

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No. 1076

Press

~~Mis~~

Dated 26-12-1857

Not to be folded or roughly handled

Fort Saint George, Political Consultation, 8th January 1858.

No. 15. From the Honorable Company's Solicitor ; to the Chief Secretary to Government, dated 18th December 1857, No. 748.

SIR,

Kamachee Boye Sahiba,
Versus
The East India Company and others.

I have the honor to forward herewith a copy of the Judgment of the Supreme Court delivered by the Lord Chief Justice on the 11th Instant, in the Suit noted in the margin, and to suggest that copies of this Judgment be transmitted to the Honorable Court of Directors and the Government of India.

The Advocate General having this day addressed Government regarding the Appeal to the Queen in Council, I do not trouble Government with any remarks on this point.

(Signed) J. R. BOYSON,
Honorable Company's Solicitor.

KAMACHEE BOYE SAHIBA

Versus

THE EAST INDIA COMPANY.

This Suit was heard before a full Court towards the end of the last Term. The various points arising in it were fully and very ably argued by the learned Counsel on both sides. Its importance was much pressed upon us. We have therefore, I trust, given to our judgment that full consideration which such a case calls for at our hands ; but, however that may be, it is satisfactory to reflect that our decision need not be final or conclusive on the parties, and that it can be brought under the revision of a higher Tribunal, by which any doubtful or wrong conclusions at which we may be considered to have arrived can be corrected.

The case having been so recently before the Court, it will not be necessary for me on the present occasion to do more than to give shortly an outline of it on each side.

The Plaintiff by her Bill prays that she may be declared as senior or first married Widow of Seevajee, the late Rajah of Tanjore, who died without Male issue, to be entitled to the private and particular Estate and Effects of her deceased husband, subject to the payment of his debts, &c. She also prays that the Defendants may be declared to be Trustees for her of such of the property as may have been taken possession of by them or their servants, also for an account and a receiver.

The Defendants in their answer set up two lines of defence : 1st, that the Plaintiff has no case on the merits, and 2ndly, that the Court has not any jurisdiction to try the Suit.

As regards the first, they submit that the late Rajah Seevajee, was an independent and absolute Sovereign, and as such was not possessed of any private Estate as distinguished from the public or State property, and they further allege that according to Hindoo Law all the widows and not the senior widow alone are entitled to succeed to the Estate of a Mahratta man dying without Male issue either natural or adopted.

In support of their 2nd line of defence, viz., that the Court has no jurisdiction, they submit that they took and detained the property of the late Rajah in their public and political capacity, that their taking of the property was an Act of State and that the question of what portion is private and what public property involves the construction of a Treaty and that consequently neither this or any other Municipal Court in Her Majesty's Dominions has any jurisdiction to entertain the question.

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It was also argued that the Court had no jurisdiction because the Suit has reference "to a matter concerning the Revenue under the management of the Governor and Council."

I will now state what I consider to have been established on the one side and on the other, and how much of the several defences relied on by the Defendants have been made out.

I think that all the material facts set out in the Plaintiff's Bill have been clearly proved. I am of opinion also that the Plaintiff, according to Hindoo Law, is as the senior and first married Widow of the late Rajah Seevajee entitled to her late husband's private and particular Estate and Effects, and that the Defendants have wholly failed to prove, or point out to us any Law or Custom such as is alleged in their answer, under which all the Widows succeed to their deceased husband's Estate, under circumstances such as have been established in this Suit. This ground of defence, it may be observed, goes only to the *quantum*, and not to the root of the Plaintiff's claim.

I am also satisfied on the evidence that the late Rajah Seevajee, a Hindoo of the Sudra Caste, was not a Member of an undivided family, and that he was possessed of private and self-acquired property both real and personal, and that a distinction was observed during his life between his State and Crown jewels and those which he either purchased himself or caused to be purchased, made for the use of his numerous wives and their families. An inspection of the Schedule attached to the answer, as well as the answer itself, confirms me in my opinion that much of the property detained by the Defendants is of such a nature as cannot allow of its being considered State property; take, for instance, Schedule (R) the contents of which have been sold by the Defendants, can it be believed that all the Carriages including numerous Poney Carriages and Children's Carriages and Palanqueens, or the Cows, and Horses, Ponies, &c., were State or Public property, or ever treated as such, or that all the contents of Schedule (M), including numerous Female jewels and Trinkets, or that all the Female apparel, Clothes, Shawls, Silks, Laces, &c., in Schedule (O) are State property. It is true that as regards some of these Schedules (G) (H) (O) (P) and (Q), the Defendants in their very cautiously drawn answer (and which were it not that of a corporation, whose personal knowledge in most instances is necessarily small, might be considered unsatisfactory) admit that the property in the last named Schedule "is not essentially public, a somewhat ambiguous phrase, and that as regarded it and some other property both real and personal, they do not intend treating it in the same way or on trust, as the property in the other Schedules, but are willing to give it up as if it had been private property. I will only observe this, that I do not exactly see, unless the property referred to is private, how the Defendants can justify, treating in any other way than as public, property really public, and which as such has come to their hands on trust.

