M.R.O. 1—39,000—16-10-20.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 314-315 Press
~~Mis.~~

17-20

17-20.

Dated 14. 3. 1860 .

Not to be folded or roughly handled

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

Read the following papers :—

No. 17. From THOS. SYDNEY SMYTH, Esq., Advocate General, to the Chief Secretary to Government, Fort Saint George, dated 2nd March 1860.

I have the honor to mention, for the information of Government, that on the rising of the Court on Wednesday last, 29th February, Mr. Justice Bittleston took occasion to observe, with marked emphasis, that he had only seen on the preceding day a letter addressed by the Advocate General to Government on the 11th July last, respecting the Administrator General's Act, and referring to certain decisions, or proceedings, of him, Mr. Justice Bittleston, with reference thereto, and that he should feel it necessary to make a statement on the subject at the sitting of the Court on Tuesday next, in the Advocate General's presence.

2. Late yesterday evening (Thursday, 1st March) I received from a messenger of Mr. Justice Bittleston's Clerk, a paper in Mr. Justice Bittleston's hand-writing, of which I annex a copy marked A.

3. Upon reading this, I drew up a paper, of which I annex a copy marked B. I have sent another copy in my own hand-writing to His Lords[illegible]

P. S.—I regret that Mr. Justice Bittleston should [illegible]ght it necessary to introduce such a subject, in such a tone, in the middle of so long and [illegible]tant a case as that of Salar Ool Moolk *vs.* the Nabob's estate, where he must have been well aware that my time was fully occupied, and my energies taxed to the utmost, to protect the interests of Government : but, as he has done so, I thought it right, notwithstanding the additional demand upon my time and trouble, to lay the matter before Government without delay.

A.

Memo. of statement to be made by me at the sitting of the Court on Tuesday next, with reference to the Advocate General's letter to Government of 11*th July* 1859.

In March last application in Chambers on behalf of Administrator General for Administration Re Cameron's Estate, referred by me to the full Court.

April 11*th.—Before the full Court.*—Re Cameron. Application renewed by Mr. Ritchie, Counsel for Administrator General.

Court intimated an impression against granting the application, but gave leave to mention it again.

May 27th.—Before full Court.—Re Cameron. Mr. Norton (with Mr. Ritchie) for the Administrator General admitted that he had nothing to offer in opposition to the view previously suggested by the Court—*upon which application refused.*

In the interval between the above dates one or two similar applications in Chambers were directed by me to stand over till the question had been finally settled.

11*th July.*—Advocate General's letter to Government compare with above facts.

22*nd July—Before full Court.*—Re Valance. Advocate General heard, and reference to Calcutta and Bombay resolved upon.

B.

Memo. upon reading the "Memo. of statement," &c. proposed to be made by Mr. Justice Bittleston in Court on Tuesday next.

1. It appears from the "statement" that two or three applications, for Administration to the Administrator General, were made to Mr. Justice Bittleston, in Chambers, in March 1859, and between the 11th April and 27th May, and that none of them were granted, a result tantamount in fact if not in terms to a refusal.

2. Similar applications on behalf of the Administrator General, are always made before a Judge in Chambers, and by either the Deputy Registrar, or the Judge's Clerk. It is not the practice to make them through Counsel, or by Solicitor, or in Court.

3. Early in July last, I received instructions, through Messrs. Boyson and Miller, to move the full Court, in the ensuing Term, for Administration to the Administrator General, Re Vallance's Estate; and the Administrator General conversed with me on the subject more than once, mentioning the inconvenience occasioned to the parties interested, by the refusals of his former applications Re the Estates of Tottenham, Schroeder, Cameron, and Vallance.

4. No other instance of refusal was ever mentioned to me than those which had occurred before Mr. Justice Bittleston in Chambers. The instructions delivered to me in Re Vallance's Estate, do not even allude to any proceedings before the full Court.

5. The instance of the 11th April, mentioned in Mr. Justice Bittleston's paper, I *now* learn of, for the *first* time, from that paper.

