

Public (1897) Department.

ORDINARY MS.

G.O., No. 1263

DATED 24. 9. 97.

[Despatch Abstract.]

Recording opinion of the Advocate
General on the question of the
liability to prosecution of Adolf
Stern and his wife Bertha Rachel
Stern for false statement on
affidavit when applying for
a certificate of Naturalization.

28/9/97

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

[Pub.]
29.
2,000-5-3-97.

Public (1897) Department.

CURRENT No. 219

From
The Govt. Solicitor
Madras

No. 518

Dated 7th Sept }
Received 9. " } 97
Registered 10. "

Enclosures 5th 2560, 2848, 3049, &
5134 & Enclos. recd.
Spare copies - but back of 1133 of 97.

SUBJECT.

Forwarding opinion re question
as to whether Adolf Stern and
Bertha Rachel Stern can be
punished for their false statements
on affidavit

Order

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

R e

~~Question as to whether Adolf Stern and Bertha Rachel Stern~~
can be punished for their false statements on affidavit (vide
G.O. No 1133, Public, dated 30th August 1897)

O P I N I O N .

If petitioners have made any false statement in the memorial knowing or believing the same to be false, or not believing the same to be true, there is no doubt they are punishable under Section 193 of the Indian Penal Code for committing the offences defined by Sections 191 and 199 of the said Code. Section 2 of the Indian Naturalization Act, 1852, imposes upon an applicant for a certificate of naturalization the obligation to declare in writing bearing his signature, to the best of his knowledge and belief, amongst other things, that he is residing within British India "with intent to settle therein", and therefore, within the meaning of Section 191, Petitioners were bound by law to make a declaration upon the said subject. If the declaration in question were false to their knowledge, they would be guilty of the offence therein described even independently of the affidavit. But by reason of the affidavit sworn to by them before a Presidency Magistrate who, under Section 11 of the Act, is empowered to administer the affidavit which accompanied the memorial as prescribed by Section 2 of the Act, the petitioners were also within the meaning of Section 191 of the Indian Penal Code "legally bound on an oath to state the truth". The case reported in I.L.R. 14 Calcutta 653 has no application to this case. The false statement would also be covered by Section 199 of the Penal Code because the declaration made by Petitioners and sworn to in the affidavit may, under Section 3 of the Indian Naturalization Act, 1852, be received and acted upon by the Local Government as evidence of the facts sworn to, with or without further evidence by affidavit or otherwise.

I presume that the alleged false statement is that contained in para 4 of the Memorial, namely, that the Petitioners are residing within British India "with a view to settle there". The corresponding phrase in Section 2 of the Act is "with intent to settle therein". If this statement had been made by the Petitioners when in fact they had no such intention, the statement would amount to giving false evidence. The onus of course would be on the prosecution to establish that at the time they made the statements the petitioners did not intend to settle here, and that therefore the statement was false to their knowledge.

Petitioners, husband and wife, appear to be travelling merchants and showmen and to have been residing in British India for the last 18 years. Referring to Petitioners, Mr Meredith in para 5 of his letter dated 30th July 1897 states "they have been settled in British Territory for the past 18 years; they have no intention of permanently residing in India but propose leaving the country in a short time in consequence of ill-health". Mr Agar in his letter dated 13th August 1897 states that when petitioners were interviewed by the Inspector of City Police they stated that they had no intention of permanently settling in India and were on the eve of their departure from here, and that they adhered to the same statement when they were interviewed personally by Mr Meredith.

The Petitioners' Solicitors, Messrs Wilson and King state in para 2 of their letter dated 9th August 1897 that one of the Petitioners Mrs Stern has been advised to go to Europe for a short time on account of her health.

