M.R.O. 14—10,000—21-4-22.

# MADRAS RECORD OFFICE.

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## Government of Madras.

Revenue **DEPARTMENT.**

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|---|---|
| G.O. No. 1960 | Press<br>~~Mis.~~ |
| 136-137 | |
| Dated 9-10- 1861. | |

***Not to be folded or roughly handled***

No. 136. Read the following letter from JOHN MILLER, Esq., Acting Government Solicitor, Madras, to J. D. SIM, Esq., Acting Chief Secretary to Government, dated Madras, 27th September 1861, No. 723:—

SIR,

With reference to my letter of the 24th instant, No. 717, on the subject of the action instituted in the Supreme Court for the recovery of possession of the "Ankusagiri" Polliam, I have the honor to forward herewith a copy of the Advocate General's Opinion.

COPY OPINION.

1. Having now received the reply of Government to the Government Solicitor's letter, dated 24th September, I proceed to state the opinion which I have formed after the best consideration I can give this important matter.

2. I agree with Government that their decision regarding the right of succession to the "unsettled" Polliam of Ankusagiri, is an act of State, and as such not questionable by any Municipal tribunal, but the difficulty is how to defend that right effectively *before* it is attacked.

3. Government is *not* made a party to the present action. The action is against Richard Roe, who is called the casual ejector. If Government do not appear to the action, it can only be entered for trial *ex parte* as against Richard Roe, and only upon affidavit of service of the plaint upon the Tenant *actually in possession*, unless the Court, upon affidavit that the Tenant *actually in possession* has absconded &c., &c., and therefore *cannot* be *personally* served shall grant a rule Nisi for substituted service.

4. Neither of these affidavits can, in my opinion, be truly made; if an untrue affidavit be hazarded, then the party making it and his suborner, run the risk of an indictment for perjury and subornation. If the truth be told, I think the Court would not permit the trial to proceed *ex parte*.

5. Even if judgment be obtained it will be a judgment against Richard Roe, and I am of opinion the Lessor of the Plaintiff cannot make any thing, in a case like the present, of such a judgment.

6. The course suggested by Government is not practicable. The action of ejectment is throughout a tissue of fictions, and the Court *has* jurisdiction over the fictitious Richard Roe, so that a demurrer will not hold. Were Government to interfere at present, the Court's answer would probably be, "This notice is a mere nullity, Government is not damnified by it."

7. It is in fact a mere experiment, and the legal advisers of the Lessor of the Plaintiff are only anxious to get Government into Court; a step which I am clearly of opinion Government should avoid taking at present.

8. I shall, with the assistance of the Government Solicitor, watch the proceedings, and whenever the parties commit themselves I shall either prosecute them for perjury or subornation, or move to set aside their proceedings for irregularity, as the case may admit of. At present I should say to Government, "Your strength is to sit still."

(Signed) T. SYDNEY SMYTH,
*Advocate General.*

*26th September* 1861.

(True Copy.)

(Signed) JOHN MILLER,
*Acting Government Solicitor.*

No. 137. ORDER THEREON, 9th October 1861, No. 1,960.

The Government leave the protection of their interests to the Advocate General.

(Signed) J. D. SIM,
*Secretary to Government.*

25th Sept. 61 No. 230 – 231.

Copy in a Letter to England
of 5th March 1864 No 76

38 – A 69 +

No 136 + 137

2d October 67th

Rec'd 1861 Dec.
Pro: of Govt for October.
No 2326

From
The Actg. Govt Sec.y
Madras

To The Actg. Sec.y
to Govt — Madras.

Dated 27th
Rec'd 30th September

No 723.
1 Enclosure
No

Forwards a Copy of the
Advocate General's Opinion
on the subject of the Action
instituted in the Supreme
Court for the recovery of
possession of the "Anta-
segiri" Poleium —

With an order
No 1960. 9th October

No 1960

The Govt leave the
protection of their interests to
the Advocate General.

Fort St George
9th Oct 61

2 Copies to the Govt Solicitor.