M.R.O. 1—55,000—18-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT

G.O. No. ~~[illegible]~~ Press ~~Mis.~~

Back No 31-32

Dated ~~31—12 1850~~ 6—1—1851

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In the Supreme Court of Judicature at Madras.

(In Equity) Between Kamachee Boye Sahaba
Plaintiff
and
The East India Company
Defendants

Interrogatories for the examination of the above named Defendants in answer to the Plaintiff's Bill of Complaint—

1. Was not Seevajee in the Bill named in his life time the Rajah of Tanjore and did he not depart this life at Tanjore aforesaid on or about the 29th day of October in the year 1855—or when else Intestate and did he leave any and what male issue by name or any and what Son by adoption and who by name and descent or any and what Brother by name him surviving or how otherwise—

2. Was not the said Seevajee in his life time a Hindoo of the Sudra Caste or how otherwise—

3. Was not the said Seevajee in or about the month of May 1831 or when else duly and lawfully married to the Plaintiff and did he not leave her his eldest and senior widow and the first married in point of time among his surviving widows him surviving or how otherwise

4. Was the said Seevajee a Member of any and what undivided Hindoo family and of whom composed or how otherwise—

5. Was not the said Seevajee subsequently to his marriage with the Plaintiff and about 3 years previous to his decease or when else duly and lawfully married to 17 or how many other wives and did not two of them named respectively Amaraye Saib and Soomooraye Saib or who else predecease him without leaving any issue, and were not the other 15 named respectively Sumraye Saib, Budraye Saib, Sooraye Saib, Soobraye Saib, Mahraye Saib, Indraye Saib, Ooraye Saib, Govoorraye Saib, Numraye Saib, Tharaye Saib, Gunnraye Saib, Amraye Saib, Lasaraye Saib, Soovooraye Saib and Tharaye Saib and were they not married in the order last above set out or in some and what other order and are they not now alive and are they not Hindoo Inhabitants of and resident at Tanjore aforesaid beyond the Jurisdiction of this Honorable Court or how otherwise and when and where did any or either and which of them by name die or what had become of such as are not now resident at Tanjore as aforesaid—

6. Did not the said Seevajee leave also 2 daughters only or how many and who by name him surviving that is to say Rajeea Boye Ammana Regum his eldest Daughter and Oopaya Mohamma [illegible] his younger daughter and were they not respectively born of a former wife one Sydumbah Boye Saheba or who else who predeceased the said Seevajee and are they not also Hindoo Inhabitants of and residents at Tanjore aforesaid or how otherwise or what has become of them—or either of them—

7. Was not the said elder daughter in the life time of the said Seevajee married to one Seetharam Saib and did she not thereby according to Hindoo Law become estranged from the family of the said Seevajee or if not why not and is she not resident at Tanjore aforesaid or how otherwise—

8. Is not the said younger Daughter still an Infant under the age of 16 years that is to say of the age of 10 years or thereabouts or of what other age and is she not a Hindoo Inhabitant of and resident at Tanjore aforesaid or how otherwise

9. Did not the said Seevajee also leave him surviving his Mother Aroo Sahiba and is she not likewise a Hindoo Inhabitant of and resident at Tanjore aforesaid or how otherwise.

10. Was not the said Seevajee at the time of his death possessed of and entitled as of his own right and private Property and distinct from and independent of the property rights claims and privileges appertaining and belonging to the Raj of Tanjore to a large Estate both real and personal or how otherwise and did not the same consist of houses Lands Jewels Cash Silver Plate Gold Copper and Brass Utensils Cloths Furniture Books Arms Equipages Carriages Elephants horses and Ponies Cattle Carts wild animals Birds and other Sundries or of what did the same consist and set forth full and true particulars and descriptions of the same and was not the said Estate so left as aforesaid of very great value that is to say of the value of many and how many Lacs of Rupees or what was the value thereof and have not the particulars and value thereof by and in consequence of the acts of the Defendants and their Officers as hereinafter and in the Bill mentioned been concealed from and are they not unknown to the Plaintiff or how otherwise.

11. On the death of the said Seevajee did not the Plaintiff as his Eldest Widow according to Hindoo Law become and is she not entitled to inherit and possess his private and particular Estate real and personal and to administer the same in a due course of administration or how otherwise and if the Defendants shall pretend the contrary then set out how they make out the same and their grounds and reasons for disputing the Plaintiff's right to such Private and particular Estate.

12. Have not the Defendants and had they not at the time of the death of the said Seevajee or at some and what other time a full knowledge of the state of the Family of the said Seevajee and of the Plaintiff's rights or how otherwise and notwithstanding the same and the facts and premises above mentioned and in fact did not the said Defendants The East India Company who are subject to the Jurisdiction of this Honorable Court by their Officers Servants and Agents or some and which of them and who by name acting by their orders and in particular by the Collector and Subordinate Officers of the Collectorate of Tanjore and by Henry Forbes Esq.re Commissioner of Tanjore begin upon or shortly and when after the death of the said Seevajee to interfere and intermeddle with the Private and particular Estate and Effects of the said Seevajee and by such their intermeddling and other acts and from their power and control over the Country did not they or their Officers Servants and Agents or some and which of them prevent the Plaintiff from receiving and possessing the same and have not such

Officers Servants and Agents as aforesaid or some or one and which of them by name on the contrary refused and do they not still refuse to deliver the same or any part thereof to the Plaintiff although frequently called upon and requested so to do.

13. Have not such Officers Servants and Agents and in particular the several persons hereinbefore mentioned or some and which of such Officers Servants and Agents or persons as aforesaid and whom by name and had they not and when full knowledge of the state of the Family of the said Seevajee and of the Plaintiffs rights as aforesaid or how otherwise.—

14. Have not the said Officers and Servants and Agents of the said East India Company or some or one and which of them by name under a false Colour and pretence of taking possession of the state or Throne Property of the said Raj and that the same is part of the Revenue of the said East India Company and under a false pretence of collecting the Revenue of the said East India Company or under some and what colour and pretence and in fact possessed themselves of the whole of the Private and particular Estate and Effects real and personal of the said Seevajee [illegible] or of some and what part thereof and have they not made or are they not making full and particular lists and Inventories thereof and have they not sold and disposed of and destroyed a considerable and what part thereof and have they not received the proceeds of the sale and disposal thereof or some and what part thereof and do they not retain the same in their hands and threaten and intend unless restrained by the Injunction of this Honorable Court to sell and dispose of the remainder thereof or some and what part thereof and to appropriate the proceeds thereof to their own use or how otherwise and are not the said Defendants their officers agents and Servants or some or one and which of them well aware that the Private property of the said Seevajee never did and does not belong to the said Defendants and does not and never has formed part of their Revenue and never has been and is not applicable to the purposes thereof and if the said Defendants shall pretend the contrary then set forth how they make out the same and their grounds and reasons at large.—

Let

15. Set out a full true and particular account of the Property Estate and effects of the said Seevajee possessed by the Defendants the said East India Company or by their Officers and Agents or any or either of them in their behalf and of the value thereof and of the Property Estate and Effects so sold and disposed of as aforesaid and of the amount realized by such sale and disposal and what has become of the same and also of all other Property of the said Seevajee not possessed by them with the reasons why the same has not been so possessed and of the value thereof

16. If the Defendants the East India Company shall pretend or assert that any part of the Property Estate and Effects left by the said Seevajee at the time of his death appertains or belongs to the Raj of Tanjore or was then in the nature of State or Throne Property or is part of or applicable to the purposes of the Revenue then in the account aforesaid distinguish such property from the private Estate and Effects of the said Seevajee and set forth how the Defendants make out the same so to belong and appertain to the said Raj or to be part of or applicable to the purposes of the Revenue and how and when the same came to be invested with such title or state or other character either otherwise.

17. Are there not among the private property left as aforesaid and possessed by the said Officers Servants and Agents of the said East India Company certain Jewels and other Costly Articles which have a specific and particular value in the minds of Hindoo Widows and of the Plaintiff in particular and the loss or deprivation of which could not be compensated by a pecuniary recompense and do not the Defendants their Officers Servants and Agents or some or one of them intend to dispose of the same or some and which of them or how otherwise

18. Do not the said Defendants The East India Company withhold from the Plaintiff the private Estate and Effects of the said Seevajee possessed by them as aforesaid from vexatious Motives and not from any reasonable doubt as to her being the party entitled to receive and possess the same or set forth how the Defendants make out the Contrary with their grounds and reasons at large.