6. The instance of the 27th May, mentioned in the same paper, I first heard of on the 22nd July, in open Court, when, on my making the application Re Vallance's Estate, the Chief Justice informed me, in Mr. Justice Bittleston's presence, that Mr. Norton had appeared before the Court upon a similar application, but had declined to argue it:—upon which I distinctly stated that this was the first intimation I had had, that the matter had been ever before the full Court; and that, under these circumstances, I felt that I could not re-open the question, without the special permission of the Court. That permission was given, and, after hearing me, the Court took time to consider, and ultimately decided in favor of the view of Section XI of Act VIII of 1855, for which I contended, thus reversing its former decision. Consequent upon this, Administration to the Estates of Tottenham, Schroeder, and Cameron, which had been previously refused to the Administrator General, was now granted to him, the value of these four Estates being Rupees 2,07,713-5-0, which the parties entitled thereto had till then been kept out of.

7. Thus, until the 22nd July, eleven days after the despatch of my letter to Government of the 11th July, I had never heard that the question had been even mentioned before the full Court. I had heard only of the decisions in Chambers; and the Administrator General's applications being usually made *in Chambers only*, under the Rules of Court, there was nothing to put me upon inquiry as to whether the matter had ever been brought before the full Court.

8. On the 11th July, I received the Order of Government, dated 8th July 1859, (No. 935, Judicial Department) calling for my opinion respecting certain proposed alterations in Act VIII of 1859. When answering this reference, it seemed to me the proper occasion to inform Government that a new construction had lately been put upon Section XI of that Act; that much inconvenience (as I had been expressly informed) had resulted therefrom; and that this new construction would, if adhered to, require an alteration in Section XI, which it seemed to me desirable to take the present opportunity of making, now that other amendments were under consideration.

9. This was my sole object in that part of my letter to which Mr. Justice Bittleston appears to take exception. I mentioned the new construction as his, because I had *only heard* of what had passed before him in Chambers, and had *not heard* that the views he had expressed in Chambers had been subsequently adopted by the full Court; and I have already submitted that, the general practice in these matters being altogether confined to Chambers, there was nothing to put me upon any inquiry.

10. The sole reason for my not stating that Mr. Justice Bittleston's views had been subsequently adopted by the full Court, was because I had never heard that such was the case, and because nothing had occurred to put me upon any inquiry.

11. Under these circumstances, I must request Government to decide whether they consider me deserving of blame for not stating to them what I did not know, and what, as I submit, I was not bound to know: but I hope it is hardly necessary that I should disclaim any, the most remote, intention of misrepresenting Mr. Justice Bittleston to Government, which he appears to consider that I have done.

12. My sole object was to apprise Government of the fact of the new construction put upon Section 11, Act 8 of 1855, of the consequent refusal of Administration to the Administrator General, of the inconvenience thereby occasioned and of the expediency of applying a remedy.

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

13. I regret that I was not made aware, until several days after the despatch of my letter to Government, of the 11th July, that the views expressed by Mr. Justice Bittleston in Chambers had been subsequently upheld by a full Court, thereby leaving him no longer solely responsible for those views. Had I known it I should certainly not only have mentioned it, but have dwelt upon it, as an additional argument in support of the alteration which I suggested.

14. So far was I from considering that I had done anything calculated to give offence, that without in the least knowing whether my letter of the 11th July had or had not been communicated to Mr. Justice Bittleston, I myself took to him the Draft Act as soon as I received it, and consulted him about it; as I mentioned in a subsequent letter to Government.

15. I now take the earliest opportunity of submitting to Government, a copy of the "Memo. of Statement," &c., forwarded to me by Mr. Justice Bittleston, together with this my Memorandum in reply thereto: with a request that, as Mr. Justice Bittleston has considered it necessary to notice the matter publicly from the Bench, Government will transmit both papers to Her Majesty's Secretary of State, and to the Legislative Council.

(Signed) THOS. SYDNEY SMYTH,
Advocate General.

