M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 296 Press ~~Mis.~~

192-193

Dated 24. 2. 1862. ~~19~~ .

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 24th February 1862.

No. 192. Read the following letter from T. SYDNEY SMYTH, Esq., Advocate General; to the Chief Secretary to Government, Fort Saint George, dated 10th February 1862.

With reference to the letter No. 263, dated Fort William, 13th January 1862, addressed to yourself by the Secretary to the Government of India, concerning the late prosecution of importing Sulphur into Madras, a copy whereof was forwarded to me on the 7th instant, I would beg to bring two matters to the notice of His Excellency the Governor General in Council.

2. I knew nothing of the case until after the Importer had been committed for trial, and released on bail, and just as the Sessions were coming on, when I was informed that the Commissioner of Police hoped that I would appear in support of the prosecution to show that infractions of Act XXXI of 1860 would not be passed over by Government, and also to show that a License such as the Importer relied on was not a legal authority for importing Sulphur into Madras.

3. In opening the case I mentioned that it was not considered one where more than a nominal sentence could be passed, as there was every reason to believe the prisoner had acted *bonâ fide*; but that it was thought right to take the opinion of the Court as to the legality or otherwise of the License which he had produced.

4. In hs defience the prisoner produced the License signed by Mr. Wauchope. Neither he, or any one else in Court, could prove the signature, and his Counsel then put it to me, whether, as I had opened that I believed the prisoner had acted *bonâ fide*, I would refuse to admit that Mr. Wauchope was Commissioner of Police, and that the License bore his seal and signature. I thereupon told the Court that under the peculiar circumstances of this case I thought it only fair to the prisoner to make this admission, as I had no moral doubt upon any of these matters.

5. This admission and the License were all that was before the Court. I knew nothing, and the Court knew nothing, of the terms of the Notification to which His Excellency the Governor General has referred. Had that been before the Court, the result would doubtless have been such as His Excellency suggests, but, in its absence, the maxim *omnia præsumuntur rité acta* was considered to apply. I could not suggest, without something to support the suggestion, nor could the Court rule, that the Calcutta Commissioner of Police had exceeded his authority: and it was presumed he had acted within it.

No. 193. To the Secretary to the Government of India, Home Department, dated Fort Saint George, 24th February 1862, No. 296.

I am directed to forward, for submission to the Government of India, a copy of a letter 10th instant, which the Advocate General has addressed to this Government, in reference to your letter therein cited.

2. Mr. Smyth's explanation seems to this Government to be satisfactory.

(Signed) T. PYCROFT,
Chief Secretary.

Exd F. Cartledge.

Recd. 24th

Judicial.

No. 296.

To the Secretary to the Govt. of India.
Home Dept.

Sir

I am directed to forward, for submission to the Govt. of India, a copy of a letter, as per margin, which the Advocate Genl. has addressed to this Govt. in reference to your letter therein cited.

2. Mr. Smyth's explanation seems to this Govt. to be satisfactory.

I have &c

Fort St George
24 Feby 1862

12 Encl

Judicial 1862 Sept.

No. 290.

To the Secretary to the
Government of India.

Dated 24th Feb.y 1862

Forwarding for submission
to the Govt of India a letter
from the Advocate General
offering certain remarks
on the late prosecution & importing
Sulphur into Madras.

192 to 193