M.R.O. 1—30,000—16-10-29

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 754 Press ~~MISC~~

60-61

Dated 7-5-1862. ~~##~~ .

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Not to be folded or roughly handled

No. 60. Read the following letter from T. SYDNEY SMYTH, Esq., Advocate General; to the Honorable T. PYCROFT, Chief Secretary to Government, Fort Saint George, dated 26th April 1862.

I have the honor to submit for the information of His Excellency in Council the following Report of the cases in which I prosecuted on behalf of the Crown during the second Criminal Sessions of 1862; viz., Nos. 3, 13, 31, 35, 36 and 37 in the Calendar.

2. In No. 3, the first prisoner Moottoosawmy a Lascar employed at the Medical Stores, was convicted of stealing two 1-lb. bottles of Quinine, value Rupees 380, the property of Government, and sentenced to 15 months' imprisonment with hard labor. The other three prisoners, charged with aiding and abetting the theft, by permitting Moottoosawmy to pass unsearched, were acquitted. The evidence that led to their acquittal was of a very unsatisfactory nature, Dr. Mayer deposed, clearly and distinctly, that the chief and express duty of the Peons and Lascars on guard was to search every Native on his leaving the Medical Stores; and had his evidence stood alone, the three prisoners would have been convicted. Mr. Lynsdale, however, an Apothecary in the Stores, stated that during the day, Natives could and did pass freely in and out, particularly by the back door, without any search at all; that he had seen this, and never noticed or reported it; that at night he had on more than one occasion found Peon and Lascars all fast asleep and took no notice of it, not thinking it any crime, and considering that the Peon's chief duty was to be there to receive any emergent messages, if sent, and to forward them on by one of the Lascars. The Tindal of Lascars, Mooneappen, an old stupid man, was still worse; he maintained that the orders for the Peon and Lascars were to sleep all night; that the Medical Stores provided mats for their use, and that he had got a kind of wooden pillows made, and he gravely assured the Chief Justice that the Peon's duty was to sleep there, and that of the Lascars to assist him in doing so. On this evidence the Chief Justice put it to the Jury, that the Peon and Lascars, in keeping a careless watch, only did what their superiors were well aware of and in fact had acquiesced in, till the practice had become habitual, and such as could hardly be considered a breach of duty. I must say that Apothecary Lynsdale's evidence warranted the remark. As the evidence showed that 13 bottles of Quinine, value Rupees 2,080, had thus been abstracted, the necessity of treating the duty of watching and searching somewhat more seriously will be apparent. When this case was first brought to my notice, the Government Solicitor, at my request, endeavoured to obtain a Court of Inquiry upon an Apothecary, who was found to have recently sold considerable quantities of Quinine, at a price much below the market rate, to some of the Druggists in Madras; his own account being that he had bought the Quinine in China—not a very satisfactory story. Nothing however was done, why, I do not know. The Peons at the Fort Gate acted straightforwardly and honestly in apprehending Moottoosawmy with the two bottles under his arm, but it is to be regretted that he was not allowed to pass on, and followed to his destination, whereby his employer or instigator might have been detected. Moottoosawmy implicated Tindal Veerasawmy Chetty as having desired him to carry off the bottles, which had, he said, been previously stolen, and hid under a mat on the stairs. This seems not improbable; it appears clear that more than one has been concerned in this systematic pillage of this most expensive and valuable medicine.

3. In No. 13, Robert Hudson McKeane, a Clerk in the Civil Paymaster's Office, was convicted on the clearest evidence of stealing a Treasury Bill for Rupees 80, and sentenced to 12 months' imprisonment with hard labor. He made a very base but wholly ineffectual attempt to throw the blame on the Manager, P. Teroovengada Chetty, who was proved to have acted most correctly.

4. In No. 31, Sillamon Saib was convicted of having in his possession some counterfeit two Anna pieces, and base metal, crucibles, bellows, and a forge for making more. He was sentenced to two years' imprisonment with hard labor.

5. In No. 35, Chinniah was convicted under Exception 1, to Section 300, of the Penal Code, of "culpable homicide not amounting to murder," a conviction in the teeth of the Chief Justice's charge, and which certainly could not have been sustained if the prisoner had had Counsel to move in arrest of judgment. The case was a clear and simple one of manslaughter,

under the Criminal Law of England, but was clearly not provided for by the new fangled Code which, after costing half a million sterling, has been here substituted for it, contrary to the advice of the most able and competent members of the Law Commission in England. The Chief-Justice saw this clearly, and called on me to say if I could suggest any grounds upon which he *could* leave the case to the Jury. I did suggest, though quite contrary to my own opinion, that it *might* be left to the Jury whether the prisoner when he struck the fatal blow, was not "deprived of the power of self-control by grave and sudden provocation" and the Chief Justice did so leave it to the Jury, and they convicted, doing thereby substantial justice. The prisoner however was clearly *not* "deprived of the power of self control," and still more clearly had no provocation which the law recognizes as "grave"—and this the Chief Justice laid down distinctly. The prisoner was sentenced to 12 months' imprisonment with hard labor.

6. In Nos. 36 and 37, an unfortunate woman who appeared clearly to have been and still to be insane, was tried for the murder of her own mother-in-law and an infant child about 3 years old, in the middle of the day. She was acquitted on the ground of insanity, and ordered to be detained in custody till the pleasure of Government is known respecting her.

No. 61. ORDER THEREON, 7th May 1862, No. 754.

Paragraph 2 of this letter will be communicated to the Military Department, and paragraph 3 to the Accountant General and the Civil Paymaster.

2. It is presumed that the Government will receive a report from the Clerk of the Crown on the case referred to in paragraph 6.

(Signed) A. J. ARBUTHNOT,
Acting Chief Secretary.

Exd. F. Cattledge.

No. 754 – 7th May 1862.

Para 2 of this letter will be communicated to the Mily. Dept. – & para 3 to the Acct. Genl. & the Civil Paymaster.

It is presumed that the Government will receive a report from the Clerk of the Crown on the case referred to in para 6.

Mems
The Bills Sanctioned
Issue Vouchers
for

The Mily. Dept. – Para 2. } Dept 8th
" Acct. Genl. } – Para 3.
" Civil Paymaster } to the Clerk of the Crown
Dept 8th