4. Upon these materials, it is impossible to say whether there will be sufficient evidence to secure conviction. As far as I can see, the only evidence that will be forthcoming will be the oral-evidence to be given by the Inspector of City Police and by Mr Meredith as to the communications made to them by the Petitioners when they separately interviewed them Mr Meredith in his letter states that the Petitioners have been settled in British India for the past 18 years. If this be so, that would be sufficient under Section 2 for the issue of a certificate of naturalization-

under Section 4 of the Act. The circumstance of Petitioners, or either of them, being on the eve of departure for Europe, is not incompatible with an intention of settling here if they intend returning.

5. The expression "settling in a country" is one of which it is by no means improbable petitioners, like many others, might have had but a vague idea. So far as intention goes, the question will be what the Petitioners' intention was on the date of the memorial, and not what it was subsequent thereto, either owing to ill health or any other cause. There is also the statement in the letter of Messrs Wilson and King that it is only one of the two Petitioners who intend to go to Europe for a short time, and that on account of her ill-health. Though no doubt under the law, an indictment for perjury will lie in respect of a statement concerning one's bare intention or belief yet as a general rule a prosecution for perjury can be sustained only if the false statement is in regard to an overt act or external fact, and that a definite and precise fact.

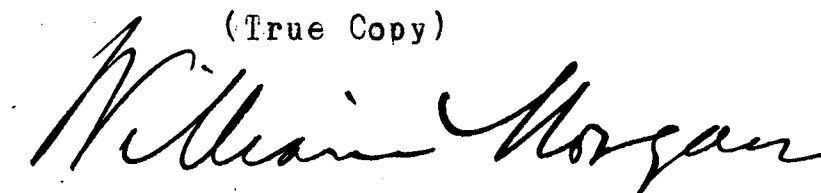
Madras

V. Bhashyam Iyengar

6th September 1897

Officiating Advocate General

(True Copy)



Acting Government Solicitor

(1897) Department

From William Morgan
Ag. Government Solicitor
Madras

To
The Chief Secretary to Government
Cotacamund

No 578

Dated 7 September 1897
Recd

Enclos: 5

Forwarded with enclosures
with reference to the Order of
Government No 1133. Public
dated 30 August 1897

W. Morgan
Ag. Government Solicitor

✓ 21p 216-9-97 (with 3 copies)
R17-2-97

[G.
25
1,000-8-5-97.]

C. No. 3372

Public DEPARTMENT.

~~H. E. THE GOVERNOR.~~
~~THE HON'BLE MR. BLISS, C.I.E.~~
~~THE HON'BLE MR. GROSE, C.I.E.~~

SUBJECT.

Means of punishing an
applicant for a certificate
of naturalisation who makes
a false statement on affidavit

FOR ORDERS.

It is doubtful whether a
prosecution was started
in connection with follow

Indirectly the Adv. Genl
thinks occurred subject a
conviction - Mis. apity

16/9/97

Submitted with reference to the
rules just before F. In view
of the Advocate Genl's opinion
no further step seems needed.

The previous correspondence
regarding his penalty for
making a false statement
on affidavit in India is in
G.O. no 777 Jud^d d 28/4/96
and G.O. no 1378 Jud^d d 24/8/96
The essential difference between
his present case on the one
hand, & those referred to in
his G.O's and his case
reported in I.L.R. 24 Calcutta 66
on the other, is that in the
present case provision for the
recovery of the affidavit is made
in the Indian Act.

AX.
14/9/97

file for Adv. Genl
recd 27. 22/9/97

[G.]
[24.]

800-20-1-07.

Public DEPARTMENT.

Papers to be read in proceedings:—

Again G.O., dated

189 , No.

Again G.O., dated

189 , No.

✓ Current No. 3372 of 1897, dated 7/9, from

The first Solicitor

" "

" 189 , " , "

" "

" 189 , " , "

C.S.

ORDER.
thus

W. 1263 of 24 Sep 97

Recorded

1 from order

Civ.
18/9/97

Mc.
20/9/97

18/9/97

When given for copying _____
When copied _____
When examined _____
When signed _____

189

READ AGAIN G.O., No.
189

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT

STATEMENT WITH DITTO

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

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A = Copy in full.
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