But the learned Counsel for the Defendants contend that the contents of the Schedules and the nature of the property are immaterial, as no distinction, they say, can be allowed between the public and private property of an absolute Sovereign as he can dispose of the whole of it as he may think fit, citing as an authority for this principle the case of the Advocate General *v* : Amceerchund, 1 Knapp 329n, and the Lord Advocate *v* : Lord Douglas 9H, and Fin 173-211.

This last case was referred to for the following *dictum* of Lord Brougham, *viz.*, it is only within the last half Century, that any private property "has been acknowledged to exist in the Crown at all; prior to that all lands descending on the Crown even from Ancestors or Collateral relatives, were held, *jure Coronæ*. All the property of the Crown is held for public purposes and is Crown property except that which the individual Sovereign has retained a right to deal with in his private and personal capacity." This *dictum* appears to be confined to landed property, and whether strictly correct as regards all landed property, is, I think, with every respect to the noble and learned Lord, fairly open to doubt, for though it is true that according to the common Law of England the King being a corporation, purchases of real property made by him after the assumption of the Crown vest in him in his Sovereign capacity and descends to his Successors, "still purchases made before the accession to the Crown or descent from Collateral Ancestors after the Accession of the Crown, vests in a natural capacity." See Co., Litt. 156, note 4, shewing that even in England the Monarch could take real as well as personal property in his own right, as was however observed by the Bench during the argument, the Statutes of 1 Ann. C. 7, and 39 and 40 Geo. 3, C. 88, regulate questions regarding the private property of the British Sovereign,

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and it is not by the English Statute or Common Law, that the questions in this Suit are to be decided, but by the Hindoo, and even the statement in the case referred to in 1 Knapp 329, *viz.*, that there was no distinction between the public and private property of an absolute Sovereign, must, I think, be taken in connection with the facts of that case and the point then under the consideration of the Court. In that case as well as in *Elphinstone v* : *Beehechund*, 1 Knapp 316, the question arose out of the seizure of an enemy's property, and it was held that on the seizure of the property of an hostile Sovereign *si non flagrante sed non cessanti bello*, no distinction could be allowed between his public and private property. Here there is no question as to the seizure of an enemy's property or as to peace or war, but whether the late Rajah Seevajee possessed any private property, and if so, whether the detention of such property now belonging to an Inhabitant of a Territory, peaceably become part of the British Territories in India, can be justified, and on the grounds set up by the Defendants.

But admitting that in the case of an absolute Sovereign, such as was contemplated in the above case, no distinction can be made between his public and private property (and few such, I think, can be found in the present age) can I assume on the facts before us that the late Rajah was such an absolute Sovereign as that he could have disposed of his Fort, or other public Buildings, or State Jewels, as he did of his other property, both real and personal? There was no proof before us of his ever having disposed of any of the State property, and as to his being an absolute Sovereign, what evidence had the Court before it of that fact? The evidence, as far as it went, tends, I think, to shew that his Sovereignty was little more than nominal, that he exercised no Sovereign powers over the Kingdom of Tanjore, that he resided within the circumscribed limits of the Fort of Tanjore, (where a Resident, an Officer of the East India Company, was always present,) enjoying little more than, to use the expression of the East India Directors, a "Titular Sovereignty," and certainly not more than, to adopt the words of the Defendant's answer, "the outward state and dignity of the Reigning Monarch." To whatever that amounted was not very clearly shown. We had evidence however that the late Rajah never did any of the Acts that mark a Sovereign power, for instance, he did not send or receive Ambassadors or keep up political relations with any foreign States; he did not coin money, he did not collect or in any way manage the Revenues of the Kingdom of Tanjore, but it was shewn that he received an Annual Stipend from the East India Company, some of his Receipts for which were put in, for what purpose I hardly know, unless perhaps for the last few words, by which the Receipt of a certain sum on account of the East India Company was acknowledged "as part of my Lac of Star Pagodas and one fifth part of the net Revenue of my Country for the year, not of my kingdom, be it observed.

