M.R.O. 1—28,000—16-10-20.

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No. 172-172A Press Mis

Dated 28. 3. 1861

Not to be folded or roughly handled

Proceedings of the Madras Government, Political Department,
28th March 1861.

Read the following papers:—

No. 71. From P. GRANT, Esq., Magistrate of Malabar, to T. PYCROFT, Esq., Chief Secretary to Government, Judicial Department, Fort Saint George, dated 7th March 1861, No. 27.

I have the honor to submit for the decision of Government the following case.

2. A French gentleman, Mr. A. DeBellemare, has been established at British Cochin as Consular Agent for France.

3. On the 4th instant, the Joint Magistrate, Mr. Cullen, had an interview with him in reference to a refractory Sailor belonging to a French Ship now in the Cochin river.

4. Mr. Bellemare contended that he had authority, as Consular Agent for France, to take cognizance and dispose of all cases of a petty character on board French Ships, in which French Sailors were concerned—that it was only necessary for him to write to the British Magistrate to furnish Police Officers to him to make arrests, when necessary, of French Sailors—that such cases should be investigated and decided by him, and the punishment awarded in them carried out under his own orders.

5. Mr. Cullen suggested to him that according to English law, depositions on oath were necessary preliminaries to the issue of a warrant by a Magistrate for the arrest of an offender, and that he, Mr. Cullen, could not detain a Frenchman in Jail merely on the Consular Agent's letter without knowing the merits of the case.

6. Mr. Bellemare maintained that a letter from him to Mr. Cullen, intimating his wishes, was all that was required, and that it was not necessary for him to go through the formality of issuing a warrant under his seal and signature.

7. Mr. Cullen, under such circumstances, asks me to obtain for him information respecting Mr. Bellemare's position as Consular Agent at Cochin.

8. The points on which he particularly wishes for information are:

1st. Whether he, as a Magistrate, is bound to attend to requisitions from Mr. Bellemare, in his capacity as Consular Agent for France, for the service of Police Constables to make arrests.

2ndly. In what form such requisitions should be made to him.

3rdly. Whether he is bound to receive into the Jail or Prison House at Cochin, and detain there, for an indefinite period, any person sent to him by Mr. Bellemare, and in what manner the latter should address him in order to effect the object.

4thly. Whether Mr. Bellemare, as French Consular Agent, is at liberty to exercise Magisterial powers in French Ships within British waters, and punish irregularities of conduct among the Sailors by keeping them in irons, and otherwise, as he may judge proper.

9. The importance of these questions, in a political light, induces me to lay them before Government, and nothing can be more expedient, in view to preserve proper relations between the Joint Magistrate and the French Consular Agent, than to have their respective duties clearly defined.

10. That Mr. Bellemare actually holds the appointment of such an Agent at Cochin, I have no doubt, as he lately sent me copy of a letter* from Lord H. U. Browne, Officiating Under Secretary to the Government of India, in proof of his appointment having been confirmed by Her Majesty's Government.

* *To Monsieur Lombard, Consul for France at Calcutta, dated 29th November* 1860.

Referred for the report of the Advocate General.

(Signed) T. PYCROFT,
Chief Secretary,

FORT SAINT GEORGE,
20th March 1861.

No. 72. From J. R. BOYSON, Esq., Government Solicitor, Madras, to T. PYCROFT, Esq., Chief Secretary to Government, Madras, dated 23rd March 1861, No. 255.

Dated 20th March 1861, *and endorsed on letter from the Magistrate of Malabar to Government of the 7th idem, No. 27.*

1. I have the honor to acknowledge the Order of Government, noted in the margin.

2. I submitted the matter for the consideration of the Advocate General, and I now forward a copy of his opinion.

3. I also return the original Order and letter above alluded to.

COPY—OPINION.

