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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

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Dated 6.6.1863 ~~11~~ .

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
6th June 1863.

No. 54. Read the following letter from the Honorable T. SYDNEY SMYTH, Advocate General; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 16th May 1863.

I have the honor to report, for the information of His Excellency the Governor in Council, the result of proceedings commenced on the 1st February 1859, by one C. Moonesawmy Chetty against the Secretary of State, Meerza Mahomed Thayer and Jooee Bala Prasad, on the Equity side of the late Supreme Court for certain Tanjore Bonds totalling Pagodas 62,000, with large arrears of Interest, alleged to be due under awards of the Tanjore Commissioners.

2. The plaintiff's suit was dismissed with costs, on the 23rd July 1862, but in this case, as in too many of those commenced against Government, the award of costs is a mere form; for it generally turns out that the person put forward as Plaintiff is a mere man of straw,—either really such, and selected on that account, or one who has carefully reduced himself, ostensibly, to that condition, by mortgaging, or in some other way masking, all his property beyond what is required for his own expenses in the suit.

3. The plaintiff had no connection originally with the Rajah of Tanjore, or his Bonds; nor was he even a claimant before the Tanjore Commissioners, but he put himself forward in his Bill as having lately bought up the claims of others; which, however, at the hearing, he said only meant that he had given Bonds and Promissory Notes, payable in the event of his succeeding.

4. The subject of his claim was cut down, by the time the suit came to a hearing, to four Bonds of the Government of India, at 4 per cent., commonly called Tanjore Bonds, totalling Pagodas 15,339-35-11, with arrears of Interest, which, on the 14th December 1846 and 2nd January 1847, had been issued by Sir Vansittart Stonhouse, then Accountant General and Provisional Member of Council, under orders from Government, to one Hurkissen Doss Sahookar, who produced Powers of Attorney, signed or purporting to be so, by Juggurnath, Jaynarrain, Madhoo Sahee and Benee Sahee, then or lately of Benares, the parties who, upon the best information that could then be obtained by Government, after repeated and careful inquiries from the Civil authorities at Benares and Patna, appeared to be the representatives of the parties declared entitled under the awards of the Tanjore Commissioners, in London, dated December 1836, as the alleged grandchildren and as the existing representatives of the Kotee of Gopal Doss Biju Chund of Benares, who in 1795 had lent, by his agents, large sums to Ameer Sing, sometime Rajah of Tanjore.

5. The inquiry respecting these parties, and the validity of their claims, had been commenced, through the medium of the Government of Madras, and through references made by it to the Government of Bengal, long before Sir V. Stonhouse became Accountant General; and in fact he merely followed up the proceedings which the records of his office showed had been commenced by his predecessors, with the knowledge and sanction of Government, but which had not been followed up to any conclusion, until he resumed them.

6. A very plausible case was certainly made out for the parties, whose Attorney this Hurkissen Doss claimed to be; and after security had been taken from him (which ultimately, however, I believe proved to be worth very little) the Tanjore Bonds, and a large amount of interest in ready money, were made over to him; although my predecessor, Mr. George Norton, had strongly advised that no such payment should be made, except under the Decree of a competent Court; advice whose soundness was soon shown.

7. The Attorney Hurkissen Doss no sooner received the Bonds and money then he disappeared, and has never since been traced; the Bonds have never since been presented for payment or for interest, and never reached the hands of any of the parties for whom they were intended.

8. Rumours soon arose of bribery and corruption, connected with these payments, among the leading Native employés in the Accountant General's Office, who seem to have had the bulk of the ready money, due for arrears of interest on these Tanjore Bonds, divided amongst themselves.

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9. Several were dismissed, and declared incapable of serving Government again, especially T. Comarasawmy Moodelly, Head Book-keeper, Mr. Home, Manager of the Bond Department, Puttabee Chitty, a very shrewd and unscrupulous Native, now or lately flourishing in the Railway Department, and one Gootoor Soobah Row, another clever Native, who had served under Sir V. Stonhouse throughout nearly the whole of his long official career, and obtained his entire confidence; and whom Sir V. Stonhouse had consequently made Head Financial Accountant, and who, if I recollect rightly, was then the Manager of the Accountant General's Office.