Upon the whole of the evidence before us I am satisfied that the late Rajah Seevajee was not the absolute Sovereign suggested by the Defendants, and that he had private property, both real and personal, as I have above stated. I am further strengthened in this last conclusion by the fact that according to the Hindoo Law and Customs, a Hindoo Sovereign may have private property. See *Strange's Hindoo Law*, Vol. 1, page 209 and 2nd Vol. Appx. 329, where after stating that a kingdom is not divisible, it is added "that the Effects and private Estate of a Sovereign like those of an ordinary individual (Hindoo) are in common and distributable amongst his Sons." See also 2 *Colebrooke's Hindoo Law*, C. 4, S. 1, *et seq.*

My Judgment on the above part of the case has been formed without any reference to the Treaty of 1799, put in evidence by the Defendants possibly for the purpose of supporting one of the points raised by them, *viz.*, that the Court could not take cognizance of the Suit because it involved the construction of a Treaty. Upon this point I would here remark as well as upon some others equally beyond dispute, but which were much dwelt on by the learned Counsel for the Defendants that the Court has never entertained any doubt respecting them, though not able to see their applicability to the facts of the present case. I refer to such points as that the construction of Treaties, or the public Acts of State between Sovereign powers, or acts relating to peace or war, could not be tried by any Municipal Courts. As little matter of doubt is it that the East India Company though Subjects, have certain Sovereign powers delegated to them: such as those of making Peace and War and of making Treaties with certain of the Native Powers in Asia, and that concerning such Acts as can be included under the above heads, neither this, nor any other Municipal Court has any jurisdiction to enquire.

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But in the way in which the Plaintiff shapes her case before the Court, I think that these points do not fairly arise. The Plaintiff sues as a private individual and as the Subject of a Country forming part of the British Territories in India. Of the annexation of the Raj, of the Defendants taking possession of its Revenues, or of the State property of the Kingdom, whether consisting of Lands, Forts, Jewels, or Munitions of War, she makes no complaint. She sues only for what she alleges to be her property according to Hindoo Law, *viz.*, the private Estate and Effects of her deceased husband Seevajee, the whole of which she alleges the Defendants detain from her without any justification.

Let us proceed now to the Defendant's second line of defence, *viz.*, that of the jurisdiction of the Court. They say, assuming that there was private property, its seizure and detention cannot be enquired into by this Court. 1st, because its seizure was an Act of State, and 2ndly, because the property seized, or a portion of it at least, is Revenue.

First then as to the seizure being "an Act of State" (though many of my arguments will bear on both lines of defence) what is an Act of State? It is not every Act by a Government, or by those representing the Sovereign in a Foreign Country, which will be exempted from the jurisdiction of the Municipal Courts. See *Cameron v. Ryte*, 3 Knapp 332. But assuming an Act of State to be an Act of the Sovereign Power in relation to Peace or War, or an Act done by it as being absolutely necessary for the public safety, or "*nequid detrimenti respublicæ capiat*" (and under this head a benefit or increase to the Revenue can hardly be included or acts of a similar description. Thus the Defendants brought the acts of seizure and detention of the Plaintiff's property within the principle of the protection they set up? and, further, was in fact the seizure of the private property an Act ordered by any Government at all?

Now what are the facts proved which bear on this portion of the case, after the death of the late Rajah Seevajee which took place in October 1855, it was determined by the East India Directors that the Raj of Tanjore had lapsed to the East India Company for want of Male heirs to Seevajee. Though this lapse was not immediately publicly announced, the East India Company must, I think, be considered to have become the Sovereign Power throughout the Kingdom of Tanjore from the death of Seevajee. No very perceptible change in the Government of the Country at large would be made, as the Territories of Tanjore had long been under the management and control of the East India Company. Such then being the state of things, it is only after a correspondence between the East India Directors and the Governments of India and of Madras, that in September 1856 Mr. Forbes is appointed under the direction of the Government of India for the purpose "of enquiring into and reporting upon the various questions demanding settlement in connection with the extinction of the Raj of Tanjore." In the letter of the Government of India of 8th September 1856, authorizing the appointment of an Officer on this special duty, I find the following passage. "But the mode in which it may be proposed to deal with the Rajah's debts and with the State Jewels, Library and Armoury should be reported to the Government of India before any measures are taken." It might be contended from the concluding words of the above Extract that no authority was given or intended to be given for the taking possession of even the State Jewels, &c., till some further report had been made to the Government of India, such however does not appear to have been the construction put upon it by the Government of Madras, who on receipt of the above letter instructed Mr. Forbes in a letter of the 25th September 1856, "to take lists of the Jewels belonging to the Raj and passing with it to the Honorable Company, as also of the State Armoury and Weapons."

Neither of the above letters appear to contemplate, much less to authorize, the seizure or detention of other than State property or in other words of the property of the Raj passing with it to the East India Company.

