

MADRAS RECORD OFFICE.

Government of Madras.

Political **DEPARTMENT.**

G.O. No.	206	Press
<i>Rz 20.</i>		~~Mis.~~
Dated	10 - 3 -	~~11~~ 1837

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Copy

To G. F. Edmonstone Esquire,
Secretary to the Govt of India
Foreign Department

Sir

I have now the honor to reply
to your letters, noted in the margin, &
with their enclosures, from the Govern-
ment of Madras, relating to the
act, which that Government desire to
have prepared and brought in to the
Legislative Council for the settlement
of the debts of the late Nabob of the
Carnatic.

2. There can I think be no doubt
that some legislation on the subject is
necessary; But it is very difficult to
decide on the particular kind of legis-
lation that should be resorted to; and
of the different measures that have
suggested themselves to me, there is
scarcely one that is not open to serious
objections, though the nature of such
objections varies according to the difference
in

in the character of the measures.

3 Of these enactments, that proposed by the Right Honble the Governor of Madras in Council in the letter of the 23^d December, which was received in Calcutta on the 7th January, and is referred to in your letter of that date, is by far the simplest and easiest of application, and, if it be taken to comprise all property on which he had created mortgages or liens, the most comprehensive and effectual. By it, the whole property of the Nabol, whether public or private, would be vested in the East India Company, who would be charged with the payment of all just debts contracted by the late Nabol or Sujan Bahadoor as Naib Nookthan to the extent, at least, of the value of the property. The Government of Madras would be empowered to act in the administration of the estate by paying such debts and distributing the residue, if any, among the heirs & family, and no act of the Government in respect of such administration.

administration, will be questioned in any Court. The Powers to be conferred on the Commissioners would only be required for the purpose of enabling them to procure the necessary evidence on which to report to the Government of Madras; and such Report would only be required for the purpose of affording to the Government a trustworthy guide for the exercise of its discretion, which would be absolute, in the admission & payment of debts, & the distribution of the Funds.

4. Even this measure, however comprehensive as it would be, would not, unless it be understood in the larger sense above referred to, enable the Govt to deal with that part of the estate which ^{presents} the greatest difficulties viz The mortgages or charges created by the late Nabol in the hands of persons whose real claims are few left, though their alleged claims may be more than the value of the mortgaged or charged property. A measure which would leave the question as to the rights of these mortgages open, would probably deprive the honest

1. honest creditors of the greater portion of
3 the Funds applicable to their payment.
On the other hand, assuming that the
6 validity of these mortgages is doubtful,
7 & that there are fair grounds for contesting
2 them, a measure which would deprive
4 the mortgagees altogether of all specific
10 claims on their securities, & reduce them
1. to the position of unsecured creditors:
2. or which left it open to the Government
3. so to treat them would be exposure to all
4. the just objections applicable to an
5. ex-post-facto-law. To avoid this objec-
6. tion it would be necessary if the measure
7. proposed by the Govt of Massachusetts be
8. adopted either to leave it imperfect & to
9. a great extent practically nugatory, or
10. to provide some machinery for compelling
the mortgagees to bring in their securities,
& for furnishing some fixed rules for
giving effect to such securities. So far
as it may be equitable to do so—

5. But even as to unsecured creditors
such a measure seems open to serious
objection. Whatever legal rights or
remedies

remedies they may have would be swept
away by the enactment, and for those
would be substituted an appeal to the
discretion of the Government, which
discretion would be beyond the control
of any Court of Justice, and for the
enforcement of which no Rule would
have been laid down by the Legislature.

It is true that the present legal
rights and remedies of such creditors
are doubtful and precarious: and if
it were certain that they had under
the existing law no remedy whatever,
there would be no real hardship in
giving an uncontrolled discretion to the
Government as to the mode of dealing
with such debts. But whatever be the
law on the subject, it is clear that the
creditors are not prepared to admit
that they have no remedy, and the
question cannot but be considered as
open to argument. The absence of a
present remedy therefore cannot be
assumed as an undoubted proposition by
the Legislature. The very proceedings
taken

taken at Madras by a Creditor against
the Auctioneers, through whom the horses
of the Body Guard were sold, though
I think that they were erroneous & might
if contested to have been defeated. I know
that the creditors are not generally considered
even by the legal advisers of the Govt of
Madras, to be practically without remedy,
the Government having acquiesced in
the payment of the creditors' claims by
the Auctioneers.

