Revenue Department.

Minutes of Consultations.

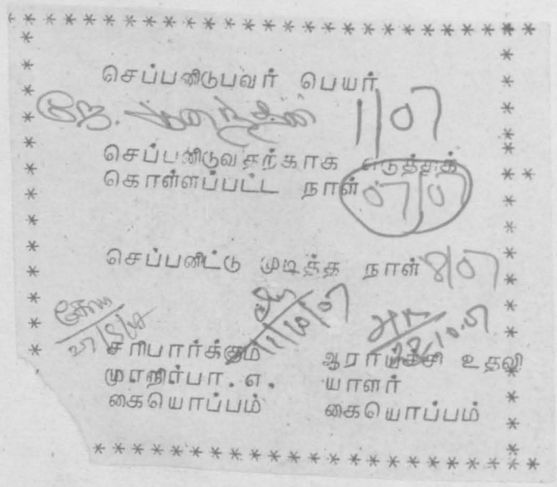
15th Dec 1857.

Back Nos. 39 & 40

Order No. 4952 14th Dec 1857.

1295

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Fort Saint George, Revenue Consultation of 15th December 1857.

No. 39. Read the following letter from T. SYDNEY SMITH, Esq., Advocate General; to T. PYCROFT, Esq., Chief Secretary to Government Fort St. George; dated 28th November 1857.

SIR,

With reference to Extract Minutes Consultation dated 26th November 1857, No. 1224, received by me this day, I have the honor to state that in my opinion the course pursued by the Collector of Sea Customs is not authorized by the 17th Section of the 5th and 6th Victoria Chapter 45.

2. Mr. Underwood seems to have been misled very naturally and excusably, by the order of the London Board of Customs. That order is quite correct as regards the United Kingdom, but it is evidently founded on the 23d and 24th Sections of the 5th and 6th Victoria Chapter 47, which apply solely to the United Kingdom, and not to the British dominions generally, as 5th and 6th Victoria Chapter 45 does.

3. The 17th Section of the 5th and 6th Victoria, Chapter 45, prohibits the importation of foreign reprints of English copyright works into the British dominions for sale or hire, not absolutely. The late Act (5 and 6 Victoria, Chapter 47 Section 24) prohibits their importation into the United Kingdom "absolutely," the preceding Section stating that "great *abuse* has "prevailed with respect to the introduction into this country *for private use* of such works re-"printed abroad." Now this later Act was wholly unnecessary if the former one could bear the construction which Mr. Underwood contends for.

4. It is very probable that the present state of the law on this point as regards the importation of such reprints into India has escaped the attention of the Legislature, for it is certain that the 7th and 8th Victoria Chapter 12, and the 15th and 16th Victoria Chapter 12 confer a greater protection in this respect on foreign authors who avail themselves of these Acts, than is extended to British authors, though the preambles profess to grant foreigners only the same degree of protection; but Courts of Law can only act upon what the Legislature has said.

5. It has *limited* its prohibition (by Act 5 and 6 Victoria Chapter 45) of the importation of such books into the British dominions to the case of books imported "for sale or hire," and no officer of Customs can expunge those words, or treat them as a nullity, and convert the limited prohibition into an absolute prohibition.

6. The Legislature afterwards made the prohibition absolute as regards the United Kingdom; but omitted, whether intentionally or otherwise I cannot say, to do so as regards India and the Colonies.

No. 40. ORDER THEREON, No. 1295; dated 14th December 1857.

Ordered to be communicated to the Board of Revenue, with reference to their Proceedings dated 21st November last, No. 4083.

(Signed) H. FORBES,
Acting Secretary to Government.

Extract from the Proceedings of the Executive Council of the 4th day of December 1857

No. 1234

3/1234/57
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From

F. Sydney Smyth Esqr.
Advocate General

To

J. Eyre Esqr.
Chief Secretary to Government
Port St. George

Sir,

With reference to Extract Minutes of Consultation dated 26th November 1857, No. 1234 received by me this day, I have the honor to state that in my opinion the course pursued by the Collector of Sea Customs is not authorized by the 17th Section of the 5 and 6 Victoria. Chapter 46.

2. Mr. Underwood seems to have been misled very naturally and excusably, by the order of the Lords Board of Customs. That order is quite correct as regards the United Kingdom, but it is evidently founded on the 23rd and 24th Sections of the 5 and 6 Victoria. Cap. 47, which apply solely to the United Kingdom, and not to the British dominions generally, as 5 and 6 Victoria. Cap. 45 does.

3. The 17th Section of the 5 and 6 Victoria. Chapter 45, prohibits the importation of foreign reprints of English copyright works into the British dominions for sale or hire — not absolutely. The late act (6 & 6 Victoria. Chapter 47 Section 24) prohibits their importation into the United Kingdom "absolutely," the preceding Section

section stating that "great abuse has prevailed with respect to the introduction into this country for private use of such works reprinted abroad". Now this later Act was wholly unnecessary if the former one could bear the construction which Mr. Underwood contends for.

It is very probable that the present state of the law on this point as regards the importation of such reprints into India has escaped the attention of the Legislature, for it is certain that the 7 and 8 Victoria Chapter 12, and the 15° and 16° Victoria Chapter 12 confer a greater protection in this respect on foreign authors who await themselves of these acts, than is extended to British authors, though the preambles profess to grant foreigners only the same degree of protection; but Courts of Law can only act upon what the Legislature has said.

5. It has limited its prohibition (by act 5 and 6 Victoria Chapter 45) of the importation of such books into the British Dominions to the case of books imported "for sale or hire", and no officer of Customs can expunge those words, or treat them as a nullity, and convert the limited prohibition into an absolute prohibition.

6. The Legislature afterwards made

4/1895
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made the prohibition absolute as regards the United Kingdom — but omitted, whether intentionally or otherwise I cannot say, to do so as regards India & the Colonies.

I have the honor to be Sir
Your most Obt. Servt.

Fort St. George
28th November 1857

Jas. Ste
Advocate General

For Original

2 Ltrs to Com 1st Dec/57 No 19-20

Revenue 1857 Dept
2 Ltrs to Com 15 December.

No 1476

From the Advocate General.

Dated 28th November 1857
Rec'd 30th "

Stating that in his opinion the course pursued by the Coll.r of Customs relative to the Seizure of a case of Copyright Works imported by the Rev.d Archibald M.c Gregor Hall is not authorized by the 17.th Section of the 16. Victoria Chapter 45 & explaining his reasons for such opinion.

No 1295 - 14th December

With an order

No 1295

Ordered to be communicated to the Board of Revenue with reference to their Proceedings dated 4th November last No 4053 - &c

Fort St George
14th Dec.r 1857.

I copies to the Bd. of Rev.e Circ.r

No 239 & 240

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