

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	246	Press
75-77		Mis.
Dated	29-2-1910	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
for the month of February 1860.*

Read the following papers :—

(ESTATE) S. J. SIMON.

No. 75. From CLEMENT DALE, Esq., Administrator General, Madras; to the Chief Secretary to Government, Fort Saint George, dated 27th January 1860, No. 122.

1. I do myself the honor of reporting, for the information of the Honorable the Governor in Council, that it has lately been brought to my notice that one Satoor Jacob Simon, supposed to have been of Armenian origin, died at Sydapet on the 7th April 1859; leaving a paper writing purporting to be a Will, but which was not executed according to the provisions of the 7th Section of Act No. 25 of 1838.

2. I was informed that Mr. Simon was the illegitimate son of the late Mr. Jacob Simon, who was an Armenian, by a woman servant named Clara.

3. The fact of the illegitimacy is admitted, as also that he was a Bachelor. If therefore the paper writing referred to in the 1st paragraph is not a Will, and he died intestate, the deceased's property devolves on the Crown.

4. Under these circumstances I placed myself in communication with Mr. Daniel Shaw, who I was informed had the possession of the paper, and who was the Executor there named; and from information I obtained, believing that the deceased had died intestate, I petitioned the Court for Administration.

5. I subsequently heard, that Mr. D. Shaw had presented his petition to the Supreme Court for Probate, and having been informed that the Proctors for Mr. Shaw had applied to the Judge in his Chambers for an order that Probate should issue, I immediately filed a Caveat, whereupon Mr. Shaw called upon me and stated, he had evidence to shew the deceased's mother Clara was a Hindoo; that consequently the deceased must be considered as a Hindoo; and as such, his Will did not require to be attested in the mode prescribed by the Will's Act, and he requested me not to proceed, until he had had an opportunity of adducing this evidence.

6. This has since been laid before me, and to my mind, appears to lead to the conclusion, that Clara was not a Hindoo. A party named Tutius has stated he knew both the father and mother of the deceased; that the mother was "a Native woman in Portuguese habits." A certificate of her burial has also been produced to me, procured as I understand from the Armenian church. She is there styled "a Native, Clara, a woman of the age" &c. The deceased was baptized by the Armenian minister.

7. I have also had laid before me, by the party who originally gave me the information, six declarations, two signed by the same Mr. Tutius, who is mentioned in the last paragraph, and four by other parties; copies of which I do myself the honor to adjoin.

8. From these statements I conclude, Clara was not a Hindoo, as contended for by Mr. Daniel Shaw.

9. The question arises under the 3rd Section of the Act No. 25 of 1838; which is worded in a very peculiar manner. I bear (but do not recollect the decision) that the late Chief Justice held, that on the unattested Will of a foreigner (Monsieur Dickman who was the Manager of the Nabob's Circus) who died here, Probate should be granted; and I understand that that decision is relied upon by Mr. D. Shaw and his advisers; who argue, that it is tantamount to deciding, that none but British subjects (other than Hindoos and Mahomedans) come within the purview of the Act.

10. I have considered it my duty to adopt the steps I have mentioned above; but, as I understand it is Mr. Shaw's intention to maintain his position, and I have no funds wherewith to oppose him further, I have considered it right to address Government, drawing their attention to the subject, it being one, in which the Crown is interested, and the question of law involved,

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being one of great importance, not knowing whether Government would wish to consult Mr. Advocate General on the point, who could if he thought fit, raise the question on the Caveat filed by me.

MADRAS, 22nd December 1859.

I the undersigned do hereby declare to the best of my knowledge and belief that I have known the late Mrs. Clara (belonging to the Church of Armenia) to be the mother of the late Mr. Satoor Jacob Simon for a period of many years and that I have always seen her wearing the dress of an East Indian Armenian woman and never that of a Native, and to all intents and purposes, she was an East Indian woman and was buried in the Armenian Church of Madras.

(Signed) A. TATIUS.

MADRAS, 25th January 1860.