19. Have not the Defendants the East India Company by their Officers Servants and Agents or some or one and which of them seized and have they not in their possession custody or power divers books letters papers documents Cadjans copies of letters Agreements lists of Jewels Inventories

Vouchers Memorandums Entries and Writings by which the truth of the matters aforesaid would appear if the same were produced and set forth a full true and particular list and description of the same. —

The Defendants The East India Company are required to answer all these Interrogatories. —

Edward Salmon. —

John Shaw
Plts Solr

[illegible] 13 [illegible]
Act 1 of 1837 Paras 20 @ 37

Supreme Court Madras
(In Equity)

Kamachee Boye Saheba
vs
The East India Company

Copy,
Interrogatories for the Examination of the Defendants in answer to the Plaintiff's Bill of Complaint

Q. 6.545
6-1-57

Opinion.

The legal questions involved in this case are full of difficulty. I will endeavour to point out the principles on which I think the several questions laid before me should be determined. But even when the principles are ascertained, the right application of them to the details of each claim will be, I fear, very difficult. And I regret that my want of local knowledge, and the absence of precise information as to the circumstances attending the different kinds of property involved, prevent me from advising on the details of the case as confidently or as fully as would be desirable for the guidance of the Government.

With respect to the questions (on which, it is rightly observed in the case, it is necessary to form some opinion in order to arrive at a solution of the questions immediately pressing for an answer) as to the effects of the Treaty of 1799, coupled with that of 1792, and with the relations of the East India Company with the Rajahs of Tanjore both before and after those Treaties, I do not think that the Treaty of 1799 can be treated on the one hand as constituting an absolute unreserved cession of the whole territory of the State of Tanjore to the British Government; or on the other hand as leaving the Sovereignty and beneficial interests in that Territory wholly unaltered and unimpaired and as merely constituting the East India Company agents and Trustees of the Revenues subject to account for the surplus proceeds to the reigning Family - In fact it would be extremely difficult to give any accurate definition according to the ordinary rules of international Law of the relations between Great Britain as represented by the East India Company and the state of Tanjore as they existed under the Treaty of 1799; and it is much more easy, (and will I believe be found practically sufficient for the present purpose) to describe those relations negatively by what they were not, than affirmatively by what they were. Dependent as the Rajah of Tanjore became upon the East India Company, and deprived as he was of all the substantial functions of Sovereignty, I do not think that he ceased by virtue of the Treaty to be a Sovereign Prince, or that during his reign, or the reign of his Successor, the territories of the state of which he was the nominal Head, absolutely vested by cession in the East India Company - The Treaty professes to treat him as an ally, and a Sovereign, though subject to restrictions on his sovereign rights - the Proclamations of the British Government treat him in the same light, and although he submitted to be placed lower on the Scale of Sovereigns, than any of the dependent tributary or Semi-Sovereign Monarchs whom the writers on the Laws of Nations treat of, yet I do not think the Treaty can be construed as amounting to an extinction of the State of Tanjore, or to an absorption of its territories into those of the East India Compy.

But the relations between the Rajah as representing the State of Tanjore, and as receiving the crown from the hands and holding it under the protection of the East India Company, and the Company were such as according to the practice that has obtained in India during the last century entitled the Company, as representing the dominant State, upon the failure of the dynasty which they had placed on the Musnud, to assert the rights of Sovereignty over the dependent state, & to take possession of it, as lapsed to the British Crown - The practice is of course too firmly established now to admit of question; nor could its validity be under any circumstances the fit subject of question in a Municipal Court -

But it may be noticed with reference to the questions suggested by the case, that however difficult it might be to reconcile with the system of International Law as professed in Europe, the original interference with the State of Tanjore, by which the British Government first acquired the position of the dominant State, and assumed the power of placing a Sovereign on the throne and of altering the whole internal constitution of the State, yet where that position has been once acquired; where the one State has permitted the other to depose and enthrone Sovereigns, and where the two States are connected by such a Treaty as that of 1799, the right of the Dominant State to enforce the lapse of the Inferior Sovereignty, and to possess itself of the country on the failure of Successors in the line of the dependent Sovereign, whom it has itself created, is, as far as I can judge, in strict conformity with the general Law of nations-

I have expressed my view of the effect of the Treaty and of the relations between the two States, not because I think the point can come directly in issue in the litigation now threatened, but because I do not think it necessary in order to support the validity of the present occupation of the territory by the Company to resort to the hypothesis of a total and absolute cession of the country in 1799; and because I think it important in that litigation for the Government to stand upon the position (which it appears to me to have already assumed although some doubts on the subject appear from the case to have been thrown out) that the Treaty of 1799 did not operate as an immediate out and out cession of the territory, that the Sovereignty remained in the late Rajah until the extinction of the line by his death and that the right of the Company to enter upon the territory as its own absolute Domain and

to

to treat it as part of British India, accrued upon his death-

The right of the East India Company to take such possession can not be called in question in the Madras, or in any Municipal Court as it involves matter of State and the effect of Treaties between our own country and a foreign State, which are not cognizable in any ordinary Court of Justice- If any of the claims preferred by Mr Norton involved a denial of the Company's right to the property of the State, the only answer that it would be necessary to give would be a denial of the Jurisdiction of the Court to try them-

But neither the Bill, nor the letters of Mr Norton raise any such questions- They expressly distinguish between the public and private property of the late Rajah- By the Bill, the principal widow seeks to recover the property seized as having been part of his private property at the time of his death- While the claim of the Rajah Surfoojee's

widow

× The [illegible] Sahiba Widow× is rested upon a denial that the property belonged to the late Rajah Seevajee in any character, at the time of his death, or to any one except the Lady herself.

With respect to the first of these claims, three questions arise:-

1st Whether the East India Company in taking possession of the property of the late Sovereign are entitled to his private as well as his public property, or whether their right is limited to the property of the State?

2d If not entitled to the whole of his property indiscriminately, how is the Private to be distinguished from the State Property?

3d Has the Supreme Court at Madras, or any Court of the Presidency Jurisdiction as against the East India Company to determine either of the above questions?

As to the first Question - The general rule is that there is no distinction between the public and the private property of an absolute monarch who may dispose of every thing whether derived from the State or from his own private resources in whatever way he pleases and who cannot be compelled to apply either class of property to the exigencies of the State. This rule was laid down by the Privy Council in the case of the Peishwa, and has generally I believe been acted on upon the conquest cession or lapse of absolute States in India. But in these cases the Sovereign has been in the absolute possession of the Revenues of his Country, and the difference between him and a constitutional monarch, on which the present distinction turns, has been that the latter is under a legal obligation to apply those Revenues either wholly or to a definite extent to the public Service of his Country, whereas the former is under no such obligation.

Advocate General v Ameerchund 1 Knapp's P.C. Cases p. 329 (n)

Can the Rajah of Tanjore then since the Treaty of 1799 be said to have been the absolute Master of the Revenues of the State within the Rule? I think he cannot.

The collection of the Revenue, and its administration are absolutely withdrawn from him by the Treaty, and while the Company collect the whole Revenue, and retain 4/5 of the net Revenue, after specified deductions, in order to provide for most of the essential purposes of the State, such as the Military and judicial establishments, the monarch has only a fixed sum of one lakh and one fifth of the net Revenues allowed to him for his own purposes. It is true that there remain certain State purposes, besides those provided for by the British Government, to which the portion of the Revenues paid to him must be considered applicable (such as the maintenance of the dignity of the monarch and of the numerous Retainers of the State) and that therefore the Stipend received by him cannot be treated as received solely for his private or personal use; while the absence of any restrictions in the Treaty as to the mode or proportion in which he was to apply the Stipend for purposes of State left him nominally as uncontrolled a dominion over it as an absolute Sovereign has over the entire Revenues of the State. This circumstance shews I think that the whole of the Revenues paid to the Rajah cannot be treated as necessarily belonging to him as a private individual or to his Estate; But I do not think it sufficient to entitle the Company to treat the whole of his property whether derived from Savings from his portion of the Revenue, or from private resources, as absolutely vesting in them together with the public Domain of the State.

Although the question is one that may fairly admit of doubt, I am of opinion that the E. I. Company is not entitled to any effects of the late Rajah that can properly be called his own private property; but that such property vested in his heirs, who in the present case appear to be his widows, or the eldest of them.

Then arises the second question, how is the private property to be distinguished. Here I feel much diffidence in offering an opinion as to details, owing to my ignorance, notwithstanding the information with which I have been supplied, of the character of much of the property. But it appears to me that while the Commissioner will be able from his local knowledge to determine under which Class each item of property falls,

the

the following Rules may be laid down as affording a general guide to him in the Classification.