If Mr. Bellemare, as Consular Agent at British Cochin, has any such criminal jurisdiction as he seems to claim over French Sailors in that Port, and, as accessory thereto, a right to command the services of British Police Constables to execute arrests, and of British Magistrates to act as Jailers under his orders, it can only be, so far as I know, by virtue of some Commission from his own Government in conformity with some Treaty with Her Majesty's Government. If so, Mr. Bellemare can probably produce them, and should be asked to do so; or if not, to point out whereon he grounds his claim.

Browne's Civil and Admiralty Law, Chapter XIV, says, "The institution is a kind of Court-"Merchant, to determine affairs relative to *commerce* in a summary way. Their authority depends "very much on their Commission, and on the words of the *Treaty*, or the extent of the *permission* "on which it is founded."

"To sum up the points most material to be known as to Consuls, they are, that their "powers may be founded in treaty or in permission; and that the powers of the *former* are gene-"rally greater and always less disputable; and to know with precision what powers are claimed "by any particular Consul, *his Commission must in the first instance be referred to.* A Consul is "*not* a public Minister but in general a person conversant and employed in trade, and liable to "the *lex loci* both civil and criminal. Their proper business is to protect and assist the persons "and trade of their own countrymen abroad; settle, if possible, disputes and controversies "between them; and if necessary convey their complaints to the Government of the place."

Unless Mr. Bellemare can produce a Commission, *and show it to be authorized by some Treaty*, giving him such powers, I apprehend that any Constable arresting, or Mr. Cullen if he imprisoned any French Seaman, by order of Mr. Bellemare, would be liable to an action for false imprisonment, and that the person so arrested or confined would be at once discharged by Habeas Corpus on a proper application being made.

21st March 1861. (Signed) THOMAS SYDNEY SMYTH,
Advocate General.

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor.

No. 73. ORDER THEREON, 28th March 1861, No. 172.

Resolved that the Magistrate of Malabar be directed, in reference to his letter of the 7th instant, to inform Mr. Bellemare that the Government cannot admit his claim as Consular Agent of France to the exercise of Magisterial powers over any persons, French or others, in the British Settlement and Port of Cochin, such claim being wholly opposed to the common law of England. No arrests can be made in the town and waters of Cochin nor punishments awarded except by the duly constituted British authorities of the place acting under the provisions of the English law or of the local Regulations and Acts of the Indian Legislature.

2. It is observed that the Government have received no intimation of the appointment of Mr. Bellemare as French Consular Agent. They resolve to forward copies of these papers to the Government of India and to request information on the subject.

(Signed) T. PYCROFT,
Chief Secretary.

No. 73. A. To the Secretary to the Government of India, dated Fort Saint George, 28th March 1861, No. 172. A.

I am directed by His Excellency the Governor in Council to forward, for submission to the Government of India, a copy of a letter from the Magistrate of Malabar, relative to the claim of Mr. A. DeBellemare, as Consular Agent for France, to the exercise of Magisterial powers over French Sailors in the British Settlement and Port of Cochin. I forward also a copy of the opinion of the Advocate General whom the Government consulted on the subject.

2. This Government, I am to state, have directed the Magistrate of Malabar to inform Mr. Bellemare that they cannot admit his claim as Consular Agent of France to the exercise of Magisterial powers over any persons, French or others, in the British Settlement and Port of Cochin, such claim being wholly opposed to the common law of England. No arrests can be made in the town and waters of Cochin nor punishments awarded except by the duly constituted British authorities of the place acting under the provisions of the English law or of the local regulations, or Acts of the Indian Legislature.

3. It will be remarked from the concluding paragraph of Mr. Grant's letter, that Mr. Bellemare holds a letter from Lord Ulick Browne, Officiating Under Secretary to the Government of India, in proof of his appointment having been confirmed by Her Majesty's Government. This Government have however received no communication on the subject from the Government of India or from the Secretary of State. I have therefore been directed to request that the Supreme Government will favor the Government of Madras with any information of which they may be in possession relative to Mr. Bellemare's appointment.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

List of papers

Political 1861. Dep.t

From

I. R. Morrison

Govt Sol.r Madras

To

~~Draft Copy~~

Chief Secy to Govt Madras

~~No. 2 Pol 12~~

~~Dated 23d~~

Read 25th March

No. 255.

