

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT

G.O. No.	2	Press
		~~Mis~~
47.48.		
Dated	30 1 - 1857	

Not to be folded or roughly handled

I have perused these papers on behalf of Government and I am of opinion that the Defendants have rendered themselves liable as Executors de son tort Subject to Order 2. J. 1897. Shalmond vs. Mellers & Sons 469.

I am also of opinion that the Defendants have no defence to the present Action, if the Plaintiff is really a creditor of the late Nabob.

Under these circumstances and assuming that the Plaintiff is really and bonafide a creditor of the late Nabob, I cannot advise the Government to take or even to sanction any steps in the matter with the view of the Defendants possibly evading the consequences of their Act, or postponing the Plaintiff in his remedy.

I observe that the Dewan, acted under a Minute of Consultation. The Government could not therefore permit the Defendants to be sufferers for an Act done under their Orders, and any steps which might be adopted (although in the name of the Defendants) would be in reality on behalf of Government, and I am of opinion that in Cases of this description proceedings should not be taken on behalf of Government unless there be any reasonable grounds for success. If the Government agree in this view, it becomes necessary to consider whether

that

there are such reasonable grounds in this case.

Only 2 Courses strike me as open to the Defendants to pursue, viz. to defend the action, or endeavour to get the Plaintiff and the Deceit to interplead.

As regards the 1st course, I believe the Defendants have no defence (if the Plaintiff be really a creditor of the late Mabel) and that if they plead "the unquies creditor" as recommended by Mr. Norton and issue be joined on that plea (which, it doubtless would be) on proof of the Defendants debt, I am of opinion that Judgment must be recorded against them and that under such a Plea the Plaintiff would be entitled to recover his whole debt and the costs under a Judgment *de bonis testatoris et de bonis debitoris* proper. This is the only defence that appears to me to be open to the Defendants. I should further advise that the Defendants simply plead *plene administravit* propter and bring the amount of the proceeds into Court or else (if the Plaintiff would not offer opposition on a *Summons* or a *Summons* might be taken out calling on the Plaintiff to show Cause why in payment of the sum paid and Costs all further proceedings should not be stayed. I incline however, to think the former Course the best, the more especially with reference to Costs, for if the Plaintiff take Judgment of such grounds it seems the Defendant is liable to Costs 2 Arch 1880

Mr.

As regards the suggestion made by Mr. Norton that the Plaintiff should be made to prove his Case &c. I should agree in that Course, if the Defendants had to act on their own responsibility; but under the circumstances (as I understand them) that the Government could in reality defend. I do not agree in the propriety of that Course, unless, indeed the Government are satisfied that the Plaintiff's Claim is a fictitious one and without foundation or precedent. On this point Government will be able to obtain information through the Government Agent. That Officer can also ascertain (if the claim be well founded) how much is now due for *Salvage* the Plaintiff's Claim under *Isakha Cutcherry* bond and *Isakha* not misinformed, that Bond, were made payable by *Isakha* but whether the whole was to become due if any one *Isakha* statement were in arrears. I do not know if information could also be obtained on that head.

I believe that Government in passing the Minute of Consultation, considered these Bonds as forming part of the *Revenue* property and as such that they passed to Government with the State. I cannot advise that such a sequence should be set up, the more especially as I observe that all the *Commisariat* were directed to purchase for Government at the Auction, such as may be considered suitable for the public Service.

As regards the 2^d Course Mr. Norton refers to

Refers to a case decided in this Court. Richardson
vs. Deschamps. this is the only Authority he cites.
on the other hand on the Authority of the Cases
decided in England. I am decidedly of opinion
that any application for interpleader would
be unsuccessful. The Defendants are the
Agents of the Dewan. they have moreover made
themselves personally responsible to the Dewan.
There is no priority of Estate between the Claimants
nor are their claims of the same Nature or in
the same right. These appear to me to form a
sufficient Answer and insuperable objections
to such a course, and bearing in mind that
the Dewan claims exemption from the
Jurisdiction of the Supreme Court under
Act No. 1 of 1844 I feel assured the Court
would not go out of its way to substitute him
in the place of the Defendants.

Under all the circumstances I advise
that the Defendants should plead as before
pointed out and bring the money into Court.

/ Signed / Clam. + Date.

Madras Dec 24 1856

True copy

W. B. P. S.

Att. for Solr.

L. D. Highland 13 Feb
N 3 of 1857 Paras 11 & 13

Vol. 1857 Dept.

in No. 8

Copy Opinion.