1st As to lands, villages, gardens &c. All lands &c. that belonged to the State previous to 1799 and that have not been lawfully alienated, and all lands received from the British Government or from other sources since 1799 in exchange for such lands clearly form part of the public Domain and may be safely taken possession of.

2nd As to lands &c. purchased by either of the Rajahs since 1799, the question is more difficult. But I incline to think that the same rule will apply subject to the modification stated below. The rule will I think entirely apply to such lands as were not purchased under circumstances indicating an intention to devote them to strictly private purposes and even when so purchased, I incline to think that unless they were purchased in the name of or appropriated by way of gift or otherwise to or for the benefit of some third person, such lands must be considered as annexed to the State Domain and as passing with them.

Chitty's Prerogative of the Crown p 205
Co. Litt. 50 (b)

Such is the general rule as to lands purchased by a European Monarch in his own country, even when purchased from his own private funds wholly unconnected with the public Revenues.

Here I presume that neither Rajah had any property of his own except his share of the Revenue and his savings from that source; and I see no reason why the Rule should not apply to purchases made by them on their own account. Purchases made on account of or for the benefit of third persons stand in a different footing and will be considered under the head of alienations.

3rd As to endowments of Pagodas Chuttrums or other endowments kept up by the State. The British Government will succeed to the Rajah of Tanjore in respect of the superintendence and trusteeship of these endowments whether established before or after 1799, if established or kept up by the Rajahs themselves — And where these establishments yielded a fair surplus after the payment of all expenses, which in the time of the Rajahs was enjoyed by them, the beneficial interest therein will also I think devolve on the British Government. × (n) But where members of the Rajah family or third persons enjoyed the surplus and the endowments were in their name and not under the superintendency of the Rajah; and when such endowments were established for the first time after 1799 I think, subject to the remarks afterwards made as to alienations the E. I. Company will have no claim —

(n) + This view and also that above expressed as to Claſs (1) is fortified by the last items of Rajah Serfojee's requests to the Govt. of Madras contained in the Resident's Letter of 5th April 1800 & granted by the Govt. on the 5th July 1800.

4th. As to personal property. It will of course be difficult to trace what, if any part of such property existed in 1799; but all that can be traced to that date will belong to the E. I. Company — As to other personalty, I think that all that has been appropriated, or can fairly be supposed to have been promised for purposes of State must be considered as public property — The State Jewels; the State howdahs, trappings, Tonjons, the armoury, arms & ammunition, the elephants, horses and equipages used for State purposes; Carts and Cattle if any used for public works, wild animals, birds &c forming part of the royal menagerie; and the Cash remaining in the Public Treasury unappropriated to any private purpose, all appear to pass with the Raj as public property. With respect to the Clothes in the wardrobe of the 'Samdha Khanah' referred to in the

procured?

27th

27th Para: of Mr. Forbes's letter of 25th November, be the State or public Wardrobe‡ of the palace, and if the Clothes be all male attire used, if at all, by Officers or Servants of State on public occasions, they will I think paſs with the Raj. But no other Clothes, and no female attire, or ornaments should I think be treated as paſsing to the E. I. Company.

As to the powder destroyed, Mr. Forbes was I think perfectly justified in the orders given by him which were quite within his competency as a Commiſsioner appointed for State purposes. The Powder seems clearly to have been State property.

As to the Library, the facts regarding its formation are not stated, so that I cannot form any definite Opinion. ×

As to the articles in the Raj Mahal generally I regret not to be able to refer to Mr. Kindersley's Reports of 26th October and 9th November /42 which might have led me to a different conclusion as to that being a State Department. As it is, Mr. Forbes's conclusion in his 28 Para strikes me as Correct; and I should infer that the Jewels &c in the Raj Mahal may be properly treated as State property.

No other property is specified by Mr Forbes as having been seized or as about to be seized—

As to those lands or properties of which possession has already been taken, I do not think such possession should be withdrawn unless there be reason to suppose that they really were the private property of the late Rajah and had not been dedicated to the purposes of the State—As to those not hitherto taken, I do not advise any seizure to be made, unless there be reasonable ground for supposing that they can be proved to have been public property— The burden of proof as to any particular property having been private,

Should

Should I think, on principle to be on those alleging it to be private—But the Government must be prepared for the plaintiffs in any suit against them making out a prima facie case which there has been ample opportunity to concoct, and no fresh seizure should be made without adequate proof to rebut such case, if set up—

3d The next and one of the most difficult questions is how far the Supreme Court or any other Court has jurisdiction upon the present Bill, or on any similar claim of the representatives of the late Rajah—

See Nabob of the Carnatic
vs
E. I. Company
1 Ves J. 371. 2 do 56
Elphinstone
vs
Bedinchund
1 Knapp's P.C. 316
Rajah of Coorg
vs
E. I. Company 25
25 Law J/Chy L.P.
350 351

No Civil Court has jurisdiction to try the question of the validity of the annexation of the State or to compel an account of the Revenues of the Country received by the East India Company under the treaties during the continuance of the late dynasty—But it does not follow that the Courts affirming the validity of the annexation may not try the questions whether certain property belonged to the State annexed or to a private person, laying no claim to the "State property" but representing the late Ruler in his private character—On this point I can find no express authority & the arguments on either side appear to me almost equally balanced—If the dominant State claimed by virtue of the Treaty to hold both the public and private property of the late Ruler treating him as an absolute sovereign, I do not think a municipal Court would have jurisdiction to try the validity of the claim, and the remedy of those aggrieved would be by application to the Government of this Country, to the Sovereign, or to Parliament - If on the other hand, the dominant state broadly admit that the Treaties do not enable them to touch any private property whatsoever of the late Ruler, I think there would be jurisdiction in the ordinary Courts to enquire whether any specified property was public or private, as no question as to the effect of the treaties &c could properly arise upon that enquiry -

The present Case is an intermediate one, as here I understand, that the dominant state disclaims the right whether it exist or not, of taking all private property indiscriminately, and is willing to forego all claim to property that really was private, and was never employed for or dedicated to state purposes; tho' claiming all other property whether or alleged to be derived from public or private sources I think it extremely doubtful whether the Court can have any jurisdiction in such a case; and I incline to think it has not, For the actual right of the dominant state depends on the Construction of Treaties & acts of state, which a municipal Court cannot adjudicate upon - At all events I think it will be right to raise the question of ~~[illegible]~~ jurisdiction in this form in the Madras Court: and for that purpose to avoid making

any

any broad admission that the East India Company is not entitled to any private property (which admission might be wrested by the opposite party or the Court much further than was intended) but to treat the right to property claimed as private as one which exists at all events to the extent above pointed out, but which, whether it exist or not to any greater extent, the East India Company has not sought to enforce beyond those limits -

Next as to the Claims of Avoo Sahiba, Rajah Sevajee's widow, and other similar claims -

These Claims assume that the property embraced in them did not belong to the late Rajah Sewajee at the time of his death i.e either that it never belonged to the Rajah or his father at all, or that it had been made over by one or of the Rajahs to the claimant –

If there be any property in the first of these Categories, the claim is good; and should be respected – If for instance, any of the Gardens &c were purchased by the claimant, whether from monies received by her from the Rajah or not; or if any of the &c Chuttrums was actually endowed by her, or by any other lady of the family or who made over her right to her, her claim would be clear – According to Mr. Forbes' view none or scarcely any of the property claimed stands in that position – Care should be taken not to seize any such property; and if any has been seized, to release it at once

The

Vattels Law of Nations.
Book 1 Ch 21 S.
259. 260. 61. 62. 265.
Grotius De Jure Bell.
at Paris
B. 1 C 3 S 22. 23.
Puffendorf
Book 8 C 6
S. 22 & 23

The greater portion of the property claimed by her will probably be found to fall under the second head, and this raises the question of the effect of alienations by the Rajahs since the Treaty of 1799.

According to the spirit of that Treaty and of the subsequent arrangements sanctioned by the Government at the Rajahs request in July 1800, and according to the general principles of international Law, I do not think the Rajahs could properly alienate, except for State purposes, or for valuable consideration, any of the lands that belonged to the State in 1799, so as to bind the E. I. Company as their successors. Any alienations indeed made by the Rajah Serfojee must I think under all the circumstances of the Case be taken to have been condoned by the British Government and I do not think any attempt should be made now to resume or question such alienations. I think too that lands &c purchased by the Rajahs with the savings from their stipend after 1799 if not annexed by them to the State might be lawfully alienated by them even for purely private purposes and without consideration, and so Chuttrums Pagodas &c might be founded and endowed by the

Rajahs on any lands acquired by them after 1799. in favor of their Wives or other female relations as managers or trustees with a resulting beneficial interest; and such endowments would I think be valid at least for the life time of the Grantees. In all such cases the right of the Dowager Ranee and others similarly situated, should I think, be respected.