It was proved, however, I may here remark, that previous to this authority being given, the rents and profits of the Villages and Lands bought by Seevajee had been received by Mr. Forbes, since the Rajah's death, the evidence of Ramachundra Row, uncontradicted, is that Mr. Forbes had been receiving the rents and profits of those Villages since Seevajee's death. The sale also of the

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contents of Schedule (R) had taken place early in 1856. On the 18th October 1856, it is that Mr. Forbes having received his new authority which is relied on for making this seizure an Act of State, took possession of the property in the Fort of Tanjore. It appears to have been an indiscriminate seizure both of public and private property, the orders of the two Governments, as I have above pointed out, having been expressly confined to the State property. Assuming then that the taking possession of the Public and State property can be considered an Act of State as ordered by the Government of India, and as being a necessary consequence perhaps of the assumption of the Raj, how can the seizure and detention of private property (and especially of such portion as consists of rents and the produce of Sales made previous to October 1856) come under the same protection. The seizure of the private property can, I think, be held to be brought within the protection of the Act of State plea only on proof either that the property was *bonâ fide* believed at the time to be all public or that its seizure was rendered unavoidable from the impossibility of distinguishing the one from the other, or because the public could not possibly have been taking possession of without also seizing the private. This last ground, it should be observed, affords no excuse for the detention. But we had not any evidence of such a state of circumstances existing as I have above suggested, no State property was shewn to have been in danger, nor was there any evidence that there existed any difficulty in separating the one from the other, which ordinary care and patience even after the seizure might not have overcome. I say even after the seizure, for it should be borne in mind that the *gravamen* of the Plaintiff's complaint before the Court is the detention of her private property, not the seizure, which of course would have been the subject matter of an action of trespass on the Plea side of the Court, nor had we any proof that there was any *bonâ fide* belief that all was public property, on the contrary, Mr. Forbes in his letter of the 17th October 1856, written the day before the seizure, shews that he knew there was private property amongst that about to be seized, for he expressly states that "all property to which a claim shall be established shall be restored to its owner." It appears then from the above that an order having been issued to take possession of public property, private property was taken, and is now detained under the circumstances above set out. I am of opinion that such detention cannot be considered an Act of State, nor can I consider that the subsequent adoption by the Defendants can make that an Act of State which originally was not so.

The remaining ground relied on by the Defendants to bar the jurisdiction of the Court, is that the seizure related to a matter of Revenue from inquiry into which the Court is expressly precluded by the 23rd Clause of the Charter establishing the Court. In support of this point the learned Counsel cited the Statute 16 and 17, Victoria, C. 95, Sec. 27, by which it is enacted that "all real and personal Estate within the said Territories escheating or lapsing for want of an heir or successor and all property within the said Territories devolving as *bonâ vacantia* and for want of a rightful owner, shall as part of the Revenues of India belong to the East India Company in trust for her Majesty for the Service of the Government of India." Looking to the words used in the Charter and the inconvenience intended to be guarded against, I am inclined to think that a very fair doubt may be entertained as to whether an escheat or lapse under the above Statute comes within the words of the Charter as "Revenue under the management of the Governor (of Fort Saint George) and Council or as Revenue collected under regulations made by him." I think also that the same reasons do not exist for preventing the subjects of the Queen from resorting to Her Courts in the case of such escheats as in cases relating to the collection of the ordinary Revenue made as it is to a great extent in small sums and under regulations and usages which it might be exceedingly inconvenient to submit to the consideration of the Queen's Courts.

I think however that this line of defence, *viz.*, that the property seized was Revenue, may be disposed of on the same ground as I have considered a sufficient answer to the defence that the seizure was an Act of State, for supposing that the seizure of the public property which had lapsed to the East India Company under the Statute to have been an Act done in the collection of the Revenue within the meaning of the Charter, can we extend the same protection over the wilful seizure and detention of private property, an Act not ordered by either Government or justified by any regulation or necessitated by any difficulty or unavoidable necessity, as I have above already shewn. I think we should not be justified in doing so, being of opinion that the property was seized and has since been detained with the knowledge that some of it was private property. This fact I think distinguishes this case from *Spooner v. Juddow*, 4 Moore's Indian

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Appeals 353, which was relied on in support of the Revenue defence as well as of that of the Act of State. In that case a slip has been made and there can be little doubt after reading the facts of that case but that the Defendants *bonâ fide* believed that he might make the distress for the whole arrears of Quit rent due from the Premises without regard to the question of whose name was mentioned in the Warrants. I fully subscribe to the authority of that case as well as to the large Class of cases establishing the rule, that if parties *bonâ fide* believing that they are acting in pursuance of a Statute and according to Law, they are entitled to the special protection which the Legislature may have afforded them, though they have been guilty of an illegal Act. But I do not think the principles there laid down applicable to the present case which is distinguishable not only on account of the want of *bonâ fides*, but also on the ground that this is not an action of trespass for the seizure, but a Suit for the detention of the property of the Plaintiff.

I must here observe that though I am now delivering the Judgment of the Court, Mr. Justice Davison who owing to his absence has not had any opportunity of reading this Judgment and consequently is not answerable for the reasons or observations contained in it, fully concurs with me in the facts of the Case and in the conclusion at which I have arrived, *viz.*, that the Plaintiff is entitled to a Decree on the ground that as to part at least of what they have done the defence set up by the Defendants cannot avail them, because they are unnecessarily and wilfully detaining private property of the late Rajah Seevajee with full knowledge that it is such private property and that they have not any title to it whatever.