10. Previously to this appointment, the whole of that important office had been for many years almost a sort of close borough in the hands of C. Armoogum Moodelly, who was long Manager there, and for whom Mr. Orr, when Accountant General, had obtained a pension of unprecedented magnitude. Not content with this, Armoogum had filled numerous berths in the office with his own relations, connections, and dependants, and in fact every one in the office was more or less under his thumb. The deference, and the presents, which he exacted and received, would hardly be believed. Nay more, if even the Accountant General or Deputy Accountant General interfered with this clique, and thwarted the wishes of its leading members, it was observed that some trouble was sure, at no distant period, to come across their path.

11. The charges brought against Mr. Crawford, Sir V. Stonhouse, and Mr. Prendergast, are all of them generally, and in my opinion truly (at least as regards the two former) believed, to have originated in their having interfered with the interests or wishes of C. Armoogum Moodelly, or his son Sooboo. I rather think, Armoogum had another son also in the office.

12. One thing was clearly shown, by letters produced at the time (1847) that the Armoogum party only wanted G. Soobah Row to be provided for elsewhere—any where out of the Accountant General's office—and that, if this had been agreed to, no charges against him or Sir V. Stonhouse would ever had been heard of; but when the former refused to move, and the latter upheld an old servant who had long enjoyed his confidence, nothing was too bad to be said of either; and a clever but penniless and most unscrupulous writer connected formerly with the Press at Home, and then with the Madras Press, was hired to abuse Sir V. Stonhouse in the Athenæum, and to compose, print, and send Home to the Court of Directors, a pamphlet containing most unscrupulous libels against him.

13. Sir V. Stonhouse's honor stood too high to be touched by any such slanders; but it was understood that he showed himself wanting in discretion and temper in certain answers, which he permitted himself to send in to Government, in reply to certain Minutes written about these matters, where he had been rather severely handled by one or two of the then Members of Council, and that on this account his appointment as Provisional Member of Council was cancelled.

14. The suit in Equity, upon which I am now reporting, referred largely and at much length to the wrongful payment (as it alleged) of these Tanjore Bonds, and of the interest thereon, and to the corrupt dealings in the Accountant General's office, and prayed that Government might be decreed to make good the whole, with interest to the present time, to the present Plaintiff.

15. I caused a commission to be issued on behalf of Government to take evidence at Benares and elsewhere; and the way in which that commission was executed was of itself enough to show the extreme danger of Government acting upon any information obtained in the ordinary way from Mofussil channels, even official ones. A great part of the return was *not evidence at all*; the merest hearsay.

16. The Plaintiff however had to make out his case before he could entitle himself to a Decree, and this I was able to show he failed to do; but he came near enough, in some parts, to make me doubt at one time whether he might not succeed; the more so, as his evidence, and indeed even that obtained by Government under the commission in this suit, showed that, on more than one point, the information upon which Government had come to the conclusion that Juggurnath, Jaynarrain, Madhoo Sahee, and Benee Sahee, were the legal representatives of the Kotee of Gopal Doss Biju Chund of Benares, and that Hurkissen Doss was their duly constituted Attorney, was defective and unsatisfactory.

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17. Nothing can show more clearly than this case does, how extremely unsafe it is for Government ever to pay away such large sums of money, except upon an absolutely clear and unquestioned title, or a Decree of a competent Court.

18. In this case the references had been frequent, the inquiries most particular, and the Civil authorities at Benares, Patna, and elsewhere, had reported, (*i. e.*, given their *opinion*, not judicial however, upon the information, *i. e.*, hearsay collected by their Native Officers) and sent extracts from their Diaries, and had even attested Powers of Attorney as executed in their presence, (*one* such signature, however, being clearly *disproved* by the party himself, and others) and done all they could to lead Government to believe that the title of the then claimants was valid.

19. The answer of Government, however, to these claimants ought clearly to have been—"If your proofs are, as you allege, so clear that they ought to satisfy Government, lay them before a Court of Law or Equity; we desire no better than to be able to pay the party really entitled; but it is not our duty to decide on disputed titles; and if you cannot satisfy a Court that your title is valid, you cannot complain that we object to act upon it."

20. It may be perhaps as well to add a few particulars, showing how impossible it is for Government to place the least confidence in even the apparently best founded Native claims, however backed up even by official documents and Acts of Court. It really seems as if no length of time was too great, no delay or difficulty too tedious, to prevent Natives, especially of the Sahookar class, from forecasting and divising the means of successful fraud, after suspicion shall have been lulled asleep, judgments, and the like, obtained exparte, and all evidence to meet them destroyed by death, and lapse of time.