But alienations made by the last Rajah Seevajee, without consideration and for private purposes, of lands acquired before 1799. or afterwards acquired and forming part of the State domain would I think not be binding on the British Government as his successors; and wherever the title of the Claimant depends on such alienations, it may I think be successfully impeached.

The facts stated by Mr. Forbes in Paras. 9 to 15 of his letter of 25th Novr. are also important as shewing that many of the alienations were not in fact bonâ fide, or absolute, but the property still virtually continued in the Rajah. As to all lands &ca. acquired before 1799. and all subsequently acquired lands once annexed

to

to the State, or used for State purposes, these facts if disproved will displace the Dowager Ranee's title. But they will not necessarily affect lands acquired after 1799 and never so annexed or used which according to the principle above pointed out will not I think vest in the E. I. Company if the Rajahs have taken measures to vest them for private purposes in the Ranees.

The minutes of Mr. Lushington referred to in the Courts Despatch of 1 September/41 and in Para 18 of Mr. Forbes's letter, will probably throw light on this subject.

I have not sufficient information as to the system of Registration or Revenue adopted in those Districts to enable me to determine what effect the registration in the name of the Ranee instead of in that of the Surcar, or the assessment of Revenue on such lands has upon the title.

Mr. Forbes's remarks (Para 5 & 6) seem also to get rid of the Appoo Sahib's claim to the Pagoda, and Chuttrum endowments.

As to these claims of third persons, not claiming as representatives of the late Ruler, I think the Supreme

Court at Madras or the Ordinary Civil Courts of the Country, will have jurisdiction – ~~matters~~ – Matters of State and the Construction of Treaties might indeed be collaterally raised, but they would not necessarily be involved in deciding whether particular property belonged to a private + individual or to the late Rajah at the time of his death –

The next point that requires notice is that urged by Mr. Norton as to the impropriety of the Government taking adverse possession of the + property claimed, and thus taking the law into their own hands + instead of asserting their claim in the ordinary tribunals of the Country. It appears to me that although Mr. Norton's remarks are [illegible]tly just as applied to the assert[illegible] of claims by the Company in a Country + already settled under its rule, they do not apply to such a Case as the present one, where the Company as representing the State of Great Britain is for the first time taking possession of a Province which has lapsed to it as Tanjore (m) has. I think

×

(m) Some possession must be taken in order to indicate that the Dominant Power has availed itself of the lapse ~~or~~ cession of the State, and in taking possession of the State, the Dominant power is fully justified in possessing itself of all things + apparently belonging to the State, though claimed by individuals & is not [illegible] as a private person to assert its right in the ordinary tribunals.

therefore that the Commissioner acting under the orders of Government, should not abstain from taking possession of any property, to which the right of the State appears to him clear, into whose soever possession it may have come, avoiding of course all violence in the mode of Seizure. I think he should exercise still more caution, in taking possession of property held by third persons, claiming independently of the late Rajah than in taking property still in the possession of the Rajah's representatives, and having the appearance of being state property; and that he should more fully satisfy himself as to the proof available in Support of the Government claims in the former Case than in the latter.

The remaining questions are (1) whether a Proclamation of the annexation is necessary or expedient, and (2d) whether if issued, it can have any retrospective effect in protecting the acts previously done by the Commissioners.

The first is rather a question of State Policy than of Law. As a matter of Law, I do not think any Proclamation actually necessary for the purpose of protecting the Acts of the Officers of the Government done in the Course of the annexation or Settlement of Tanjore under the British Settlement – It would be convenient I think – that such a Proclamation should be issued, stating the lapse of the State of Tanjore to the British Government that the Government has accordingly taken possession of the State: and that the territories now form an integral Part of the British Dominions with such particulars as it may be thought advisable to proclaim as to the Settlement of the Province – The absence of any such proclamation in the Case of Nagpore was attended with some slight inconvenience in a recent trial at the Supreme Court of Calcutta, and reason and practice are in favour of a public notification upon a change of dynasty.

Ouseley-v-Plowden.
3d Term 1856 –

But such a proclamation will have no retrospective effect for the protection of the East India Company or its officers for acts previously done: – nor indeed will it give any special protection in respect of subsequent acts. – It is entirely for the Government to determine whether it is politic or advisable to issue one at all and in what form –

With respect to the defence to the Bill

already filed, it should I think be framed with a view to the principles above pointed out. It should be by way of Answer, I think, and not by demurrer or pleas. I have sketched on a Separate Paper the principal points that should be stated in the Answer.

W. Ritchie

Calcutta 5th Decr 1856

the Raj or Kingdom of Tanjore) to certain ~~enjoyment~~ engagements and relations between himself and the British Government and particularly to a treaty entered into between his predecessor and father Rajah Serfojee as the then reigning Sovereign of Tanjore and the Defendants bearing date the twenty sixth November one thousand seven hundred and ninety nine.

2 The said Rajah Seevajee also continued up to the time of his death subject to the said ~~enjoyment~~ engagements relations and treaty to enjoy the outward state and dignity of Reigning monarch of the whole of the territory of Tanjore and to receive from the Government of India and from the Defendants the honours due to a Sovereign friend and ally of the British nation.

3rd The said Rajah Seevajee died on the day of November One thousand Eight hundred and fifty five whereupon it was determined as an act of State by the Defendants and the British Government that the Raj and dignity of Rajah of Tanjore was extinct & that the state of Tanjore had thereupon lapsed to the Defendants in trust for Her Majesty and it was thereupon also determined by the Defendants as an Act of State and Government that the whole dominions and Sovereignty of the said State of Tanjore together with the property belonging thereto should be assumed by the Defendants in trust for Her Majesty the Queen and should become part of the British Territories and Revenues in India in trust for Her Majesty as aforesaid

4th Before and at the time of the said

Treaty of one thousand Seven hundred and ninety nine the said Rajah Seefajee as and being absolute Sovereign of Tanjore as aforesaid was possessed of and absolutely entitled in right of his Crown and Sovereignty to divers Villages — Messuages buildings Gardens lands and other real estates situate and being within the Territories aforesaid and which Estate had previously formed part of the State and belonged to the Sovereign of Tanjore for the time being and the rents and profits whereof formed part of the Royal revenue of the said Rajah

5th The said Rajah was also at the date last mentioned possessed of and absolutely entitled in such right as aforesaid to divers other villages — Messuages Pagodas lands and real estates which had theretofore been dedicated by the preceding Rajahs of Tanjore and otherwise to religious+ purposes and such last mentioned real Estates was then also held by the said Rajah as and being such Sovereign as aforesaid and the Surplus of the rents and profits thereof after providing for the several religious endowments

appertaining

Describe these so as include the Chutt-rums and other Endowments mentioned in Mr. Forbes's Letter of 25th Novr. 1856

+ 2do: Were there any purposes besides religious purposes to which any of these endowments were applicable - e.g. State or Charitable purposes - If so describe them generally -

Is this the Case? This should be accurately stated according to the facts which I cannot quite distinctly gather from the Papers —

appertaining the same also a formed part of his Royal revenues.

6th The said Rajah Seefojee was also at the date of the said Treaty as such Sovereign of Tanjore in right of his Crown and Sovereignty possessed of and entitled to divers state Jewels Ornaments arms and other chattels being heirlooms of State or otherwise appertaining to and forming part of the Royal equipage of the Rajahs of Tanjore.

I assume that this was the Case but it should not be stated unless it can be proved. Rajah Seevajee Complained to the Resident of the abstraction of the State Jewels &c by Ameer Sing. Qu: Were any of these restored? this does not appear from the papers but I presume that some at least must have been recovered or the stipend would not have been paid to Ameer Sing.

7 The real and personal property mentioned and referred to in the three preceding paragraphs were held and possessed by the said Rajah Seefojee from and after the execution of the said Treaty of one thousand seven hundred and ninety nine as part of the state property of the Rajahs of Tanjore and on his death the same were taken possession of by his Son the said Rajah Seevajee in his character of Successor to the throne of Tanjore

8 At different times between the years one thousand Eight hundred and ninety nine and one thousand Eight hundre and fifty four portions of the real estates hereinbefore mentioned to have been held and possessed by the said Rajah Seefojee at the date of the said Treaty were exchanged

by him and by the said Rajah Seevajee for other real estates also situate in Tanjore and the estates so taken in exchange were thenceforth held by the said Rajahs as part of the state property of the Raj in the same manner as the estates given in exchange.