The Defendants having then failed to establish any of their grounds of defence, it remains for me only to declare the Plaintiff entitled to the Decree of the Court as prayed.

1st. That as senior or 1st married widow she is entitled to the private and particular Estate and Effects of her deceased husband the late Rajah Seevajee, subject &c.

2ndly. That the Defendants may be declared Trustees for her for so much of such property as they have possessed themselves of, &c.

3rdly. For an account of all property.

Other points including Costs reserved until after the Master's Report.

(True Copy.)

(Signed) J. R. BOYSON,
Honorable Company's Solicitor.

Read MEMO. by H. FORBES, Esq., late Commissioner of Tanjore, dated 17th December 1857.

Passing over the legal arguments of the Judgment, which will be met by the Law Officers of Government, the judgment appear to be based on the following supposed facts.

1. That the rents and profits of the Lands bought by Seevajee had been received by Mr. Forbes since the Rajah's death.

2. That certain property in Schedule R, had been sold early in 1856, and that the sale proceeds had been seized.

3. That at the time the Rajah's property was taken it was not *bonâ fide* believed to be public.

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4. That the seizure of private property was no necessary accompaniment of the seizure of public property.

5. That Mr. Forbes, in a letter addressed to the Plaintiff, admitted that he knew that he was taking private property.

6. And that, after all, the gravamen of the complaint is, not that the Plaintiff's property was taken, but that it was and is detained and not given up to her.

1. It is not fact that Mr. Forbes received the rents and profits of the Lands from the time of the Rajah's death. The Rajah died in October 1855, and no land was taken, nor any rent collected by Mr. Forbes, or by his order, until, after being appointed Commissioner in October 1856, he went to Tanjore, and directed the Collector to assume the landed property after the Raj had been annexed. I do not know to what evidence the Chief Justice refers as proving the collection of rents and profits by me. I do not remember any being given at the trial, I was not asked a question upon the subject, and I am under the impression that the Court has misapprehended something that was said.

2. The Chief Justice was told on the trial that the property in Schedule R was sold, not by me, but by the Rajah's Sirkele. I aided him so far as to write to the Livery Stable keeper to receive and sell the Horses and Carriages, because the Sirkele had never been out of Tanjore, and was wholly ignorant how to proceed, but what I did was at his request, he was the Principal and I only the Agent. Further, the sale proceeds were not seized, they were paid into the Palace Treasury, and on that Treasury I never put my Seal, I did not think it necessary to do so, there were regular Accounts kept of all Receipts and Disbursements, and fraud was not more practicable than in my own Treasury as Collector, but it was different with the other property, of that there were no Lists or Accounts, and had I not sealed the Doors, Jewels, Clothes, or any other property might have been abstracted without fear of detection.

3. This assumption is incorrect. I *did* believe all the property I took possession of to be public property, as far as I knew what that property consisted of, and I believe that the Government are under the same impression.

4. This assumption is not only wholly incorrect, but is in direct opposition to what was repeatedly pressed on the Court at the trial. My orders were to "secure" the State property. Securing it, could not possibly mean that I was to leave it in the charge of the late Rajah's family and Servants, as they were the only people I was intended to secure it from; if therefore I was to secure it at all, I could do so only by taking it into my own keeping. The property consisted of many thousand items, it was, I think, manifestly obvious that I could not in one day, examine, and classify such a mass of property, and off hand decide what was public and what was private, and yet, if I did not perform this sheer impossibility, and if, on retiring from the Palace at the close of the first day, I "secured" the property by placing my Seal upon it, I thereby made the very seizure which this Judgment declares to be illegal.

I was ordered to take all public property. All the property of all kinds was mixed up together, I could not separate it in a day, I cannot therefore have taken all or have left all, I could not do the latter without disobeying my orders, and I maintain therefore that, in doing the former, as the sole and only means of obeying my orders, I acted under the authority of Government, and that the Act was an Act of State.

But besides this, the Judgment is silent upon a very important fact, which was pointedly pressed by Mr. Mayne at the trial, my proceedings were all reported to the Government and were formally approved, even if therefore they were not Acts of State before, they were made so by their adoption and ratification by Government.

5. This also is an assumption by the Chief Justice, the contrary of which was pointedly laid before him at the trial, knowing the confusion in which the Rajah delighted to keep all his affairs,

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I thought it very possible that property which really belonged to some Member of his family might have been mixed up and kept with his, I therefore wrote to the Plaintiff, as the head of the family, and said that if any such property was found, it would be immediately restored to its Owners, not only does the whole tenor of my letter shew that this was my meaning, but the Court was told at the trial that such had really been my meaning. It is remarkable therefore that the Chief Justice should now assume that in the use of the words "private property," I meant the private property of the Rajah, and should argue that I thereby admitted that I *knew* that there was such private property among that which I had taken. The very reverse is the fact, and the Court was told so.