I do declare upon my honour before God and man that I never granted a certificate to Mr. Daniel Shaw, or any one else stating that Mr. Satoor Jacob Simon's mother named Clara deceased was a Pariah woman and wore Native clothes during her life time, but I do declare that the certificate I gave in December last, to Mr. Daniel John Shaw of the Town Major's Office is the fact and genuine and that Clara was an East Indian woman and wore Portuguese clothes always. To wit A. A. DAWSON,

(Signed) A. TATIUS.

MADRAS, 23rd January 1860.

This is to certify that I knew one Clara who I believe was the mother of a Mr. Simon and that both of them lived in the house of one Mr. H. J. Shaw, now deceased, and that as far as my recollection serves me I believe that the said Clara wore Portuguese attire.

(Signed) C. HARRISON.

MADRAS, 24th January 1860.

This is to certify that I was acquainted with the mother of the late Mr. Simons, and that she was called by the name "Clara" and that she wore the habit of an East Indian woman, and I never knew her to be a Native woman or ever heard it said she was one.

(Signed) J. MITCHELL,
Government Office Indexer.

MADRAS, 24th January 1860.

This is to certify that, to the best of my recollection, the late mother of the late Satoor Jacob Simon deceased, named Clara, was (from the time I knew them both) an East Indian woman and wore all the days of her life European attire and never do I recollect of having ever seen her in a Native garb nor was she ever known to be a Native woman.

(Signed) J. W. IVATTS.

To wit C. POWNEY.

MADRAS, 27th January 1860.

I, Catcheck Lazar, do solemnly declare upon my honor that I know, and was fully acquainted with a woman named "Clara" as the mother of the late Satoor Jacob Simon, and that during the whole term of her life I have known, and seen her wear the East Indian apparel, and further, do solemnly declare, from my own personal knowledge, that she was an East Indian.

(Signed) CATCHECK LAZAR.

Witness, L. C. THOMPSON.

Referred to the Government Solicitor for the opinion of the Advocate General.

(Signed) T. PYCROFT,
Chief Secretary.

31st January 1860.

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No. 76. From J. R. BOYSON, Esq., Government Solicitor, Madras; to the Chief Secretary to Government, Fort Saint George, dated 22nd February 1860, No. 131.

1. I have the honor to acknowledge the Order of Government, dated 31st January 1860, and made on a letter from the Administrator General of Madras to Government of the 27th idem, No. 122. Order of Government, noted in the margin.

2. I laid the same before the Advocate General for his consideration and I have since conferred with him thereon.

3. I now send for the information of Government, a copy of his remarks and return the Order above noted.

COPY—OPINION.

The Crown appearing to be interested in this case, I conceive it to be my duty to intervene to protect its rights, and shall be ready to do so whenever the Caveat filed by the Administrator General shall be set down to be argued, of which I shall doubtless receive due notice.

Apart however from the circumstance of the rights of the Crown being involved, I conceive that the fact of the Administrator General having no funds in any particular estate, in no way entitles him to call upon the Law Officers to intervene, or to request Government to instruct them so to do. He has both salary and fees, or commission, and as a Barrister he is able, and as a private individual he is entitled, to conduct in person any case he may think it right to bring into Court. If he had rather not do this, he can retain Counsel to appear for him, as Magistrates and other Public Officers in England have to pay for legal advice and assistance out of their own pockets.

21st February 1860.

(Signed) THOMAS SYDNEY SMYTH.

(True Copy.)

(Signed) J. R. BOYSON,

Government Solicitor.

No. 77.

ORDER THEREON, 29th February 1860, No. 246.

A copy of the Advocate General's opinion will be furnished to the Administrator General, in reference to his letter, 27th ultimo, No. 122.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

Copy Opinion

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Yours Truly
Thos Sydney Smyth

(True Copy)

W. Moyson

Govt Secy.

This last page is true
W. Moyson

July 21/60.

Proceedings of the Madras Govt.
Read Letters —

From the Administrator General — Entered 27th January
1860 No. 122.
the Govt. Solicitor — 22nd February
1860 No. 131.

Order — 27th February 1860 — No 246.
A Copy of the Advocate General's opinion will be furnished to the Administrator General in reference to his letter, 27th Ult. No. 122.

The Administrator General.
Govt. Solicitor. } Dated 3rd Feb.