

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	1544	Press Mis.
<i>91-82</i> Dated	11-10-	1870.

Not to be folded or roughly handled*26/5/20*

*Proceedings of the Madras Government, Revenue Department,
11th October 1870.*

No. 91. Read the following Proceedings of the Board of Revenue, dated 4th October 1870, No. 5,970 :—

Read the following letter from the Collector of Sea Customs, to the Acting Secretary to the Board of Revenue, dated Madras, 19th September 1870, No. 894.

REFERRING to the Proceedings of Government, No. 1,166, dated 5th August 1870, authorizing the Government Solicitor to prosecute G. Narasimloo Chetty for fraudulently attempting to pass a larger case of gold thread than the one originally entered in his Bill of Entry, I have the honour to inform the Board that the case came on for trial before Mr. T. G. Clarke, the Senior Magistrate, on the 30th ultimo.

2. The evidence for the prosecution was considered sufficient by the Magistrate, who has since stated that he was prepared to convict the prisoner on the merits of the case; but the counsel for the defence put in a plea that a month's notice was required to be given to the prisoner, under Section 214 of Act VI. of 1863, which plea was accepted by the Magistrate, and the case was dismissed.

3. On the Government Solicitor's* reporting to me the result of the trial, I requested† him to obtain the opinion

* Enclosure A. Letter from Government Solicitor, 31st Aug. 1870, No. 475.

† Enclosure B. Letter to Government Solicitor, 7th September 1870, No. 823.

of the Advocate-General on the construction the Magistrate had placed on Section 214, as I had no doubt that Section 214 did not apply to persons prosecuted for infringing the provisions of the Act.

4. I also requested the Government Solicitor to consult the Advocate-General as to what further proceedings should be taken in the case.

5. I beg to forward herewith the Advocate-General's opinion,‡ and to request that the Board will be good enough to obtain the sanction of Government for the Government Solicitor to pursue the course recommended by the Advocate-General.

‡ Enclosure C. Letter from Government Solicitor, No. 499, 17th September 1870, with Advocate-General's opinion.

ENCLOSURE A.

From the Government Solicitor, to the Collector of Sea Customs, dated Madras, 31st August 1870, No. 475.

I HAVE the honour to inform you that in accordance with the Order of Government, dated 5th August 1870, No. 1,166, Revenue Department, I appeared yesterday at the Town Police Court, and prosecuted G. Narasimloo Chetty, under Section 216 of the Customs' Act No. VI. of 1863, for fraudulently altering a document relating to the Customs.

2. The case for the prosecution was entered into, and all the witnesses examined; at its close, however, the Counsel for G. Narasimloo Chetty raised an objection upon a point of law, namely, that Section 214 requiring a month's notice of an intended action, suit, or other proceeding under the Act, to be given to the person to be proceeded against, applied not only to actions, suits, or other proceedings to be brought against officers of customs or other persons employed in executing the provisions of the Act, but also against persons infringing its provisions, and I much regret to inform you that the Magistrate held that such notice was requisite, and that not having been given, the objection was fatal to the prosecution, and in consequence he dismissed the

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case with costs. I may mention that the Magistrate intimated that if the case could have been decided on its merits, he would have convicted G. Narasimloo Chetty of the offence with which he was charged.

3. I have paid to G. Narasimloo Chetty's Attorney the costs awarded by the Magistrate, namely, Rupees 122-8-0.

ENCLOSURE B.

From the Collector of Sea Customs, to the Government Solicitor, dated Madras, 7th September 1870, No. 823.

With reference to our communication on the subject of your letter of the 31st August 1870, No. 475, in G. Narasimloo Chetty's case, I have the honour to request you will be good enough to consult the Honourable the Advocate-General as to what further proceedings should be taken in the case.

2. I cannot believe that the Magistrate's ruling, that "under Section 214 a month's notice must be given to persons infringing the provisions of the Act," is correct in law.

3. The Section, in my opinion, undoubtedly applies only to officers of customs, as it refers to anything done in pursuance of this Act; persons offending against the Act are not doing things in pursuance thereof.

ENCLOSURE C.

From the Government Solicitor, to the Collector of Sea Customs, dated Madras, 17th September 1870, No. 499.

I HAVE the honour to acknowledge the receipt of your letter of the 7th instant, No. 823, requesting the Advocate-General's opinion as to further proceedings to be taken in G. Narasimloo Chetty's case.

2. I submitted the matter for the consideration of the Advocate-General, and have also conferred with him thereon; and

3. I now forward a copy of his opinion.

OPINION.

I HAVE looked at Section 214 of the Sea Customs' Act. It appears to me to be evident at a glance that it applies only to persons who do something *in pursuance* of the Act. It is for the protection of officers and others carrying out the provisions of the Act. It is the ordinary protection clause for officers. By the construction which the Magistrate has put upon the Section, he has given protection to those who act *in contravention* of the Act. How can it be said that falsifying an invoice is an act in pursuance and not in contravention of the Act?

2. To give wrong-doers the protection of a month's notice would be a positive premium for fraud. As well might it be said that if a month's notice is required under the Police Act, a person who assaulted a Policeman in the execution of his duty was entitled to a month's notice.

3. The proper course for bringing the judgment under review is to apply, as soon as the vacation is over, for a *Mandamus* to compel the Magistrate to try the case.

4. The case appears to me on all fours with *R. V. Blanchard*, 13 R. B. R., p. 318, and the cases therein cited, as well as others of a later date which show that the Queen's Bench, and consequently here the High Court, will issue a *Mandamus* to a Justice to try a case as to the merits of which he has pronounced no decision, but has declined to decide on the mistaken notion that he has no jurisdiction, and that the parties are *coram non judice*, among other reasons, for want of a notice which the law does not contemplate being given.

15th September 1870.

(Signed) J. B. NORTON,
Advocate-General.

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SUBMITTED to Government, with the request that the Government Solicitor may be authorized to apply to the High Court for a *Mandamus* to compel the case against Narasimloo Chetty to be heard on its merits.

2. The case was dismissed not on its merits, but on account of a strange and obvious misapprehension of the law.

ORDER THEREON, 11th October 1870, No. 1,544.

No. 92.

Separate Revenue, No. 7.

Customs.

ORDERED accordingly that the Government Solicitor be instructed to apply for a *Mandamus* to enforce the trial of the case by the Magistrate.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To the Board of Revenue.
.. the Government Solicitor.

Ed. E. C. Shunker.

No 1544

8th October 1870

Ordered accordingly
that the Justices
be instructed to apply for

a mandamus for a trial
of the case /

PD

N?
to enforce the trial of
the case by the Magistrate
N.

Perhaps this order
should go out in the
Indicinal Dept? No. R.D.
W.H.

A. J. D.

14 Folios of Rev. Dept 15
14 Govt. Solicitors

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REVENUE.

THE BOARD OF REVENUE.

Decd. Encl.

Dated October, 11th.

G. O. 11th October 1870, No. 1,514.

OCTOBER.
Nos. 91-92.

Attempt to pass out of Customs-house a larger
case of gold thread.—Government Solicitor
authorized to apply for a Mandamus to enforce the
trial of G. Narasimha Chetty by the Magistrate.