M.R.O. 1—99,000—18-10-99.

MADRAS RECORD OFFICE.

Government of Madras.

Political **DEPARTMENT.**

G.O. No. 148-150	Press ~~Mis.~~
Dated 18-2-~~19~~ 1857	

Not to be folded or roughly handled

No 84

From J R Dyson Esq Honorable Company's Acting Solicitor

To The Chief Secretary to Government

February 11th 1857

Sir

I have the honor to suggest that it be brought to the notice of the Member for Madras of the Legislative Council of India that the Honorable Sir W. M. Burton, Puisne Judge of the Supreme Court at Madras, recently decided that a writ of Summons issued from the Plea Side of the Supreme Court in an action commenced by Plaint was not a "writ or process against the person" within the meaning of Section 2 of Act 10 of 1844 and on that ground discharged a rule nisi which had been obtained for setting aside, on the score of irregularity, a writ of Summons issued from the Supreme Court without the consent of the Government in Council of Fort Saint George as required by Section 2 of the Act in the action noted in the margin. The name of the Defendant in this action, who was the Dewan of the late Nabob of the Carnatic was included in the last List published by the Right Honorable the Governor in Council of Fort Saint George, under the provisions of Act 1 of 1844 of persons

George Lionel Frederick Richardson
Herbert Ernest Richardson
James Leslie Richardson
Executors
of
Mirzar Abul Kasim
Bahadoor a Persian man
of Persian formerly Dewan
to His Highness Mahammed
Ghous late Nabob of the
Carnatic now deceased

persons "entitled to privilege from Cival and Criminal process" under that Act.

Sir W. Burton also threw out when this Rule nisi was moved for, whether the operation of Act 1 of 1844 so far at all events as it affected the "Household" and "retinue" of the late Nabob did not necessarily cease with his death; but this point was not discussed or argued on the motion to make the rule nisi absolute, nor did Sir W. Burton express any opinion or any further impression upon it, having discharged the Rule nisi solely on the ground before mentioned.

The Plaintiffs in the above mentioned Action have now issued a writ of Ca Sa against the Defendant for the Amount of their taxed Costs of opposing the Defendants application to set aside the writ of Summons and as there can be no doubt that a writ of Ca Sa is "process against the person" within the meaning of Section 2 of Act 1 of 1844 the Defendants Attorneys (my Firm) purpose moving by Rule nisi to set aside this Ca Sa. on the ground of irregularity in having issued without "the consent of the Governor in Council of Fort St George" and contrary to the provisions of the 2d Section of the Act.

The application to set aside the Summons was made under the advice of Counsel and under like advice a plea has never been filed on behalf of the Defendant

Setting

Setting up his exemption under the Statute. This plea will in all probability be demurred to and by one or other of these proceedings the judgment of the full Court will be obtained on the present effect and operation of the Statute as regards those persons whose names were included in the last published List as belonging to the "Household" and "retinue" of the late Nabob.

Looking at the operative part of the Statute I much fear that the Plea in bar of the action can not be sustained. the Statute no where enacts that "no Action or Suit" shall be brought or instituted without consent but merely that "no writ or process" against person goods or property shall be issued forth or prosecuted without consent &c

It will be seen that the preamble of the Statute which is as follows "Whereas "questions have lately been raised as to the "liability of persons of the Family Household "and Retinue of His Highness the Nabob "of the Carnatic to the process and jurisdiction "of Courts of Justice, and it is deemed expedient "that provision should be made for protecting "by Legislative Enactment under the un "qualifications hereinafter mentioned certain "individuals of the Family Household and "Retinue of his said Highness from any such "liability and from claims and litigation "to establish any such liability" is far

more

more comprehensive in its terms than the operative part of the statute.

If the Plea in bar cannot be sustained and Sir W. Burton's ruling be correct it follows that so much of the preamble as enacts that parties exempted shall be protected "from claims and litigation to establish any liability" is a mere waste of words, as a Plaintiff may file his Plaint, issue and serve his Summons, in default of appearance by defendant enter an appearance for him, issue and serve a rule to plead, in default of plea enter his cause for Trial Exparte, proceed to Trial, obtain a Verdict, tax his costs, sign his Judgment and issue an execution upon this Judgment before the defendant can take any step whatever for asserting his exemption from the process and jurisdiction of the Court under Act 1 of 1844.