I did not *know* that there was private property of any body's there, I only thought it probable, and I considered that to allay any fear of a general confiscation, and as a matter of courtesy, it was right to assure the family that if any such property were found, it would be given to its rightful Owner.

6. In this part of the Judgment, the Court entirely ignores its own Act, it is no fault of the Defendants that Plaintiff has been, and is kept out of any property the Government might assign to her, an enquiry was proceeding, as rapidly as circumstances would allow, with the view of ascertaining what was strictly State property, and what could properly be left to the family, when an injunction issued from the Supreme Court prohibiting further proceedings; it is this that has caused delay, and without this the whole matter would have been arranged many months ago.

(Signed) H. FORBES.

Read letter from the Advocate General; to the Chief Secretary to Government, Fort Saint George, dated 17th December 1857.

SIR,

On the 11th Instant the Chief Justice delivered in a written judgment, the decision of the Court in the case of *Kamatchee Boye v. the East India Company*, known as the Tanjore case.

2. I applied to the Chief Justice for a copy of the judgment, which he said his Clerk should furnish, and I only waited to address you officially on the subject until I received the copy.

3. I only heard yesterday evening that it was furnished on the 14th Instant, to the Company's Solicitor, that he had forwarded two copies of it, demi-officially, and that an official copy of it will be ready either to-day or to-morrow.

4. I need therefore say but little about the judgment, which will speak for itself. I shall merely notice the leading points.

5. It decides that the Plaintiff has established her case and that the points relied upon for the defence have not been made out.

6. It says that the deceased Rajah by Hindoo Law was competent to have, and that as matter of fact he did possess, private, separate, self-acquired property, as distinguished from that which he held as Rajah of Tanjore, and that this private property on his death passed to the Plaintiff, as his eldest Widow.

7. That while fully admitting that the Court has no jurisdiction over Acts of State, or matters depending on the construction of Treaties, nor in matters of Revenue, and that Sovereign Powers were delegated to the East India Company in respect of its transactions with Native

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Princes, yet that the Court's jurisdiction was not therefore barred in the present case, because the Plaintiff sued only as a private person and in respect of the private Estate of her deceased husband, and that the Government of India had never authorized the seizure or detention of any part of that private Estate, its orders specifying only what belonged to the Raj, and that therefore the seizure of the private Estate was in excess of the orders of the Supreme Government, and so not an Act of State; that, moreover, if private property was seized by Government, I could not by merely calling the seizure an Act of State, bar the Court of its jurisdiction in the matter; and that Female jewels, Nursery Toys and Utensils, and even Lands which the Rajah had always treated as private property, could not possibly be seriously alleged to be State property, or to come under the head of Revenue.

8. The question of the Court's jurisdiction is obviously the most important one. It is clear that here, in the difficulty of at first distinguishing private from public property, and the necessity of securing the whole to prevent the latter from being plundered, possession was taken of a mass of trivial, and some valuable Articles, which neither Government nor any of its Officers could have contemplated claiming or detaining as State property, and it is useless to remark now on the course that might then have been adopted respecting such Articles. It is also true that if what was the undisputed private property of a private individual, a Subject, were seized by order of Government, the merely calling such seizure an Act of State could not possibly oust the jurisdiction of the Queen's Courts when appealed to by such Subject. Otherwise Government or the Crown could never figure in any Civil Suit, because whenever morally convinced of their own rights they could seize them, and preclude all question of their Act by calling it an Act of State.

9. The present however appears to me a widely different case. This is no case of a bare assertion that the Act is an Act of State, nor is the case one of the seizure of the undisputed private property of a private subject. It is a public question regarding the property of a deceased Sovereign of a State escheated to the Company, according to the construction of a Treaty, and where the Supreme Government had *bona fide* and not as a mere colorable Act ordered possession to be taken of all State or public property, and where its Officers were *bona fide* endeavoring to carry out that order, no *malá fides*, or mere colorable assertion of an Act of State being even suggested. To say that in such a case the Supreme Court can discuss the seizure of each separate Article, (the seizure of the whole being one simultaneous Act) and say that one was properly seized and detained as an Act of State, but that the next was not, seems to me so to fritter away the exemption acknowledged to belong to Acts of State, as nearly to annihilate it for any purposes of practical utility.

10. It will be seen that the Court, not deciding that any particular Articles are private property, granted the taking an account of the property in the Master's Office, with which the Plaintiff can now proceed as soon as she pleases, but after concluding the delivery of the written judgment, the Chief Justice suggested, very earnestly, that looking to the very decided opinion of himself and Mr. Justice Davison, who, he thought, had considered the case as impartially as any two men could, that the Rajah might have and had private property and that much of the property seized was so clearly private property that no one could seriously contend the contrary, it was highly desirable that it should be referred to two intelligent persons on the spot to agree on what was and what was not private, and so save the expence of the reference to the Master.