2 Enclosures

No. 52

~~Forwards with reference to~~
Order of Government dated
20th March 1861 and en-
-dorsed on letter from the
Magistrate of Malabar
to Government of the 7th
idem No. 27 Copy advocate
General's Opinion as to the
authority of the Consular Agent
for France at British Cochin
over offences committed on
French vessels in the Cochin
River

72

Without

Political Department.

Proceedings of the Madras Government.

Read the following Papers.

From the Magte. of Malabar. / Rec'd enter 7th March 1861, No. 27 /
" " Govt. Solicitor, Madras. / " " 23d " " " 255 /

Order thereon 28th March 1861, No. 172.

Resolved that the Magistrate of Malabar be directed in reference to his letter of the 7th instant, to inform Mr. Bellmarr that the Govt. cannot admit his claim as Consular Agent of France to the exercise of Magisterial powers over any persons, French or others, in the British Settlements and Port of Cochin - such claim being wholly opposed to

to the common law of England - No arrests can be made in the town and waters of Cochin nor punishments awarded except by the duly constituted British Authorities of the place acting under the provisions of the English law or of the local regulations and acts of the Indian Legislature.-

2. It is observed that the Govt. have received no intimation of the appointment of Mr. Bellemare as French Consular Agent. They resolve to forward copies of these papers to the Govt. of India and to request information on the subject.

J.

To the Magte of Malabar Dispr 28 - 3 - 61.

Desp. 10-4-61. with Enclosure

List

6

Political Department.

No. 172 A

To

The Secretary to the Government
of India,
Foreign Dept.

Sir,

I am directed by His Excellency the Governor in Council to forward, for submission to the Government of India, a copy of a letter from the Magistrate of Malabar, relative to the claim of Mr. A. De Bellemare, as Consular Agent for France, to the exercise of Magisterial powers over French Sailors in the British Settlement and Port of Cochin. I forward also a copy of the opinion of the Advocate General whom the Govt. consulted on the subject.

2. This Govt. I am to state have directed the Magistrate

Pol. Department 186/.

No. 172

Proceedings of the Madras
Government.

Dated. 28 March 1861.

Papers noted in the margin
Laid before Council
Ordered to be recorded
Read, Resolved as noted

2501] Madras—Printed at the Government Press.

Magistrate of Malabar to inform Mr. Bellemare that they Govt. cannot admit his claim as Consular Agent of France to the exercise of Magisterial powers over any persons, ~~&~~ French or others, in the British Settlement and Port of Cochin - such claim being wholly opposed to the common law of England - No arrests can be made in the town and waters of Cochin nor punishments awarded except by the duly constituted British Authorities of the place acting under the provisions of the English law or of the local regulations ~~and~~ or acts of the Indian Legislature.

3. It will be remarked from the concluding ~~&~~ para: of Mr. Grant's letter, that Mr. Bellemare holds a letter

7

Mick

letter from Lord ~~Wm.~~ Browne, officiating Under Secretary to the Govt. of India, in proof of his appointment having been confirmed by Her Majesty's Govt. This Government have however received no communication on the subject from the Govt. of India or from the Secretary of State - We have therefore been directed to request that the Supreme Govt. will ~~furnish~~ favor the Govt. of Madras with any information of which they may be in possession relative to Mr. Bellemare's appointment. -

I have &c a:

Fort St. Geo. 28 March 1861.

List of Political

Political 1861. Dept.

No. 173 A.

To The Secy: to the Govt. of India

D/28: March/61
Rec'd 7th 22nd do in 61. No. 516.

Directing the Magistrate of Malabar to inform Mr. Bellemare that the Govt. cannot admit his claim as Consular agent of France to the exercise of Magisterial powers over any persons, French or others, in the British Settlement and Port of Cochin.

71 & 73 A