But for the concluding words of the preamble it might have been assumed that in framing and passing the Act the Legislature merely intended to give personal exemption during life to persons who might be named in the contemplated Lists and exemption of their property during their lives only. and did not desire or intend to stop parties from establishing claims and obtaining payments against persons named in such Lists with a view to such judgments binding property or being enforced against property or otherwise after the deaths of such parties: but looking at the last line of the preamble it is quite apparent that this could not have been the intention of the Legislature at the time of passing the Act and the Legislature Council will doubtless consider it an expedient to remove these difficulties and remedy the defects to which I have above called attention before the Act which they are about to pass for repealing (with reservation) Act 1 of 1844.

I have the honor to be

Your most obedient Servant

A Morgan

Hon Colonial Secty Sydney

C. P.

To Tom S. R. Dayton Esqr Hong Kong Honorable Company's Solr

&c &c &c

The Chief Secretary to Government

February 11th 1857

Sir

I have the honor to acknowledge the Order noted in the margin and to refer to my letter of this days date C. P. as containing all the observations on the subject in question with which I think it necessary to trouble Government.

I have the honor to be

Sir

Your most obedient Servant

[signature]

Actg Translator

Order dated 6 Feby 1857 No 123 on letter from Govt Agent dated 5th Feby 1857 with inclosure

Dated 11th Feby 1857

Rec'd 12th Feby

Read the Petition of [illegible] praying that he may be appointed Guardian to the Orphan [illegible] Ordered that the Petitioner be informed that the Court cannot interfere in the matter of the Petition

Dated 11th Feby 1857

Rec'd 12th Feby

Read the Petition of [illegible] praying that he may be appointed Guardian to the Orphan [illegible] Ordered that the Petitioner be informed that the Court cannot interfere in the matter of the Petition

No 148 & 149 & 150

Dated 11th Feby 1857

Rec'd 12th Feby

Read the Petition of [illegible] praying that he may be appointed Guardian to the Orphan [illegible] Ordered that the Petitioner be informed that the Court cannot interfere in the matter of the Petition

C 13 Feb 11 14

Political Department

No 1488

Memorandum Minute of Lieut. Col. Ouseley's Report
on the Political Relations of Persia
from the Year 1803 to the Year 1814

140
141

Pub: Dep: to Corr: of 22d July
No 11 of 1857 Paras 23 & 24

Political 1857 Departt

From the Hon: Compy's
Sol: Solicitor No 85

Dated 11th May

Rec'd 17. 2. 57

No 141

Copy to the Govt of India &
to the Members of the
Legislative Council — 19 Feby 57
No 1490 of 1857

Refers to the remarks in his Letter
No 84 of this date for his opinion on
the Letter from the Govt Agent at
Bushire reporting that the Diwan
of the Durbar was served with a
Process from the Supreme Court.

2

C 13 Feb.
R 14 "

Dated 11th Feby. 1857
No. 84 & 85.

H.M. Comrs. Att.y Solicitr
Relative to the construct-
-ion which has been placed
by the Prisoner Judge of
the Supreme Court
on Certain of the provi-
sions of Act 1. 1846.

I have to annex that
copies of Letters pro-
-posed to be addressed
to the Members of the
Leg: Council for their
Consideration in con-
-sequence of the Bill
now in this Colony,
intituled, &c.

I have &c
(Sgd) Eyre

Govt. House
18th February 1857

Dienstag

Der Bruder der Kaufm
ist heute Vormittag
gestorben.

Die Beerdigung findet
Donnerstag Nachmittag
um 3 Uhr vom Trauerhause
Schwalbacherstr. 23 aus statt.

Die trauernden Hinterbliebenen.

Wiesbaden, 1857

Todes-Anzeige.

Gestern Abend 10 Uhr entschlief sanft nach langen Leiden unser lieber Vater, Bruder, Schwager und Onkel, der Kaufmann

Johann Heinrich Wilhelm Schmidt

im Alter von 57 Jahren.

Dieses zeigen tiefbetrübt an

Die trauernden Hinterbliebenen.

Wiesbaden, 1857

Todes-Anzeige.