11. This would certainly be very desirable, for the expense would be enormous in this case. The first step would be for the Honorable Company's Solicitor to bring in an Inventory of the whole, and for the Master to furnish copies thereof to the other side, and it would be quite useless, for the Inventory would be only a copy of the long and numerous Schedules with the correctness of which the Plaintiff, I believe, is quite satisfied.

12. The objection would be the admitting that the Court had any jurisdiction in the matter, but if this can be got over by an express and formal admission on the Plaintiff's side, that no such Act on the part of the East India Company shall be, or operate, or be regarded or construed, as any admission of the Court's jurisdiction, the course suggested would be, in my opinion, a very desirable one.

Fort Saint George, Political Consultation, 8th January 1858.

13. The Chief Justice was much pressed by Plaintiff's Counsel to appoint a Receiver at once over the private property of the late Rajah, but after some suggestions from me refused to do so at present.

14. The Judgment should in my opinion be at once appealed against.

(Signed) T. S. SMYTH,
Advocate General.

No. 16. ORDER THEREON, No. 1076; dated 24th December 1857.

The Right Honorable the Governor in Council, directs that immediate measures be taken by the Law Officers of Government for appealing to Her Majesty's Privy Council against the Judgment given by the Supreme Court in the Suit, Kamatchee Boye Sahibah *versus* the East India Company.

2. Copy of Mr. Forbes' Memo. will be furnished to the Law Officers for their consideration in connection with the appeal now ordered.

3. The Government are not at present prepared to express any opinion upon the suggestion contained in paras: 10, 11 and 12 of the Advocate General's letter. Should such a reference as is therein alluded to be proposed by the opposite party, they will give it their consideration on the proposal been laid before them by their Law Officers with such remarks as they may then see occasion to make on it.

4. Resolved that copy of the Judgment and of the other papers recorded at the head of this Extract, and of these orders upon them be forwarded to the Honorable the Court of Directors and to the Supreme Government by the next Steamers.

No. 16. A. From T. PYCROFT, Esq., Chief Secretary to Government at Fort Saint George; to the Secretary to the Government of India, Foreign Department, dated Fort Saint George, the 24th December 1857, No. 1077.

I am directed by the Right Honorable the Governor in Council, to forward for submission to the Right Honorable the Governor General in Council, the accompanying copy of the Judgment, recently delivered in the Supreme Court in the Suit Kamatchee Boye Sahibah, elder widow of the late Rajah of Tanjore, *versus* the East India Company, of other papers connected therewith and of the orders which have been passed by this Government.

2. It will be seen that the decision has been adverse to the Defendants, the East India Company, and that the Law Officers of Government have been directed to take immediate measures for preferring an Appeal to Her Majesty's Privy Council. The Government have declined to express any opinion on the suggestion contained in Mr. T. Sydney Smyth's letter, paras: 10, 11 and 12, relative to the appointment of Referees to determine what was and what was not the private property of the late Rajah, but have informed him that they would consider any proposal of the kind alluded to which might emanate from the opposite party on its being laid before them by their Law Officers with any remarks which they might then see cause to offer on it.

3. Copies of these papers will be forwarded to the Honorable the Court of Directors by the out-going Mail, and the Court and the Supreme Government will be kept duly informed of the further proceedings of this Government in the case.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. J. A. Wilson.

17. December 1857.

My dear General,

I send you a summary
of the substance
of the judgment in
the Rajah's case, in
order that you may
consider if there be any
point in it to stick
it may be desirable
to attract the attention
of the Law Officers.

seen a huge amount
in fact but still is
really not so, and
omit, but still really
is so, it leaves the
impression that the
side he expounds is
weak, and cannot
stand up to its
own merits.

I hope however that the
impression is a good
one to take away from

Yours
W. G. S. W.

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Memo -

I beg to inclose an official copy of the judgment in the Tanjong case recd from the At Solicitor on Saturday the 19th inst.

I inclose also a memo written by Mr Forbes as soon as he saw the judgment published in the newspapers - pointing out some errors of fact which appear in it and which will demand consideration in connection with the appeal which will have to be made - This paper might be communicated to the Law Officer of the Govt.

I inclose at the same time a letter from the Advocate General upon the same. That part of it, on which early orders seem especially needed is that which respects the taking account of the Tanjong property and the proposed avoidance of the Master's inquiry by reference to two intelligent persons on the spot. From what Mr Smyth says I gather that this taking account, whether by the Master or by reference, cannot be turned

Extract from the Minutes of Consultation
Dated 24 December 1857.

