

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1391	Press Mis.
78-79	
Dated 15.11.1861	18

7/8
Not to be folded or roughly handled

15th November 1861.

No. 78. Read the following Extract of a letter from THOMAS SYDNEY SMYTH, Esq., Advocate General; to the Chief Secretary to Government, Fort Saint George, dated 17th October 1861.

I have the honor to report for the information of His Excellency the Governor in Council upon the cases wherein I conducted the prosecution on behalf of the Crown.

2. They were eleven in number; two (Nos. 5 and 31 in the Calendar) for murder; one (No. 11) for poisoning with intent to murder; one (No. 7) for cutting, stabbing with intent to murder; three (Nos. 27, 28 and 29) for manslaughter; three (Nos. 1, 10 and 15) for offences against the Income Tax Act; and one (No. 9) for importing Sulphur without a license, contrary to Act XXXI of 1860, Section 17.

3. No. 9, the case of importing Sulphur without a license, requires some notice. The defendant was acquitted, the Chief Justice deciding that there was no case to go to a Jury, under the very peculiar facts disclosed by the evidence. The Sulphur was imported openly and without any attempt at concealment, it was lodged in the Custom House, one of the regular Brokers was employed to clear it, and a written application to pass it out, and a Permit, were sent in and granted in the regular way. The Sulphur was lodged in the defendant's godowns, and he then applied openly and formally to the Commissioner of Police for a License, under Section VII, which was the first information the Commissioner had of the fact that the Sulphur had been imported.

4. This, I submit, ought not to have been the case. It seems to me that the Custom House Officers ought, in the first instance, to have called for the production of a license, and should not have passed out the Sulphur without one, and should have at once communicated the facts to the Commissioner of Police.

5. The Commissioner of Police at once summoned the defendant before him, and told him he had violated the law, whereupon the defendant at once produced a paper, apparently genuine, signed by Mr. Wauchope, Commissioner of Police at Calcutta, and sealed with his seal, authorizing one Mooteram Sett to convey 35 maunds of Sulphur from Calcutta to Madras. Not deeming this sufficient, informations were laid, and the defendant committed, but released on bail.

6. I might easily have obtained a conviction by putting the defendant to strict proof of Mr. Wauchope's license, for no one in Court could have proved his hand-writing, office, or seal, but I do not consider that the Law Officers of Government ought to take such advantages, especially where, as here, there is every reason to believe that the infraction of the law—if any—has been committed under a mistake, and with entire *bond fides*; and more especially where, as in this instance, a Government Officer like Mr. Wauchope has been mainly accessory to such mistake. I considered moreover that the conviction of an unintentional offender was a much less important matter than to obtain the Court's opinion whether Mr. Wauchope's Calcutta license could legally authorize the Madras consignee of a Calcutta bunnea to import Sulphur into Madras without any license from any Madras authority.

7. The Chief Justice ruled that it could do so, and did so; that, it being admitted that Mr. Wauchope was Commissioner of Police in Calcutta, and authorized to issue licenses to import into Calcutta, and the Act itself nowhere requiring any license to export Sulphur from India, the Court could only look on the license as one to import the Sulphur into Madras, as it in express terms purported to do; and there was nothing in Section XVII to restrict the authority of such a license to the Presidency wherein it was issued; or to restrict the authority of the Calcutta Commissioner of Police to his own Town or Presidency, so far as such licenses are concerned.

8. I quite concur with the Chief Justice's view of the Act, though I cannot think it was ever contemplated that the Calcutta Commissioner of Police should assume any such authority. I suspect Calcutta would be in a ferment, were Major Wilson to issue licenses to the Madras

bazaar to import Sulphur into Calcutta. Probably the Supreme Government will, upon application, admonish Mr. Wauchope to restrict his licenses within his own limits, and avoid creating such very unnecessary difficulties in other Presidencies which never heard of him before.

9. The three cases under the Income Tax Act also require notice. The first, No. 15, for receiving bribes, was acquitted, though the evidence seemed very clear. Probably the Jury considered the receiving of two four annas pieces as too trumpety a matter for a formal indictment, and one which the Magistrate ought to have disposed of summarily. I can imagine no other ground for the case was a very clear one, and the prisoner himself confessed, saying, when asked what he had to say for his defence, "There is fault upon me."

10. It certainly was a trumpety case; but, as to the Magistrate's not disposing of it summarily, the Act is more in fault than the Magistrate; and, I submit, requires amendment.