D. On the other hand, if any absolute
guarantee were given that the
Government would pay all claims estab-
lished as honest ones, this would
be an ample consideration for depriving
at least the unsecured creditors of their
present remedies, even if these remedies
were less doubtful & precarious than they
are. But nothing short of an absolute
guarantee, without reference to the
value of the property realized, would be
a sufficient consideration for this purpose;
and I do not understand that the Govt
is prepared without more accurate
information

information as to the state of the property,
incumbered or clear, and of the debts,
secured and unsecured, to pledge itself
present to such a guarantee, which if
given at all should be secured by the
act itself.

Act 14 of 1848. 7. Again the objections which have
been lately urged in England to the Act
for the administration of the Nivab
of Suratt's estate would apply with
equal or greater force to the present
measure, as there the rights of the
family, while here, those of the creditors
are principally affected. The objections
in the present case will be certainly
plausible, and will respectfully submit
to some extent be just, unless an absolute
assurance be given of the payment
of all debts in full, with the full rate
of legal interest which the Nivab
contracted to pay & which would now be
recoverable upon a dealing between
private persons.

8. I have however sketched an abstract
of the Bill according to what I understand
to be the view of the Right Honble the
Governor

Governor of Madras in Council, in case
the Supreme Govt. should think the princi-
ples ought to be adopted.

9. The next measure that I have con-
sidered is the Bill prepared & drafted
by the Commissioners. The provisions sug-
gested by them, with some modifications,
should I apprehend, whatever measure be
adopted, form part of the Act. But as that
Bill is chiefly limited to conferring the
necessary powers of enquiry on the Commis-
sioners and does not deal with the main question
of difficulty, viz. the mode in which the
creditors in whose favor the Report is
made are to obtain payment of their claims,
how the mortgages are to be dealt with
the equities of Redemption got in, I do
not think it advisable to limit the legis-
lation now contemplated to so narrow a
compass as that proposed by the Commis-
sioners' draft bill, which would leave these main
difficulties unsolved.

10. I have next considered the suggestions
of Mr. Dale in his letter of 25th of Nov.
Some of which are entitled to much weight.
He suggests provisions for the investigation
of the mortgages securities by the Commis-
sioners with an appeal that may be thought
reasonable.

See Draft 1
See there with

reasonable; for securing to such mortgagees
payment in full where the security suffices,
& where this is not so, payment to the
extent of the value of their security with a
right to prove for the balance rateably
with the other creditors; and for enabling
the Govt. to recover the ^{property} held by pretended
mortgagees. So far I entirely concur with
him, and I think that any measure that
does not contain some provisions for effecting
these objects will be practically inoperative.

I also think that as suggested by Mr.
Dale a provision for including all credi-
tors who do not prefer their claims within
a limited though liberal time subject
to an exception in favor of persons under
disability should be inserted.

11. Mr. Dale also suggests that if the
award of the Commissioners is not to be final
until sanctioned by the Govt. Reports
should be made periodically & more shortly
after each case has been investigated,
and that after each Report has been
sanctioned by the Government, the party
therein named should be deemed to have
been a creditor of the Nabab at the
time of his death to the extent allowed,
with a view, I presume to his ranking
against

against the estate, realized by the Govt, treasury
with the other creditors. He justly observes
that care should be taken that the creditors
be not declared entitled to payment in full
on each Report being sanctioned, as otherwise
the debts comprised in the first few Reports
would probably consume the whole estate.
12. For some time I thought, with Mr. Dale,
that it would be desirable that the Commrs.
should make separate reports on each claim,
without waiting until the whole of the claims
had been investigated. In that case the
most convenient course would seem to be to
provide for the payment to each creditor,
as soon as his claim was established, of a divi-
dend from the funds in hand, such dividend
to be calculated with all the claims that
had been reported on, not on the amount of the
claims established, but on the amount of
the claims of which notice had been
given to the Commissioners. So that no
creditor would receive more than his
rateable proportion of the fund even
if the whole of the claims of which notice
was given were ultimately allowed. One
desirable object, an earlier dividend to those
Creditors

Creditors who were most active in proving
their claims, would thus be attained;
and successful dividends on somewhat
the same principle as that adopted in
Bankruptcy might from time to time
be declared as the fund increased, and
as claims of which notice had been given
were disallowed.