Madras, 2nd March 1860,

No. 18. From THOS. SYDNEY SMYTH, Esq., Advocate General, to the Chief Secretary to Government, Fort Saint George, dated 6th March 1860.

I have the honor to submit, with reference to my letter to you of the 2nd instant, the following report of what passed in Court this morning. My note is very sacanty, owing to the rapidity with which Mr. Justice Bittleston spoke, so that I can only profess to give the substance.

2. Mr. Justice Bittleston took his seat alone when he spoke, I cannot say if it was from notes, or whether he read out a written paper—it was either one or the other.

3. He said he had mentioned in Court, last Wednesday, that he should this day make a statement about my letter to Government of the 11th July last. He would now proceed to do so, and then dismiss the subject from his mind, prefacing however, what he had to say, with an expression of regret. He felt the importance of preserving harmony between the Bench and the Bar, and regretted anything that disturbed it, but the harmony ought to be real, not merely superficial, and should rest on good understanding and mutual confidence. He noticed the present matter publicly in Court, on the ground that it seemed to him the only place and occasion where he could do so with propriety. He then read paras. 3 to 6 inclusive, of my letter of 11th July, and paras. 2, 3 and 4 of my letter of 3rd November, and then continued—that what he wished to observe, was, that there was not, in my letter of 11th July, that *complete accuracy* which the Judges had a right to expect in Reports to Government from an Officer in my position. He knew not where the letter had travelled; he found it circulated in a paper printed by the Legislative Council; and he considered it was calculated to produce an erroneous impression of the facts, unduly disadvantageous to himself, it was based on *very imperfect information.* He then proceeded to mention in substance, what was mentioned in his memorandum of which I forwarded you a copy, marked A, with my letter of the 2nd instant, and to give some explanation of his reasons for refusing—or at least for *not granting*—Administration to the Administrator General; one that I particularly recollect, being, that he thought there was greater security to the Estate when an individual applied for Administration here under a Power of Attorney from the Executor in England, as then the applicant had to give security to the Court; whereas, when the Administrator General applied, he did so on a simple letter requesting him to administer, and gave no security whatever, beyond what he gave as Administrator General. He also said he had inquired, and been informed that this particular point had never been considered before: moreover, that none of the Estates were in danger, had they been so, there was an easy and obvious course open for their protection. He laid stress on the fact, that, when the applications were made to him in Chambers, he either referred them to the full Court or desired them to stand over for the full Court (I forget the precise phrase) and on the fact of the proceedings before the full Court on the 11th April and 27th May as mentioned in his memorandum; and he then continued—that he had *now* stated what *really* occurred, and that,

when he first read my letter, he must say he felt surprise at the light in which he was made to appear in it. He then mentioned my application to the full Court on the 22nd July and its result, and concluded by observing that though he did not in the slightest degree impute any thing like *intentional* inaccuracy, he felt he had reason to complain ; that in my memorandum sent to him I had intimated an intention of referring the matter to Government, and requesting them to lay it before the Secretary of State, and Legislative Council; that he had no intention of appealing to Government, or any other quarter, but thought it right to notice the matter as he had now.

4. I replied very briefly to the effect that I had listened to His Lordship with all attention and respect, but that I must regret that he had thought fit to discuss from the Bench a matter not before him as a Judge, and one in which he had no Judicial authority. That no one could regret more than I did that any thing should lead to any disturbance of harmony between Bench and Bar, and believed that if allowed an opportunity I could have explained the matter satisfactorily in private, but that, when he once noticed it from the Bench, in the way he had done on Wednesday last, I thought the charge implied in what he said, and in his memorandum, was so serious, that it was due to myself to lay the matter at once fully before Government. That I could not admit any inaccuracy in my letter of the 11th July, that I had spoken only of the fact of his decisions in Chambers, because I knew of no other decisions, and the course of practice was such as not to put me upon any inquiry as to whether the question had ever been before the full Court. That I regretted I had not known earlier of the decisions of the full Court : that had I done so, I should have mentioned and relied on them as supporting my views : that I fully admitted that the decision of the full Court took away from His Lordship the sole responsibility for the views which I had mentioned as his, and that so far as my ignorance of this, and my consequent omission to mention it, had given His Lordship any uneasiness, I very much regretted it, but could not admit that I was to blame for not knowing a matter which had occurred in my absence, and out of the ordinary course of practice, and which had never been mentioned to me. That I mentioned this, and my other grounds of explanation in the Memorandum I had sent to His Lordship and to Government, that if that explanation was not satisfactory to him, I regretted it, but, with every respect for him, must decline to accept him as Judge in his own cause, and would rather refer myself to the decision of Government.