11. Section 224 professes to give the Magistrates summary jurisdiction over all offences within the jurisdiction of the Supreme Court, where the punishment is fine or forfeiture, or fine and imprisonment for not more than six months—meaning, apparently, to include the offences enumerated in Clause 4 of Section 195. This Clause however, while limiting the original imprisonment to six months, and the fine to one thousand Rupees, goes on to enact, that, if the fine be not paid, the offender shall be liable to further imprisonment of not more than six months. The Magistrate therefore considered (and I concur with him, though I submitted the contrary view to the Court, to elicit its opinion) that this latter clause made the punishment amount to twelve months' imprisonment, and so deprived him of any jurisdiction, and so the Court seemed to think, though it gave no express decision on the point. Unless the Magistrates are given summary jurisdiction in these matters, the inconvenience of having nearly the whole Income Tax Office Establishment dancing attendance for several days at the Sessions, as was the case this time, on account of the three cases committed there—two of them very trumpety—may be very serious.

12. Case No. 1, for assaulting Income Tax Officers while distraining, was a very trumpety case (owing in a great degree to somewhat over-hastiness on the part of the Income Tax Officer) which, if taken under Section 214, as a case of obstructing of the Officers, might clearly have been summarily dealt with under Section 224. The first prisoner was acquitted, the second convicted, and sentenced to two months' imprisonment with hard labor.

13. Case No. 10, for breach of trust, in applying to the prisoner's own use a sum of Rupees 36-13-3, was one which might clearly have also been disposed of summarily by the Magistrate, under Section 28 of the Police Act XIII of 1856. The prisoner throughout admitted that he was responsible for, and liable to make good the money—but, in the first instance, he denied to Mr. Winscom that he had actually received the money, though saying he had made himself responsible for it to the Serjeant; but next day he confessed the whole truth to Mr. Ellis, the Special Commissioner. But for a monstrously false defence which he set up at his trial, (the witnesses called to support which entirely broke down on cross-examination) I should not have been surprised if the Jury had felt doubts of his having had any intention originally to defraud Government. The prisoner was sentenced to 18 months' imprisonment with hard labor.

14. Nos. 7 and 11, were very bad cases; the former, a case of an idle strapping fellow cutting the throat of his young wife, because, when eight months gone with child, she would not go over to him to cohabit with him; the latter, a case of a son twice putting arsenic in his mother's rice, to prevent her from selling her house, and to obtain possession of it himself. Both were convicted, and sentence of death recorded, but mitigated to transportation for life.

15. No. 5, was also a very bad case of deliberate murder. The prisoner, a Sepoy of the 4th Regiment M. N. I., left his guard over the regimental magazine, loaded his musket, went to his hut in the line, and shot his wife, whom he had frequently before illused, from motives of jealousy. He was sentenced to execution.

16. Nos. 27, 28, and 29 were cases of manslaughter, against the native crew of the Massullah Boat No. 9. The boat was licensed to carry only fifteen Native passengers, but the crew on the evening of Saturday, 28th September, bargained with 48 coolies and ahin lascars, that had been

working on board the "Castle Eden," to bring them all ashore at once for one anna a head. The surf was very strong, the boat very low in the water, and on entering the outer surf one wave struck the boat violently, so that several of the passengers were pitched into the sea, and the next wave broke the boat to pieces, and three of the passengers were drowned. The tindal and two of the crew absconded; two others had only been hired for the day, and these were acquitted; the four others were convicted, and sentenced to four months' imprisonment with hard labor, with an admonition that the next sentence for a similar offence (as it was shewn to be one of frequent occurrence) would be much more severe. I would submit that between the Marine Police and the Master Attendant's Office, some arrangement might and ought to be made to prevent breaches of Act 4 of 1842, which at present do seem to be almost compulsory and unavoidable. As one of the witnesses said, "when vessels are going off, particularly Steamers, there are often 40 or 50 of us on board, working to the last minute, and there is but one boat alongside, what are we to do? This happens very often." By signalling to such vessels, the number of coolies on board might easily be ascertained, and the proper number of boats sent off to bring them back. At present it really seems hard to say that either the boatmen or the coolies are to blame; but the law is violated daily and the constant risk to human life is very great indeed. The Mercantile Houses that send off the coolies or ship Lascars to the vessels consigned to them, or the Owners of the boats that take off the coolies in the morning to the ships ought to see to having boats in attendance to bring them back in the evening.

17. The case tried last, No. 31, though an indictment for murder, as a blow had been struck and a man had died in consequence, was upon the evidence clearly only a case of manslaughter, at the most, and this against the first prisoner only. A sort of street row occurred soon after lamplight near the "Thousand Lights," and the first prisoner who was the worse for liquor was flourishing a stick of unpleasant dimensions in very shillelagh-like fashion. The deceased, who was passing by, must needs poke his nose into the crowd to see the fun, and unfortunately got a rap on the end of it from the shillelagh, which knocked him over, and gave him a bloody nose, with the usual amount of swelled face. He was taken to the Hospital, where cold water bandages were applied, and in three or four days the swelling had disappeared and the wound healed, but unfortunately tetanus set in, and the man died. The shillelagh man a greyheaded decent looking and very intelligent Conicopoly, who seemed to feel acutely the disgrace of his position, was found guilty of manslaughter, and sentenced to twelve months' imprisonment with hard labor, and a fine of Rupees 100, and, in default of payment, to a further imprisonment for six months. The second prisoner was acquitted.