Read letter from H^c Solicitor dated 18 inst.
forwarding copy of the Judgment delivered
by H^c Chief Justice of the Supreme Court in the
suit Karatchen Bogg Sahib Versus the
East India Company -

Read ~~letter~~ Memo by Mr Henry Forbes
Late Commissioner at Tanjore dated 17th
inst - offering remarks on certain parts of
the Judgment -

Read letter from H^c Advocate Genl dated
17 inst submitting observations in connection
with the Judgment. —

A

G

H. G. G.

The R^t Hon^{ble} Secy directs
that immediate mea-
sures be taken by the
Law Officers of Govt
for appealing to H^c
Privy Council against
the Judgment given by

the propriety of an appeal - although it does not
appear of what use such accounting can be
seeing that whatever sorting of the property in the
public and private may be made, the Plaintiff
cannot get the private property until the appeal
is decided, and that the whole proceedings of the
Supreme Court may on appeal be reversed -

It may now be proper also to ascer-
tain from the Law Officers of Govt what
should be done, in satisfaction of the late
Rajah's creditors, and for the maintenance
of those having claims on him for support,
in the event of this property passing to Karatch-
en Bogg Sahib - and how, when & by whom
such demands and claims should be
assisted - The full particulars of the Rajah's
debts have not yet been reported but it will
be seen from the Commissioner's letter 15th
January last that one claim amounts to
the loss of Rupees and that the loss due to
the Chattrams inclusion of interest is no less

J. J.

The Supreme Court in
the said Kanchi
Kor Taketah Kistur
K & J Comp -

2. Copy of Mr Forbes'
Memo will be furnished
-ed to the Law Officers
for their consideration
in the connection with the
Appeal now ordered

3. The fact are not at
present prepared to
express any opinion
upon the suggestions con-
-tained in paras 10-11

12 of the Advocate's Genl.
letter - Should such a
reference as is therein
alluded to be proposed
by the opposite party,
they will give it their
consideration on the ^{the proposed} ~~the~~ ^{being}

Laid before them by
the Law Officers with
such remarks as they
may think see occasion
to make on it -

4. Resolved that copy
of the Judgment and of
the other papers record-
-ed at the head of this
Extract - and of their
orders upon them be
forwarded to the Hon
the Court of Directors
and to the Supreme

Govt by the next Steamer
and that the following

letter be despatched
the 19th of 1857
To The Honorable C of
Directors -

The Solicitor
Advocate Genl
Commissioner of
Tanjore.

We do ourselves the
honour to send you
the proposed
Honorable Court the

11 Aug last no 13 Para 1-5

accompanying copy of
the Judgment - delivered
by the Chief Justice of the
the Supreme Court in
the suit Kaatchee Boye
Tahitah V. S. & D
Company - which it will
be seen is in favor of the
Plaintiff. We forward
also copies of a Memo
written on certain points
of the Judgment by the Hon.
Forbes Esq. Commissioner
at Tanjore - of a letter
from our Advocate Genl
offering remarks in con-
nection with the Judgment
and of our order thereon.

2. We have directed
immediate steps to
be taken for appealing
to the Privy Council
against the same - and

have furnished copy of
the Forbes Memo to our
Law Officers for their
consideration in the
preparation of the
Appeal -

3. We have declined to
express any opinion
upon the expenses etc.
- dealt with in paras 10. 11.
12 of the Sydney Smyth
letter - but have stated
that we would consid-
-er any proposal of
that nature which might
emanate from the oppo-
-site party on its being
laid before us by our
Law Officers with such
remarks as it might
then occur to them to
offer on it -

4. We have provided

Copies of all these papers
to the Supreme Court and
shall not fail to keep
your Honorable Court
constantly apprized
of the further proceed-
-ings in the case.

For St. George
24th Decr 1857.

Capt. to St. George 24/12

8th 10/7/77

To The Govt of India
Foreign Dept

I am to forward
for submission to the
Rt Honble Council
the accompanying
copy of the order and
recently determined
in the Supreme Court
in the suit Ka matcha
Naga Sahibah Elder
widow of the late
Rajah of Tanjore

Trust & Law India
Company - of other
papers connected
therewith and of the
order which have
been passed by this
Court -

2. It will be seen that
the decision has
been adverse to the
Dept. of E & Comp^y and
that the Law Officers
of the Court have been direct-
ed to take immediate
measures for preparing
an Appeal to the
Privy Council - The
Court has declined
to express any opinion
on the suggestion con-
-tained in Mr. T. Sydney
Young's letter passed.

and the private property
of the late Rajah

relative to the appointment of referees
to determine what was a whole
10.11.12 - but have a form.

and him that they would
consider any proposal
of the kind alluded to which
might emanate from the
opposite party on its being
laid before them by their
Law Officers with any
remarks which they might
then see to cause to offer
on it —

3. Copies of their papers
will be forwarded to the
Honorable the Court of
Directors by the outgoing
mail and the Court &
the Supreme Govt will be
kept duly informed
of the further proceedings
of this Govt in the case.

Fort St George
24 December 1857

J.