Gestern Abend 10 Uhr entschlief sanft nach langen Leiden unser lieber Vater, Bruder, Schwager und Onkel, der Kaufmann

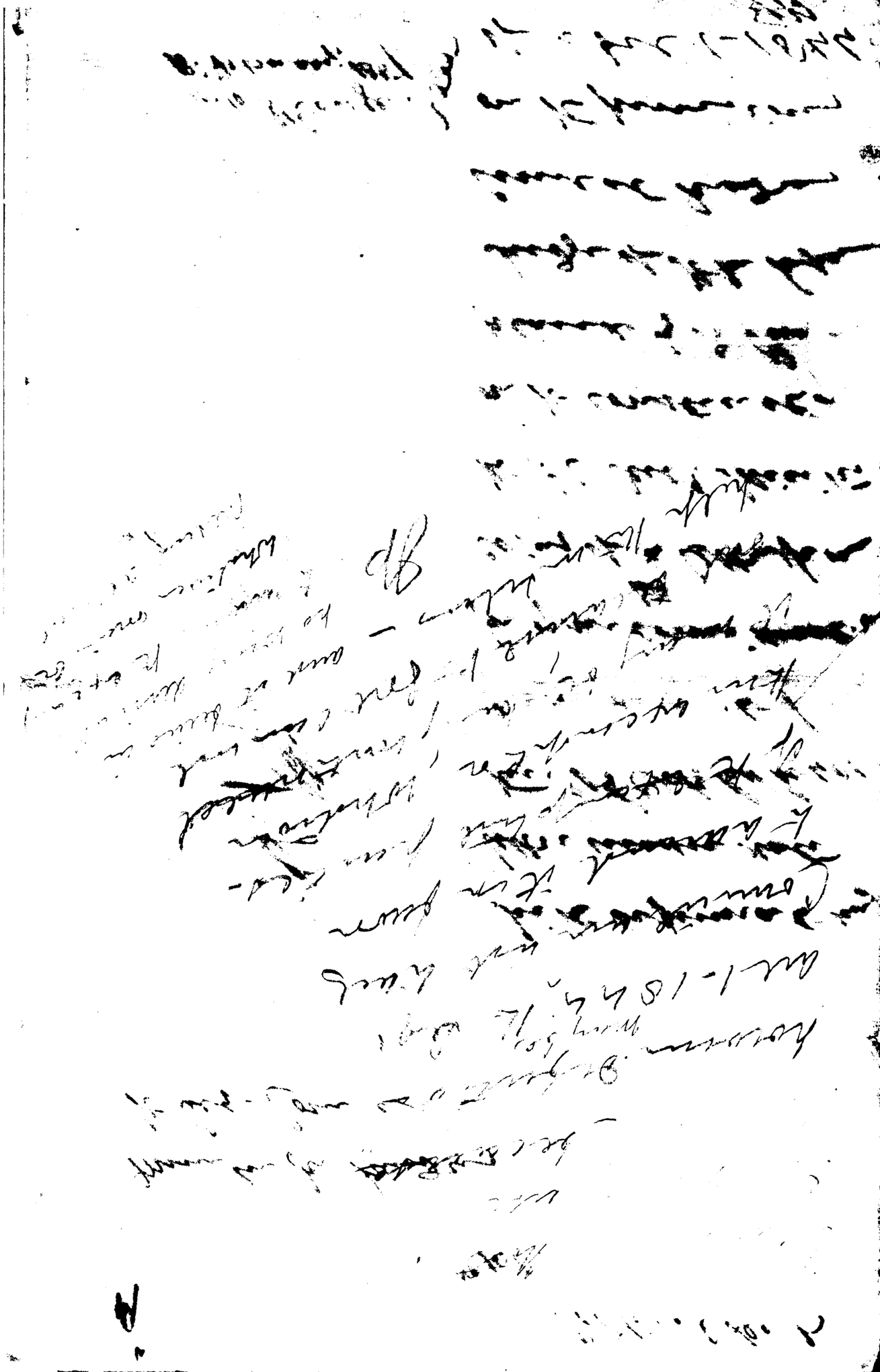
Johann Heinrich Wilhelm Schmidt

im Alter von 57 Jahren.

Dieses zeigen tiefbetrübt an

Die trauernden Hinterbliebenen.

Wiesbaden, 1857



P.L. D. to Leg of 22d July
No 11 of 1857 Paras 23 & 24

Leg D to Cons 24 Feb
P.C. 1805 / D. 110

No 150.

To
D Cluett Esqre
Member of the Leg
Council of India

(Pol D 18a February 1857
Dispt 15)

Communicating a letter
from the Hon Mr Sconce
relative to the instruction
sent by the Puisne Justices of
the Supreme Court on cer-
tain of the provisions of
Act I of 1844.

3

C 13 Ea
1857 11