9th Besides the above property the said Rajah Serfojee and after his death the said Rajah Seevajee at different times after the said Treaty of One thousand Seven hundred and ninety nine purchased with and out of the portions of the Revenues of the state of Tanjore which they respectively received as such Rajahs under a provision in the Treaty, divers other villages messuages gardens Pagodas lands and other real Estate and also divers Jewels Ornaments state robes cannon munitions of war arms and armours books for the Royal Library Elephants animals and trappings which were from the times of their respective purchases held and used by the said Rajahs respectively in the same manner as the state property belonging to the Raj of Tanjore before one thousand Seven hundred and ninety nine and were used and applied for the purpose of maintaining the outward State and dignity of the Rajah and for purposes connected with such State and dignity—

10 The particulars of the said real Estates forming part of the state Property of the Rajah of Tanjore before and at the date of the said Treaty— of the said real estates subsequently taken acquired in exchange as aforesaid of the said personal effects forming part of such state property at the date of the said Treaty— and of the said real Estate and of the personal effects so acquired and received as in the ninth Paragraph mentioned so far as such particulars are known to the Defendants are setforth in the Schedules hereto annexed and marked respectively A.B. C.D. D1 D2 which with the other Schedules hereto these Defendants pray may be taken in part of this their Answer and to which they hereafter refer as part thereof.

11 The Defendants since the death of the said Rajah Seevajee have proceeded to enforce the lapse of the said Sovereignty and their Sovereign rights in trust for Her Majesty the Queen in respect thereof and of the property belonging thereto and have declared the said Raj of Tanjore to be extinct and to have lapsed as aforesaid.

12 With a view to enforce the said Sovereign rights and on or about the Eighth of September one thousand Eight hundred

and fifty six The Right Honorable The Governor General of India in Council on behalf of the Defendants duly sanctioned the appointment by the Right Honorable The Governor of Madras of Mr Henry Forbes a Covenanted Servant of the Defendants as a special Commissioner to inquire into and report on various questions arising as to the state property of the late Raj and otherwise in Consequence of the said lapse and extinction of the Sovereignty of Tanjore The said Mr Forbes was in particular & authorized and directed by the said Government of Madras to adopt measures for preserving in Safe Custody on behalf of the Government of India the Jewels munitions of war Arms and other effects appertaining to and forming part of the state property of the late Rajah

13 The Defendants further with a view to enforce the said Sovereign rights have by the said Commissioner and by their Collector of Tanjore and for the purposes of the Government of India taken possession of the Kingdom and hereditary Fort (w) of Tanjore and of such real and personal property late of the said Rajah Seevajee as is Specified and enumerated in the said Several Schedules A B C & D, D1 & D2 hereunto annexed but of no other property or effects

of

(w) "or Town" see note to Para 1.

I presume from the correspondence that no property was taken possession of by Mr. Forbes or under his directions but property apparently falling, or believed to fall within one or the other of the descriptions of property referred to in these Schedules – See particularly Paragraphs 4 to 9 inclusive for the description of the said late Rajah

14th The Defendants in entering into the said Treaty, in declaring the extinction of the Raj and of the dignity of Rajah, in treating the Sovereignty and Territories of Tanjore as lapsed to the Defendants for the purposes of the Government of India in trust for the British Crown in appointing through the Government of India the said Mr. Forbes as special Commissioner as aforesaid and in taking possession of the property late of the said Rajah acted in their public political capacity and in exercise of the general powers privileges and authorities vested in them by the various Charters and acts of Parliament by which the possession and Government of the British Territories in India and the powers of making peace and war and entering into treaties have been and are committed to the Defendants in Trust for the Crown of Great Britain and all the acts and matters hereinbefore setforth were and are acts and matters of state

15 In particular the Defendants respectfully insist that the question as to the right of the Defendants to take

of property intended to be
included in such Schedules.
If any property was seized
not being apparently, or
not believed to be of
the nature of public property
or used for purposes of
internal State or the
paraphernalia of the Raj
a separate Schedule
should be made for
such property which
may be called D3, &
[illegible]
which the Defts must
submit to give up
with the property in
Schedules D & D1 —
In that case this &
other Parts of the
Answer will require
alteration, which can
easily be made according
to the facts at
Madras —
WM

take possession of the estate and property of and to which the said Rajah Seevajee died possessed and entitled as Rajah of Tanjore as aforesaid or of any and what parts of the said state and property was and is a question of state, arising from the character of the said Rajah as a Sovereign as afd ~~absolute Monarch~~ and the Political relations between the Defendants acting in Trust and for Her Majesty and the State of Tanjore* and the Defendants therefore Submit that the matters set forth and on which the Defendants rest their right to take possession of the property which was of the said late Rajah of Tanjore are matters which cannot be inquired into by this Honorable Court or in any Municipal Court of Justice & within Her Majesty's dominions

* & involving the construction of the sd Treaty & other treaties made between them & other acts of state.

16 The Defendants further say that under the circumstances herein setforth the whole of the property which the Defendants claim to retain for their own use in trust as aforesaid was to all intents and purposes state property & which had belonged to the said Rajah only in his sovereign capacity

17th The Defendants further say that without in anyway waiving the right of the Defendants to retain possession of the whole of the property so possessed as aforesaid and mentioned in the Schedules hereto annexed and without in anyway admitting the Jurisdiction of this Honorable Court to enquire into the grounds (as and being grounds of State) on which such right is vested it has been determined as an act of State and Government by the Defendants through their said Governor General of India in Council and their said Governor in Council of Fort St. George that the property and effects specified in the Schedules hereto annexed and marked C.D.D.1. (being property acquired subsequent to the date of the said Treaty of 1799) shall be dealt with and disposed of as if the same had been the property of the said Rajah Seevajee as a private individual and that the Officers and Servants of the Defendants who are now in possession of such last mentioned property shall be instructed to make

Of the property comprised
Schedule C which is the
personal property acquired
before 1799

the same over to the person or persons who would have been the legal representative or representatives of the said Rajah had he been a private individual

18th. The Defendants further say (but without waiving the said right ~~or admitting the Jurisdiction of this Honorable Court as aforesaid~~)x that it is not and never was the intention of the Defendants or of either of their Governments aforesaid to retain possession for the benefit of the Defendants in trust as aforesaid or otherwise of any portions of the property and effects of the said late Rajah other than such portions thereof as formed part of the State or public property of the Rajah of Tanjore at the date of the said Treaty of 1799. or as has been since the date acquired or received by the Rajah of Tanjore in exchange for property so pertaining to the Raj before that date and such other portions as had been acquired since that date but were in their very nature property purchased for State purposes such as munitions of War and the

x and without admitting that there is any distinction in law between the public & private property of ~~the absolute~~ Sovereigns such as the late Rajah Sevajee was, or that this Honble Court has any jurisdiction to enquire as to, or to direct an account of the private or particular estate if any of the sd Rajah, but denying the jurisdiction as afd,) articles mentioned in the Schedule D.2 hereto annexed -

19 But the Defendants are advised and submit that in any point of view the question whether any and what portions of the property left by the said Rajah were his private property or were property of the State of Tanjore is also a question involving the construction of the said Treaty and relation between the said States and the several political powers of the Government of India and is therefore a question not cognizable by any municipal Court of Justice

20th The Defendants therefore claim the same benefit as if they had pleaded to the said Bill of Complaint that the matters therein set forth and in respect of which relief is prayed were matters of State and as to which this Honorable Court has no jurisdiction to enquire -

21st The Defendants are further advised and submit that this Honorable Court has no Jurisdiction in respect of the lands and real estate lately belonging to the Rajah situate in the Territory of Tanjore aforesaid and they claim the same benefit as if they had demurred or pleaded to so much of the said Bill as relates to such lands or real estate.

22d. And the Defendants further answering say that they admit that Sevajee in the Bill named was in his life time Rajah of Tanjore and that he departed this life at Tanjore aforesaid on or about the twenty ninth of October One thousand eight hundred and fifty five intestate and without leaving any male issue or any Son by adoption or any brother him surviving.

23rd. The Defendants admit that the said Sevajee was in his lifetime a Hindoo of the Sudra Caste.

[Note to Para. 23rd
See Mr. Forbes letter of 25th Nov. /56 Para 23. The bearing of this Inty will probably be better understood by Mr. Dale than by me. If as seems probable the intention is only to exclude the claim of Collateral heirs it is of no importance.]