13. If the only appeal given from
the decision of the Commissioners be
to the Government of Madras, I am con-
fident that the mode of
proceeding will not be a desirable
one. But if an appeal from the
Commissioner's decision be given to the
Supreme, or any other, Court, the measure
founded on such a principle
of division will be found so cumbrous
and will involve so many details,
that it will probably be unacceptable
to the Government of Madras
without being satisfactory to
the Public. I have prepared an
Abstract

abstract of an act founded on this prin-
ciple; and though I have endeavored
to avoid unnecessary details, I have
not been able to reduce it consistent-
ly with its efficiency and with a
due provision for cases that may arise
under it, within a moderate compass.
Send the abstract herewith, and al-
though it may be much shortened
as pointed out in the margin,
if the clauses as to appeals are
omitted, and a reference to the
Madras Government only
substituted it will still be
not complicated without being
more satisfactory than the mea-
sure which I shall next
present to -

This

i.e. Part C. which cannot be reached
by ordinary legal process, but which
a Court of Equity, treated as applicable
to the payment of debts and divided
proportion among the Creditors without
regard to any legal priorities, such
as that of a bond or decree over a
debtor's estate.

Draft B

14. This measure consists in dealing with
the whole estate of the Debtor on much
the same principle as a Court of Equity
adopts in dealing with an estate con-
sisting of equitable assets of a deceased
debtor in an administration
suit; with certain enlarged
powers for the purpose of
compelling the mortgagees
to prove their claims, and
to submit to be redeemed,
or to sell their securities.

This is on the whole the enactment
that appears to me the most advisable
(unless His Lordship in Council is prepared
to adopt the principle on which Draft A
is framed); and the Draft C sent
herewith contains the provisions that
I think necessary for this purpose.

Draft C

15. In an administration suit, the Court
would declare that all Creditors not
coming in by a certain day, should be
excluded from all benefit of the assets to
be administered in the suit. The Master
of the Court would appoint a day for the
purpose, would advertise for all Creditors and
investigate their claims; and would by his
Report find which of such claims were
established and for what sums and which
rejected.

rejected. The Report would be subject to confirmation by the Court and when confirmed all the assets would be divided among the creditors whose claims were established by such Report; All creditors whose claims were not established before the Master, would be barred from any claim on the assets in Court or in the executor's hands; although if there were any surplus which had been paid over to the next of kin or legatees, such excluded creditors, if any, as had not preferred their claims before the Master, through ignorance or otherwise might take steps independent of the suit, to establish their claims and so compel the next of kin or legatees to refund. I propose in Draft C. to give power similar to those of the Master to the Commissioners in the present case, treating all the assets as equitable and therefore as equally divisible among the creditors.

16. Two main difficulties already or partially glanced at occur in framing this or any measure on the subject. The first relates to the claim of the Mortgagees or creditors holding securities; The second to the power of appeals from the Commissioners; And these will be found closely connected with each other.

17. In ordinary cases, the law is extremely

extremely jealous of any interference with the rights of Mortgagees by the Mortgagor or his representatives on any terms short of payment of the demand in full with all interest and costs. Without an offer of such payment the Mortgagee cannot be compelled, unless he himself comes forward as a claimant on the general estate for a surplus, even to state the amount of his claim or the nature of his security, and if such payment be offered in a redemption suit, and be not made within the prescribed time, he can absolutely foreclose the mortgaged property. In an administration suit unless he voluntarily comes in, his rights cannot be affected: nor can he be compelled to sell his security, unless an offer of payment in full be made to him. Even in bankruptcy, though the powers of compelling a sale are larger, they only exist where payment in full has been tendered him has been refused; or where he himself claims a dividend from the estate.

18. A Mortgagee therefore of the late Statute could not, as the law now stands, be compelled to submit to any investigation of his claim as to a sale of mortgaged property on any other footing than that of an offer to pay that claim in full. It is true that he might have some difficulty when not in possession in enforcing actively, his

his own remedies for want of a legal representative liable to be sued. But such difficulty is not insuperable; if he be in possession of the title deeds he may raise money on them; if he has a power of sale he may sell and make a good title, and if the mortgaged property gets into the possession of any one not exempt from the jurisdiction of the Court as a tenant or purchaser, he may then recover possession in the ordinary course of law, and may enforce all his remedies against the mortgaged property.