I have perused these papers on behalf of the Defendants. It appears to me that they have placed themselves in a singularly unfortunate predicament; and I don't see that they have any good defence against the claim of the Plaintiff if the Plaintiff really is a creditor of the Arab. At the same time, I cannot recommend them to pay the Money over, without a struggle, even on the opinion above expressed. They have given Security to the Dewan; though, it is really very difficult to say, what for. If indeed as the Security is, it could appear to be "for the horses." Assuming however, that the instrument must have some reasonable meaning put upon it, I presume that the intention of the parties, was to give and take Security for the proceeds of the sale of the horses. The Dewan appears to have acted, under instructions from Government conveyed, in a Minute of Consultation; and it is not to be presumed, if Defendants are compelled to pay those proceeds by a Court of competent jurisdiction to a third party, that the Government would allow the Dewan to enforce any lien, which he may have on the Securities; that the Government should be satisfied that Messrs. Gault and Waller have not yielded to any demand on the part of an alleged Creditor; and they should do all in their power to pay only, under a decision of the Court.

I think their safest course is to make the Dewan interplead. He might perhaps

perhaps resist their attempt, as they have pledged themselves
to hold the proceeds to his use, by giving him the *Securitas*.
but on the certainty of the proceedings, in Richardson
vs. Deschamps case, it may be contended that he should
interplead. At all events, even if unsuccessful, the
attempt is worth being made, for I do not see how
otherwise the Defendants have a good defence. They
might however take the opinion of the Court by a plea of
the Unques. Executor as to whether their Act binds them
Executors de son Tort, though the Cases are strong against
them, and observe they do not even profess to have
acted upon the orders of any third party. The
Plaintiff should also be made to prove his case by
denying the promise alleged to have been made by the
Nabob.

Signed/ John Bruce Norton

True copy

J. Weyson

Att. for Solr.

London 13 Feb
1857 Case No 13

Roll 1857 Deph

in No 8

No 1

From J R Boyson Acting Honorable Company's Solicitor
To The Chief Secretary to Government

January 2^d 1857.

Sir

I have the honor to return the papers
noted in the margin and having reference to the
Letter from Government agent Action instituted in the Supreme Court
at Chaparral to Chief Secretary to Government by Mr. Nathaniel Jacob Johann
against Messrs Cuttrip and Waller.
dated 24 Decr 1856 No 180
with 2 enclosures.

I do not consider it necessary to trouble
Government with any further details of this
case, all the important facts having been
already under their consideration.

Herewith send a copy of Mr. Norton's
opinion, taken on behalf of Messrs Cuttrip
and Waller.

Subsequent to my assuming charge of
the office of Company's Solicitor I consulted Mr.
Dale on behalf of the Honorable Company.
I now submit a copy of his opinion and beg
to add that after giving the whole question
much anxious consideration I concur in
Mr. Dale's views and think that the most
expedient course that can now be pursued
will be for Messrs Cuttrip and Waller to
plead *plene coministravit preter* and
bring the proceeds realised by the sales of
the Horses into the Supreme Court, from whence
they

they will forthwith be paid out to Mr. S. I. Johannes (the Plaintiff) in part liquidation of his claim.

I think the amount brought into Court should be the gross proceeds of the sale of the Horses and that Messrs. Cultrick and Waller's Commission and the charges connected with the sale (for advertising and otherwise) should not be deducted from the gross proceeds but should be left for future adjustment. This is also Mr. Dale's opinion.

Mr. Johannes' claim in the present action is founded upon Istefa Cutcherry Bonds for a large (aggregate) amount. These Bonds were issued (as I have good grounds for believing) in settlement of a debt incurred by one Schoolam moortooga Khan to Mr. Johannes. Schoolam moortooga Khan passed through the Insolvent Court and some years afterwards the late Sabab effected an arrangement with the creditors of Schoolam moortooga Khan by granting them Istefa Cutcherry Bonds for amounts then agreed upon, payable by annual instalments, without interest. I can not but think that the whole of the details of this arrangement must be within the personal knowledge of the late Dewan. I have the honor to be

Your most obedient servant

S. M. Myers

Actg. Dewan Sahib

No. 2.

Under the advice given in the above letter the R. H. the J. C. directs that Messrs. Cultrick and Waller be appointed to plead as recommended in para 3, and to bring in to the Supreme Court the gross proceeds of the sale of the Country Horses of H. H. the late Dewan Sahib to be paid out to the Plaintiff in part liquidation of his claim.

Settlement will be made hereafter with Messrs. Cultrick and Waller for their Commission & other charges incidental to the sale.

The Dewan will be called on through the J. C. to affirm

that he can give information that he can furnish on the subject of the Plaintiff's claim. J. C.

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of the Executive, because the
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 and that the same be signed
 and to furnish all the information
 - in his own possession the
 same in question

is paid - but this however is to
 be done as soon as possible

I have been informed
 that the same is to be done

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