18. I would add in conclusion, that, in more than one instance, delay and inconvenience has been experienced during this Sessions from the non-attendance of any person from the several Offices of the Magistrates of Police, when it became desirable to put in evidence the statements of the prisoners and witnesses. This is a matter which cannot be always determined upon beforehand, and in more than one case Horse Policemen had to be despatched in a great hurry to procure the necessary evidence. I would submit that, during the Criminal Sessions an Interpreter, or Minute writer conversant with the Native language, ought to be in attendance from the Office of each Magistrate, who could prove that each prisoner's and witness's statement had been properly explained and translated to him, so as to enable it to be put in evidence if it becomes necessary so to do.

No. 79. ORDER THEREON, 15th November 1861, No. 1,391.

The Governor in Council will forward to the Government of India a copy of paragraphs 3 to 8 of the Advocate General's report, in order that the Police authorities in Calcutta may be restrained from issuing licenses for the import of Sulphur into the Madras territories; but, before doing so, he resolves, in reference to the Orders of the 3rd November 1859, No. 1,483, in which the Collector of Sea Customs was directed in every case to keep in custody imported Sulphur, until the owner should obtain for it a license from the Commissioner of Police, to call upon the

Proceedings of the Madras Government, Judicial Department,
15th November 1861.

Collector to explain under what circumstances a permit was granted for clearing from the Custom House the Sulphur, which formed the subject of indictment in case No. 9 on the Calendar for the late Sessions.

2. Paragraphs 9 to 13 of the report will be referred to the Revenue Department for consideration. Paragraph 15 will be communicated to the Military Department.

3. The Superintendent of Marine, in communication with the Master Attendant, and the Commissioner of Police will give their immediate attention towards carrying out some arrangements of the kind suggested in paragraph 16 of the report. It is not to be tolerated that Boat owners and Agents should ship Coolies off to vessels and leave them to get back as they best can, thus inducing breaches of Act IV of 1842, and if other means fail, recourse must be had to legislation in order that the responsibility of such breaches and their consequences may be thrown on the right persons.

4. The last paragraph of the Advocate General's report will be communicated to the Magistrates of Police for their guidance.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read letter from the
Advocate Genl. — Inter 17th Oct. '61.

Order — 15 November 1861. No 1391.

The Governor in Council will forward to the Govt. of India a copy of paras 3 to 8 of the Advocate General's report — but, before doing so, he resolves, in reference to the Orders of the 3rd Nov. '59 No 1483, in which the Collector of Sea Customs was directed ^{in every case} to keep in custody

custody imported sulphur, until the owner should obtain for it a licence from the Commissioner of Police, to call upon the Collector to explain under what circumstance ~~the~~ a permit was granted for clearing from the Custom House the sulphur, which formed the subject of indictment in Case No: 9 on the Calendar for the late Sessions.

2. Paras 9 to 13 of the report

report will be referred to the Rev. Dept: for consideration. Para 15 - will be communicated to the Mily: Dept.

The Superintendent of Marine, in communication with the Master Attendant, & the Commissioner of Police will give ^{their} immediate attention towards carrying out some arrangements of the kind suggested.

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ure of the
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and their consequences
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the right persons.

suggested in para
16 of the report. It
is certainly a state
of things discredi-
table to the autho-
rities, when, as re-
marked by the
Advocate General,
breaches of Act IV
1842 seem to be al-
most compulsory
& unavoidable -
& when, altho' the
law is violated
daily, & the con-
stant risk to hu-
man life is very
great, blame can
hardly be said to
attach

either
attach to the boat-
men, who receive
a larger number
of passengers than
they are authorised
by their license, or
to the Coolies who
crowd into the
only boat remain-
ing to land them.
Mr. Franklin will
report what mea-
sures ^{it is proposed} to adopt.

4. The last para of
the Advocate Genl's
report will be com-
municated to the
Magistrates of Po-
lice

Police for their guidance.

J. H. S.

	Pro.	Advocate	
The Colln. of Sea Customs	1	3680	
Rev. Dept. & Adv. Genl.	2	9613	
Milky. Dept.	2	15	
Tuptt's Marine	3	16	} dep 16
Commissioners of Police			
Magistrates of Police - Town, Royapet, & Vepery.	4	18	

Judicial 186 . Department.

No. 1391.

PROCEEDINGS OF GOVERNMENT.

Feb. 1890. 2627/87.
— 1996.

Dated 15th November 1861.

*(Orders on the Advocates)
General report upon the cases
wherein he conducted the
prosecution on behalf of the
Crown*