applies to Mr. Sherson, it is, methinks, incumbent on you to account for Mr. Cooke's giving it so decided a turn to Mr. Sherson's prejudice; and, perhaps, it might not be amiss if you were to shew, *for your own sake, that you endeavoured to prevent your friend from using such a weapon in secret; or made some effort to prevent credit from attaching to that which you believed to be false.*

This subject is open to many observations which, perhaps, you have not yet heard, and which, possibly, you may not be able to anticipate.

I believe the *abstraction* of the Shroff's accounts was not the act of Mr. Sherson: you are wrong, however, in thinking that I suppose this to be "a story of the same complexion as the story of the bribe." Your second guess is more plausible, although very inaccurately expressed.

If the non-existence of abuses in a department such as that which Mr. Sherson was at the head of, would really, as you say, be a matter of much greater surprize to you than their existence, *I wish you would have the goodness to ask Mr. Cooke how it happened, that he, upon a very naked suspicion of abuse, imputed personal guilt to his superior in office.*

I do not quite understand your theory of suspicion: how it is *nurtured* (as you express it), or how "matured," I do not know. Its diet, in this case, does not seem to have been very solid: and as you speak of a sort which is more easily felt than communicated, I presume you do not allude to the species which was brought up by Mr. Cooke, inasmuch as his was, at least, as easily communicated as felt.

You say, "What Mr. Cooke may have stated in his evidence, I know not, never having seen or heard what passed, either on the side of the Prosecution, or that of the Defence."

I have never seen the Bill, nor any of the depositions or affidavits on either side." Now, Sir, I confess it does to me seem rather strange, that you should be desperate enough to undertake to dispute inferences which you suppose to have been drawn by those well informed of all particulars, and of which you avow yourself to be utterly ignorant.

Had any public functionary drivelled after this manner in the Company's concerns, it would, I dare say, have provoked your resentment, or, at least, have excited your contempt; but I am willing to believe you had reason at your command, although you deemed senselessness good enough for the occasion in question; and that you are able to apply an adequate portion of solemnity to your own concerns, although you may think levity perfectly sufficient for mine. I will not suppose, that you meant any thing offensive to me, by observing, that "weakness has been aggravated into guilt;" although, if I had decided in the guilt of Mr. Cooke, you would not, I am sure, have been pleased by my tracing it to the origin of weakness; *for I must now conclude he had the benefit of your counsel from the commencement of his operations.* Nor am I, indeed, prone to aggravate weakness, upon any occasion, into guilt; and this I trust you will believe, when I assure you, that, even after a most attentive perusal of your letter, I am not, by any means, convinced of your criminality.

I do not desire to shrink from the question; and, although I do not think your statement perfectly justified by what I said, I am willing to adopt it as my own. *Mr. Sher-son I believe to have been most wickedly belied, and most cruelly injured. The part taken by Mr. Cooke in the business certainly may prove to be less criminal than it at present appears.* This was my declaration, and is my

wish. I venture, in the mean time, to advise, that you should understand the case, or, at least, *read the evidence, before you dictate to the judgment of others.* After you shall have compared your friend's with other testimony on the same side, you may proceed by analogy, and see *how it stands by itself.*

It is my duty, and, I can safely add, my most earnest desire, to do justice to all parties; and I solemnly assure you, *if the conduct of Mr. Cooke should come to be further investigated before me,* it shall stand without prejudice, and he shall not be injured in my mind even by your most strenuous exertions on his behalf.

Sir John Newbolt intended, I suppose, to speak as I did, from that which appeared in the Cause; but as I believe he expressed himself with less reserve, I must conclude, that a letter from you to him will be proper, or that yours to me is the contrary.

I am, Sir,

Your obedient servant,

(Signed)

F. MACNAGHTEN.

Thursday, 14th of April, 1814.

No. III.

SIR,

I HAVE received your letter. Whatever you may profess to think, "the gratification of a controversy" was not among my motives for addressing you. I understood that Mr. Cooke's character had been principally attacked upon two points: that he had been supposed to swear falsely with regard to the alleged offer of a bribe; and that the concealment of the Shroff's accounts had been supposed to rest with him and the other persons concerned in the Prosecution. What I happened to know with respect to these points, I thought it a duty incumbent on me to state; and if I took the liberty of making an address to you the channel of the communication, it was because your impressions on those points appeared to be more strongly felt, as they were certainly more strongly expressed, than those of the other learned Judge to whom you refer. I regret that the mode of my address should have displeased you: if I had thought that it had been calculated to do so, I would not have adopted it. The expression upon which you particularly animadvert was not intended in the sense in which you appear to have taken it. My interposition, feeble as it may be, was offered not between you and Mr. Cooke, but between Mr. Cooke and what I conceived to be undeserved obloquy. Thus much for the explanation which your letter appears to require. With respect to the sneers and the insinuations with which your letter abounds, affecting me personally, I shall treat them with the silent disregard which they appear only to merit.

I am, Sir,

Your most obedient servant,

15th April 1814.

(Signed) W. WAYTE.

To Sir Francis Macnaghten,
&c. &c. &c.

No. IV.

SIR,

YOUR letter of this day's date obliges me to give you credit for some discernment and for some discretion. I am heartily glad that those attributes have proved so immediately beneficial to yourself. The one has, it seems, enabled you to discover my sneers; and we owe it to the other, I presume, that you have resolved to be silent on the subject of them.

What affects you only cannot, I admit, merit any thing but disregard, although I wonder that you should come forward with the observation.

If your motives for addressing me be satisfactory to yourself, I shall not attempt to disturb you upon that point. It is lamentable, however, that your means should have been so extremely ill adapted to the very laudable end which you profess to have had in view. Your *interposition* had certainly very much the appearance of officiousness; and as I believe nothing can be discovered, in your very elaborate performance, to excuse the impropriety of addressing it to me, I think you ought not to complain of having suffered all that my answer was calculated to inflict: but that is a point for your consideration alone. If there was any thing of *insinuation* in my letter, it was perfectly unnecessary, therefore you will the more readily believe that it was unintended; and by this time I trust you are convinced, that your Address afforded an ample warrant for any thing I might advance on the subject to which it related. Had I known nothing of the proceedings against Mr. Sherson, but by the information with which you have favoured me, I could not have hesitated

to say that there is much in Mr. Cooke's conduct to be censured, and something in your own which requires to be explained.

And now, Sir, I desire that our correspondence on this subject may cease. I desire it the more peremptorily, as I verily believe it will be for your interest, as well as for the interest of your friend Mr. Cooke, that it should be discontinued.

I am, Sir,

(Signed) F. MACNAGHTEN.

Friday, the 15th of

April, 1814.