5. In conclusion I would only add, that I am really quite unable to see what the three points dwelt upon by Mr. Justice Bittleston (the supposed greater security in the case of a private Administrator than of the Administrator General—the fact of this point not having been considered before—and the absence of danger to the estates) have to do with my letter, or the point then necessary to be laid before Government, viz., that Administration had been, in 4 estates totalling above 2 lakhs of Rupees, refused by Mr. Justice Bittleston (or not granted) to the Administrator General, that the parties interested had thereby been put to much inconvenience, and that the alteration in the Act which I suggested would prevent similar inconvenience in future.

No. 19. ORDER THEREON, 14th March 1860, No. 314.

The Government remark, in reference to Mr. Smyth's two letters recorded above, that they consider his explanation perfectly satisfactory. Agreeably to his request, they will forward copies of the papers to the Secretary of State and to their Member of the Legislative Council.

(Signed) T. PYCROFT,
Chief Secretary.

No. 20. To the Member for Madras of the Legislative Council of India, dated Fort Saint George, 14th March 1860, No. 315.

I am directed to forward to you copies of two letters, 2nd and 6th instant, from the Advocate General, in reference to certain observations made by Sir Adam Bittleston, Puisne Judge of Her Majesty's Supreme Court, on the former's letter to Government dated 11th July last, copy of which was annexed to my letter, 23rd idem, to your address.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

This in reference to an application dated 347
made by the Advocate General which
of State for
From
Letter Council
Written
copied
to
From I can
-ment
Pd
Calculator

From, The Advocate General

To, The Chief Secretary to Government.
Fort Saint George.

Sir,

I have the honor to submit, with reference to my letter to you of the 2nd Instant, the following report of what passed in Court this morning. My note is very scanty, owing to the rapidity with which Mr. Justice Bittleston spoke, so that I can only profess to give the substance.

2. Mr. Justice Bittleston took his seat alone when he spoke, I cannot say if it was from Notes, or whether he read out a written Paper — it was either one or the other.

3. He said he had mentioned in Court, last Wednesday, that he should this day make a statement about my letter to Government of the 11th July last. He would now proceed to do so, and then dismiss the subject from his mind — prefacing however, what he had to say, with an expression of regret. He felt the importance of preserving harmony between the Bench and the Bar, and regretted any thing that disturbed it, but the harmony ought to be real, not merely superficial, and should rest on good understanding and mutual confidence. He noticed the present matter publicly in Court, on the ground that it seemed to him the

the only place and occasion where he could do so with propriety. He then read Paras 3 to 6 inclusive, of my letter of 11th July, and Paras 2, 3 and 4 of my letter of 3rd November, and then continued — that what he wished to observe, was, that there was not, in my letter of 11th July, that complete accuracy which the Judges had a right to expect in Reports to Government from an Officer in my position. He knew not where the letter had travelled; he found it circulated in a Paper printed by the Legislative Council; and he considered it was calculated to produce an erroneous impression of the facts, and by disadvantageous to himself — it was based on very imperfect information. He then proceeded to mention in substance, what was mentioned in his Memorandum of which I forwarded you a copy, marked A, with my letter of the 2nd Instant, and to give some explanation of his reasons for refusing — or at least for not granting — Administration to the Administrator General; one that I particularly recollect, being, that he thought there was greater security to the Estate when an individual applied for Administration here under a Power of Attorney from the Executor in England, as then the applicant had to give security to the Court; whereas, when the Administrator General applied, he did soon a simple letter requesting him to administer, and gave no security whatever, beyond what he gave as Administrator General.

