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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 909 Press ~~Mis.~~

121-122

Dated 20th July ~~19~~ 1860

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Not to be folded or roughly handled

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No. 121. Read the following letter from THOMAS SYDNEY SMYTH, Esq., Advocate General, to the Chief Secretary to Government, Fort Saint George, dated 14th July 1860.

I have the honor to submit for the information of His Excellency the Governor in Council the following report of those cases at the third Criminal Sessions, concluded this day, in which I deemed it necessary to prosecute.

2. Government is aware from my report, under date May 4th, 1860, that several persons charged with kindnappping children were acquitted last Sessions in consequence of no evidence being offered; it having been discovered that the indictments were so defective, that, even if convictions had been obtained, they could not have been sustained. The indictments were prepared, as usual, in the Office of the Clerk of the Crown, but that Officer being then on the eve of departure for England, probably overlooked the omission of the words "by force or fraud," which the 9th George 4, C. 74, S. 69, makes essential to the offence.

3. Upon being informed of this failure of justice, and of the frequency of this offence within the last few months, I deemed it necessary to appear on behalf of Government to conduct these prosecutions, and being consulted by the Senior Magistrate, Colonel Colbeck, as to whether the acquittals were not a bar to his re-committing the accused parties, I advised him (though, as Government is aware, I as a general rule decline to advise the Magistrates, in accordance with the practice sanctioned by this Government and the Government of India) that an acquittal on a defective indictment was no bar to a re-committal, and that it was his duty to recommit them, which he accordingly did, seven cases in all, one having occurred since last Sessions.

4. The trials came on in due course, and all the parties charged with kindnapping were found guilty, an example, which I trust, will put an end to this very serious offence. A plea of Autre fois Acquit was put in in one case, but I easily satisfied the Court that it must be overruled. Two of the parties charged as Receivers or Harbourers were acquitted, there being in fact no case at all against them.

5. With regard to these cases I have but two more remarks to submit; 1st, that four or five of the kidnapped children were found in the house of one Syud Abdulla, who, not only was not committed, nor even his deposition recorded, but whose very name was never mentioned in any of the depositions returned to the Clerk of the Crown; although, according to the evidence of the Police who found the children in his house, he made statements which certainly ought not to have been thus suppressed. Supposing that there was not sufficient ground for committing him to take his trial (which however I think admits of considerable doubt) he certainly ought to have appeared as a witness. Had time permitted I would have insisted on his production; but owing to the total and to me unaccountable omission of his name from the depositions, I was not aware, till the trial was near its close, that he could give any evidence at all.

6. I submit that some explanation should be called for on this point, but whether from the Commissioner of Police, or the committing Magistrate, I have not sufficient knowledge of the proceedings to enable me to suggest.

7. The second remark is of a somewhat similar nature. It appeared, in Case No. 4 in the Calendar, that the child Chinnamah was sold, for eleven Rupees, at the Shadee Mahal (Nabob's Palace) in Triplicane; and, in Case No. 18, that the abduction of the child Mooneamah, by the Prisoner Sheik Tippoo, was reported by him personally at the door of Rahim-oon-Nissa Begum, daughter of Prince Azeem Jah (whether at the Shadee Mahal or not was not clear) who thereupon sent her own servant, Rungummah, for the child, and received and harboured it till some noise was made about it's disappearance. I am not at all prepared to say that, in both these cases, these Begums have not come within the provisions of the Act: there was at least ground for much more inquiry than appears to have been made, so far as the depositions shew, which is all I know of the case. I would at all events suggest that the Government Agent at Chepauk should be instructed to communicate these facts to Prince Azeem Jah, inform him that very serious infractions of the law have thus taken place within the limits of his residence, and, as has been deposed, with the cognizance of, if not at the instigation of, ladies of his own immediate

family, and request him to prevent a repetition of such offences, warning him that, if they are repeated, the rank of the offenders cannot be allowed to screen them from a public trial.