24th. The Defendants admit that the said Sevajee was in or about the Month of May One thousand eight hundred and thirty one duly and lawfully married to the Plaintiff and that he left the Plaintiff his eldest and Senior Widow and the first married in point of time among his surviving Widows him Surviving

(n) See note at last page

25th (n) The Defendants say that the said Seevajee was the only Son of the said Rajah Seefajee who was himself an adopted Son of the former Rajah Tooljajee and that neither of the said Rajahs Seevajee or Seefojee had any brother; and the said Rajah Tooljajee being Rajah and absolute Sovereign was never joined in estate with his only brother Ameer Sing or undivided from him but was always as were his Successors Separate and divided from him, and therefore these Defendants admit that the said Seevajee under the circumstances aforesaid was not a Member of any undivided Hindoo family. The Defendants admit that the said Seevajee Subsequently to his Marriage with the Plaintiff and about three years previous to his decease married and as these Defendants are informed and believe though they submit the same to this Honorable Court so far as it is matter of law duly and lawfully) Seventeen other Wives two of whom named respectively Soyeeram Bahbayee and

Fookumbahbayee

Tookumbahboyee and not Amaroye Saib and Soomooraye Saib as in the said Bill stated predeceased him without leaving any issue and the other fifteen named respectively

Name them correctly here
WR

were married in the order last above set out and are now alive and are Hindoo Inhabitants of and resident at Tanjore and these Defendants are advised and admit that Tanjore is a place beyond the jurisdiction of this Honorable Court.

26th. The Defendants admit that the said Sevajee also left two daughters only him surviving that is to say:- Rajasa Bhye Ammany Rajay his eldest daughter and Veejaya Mohana Moocutta Bhye Ammanee Rajay his youngest daughter who were respectively born of a former wife one Sydumbah Boze Sahiba who predeceased the said Sevajee and who are also Hindoo Inhabitants of and residents at Tanjore

27th The Defendants admit that the said eldest daughter was in the life time of the said Seevajee married to one Sree Tharam Sahib but these Defendants submit as matter of law to the judgment of the Court the question whether according to Hindoo law she thereby became estranged from the family of the said Seevajee and the Defendants admit that she is resident at Tanjore aforesaid

28th The Defendants admit that the said younger daughter is still an infant under the age of sixteen years that is to say of the age of ten years or thereabouts and is a Hindoo Inhabitant of and resident at Tanjore aforesaid-

29 The Defendants admit that the said Sevajee also left him surviving his mother Aboo Sahiba who is likewise a Hindoo Inhabitant of and resident at Tanjore aforesaid-

30th The Defendants admit that the said Seevajee at the time of his death was as such Rajah and Sovereign Prince as aforesaid possessed of and entitled as aforesaid of his own right or private property as distinct from or independent of the property rights claims and privileges appertaining and belonging to the Raj of Tanjore to such estate both real and personal as is specified in the several Schedules hereto marked A B. C D. D1 and D 2 and which Schedules give the full and true particulars and description of the said property so far as the Defendants have been able to ascertain the same, and that the said property is altogether of the value so far as the Defendants Servants and Officers have been able to ascertain, of

Companys Rupees

in round numbers -

31st The said Commissioner of the Defendants Mr Forbes and their other Officers and Servants who have been employed in that behalf have not as yet discovered and therefore the Defendants so far as their means of information go do not believe that the said Seevajee left any property real or personal & distinct from or independent of the property rights claims and privileges appertaining and belonging to the

Rajah of Tanjore or which was in the sense possessed by him as of his own right or as private property –

And save as herein and as in the said Schedules appearing these Defendants are ignorant and cannot answer whether the said Seevajee was at the time of his death possessed of or entitled either as of his own right as private property or distinct from or independent of the property rights claims or privileges appertaining or belonging to the Raj of Tanjore or otherwise of any Estate or effects real or personal whatsoever and cannot set forth of what the same consisted or any of the particulars or the description or value of the same if any there were other than as aforesaid –

32 The Defendants are wholly unable to say whether the particulars or value aforesaid are unknown to the Plaintiff but such particulars or value have never been concealed or suppressed in any way from the Plaintiff by the Defendants or any of their Officers or Servants and if such particulars are unknown to

the Plaintiff it is because she has not chosen to inform herself thereof. But these Defendants are advised that it is probable and they believe that the said Statement as to the concealment from the Plaintiff (and a Statement in Sixteenth paragraph of the said Bill as to certain Articles (not admitting) not admitting of Compensation by a pecuniary recompence, have been inserted in the said Bill for the purpose of founding the equitable jurisdiction of the Court thereon.

33 The Defendants submit as matter of law to this Honorable Court whether (even if the said Sevajee did die possessed of or entitled to any private or particular estate which these Defendants do not admit) and if the property of the said Sevajee was liable to be administered distributed as that of a private individual (which also these Defendants do not admit) the Plaintiff did or did not as his eldest Widow according to Hindoo law became entitled to inherit or possess the same or to administer the same in due Course

of

According to Hindoo Law as understood and administered in the Supreme Court Calcutta, all the widows would succeed jointly. But 2ly Whether the same Law prevails in the South of India.

I infer from the frame of the Bill and from the Statements in Stranges Hindoo Law P. 56 & 136 that the Rule at Madras is stated in the Bill. But Mr Dale will be better able to judge as to this than I am W.B.

of administration or otherwise And they submit whether on the death of the said Seevajee all his surviving Widows did or did not became and were not the joint heiresses and representatives of his person and would not have inherited such his private and particular estate if any to the extent of the interest of a Hindoo ~ Widow according to Hindoo law ~ and these Defendants therefore submit as aforesaid whether the said other Widows ought not to have been made and whether they are not proper and necessary parties to this suit Supposing any part of the property of the said Rajah Sevajee to be distributable and liable to be administered as that of a private person And these Defendants do not make any pretence or allegation respecting the said private or particular estate of the said Rajah if any and neither dispute nor admit the Plaintiff's right thereto if any, and they have herein set forth their grounds and reasons so far as they are advised and believe is material for the ~

purposes of this Suit for disputing the Plaintiff's right to such of the estate of the said late Rajah Sevajee as herein and in the Schedules hereto mentioned so far as they do dispute the same.

34 The Defendants have and had at the time of the death of the said Sevajee knowledge of such facts regarding the State of his family and the rights of the plaintiff as hereinbefore are set forth and admitted but further or otherwise the Defendants have no knowledge of the state of the said family or the rights of the plaintiff.

35. The Defendants deny that they or any of their Officers or Servants or in particular the Collector or any of the Subordinate Officers of the Collectorate of Tanjore or the said Henry Forbes their Commissioner at Tanjore began Shortly or otherwise after the death of the said Rajah Sevajee or at all to interfere or intermeddle with any of the private or particular estate of the said Sevajee or any estate save such estate as aforesaid or by such their intermeddling or acts or from their power or control over the

Country in any way prevented the Plaintiff from possessing the same for these Defendants say that although the Plaintiff has through her Agents called on and requested the Defendants to deliver possession of such alleged private and particular estate to her yet in fact no such private or particular estate or any estate save such estate as herein and in the said Schedules hereto mentioned was so far as the Defendants have been informed and believe interfered with or possessed by the said Officers or any Officer of the Defendants and such Officers and Servants have not as these Defendants are informed and believe refused to deliver up to the Plaintiff any private or particular estate or effects whatever of the said Sevajee, although they have refused and do still refuse to deliver up to the Plaintiff such parts of the State or Crown property of the late Rajah as aforesaid and as are set forth in the Schedules hereto marked A B. C. and D. 2-

36 So far as the Defendants are aware none of their Officers Servants

or Agents have or has any knowledge of the State of the family of the said Sevajee or of the rights of the Plaintiff beyond the facts hereinbefore stated and admitted of which facts such Officers Servants and Agents as aforesaid have and had notice.