He

Lent Bitterston are excuse to a divine invitation which Rev Sperring Smyth myself had previously accepted.

Since the Campaign, as far as I can judge. I could not get all this into an official letter. But I should be glad it was known semi-officially.

Yours truly
Sperring Smyth

March 2nd 1860

My dear Pigott

I send to an official letter, and two Papers — one from Bitterston, the other mine in reply.

You will probably agree with me in thinking that some thing appears on the surface, in reality at the bottom of Bitterston's attacks the fact is; that from

the beginning of Salar del Hombre case, the Judges have shewn annoyance at the great length of the proceedings — at my insisting on bringing before them de novo (with a view to an Appeal) matters which they had several times decided against me — and particularly at one or two allusions I was obliged to make, to the necessity of having matters made clear to the comprehension of the Provincial, which was unquestionably ignorant of many that these habitual cases had now made familiar to this Court. Both of the Judges have been repeatedly down on me in a very unpleasant manner (in fact they seem extraordinarily hostile to Scott) so much so, that I have felt it necessary to avoid meeting the Chief Justice, and

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Memo

The letter from the Advocate General which seems to have excited the ire of the Provincial Judges will be found at page 10 of this Statement of Objections and reasons — see also page 17.

Sir Adams principal ground as far as I can gather it is that the ruling on which Mr J S Smyth commenced was not that of himself sitting very ill that of the full Court — sitting by, but that of the full Court — If this be all — I do not see how he must —

But I do not see what Sir Jo. Coleridge can do in any case

except perhaps such papers, as
Mr Smyth requires, the Secretary of
State and the Members for
Trustees of the Legislative Coun-
-cil - to be dealt with by them
as they see fit. —

I enclose a dimi official
note from Mr Smyth

JW

5.4.

The explanation of the Advocate
General is, in my opinion, perfectly
satisfactory, and it does not seem
to me that there can be any objection

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to comply with Mr Smyth's request to have
the Papers forwarded to the Sec[illegible]
State & the Madras Member of the
Legislative Council -

yes I will

G

Mr

Judicial Depart.

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No 375

From the Advocate-General

Dated 6th March 1850

For Orders

I concur with the President in thinking that Govt has already done all that it can

HHe

I regret that there has been any difference between the Prime Judge and the Advocate General — but I do not see that the Government can with advantage interfere

Lindi 8 March 1860 —

Proceedings of the Madras Govt.

Read letters from the
Advocate General - Enter 2. & 6. March 60

Order - 14th March 1860 No. 314.

The Govt. remark, in preference
to Mr. Smyths two letters recorded
above, that they consider his ex-
planation perfectly satisfactory.
Agreeably to his request, they will
forward copies of the papers to the
Secretary of State for their Member
of the Legislative Council.

JP

The Advocate General. Sept 24th

20 March 1860

Judicial 1860 Depatch

From
The Advocate Genl

Dispatch 2nd
Reply 3rd 3 March 1860

2 Incls

No 3149

Govt to Govt copy of a paper sent to him by the Justice Bittleston, and of one which he wrote in reply thereto, in reference to some observations made by His Lordship on a letter written by the Advocate General, respecting the administration Jud. Act.

With an Order & Letter.

Prior 20th March 1859 No 62 & 63
20th Dec 1860 No 70 & 71

Judl to Govt
March No 10 of 1860
Reply No 19 of 1860

Chief Justice

The Member for Law
Legislative Council

No. 3/5.

Sir,

I am directed by His Excellency the Governor to forward to you copies of two letters, from the Advocate General, & Justices Bittleston & Pereira, in reference to certain observations made by His Lordship Sir Adam Wilson, upon a letter written by the Advocate General, respecting the administration of Jud. Act.

I have &c.

Puisne Justice H.M. Supr. Court

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