21. The Plaintiff's claim rested upon several wills; all of which, except perhaps one, there is the strongest reason to believe were forgeries, concocted after the settlement of the Rajah of Tanjore's debts had been undertaken by Government, in 1824. Gopal Doss Biju Chund of Benares is said to have died on the 15th December 1795, leaving a will, which, however, was never produced or proved, dated 9th November 1790; under which his widow Ruthna Bhoye (a very mythical personage so far as the Kotee is concerned) is said to have managed his Kotee, through her son-in-law. She is alleged to have written a letter, dated 4th April 1824, assigning the Tanjore Bonds in question to one Jayaram Doss of Madras, in *part* payment of large sums said—but never proved—to have been paid by this Jayaram Doss out of his private funds, for the wealthy Benares Kotee, with whom he had no connection whatever. This Jayaram Doss died on the 14th June 1813; and on the 25th March 1814, one J. Sookoo Davay unopposed, obtained Probate as the Executor of his alleged will. In 1825 J. Sookoo died at Pondicherry where he seems to have run from his creditors; and on the 26th March 1832, *i. e*, after a lapse of *seven* years, Probate of his alleged will was obtained, unopposed, by J. Ganasa Prasad. Twelve years later, 3rd December 1844, this same J. Ganasa Prasad, obtained Probate, again unopposed, of a will said to have been executed on the 9th February 1828, or sixteen years before, by Gopal Doss Biju Chund's, Benares, widow, Ruthna Bhoye—which was merely a recital and confirmation of her alleged former assignment of these Tanjore Bonds.

22. Had this will of 1828 been genuine, there can be little doubt that it must have reached J. Ganasa Prasad before 1832, the date at which he obtained Probate of the alleged will of Josee Sookoo; and doubtless he would have proved both wills together, had the former really been then in existence, instead of waiting twelve years longer before doing so. The fact is, however, that Ruthna Bhoye's alleged assignment might have been contested at any time; so that, when it transpired, in 1836-37, that the Tanjore Commissioners had made their awards about these Tanjore Bonds, it became desirable to have some stronger documents. A Probate was obviously the best suited for this purpose; for, once granted, it cannot be impugned until revoked by a long and expensive suit; and, moreover, no one is considered to have a *locus standi*, entitling him to dispute a will, unless he can show an interest in the matter; and it is self-evident that unless Government had then had the spirit of prophecy, so as to divine the fraudulent purposes for which these Probates were obtained, they never could have shown any interest sufficient to entitle them to caveat, or put the alleged Executor to proof *per testes*.

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23. I cannot but think that the interests of society require that in the case of Native wills, unless made in favor of a wife, son, or daughter, strict proof should be required in every case; and that there should be some person always to oppose the grant of Probate, as the Devil's Advocate at Rome opposes claims to canonization, or at least that the Court should have the power of calling upon the Advocate General to intervene (as the Court of Divorce and Probate in England does upon the Queen's Advocate in suspicious divorce cases) and have power to award costs out of the Estate.

24. The foundation of this suit having been such as I have described, it will perhaps suffice to add that the superstructure was worthy of the foundation.

25. I deferred reporting at length upon the case at the time, from believing that a copy of the Court's Judgment was to be furnished to the Government Solicitor, and I waited for it. Upon recent inquiry, however, I learned that the Judgment had been delivered from notes, and that no such copy had been given, or could now be obtained. I have therefore referred to the pleadings and my own notes.

No. 55. ORDER THEREON, 6th June 1863, No. 880.

The foregoing letter will be communicated to the Accountant General, and also to the Legislative Department, for the consideration of the Committee of the Council for making Laws and Regulations on the Honorable V. Sadagopah Charlu's "Bill to declare more precisely the legal "efficacy of Wills among Hindus, and to legalize the alienations of self-acquired property of "Hindus in land."

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Encd. T. McMoorty.

Pros 8th Oct 1861 - Nos 25 to 27
" 14th Nov " - Nos 60 - 61
" 31st Jany 62 Nos 212 213.
" 17th Feby " - Nos 48 to 50
" 4th March " - Nos 27 - 28.

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PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the Advocate General Madras.

(Here Enter 16th May 1863)

Order thereon 6th June 1863 No 880.

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To the Accountant General.
— Legislature Department.
— Advocate General

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Judicial 1863. Department.

No. 880

PROCEEDINGS OF GOVERNMENT.

Dated 6 June 1863

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