37 The said Officers and Servants and Agents of the Defendants and particularly those hereinbefore named not under the false colour or pretence but with the bonâ fide and lawful and authorized object of taking possession of the State or Throne or property of the said Raj and on the ground and in the belief that same is part of the Revenues of the Defendants as aforesaid and for the purpose of collecting the Revenues of the Defendants possessed themselves not of any private or particular estate or effects of the said Sevajee unconnected with the said Raj but of such estate and effects of the said Sevajee or Rajah of Tanjore as is specified in the Schedules hereto annexed and all which property was and is as hereinbefore setforth

(See note to Para. 13 B.R.)

set forth, in the nature of and was by the said Officers and Servants possessed and believed to be of State property which lapsed on the death of the said Sevajee and the said Servants and Officers of the Defendants have for the purpose and in the belief aforesaid made and are making full and particular lists and inventories thereof but no part thereof has been sold or disposed of nor has any part been destroyed except certain Gunpowder mentioned in Schedule D2 which formed part of the ammunitions of War and property of the State of Tanjore and which being useless from age and dangerous has for the safety of the said Fort and neighbourhood with the sanction of the Governor in Council of Madras been destroyed by the orders of the said Mr. Forbes as such Commissioner as aforesaid and so far as the Defendants their Officers Agents or Servants are aware the said Sevajee left no private or particular property and no property of any kind save that in the Schedules hereto set forth

I presume that this is the
case from the correspondence -
If it be otherwise & if Mr.
Forbes or any other Officer
in communication with the
Government knows of any
property of the late Rajah
which has not been in any way
interfered with by him or of any
other Govt. Officers, the fact must
be so stated, & the particulars of such property must be given
in a separate Schedule (say D4). This additional Schedule must [illegible] the statements in the answer
in this case be coupled with Schedules D2 & D3 [illegible] of the claims of the Govt. [illegible]

38th

2

38th The Defendants have to to the best and utmost of their knowledge information and belief set forth in the said Schedules hereto annexed a full true and particular account of all and singular the property estate and effects of the said Rajah Sevajee possessed by them or by their Officers or Agents on their behalf and of the value thereof but they are at present wholly ignorant whether or not there is any other property of the said Sevajee not possessed by them.

39th

39 These Defendants further answering say that they are not aware nor are as they are informed and believe their officers Agents or Servants or any of them that the property of the said Rajah Seevajee come to their possession as aforesaid never did and does not belong to the Defendants and does not and never has formed part of their Revenue and never has been and is not applicable to the purposes thereof but these defendants say that without admitting that the Rajah left any property that can legally or properly be called his private or particular property and without admitting that the Plaintiff has any legal claim or right in respect of any property taken possession of by these Defendants or their officers or agents as aforesaid these defendants do not intend and have never intended to treat the property of the said Rajah Seevajee in the Schedules hereto marked D and D1 respectively as belonging to the Defendants for their own use or in trust as aforesaid or otherwise or as forming part of their Revenue — or as being applicable to the purposes aforesaid.

40 The Defendants do not pretend nor do allege that the property

stated

estate and effects left by the said Seevajee and since taken possession of by the Defendants as described in the said several Schedules hereto (and which is the only property of the said Seevajee of which the Defendants have at present any knowledge ~~and~~ or information) belonged to him as the Rajah of Tanjore and not otherwise and does to the extent herein mentioned and not otherwise does belong to the Raj of Tanjore and is of the nature of State or Throne property and is to the extent herein appearing and not otherwise part of and applicable to the purposes of the Revenues of the Government of India In Trust for Her Majesty and the Defendants have hereinbefore set forth and explained how they make out the same so to belong and appertain to the said Raj &c and to be part of and applicable to the purposes of the said Revenue So far as they intend to treat the same as part of or applicable to the purposes of the said Revenue have set forth to what extent they intend so to treat the same and they have distinguished herein and in the said Schedules so far as they are able to distinguish between the different kinds of property left by the said Rajah Seevajee and how and when the same came to be invested as aforesaid so far as it was so invested and so far as these defendants have been able to discover the same

41 — And these defendants say that they are setting under the Circumstances aforesaid without admitting that there is any legal distinction or legal means of distinguishing between the two Classes of property to distinguish the property described in the Schedules marked A.B.C.+D2 and the property described in the Schedules marked D+D1, the latter of which property they are as aforesaid setting and have always intended to give up as if it formed private property to the legal representative or representatives of the person of the said Rajah Seevajee without this that the defendants in any way admit the Jurisdiction of this Honorable Court or of any municipal Court of Justice to decide or entertain the question whether the defendants are justified in treating the said property or any and what part thereof as state property belonging to them for the purposes of the Government of India, or & whether they ought to give up any & or what part thereof to the Plaintiff or to any other Claimant or to treat any ~~and~~ or what part thereof as private property of the said Seevajee.

42

42nd The Defendants Contend that the said property and effects having been defacto the property and effects not of a private individual but of a Sovereign prince and the Defendants now Representing the Sovereignty which that prince in his life time held and the Defendants' Right to such Representation being exclusively a matter of State and not of municipal Cognizance the Defendants' Right to possess themselves of the property in question and to deal therewith or dispose thereof is also exclusively matter of State and is in fact included in and forms part of their Right to Represent the Sovereignty and that the decision of the question whether any of such property had been private property of the said Seevajee and as such descended to his natural Heirs depends on the question whether the said Seevajee having Regard to the Relations between him and the British Government was an absolute Sovereign and is therefore equally a matter of State in Respect of which a Court of Justice has no Jurisdiction to grant Relief or enforce discovery.

43rd. Among the State property left and possessed by the Officers Servants and Agents of the Defendants not as in the Bill but as hereinbefore mentioned and set forth are Certain Jewels and other Costly articles more particularly described in the Schedules marked hereto annexed which have a Specific and particular Value as being in the nature of State heir looms and Crown Jewels. But the Defendants do not, nor do their Officers Servants or Agents, or any of them intend to dispose of the Same or any of them Save that these Defendants claim and reserve the Right to dispose as they may think fit of Such of the Said Jewels and articles as belonged to the Raj as State or Crown Jewels or heir looms before the Treaty of 1799 while these Defenda intend as aforesaid to permit the lawful Representative or Representatives of the person of the Said Seersjee to receive the Residue of the Said Jewels and articles acquired Since the said Treaty.

44th. The Defendants are wholly unable to say whether such articles have any Specific or particular value in the eyes of Hindoo Widows or of the Plaintiff in particular - But these Defendants do not believe that the loss or deprivation of the said Jewels or aticles Could not be Compensated to the Plaintiff by a pecuniary recompense. -

45th The Defendants do not withhold from the Plaintiff any private estate or effects of the said Seevajee possessed by them from vexatious motives or otherwise at all the only property which the Defendants withhold from the Plaintiffs being property of State And the Defendants further say (but without in any way admitting the Jurisdiction of this Honorable Court to enquire whether any and what part of the property so possessed by them had been private property of the said Seevajee) that they have never had and have not any intention of taking or retaining possession of any property or effects which in any fair or proper sense of the term Can be deemed the private and particular property of the said Seevajee and not property of the State and on the

Contrary the Defendants always have been and are desirous of leaving the possession and enjoyment of all property which can in any such sense be deemed private property to the lawful Representative or Representatives of the person of the said Rajah Seevajee and of all property except the property hereinbefore described in that behalf which they intend to retain as part of their Revenues as aforesaid.—

46 The Defendants by their Officers servants and Agents have not seized but have in their possession divers books letters papers documents × Cadjans (Cadjams) Copies of letters agreements lists of jewels Inventories vouchers &c Memoranda entries and writings relating to the matters in the bill and hereinbefore set forth although the truth of the matters in the bill alleged would not appear therefrom inasmuch as such matters (except as hereinbefore admitted) are not true and these Defendants have in the Schedule hereto annexed and marked E set forth a full and true list of certain of the said documents which they are ready to produce.—

× Omit this word, if no documents of this description (which I do not understand) are not in the possession of the Government. WK

1 [illegible]
2 [illegible]

47 And in the Schedule hereto annexed and marked F. the Defendants have set forth a full and true list of Certain other of the said documents in their possession which are Communications which have passed between the Defendants or the Government of India or Madras and their Counsel and Solicitors in the Course of the professional employment of Such Counsel and Solicitors with reference to the present litigation and the Defendants therefore submit that they are not bound and they decline to produce or disclose the Contents of such last mentioned documents.

48. 48 And in the Schedule hereto annexed and marked G the Defendants have set forth a full and true list of the Residue of the said documents in their possession as aforesaid and which are documents relating to affairs of State the production of which would be Contrary to good Policy. For the Defendants say that the said last mentioned documents are either political Communications which have passed between the Defendants and their Court of Directors and the Government of India or Government of Madras in the fulfilment of the Defendants' political duties

and with a view to the good Government of India or political Communications and Reports and Minutes which passed between the Official agents and Servants of the Government of India or Government of Madras and the said respective Governments in fulfilment of their public political duty and for the purposes of the Government of India in Trust for Her Majesty And the Defendants say that with a view to the good Government of India it has always been part of the System of the Government of India to require the most full and unreserved Communications in writing between the Defendants and the several local Governments and between the Various political agents and Officers of the said local Government and those Governments as to all public affairs and that the public interest would be prejudiced if documents written in the execution of such public duty or the Contents of the same were liable to be produced or disclosed at the suit of private individuals wherefore the Defendants submit that they are not bound and decline & to produce or disclose the Contents of the said documents enumerated in the said last mentioned Schedule

49 The Defendants admit that they are subject to the jurisdiction of this Honorable Court in a suit properly Cognizable by the Court though they insist and submit that this Court has for the Reasons hereinbefore set forth no jurisdiction to entertain the present suit.–

Schedule A. Real property acquired on before 1799.