8. Since I wrote the preceding remarks, Sir A. Bittleston passed sentence of six months' imprisonment with hard labor on each of the Prisoners except one very old and infirm woman, who was sentenced to 3 months' imprisonment. Each of the Prisoners had already undergone several months' imprisonment. In passing sentence the Judge made the following remarks, part of which I hope may be conveyed to Prince Azeem Jah for the information of his female relatives:—"You have been found guilty, upon the clearest evidence, of decoying away and harbouring children from their parents and lawful guardians—a great and serious offence, which about last Christmas had become so common as to create a perfect panic among the poorer classes of Native inhabitants, and there is too much reason to believe that the children produced before me are but a few of those that were lost by their parents. It must be known that the law tolerates no such traffic in children. There was however some circumstances that weigh somewhat in your favor, firstly that there is no reason to suppose that there was any intent to ill-treat the children, or that any in fact were in the slightest degree ill-treated; secondly (here my note is imperfect, my attention having been called off); thirdly, there is great reason to believe that other persons, much higher in position and with larger means, have been encouraging and instigating you in these practices. I hope it will be made known in the quarter to which I refer, that if any such persons are brought here and convicted, the full penalty of the law will be inflicted, that penalty being transportation for 7 years. To that sentence you are liable. Every one who knowingly takes part in such proceedings is liable to the same; it is no excuse to say that you acted under the orders of your employer or master. I hope however that on this occasion it is not necessary to pass a very severe sentence, and that enough has been done without this to stop this practice. All of you but Rokiah Bee have already been in prison for several months; the sentence on each of you now is imprisonment with hard labor for 6 Calendar months, and on Rokiah Bee in consideration of her age and infirmity imprisonment for 3 months."

9. The only case of murder was that of Colan alias Sawmy, one not in the Calendar, it having been committed rather in a hurry, either after the Sessions had begun, or the evening before. It is much to be regretted that the case was committed so hastily. The identification of the corpse by its features was impossible, and it was therefore obviously the more necessary to obtain identification by every other means; but that of the only garment found on the body (a common bordered Dovatty) was left in the loosest manner, and in fact would have *entirely* failed, but for a suggestion of my own to send for the washerman who washed for the deceased, who fortunately was found and arrived before the close of the trial. There was however no other identification of the corpse and but very slight evidence of the indentity of the accused, with a man seen *on the high road*, near the spot where the murder *probably* occurred, about the time, 9 P. M., when it *probably* occured; all the rest of the evidence being purely circumstantial. On seeing the depositions, I wrote at once to the Clerk of the Crown to request him to suggest to the Judge to give the Grand Jury a strong hint to throw out the Bill. The Judge in fact did so, but unfortunately the Grand Jury found a True Bill, which there was not sufficient evidence to support. It was certainly a case of very strong suspicion, but nothing more.

10. Three other cases, not in the Calendar, were committed by Mr. Clarke for perjury and subornation of perjury, and he requested the assistance of the Law Officers of Government. I found the case to be a very gross one, and so clear that I felt it my duty to assist the Magistrate by endeavouring, as far as in me lay, to check this detestable and fearfully prevalent crime, against which there are so many difficulties in the way of obtaining convictions, and which strikes at the very root of the administration of public justice, by the doubts and embarrassments it creates in the minds of Magistrates and Judges of all grades. The prisoners were defended and their Counsel treated the offence as one so common and trumpery that it was an insult to the Jury to occupy their time with it, and so universal that if every case were brought to punishment the one per cent. of the Income Tax would not suffice to provide places of imprisonment. The Jury convicted in every case—several legal objections, such as motions to quash the Indictments, no case to go to the Jury, and motions in arrest of judgment, were made, but all defeated—and the Judge sentenced the suborner to 2 years' imprisonment with hard labor, and the perjurers to 18

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months each with hard labor, a sentence which I trust will have a beneficial effect which truly is much needed, as every Court and Magistrate's Office can daily testify.

11. Recent indisposition, and the number of cases at these Sessions obliged me to require the assistance of a junior Counsel, which Mr. Macdonald Ritchie rendered very efficiently.

No. 122. ORDER THEREON, 20th July 1860, No. 909.

The Advocate General reports on those cases in which he prosecuted at the recent Criminal Sessions.

2. Paragraphs 5 and 6 of his letter will be communicated to the Commissioner of Police and to the Magistrate of the Royapettah District for explanation.

3. A copy of paragraphs 7 and 8 will be furnished to the Government Agent at Chepauk, with instructions to convey the substance of them to His Highness Prince Azim Jah, and to impress most seriously upon him the remarks of the Advocate General and of the Puisne Judge, for his own consideration, and that of the members of his family.

4. Paragraph 9 will be communicated to the Commissioner of Police, and to the Magistrate, Mr. T. G. Clarke, who committed the case of murder, referred to.

(Signed) T. PYCROFT,
Chief Secretary.

lxd. F. Cartledge.

The Report of the Advocate Genl is very clear and interesting. I agree in Mr Pyecroft's view as to No. the steps to be taken upon, especially as regards the Third mapping Cases. The warning should be strongly given or Prince Azim Jar, & his Ladies, or find themselves in Court.

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JP

The Commr. of Police.
~~Senior~~ Mag^t of Police for Royapettah
Govt. Agent, Chepauk.
Mr. T. G. Clarke, Mag^r of Police.
The Advocate Genl.

Distrn

J.W.L.