" B. Real property taken in exchange for property acquired before 1799.

" C. Personal property acquired before 1799.

" D. Real property acquired after 1799.

" D1. Personal property D^o. (except that in D2.)

" D2. Personal property acquired after 1799. but which was of its very nature public, such as the Powder, Balls and any other munitions of War.–

" E Documents to be produced.

" F Documents not to be produced on ground of professional privilege.–

" G. Documents not to be produced on grounds of public policy.

(Two additional Schedules (say D3 & D4) may be necessary – though not so on the facts as now ~~stated~~ appearing from the correspondence. See Notes to Paras 13 & 37. – JM)

Kamachee Boye Sahiba
v
The East India Company

[illegible]

Fair Copy
Dft.
Answer

Fd 21 Decr/56

Pol 1856 Dept.
Le No. 745
Com. 6 Jany/57 – No. 31

No. 6197

From
G. F. Edmonstone Esqre.
Secretary to the Govt. of India

To
T. Pycroft Esqre.
Chief Secretary to the Government
of Fort St. George
Ft. William, 23rd December 1856

Foreign Department

Sir,

The Despatches of the Numbers and dates noted in the margin, relative to the proceedings taken by Mr. Norton in the Supreme Court at Madras, on behalf of the eldest widow of the late Rajah of Tanjore, against the East India Company and its Officers, were placed without delay in the hands of the Advocate General at this Presidency.

430 – 14th Nov. 1856
449 – 20 do.
463 – 27 do.
479 – 2nd Decr.

2nd. I am now directed by the Governor General in Council to transmit to you the "Opinion" of the Advocate General on the cases submitted to him, together with an answer to the Bill which has been prepared under his direction.

3rd. The Governor General in Council concurs generally in the view taken by

Mr.

may [illegible]
[illegible]

Mr. Ritchie, and requests that the Government of Madras will follow his counsel. It will not escape the attention of the Madras Govt. that the "Answer" does not assert the extreme legal rights which, in the opinion of the Advocate General, this Government possesses, and it is hardly necessary to point out that it is by the Answer the Madras Government should be guided, wherever there may be any difference.-

4. I am desired to impress upon the Madras Government that it is the wish and the intention of the Government of India that every article of property, respecting the title to which, as based upon the grounds set forth in the answer, any reasonable doubt can be raised, should at once be relinquished.-

5. I am to request that, if, on the case coming to a hearing, or for other reason, the presence of a Lawyer from Calcutta should appear to be necessary, the Madras Government will despatch a Telegraphic Message to that effect-; it will receive immediate attention.-

Fort William
The 23rd. December 1856

I have the honor to be,
Sir,
Your most Obedient Servant

G. F. Edmonstone

Secretary to the Govt. of India.

Compd. Dm

may get

Lr to England 13th June
No 1 of 1857 Paras 26 & 32

No 31

Indg to Cons: 6th Jany 1857

Political B & C Dept.

No 5745

From the Secy to the
Govt of India
No 6197

No 745

2 Inclos:

Dated 23rd Decr 1856

28/12/56

Transmitting the answer to the Bill filed in the Supreme Court at Madras by Kamatchee Bhoye Sahib against the East India Company, prepared under the direction of their Advocate General, together with his opinion on the several cases submitted to him.

No 745. Pol. Dept.

Extract Mins: of Cons: dd 31st Decr 1856

Read the following letter.

From Govt of India 23 Decr 1856 No 6197

Resolved that copies of the above letter and of its enclosures, the opinion and answer, be furnished to the Commissioner at Tanjore and to the H C Acting Solicitor

2. The H C Solicitor will proceed as quickly as practicable with the completion of the answer of which the draft has been sent by Mr Ritchie, communicating direct with the Commissioner on any points on which he may feel doubts or desire information

× The Commissioner will also at once report to Govt whether he holds any property which under the orders conveyed in para 4 of Mr Secretary Edmonstone's letter should immediately be relinquished — & if so state what it is and in what manner it came into his possession

3 – The Commissioner will reply to the various queries entered in the margin of the draft answer, and will furnish ~~copies~~ the several lists therein specified as soon as possible — his communications being addressed to Govt but duplicate sent by the same post to the Hble C Solicitor. ×

4 – Mr Forbes's attention is drawn to the remarks in the opinion of the Officiating Advocate Genl, on the claims to the Chouttiege villages, gardens & lands set up by Soobah Sahib and others. He will duly consi

these observations in the further report that he has to furnish on these properties —

5 – According to para 33 of the draft answer the opinion of the Hble Solicitor will be asked whether according to the Hindoo Law as followed in the South of India the elder widow only of the late Rajah would be his heiress — or whether all the widows left by him would ~~share~~ take jointly as co-heiresses — and also whether the interest

widow or of all the widows is not confined to a life interest — & if so what means should be taken on the delivery of the property to prevent dilapidation and ~~[illegible]~~ ~~its~~ protect the rights of the party having the reversionary interest in it — being it is presumed the minor daughter of the Late Rajah.

JF

Commissioner of Tanjore with copy of Letter No 6197 ~~& its 2 Enclosures~~ & a demi Official Paper } Dispd 31st

The Actg Solicitor with copy of Letter No 6197 & its 2 Enclosures } Dispd 31st

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(9) X

Memo -

These papers were recd by the Steamer yesterday -

JF The course to be pursued according to the answer - which is the document to be followed is as a matter of grace and ~~favor~~ and without admitting the jurisdiction of the Court — to offer to relinquish to the eldest widow, or to all the widows of the Late Rajah if entitled to take jointly - all the property taken possession of as belonging to the Rajah which was not acquired by his father Serfojee before the Treaty of 1799 - or ~~[illegible]~~ recd subsequently in exchange for real property possessed before the Treaty - or personal property acquired after 1799 but articles only such as Gunpowder Balls & other Munitions of with –

I would submit that the steps now to be taken are to forward copies of these papers to the H.C. Ass(t) Solicitor and to the Commissioner Adj. M & to direct the former to complete the answer communicating direct (perhaps it had better be direct sanction) with the Commissioner for any information that he may require — The Commissioner sh(d) be desired to proceed as quickly as possible with the preparation of the various lists specified ~~with~~ by Mr Ritchie — He should also be directed to report at once whether he does hold any property wh. the orders conveyed in the fourth paragraph of Mr Edmonstone's letter should at once be relinquished, & if so to state what it is & how he obtained it — the question then occurs to whom is it to be relinquished — to the elder widow only or to all the 16? See the answer para. 39

The "Opinion" further discusses at some length the claims on the Govt by the widows, gardens & lands set up by Azoo Sahib & others — Mr Forbes' attention might be drawn to this for his remarks & explanation in the further report that he has to furnish on these pretensions — but perhaps it will be well to take no proceedings in this matter, until the suit be settled — or at any rate until the Injunction be withdrawn.

There is also another point — The result of the litigation course adopted by the Supreme Court will probably be to relinquish a very large amount of valuable personal property — The Jewels are estimated by the Commissioners at 9 lacs of Rupees & but few of them probably can be proved to have belonged to the Rajahs prior to 1799. Are the Kamatchee Boye Saheba herself & the other fifteen widows if entitled to take it to them — to have more than a life interest and cannot I believe according to Hindoo law convert the property to their own uses — On its being made over to them should not there some measures if possible be taken to prevent dilapidation or waste and to keep the property in the family? I conclude the Rajahs daughters must have no absolute beneficial interest.

This however may be considered hereafter

Ltr to England 13th
January No. 1
1857 Paras 26 @ 32

In Dft to Court 6th Jany 57

Political 1857 Deptt.

No. 545

21-11-16

Ex: from the Mins:
of Cons:

Dated 31st Decr 1856

Directing that copies of the letter from the Govt of India, the opinions and answers furnished to the Commissioner of Tanjore and to the Hon Company's Solicitor with instructions on the particular points noticed

No 32