19. It is also true that the mortgages if any of the public property of the late Nabob would be open to objection to the validity of their securities similar to those pointed out in my Opinion of 5th Decem^r on the Mangre case and that they are thus exposed to be wholly defeated as mortgages and to be reduced to the position of ordinary Creditors. But these mortgages so far from submitting to such objection would probably contend that the property mortgaged was not public; - that, if it was, the facts justified the Nabob in mortgaging it; and that the principles adverted to in that opinion do not apply, and that there was no limit in the power of alienation of the late Nabob.

These are all questions of difficulty
on

on which, assuming the mortgages to be wrong, they have at least a plausible case, to put forward - To place them by an Act of the Legislature in a substantially worse position than they would be in if their mortgages were valid, would not be fair to them, as it cannot be assumed that these questions must all be decided against them and they should have an opportunity of being heard.

20. While therefore I feel the importance of enabling the Commissioners to deal with the mortgages, I am much impressed with the delicacy of any interference by the Legislature with their rights - So the extent however of constituting a new Tribunal for the purpose of investigating their claims and of giving the same effect to them if found to be just as a Court of Justice would give, there can I think be no objection to the interference of the Legislature. I have endeavored to do this in the Draft C.

The only infringements therein on their strict legal rights, supposing those rights to be clear, are,

1st. The compelling them to bring in their claims before a certain day under the penalty of losing the benefit of their securities.

2^d. The investigation of their claims, before an absolute offer to pay, has been made to them, the Government reserving till after the Report the right either to tender the amount ascertained, or to call on them to sell their security and prove for the deficiency, as may be found most beneficial for the Estate.

3^d. The investigation by Commissioners instead of by a Court of ordinary jurisdiction.

21. It appears to me that the mortgagees will not have any real cause of complaint in respect of any of these provisions, if the Tribunal to whom their rights are referred be one in which confidence can be placed by the public. Of the personal competency of the gentlemen already named as Commissioners and of their ability to deal with the complicated questions of fact that will be brought before them, I have no doubt. And the question is whether their body is so constituted as to inspire general confidence in their decision if treated as final, both on law and fact.

This brings me to the consideration of the second difficulty above referred to, as to giving an appeal from the Commissioners to any and what quarter.

22. If the Act leaves it doubtful whether the East India Company reserves to itself any beneficial claim in the residue of the property

property after the payment of debts, I think it essential that an Appeal be given, and that such appeal be, not to the Govt. but to one of the ordinary Tribunals - for the Commissioners, being nominated by the Government and consisting, with the exception of Mr. Reed, of gentlemen not exercising Judicial functions in any Court, their decisions, however impartial and able, would scarcely carry that weight which would be desirable for the final adjudication of claims in which the interests of the Government and of the subject are or may be opposed - In that case therefore it would be expedient to give an appeal from them; and inexpedient to give that appeal to the Government of Madras, if the Government be, or be supposed to be, interested however remotely, in the contest.

23. In that case, I think the Supreme Court of Madras would be the natural and proper tribunal to which to give the Appeal, taking care that appeals on technical grounds, or on the strict rules of English evidence be excluded - I have inserted in the Draft C provisions for such

such an Appeal in the shape of exceptions to the Commissioners' Report, to be taken by any person aggrieved either by the rejection or admission of any claim -

These exceptions the Court can deal with much in the same way as if they had been taken to the Master's Report in an Administration suit - These provisions involve much care as to the details, which must necessarily, a good deal swell the bulk of the Act.

24. The case of such an appeal however I scarcely see how the further right of appeal to the Privy Council can be avoided. The Legislative Council might indeed provide that no Petition of Appeal to the Privy Council should be filed in the Supreme Court. But I apprehend that it would be beyond its power, unless leave of the Crown were first obtained under 16th 17th Victoria, to exclude the right of Her Majesty in Council to entertain the appeal; or the right of the subjects to obtain from Her Majesty in Council special leave to present such an appeal. From the urgent nature of the case there will not be time to apply for and to obtain such

such leave even if it were thought advisable to do so. An appeal too might be given from the Commissioners to the Insolvent Court from whence no appeal lies to the Privy Council. But I do not think this course satisfactory, and it seems questionable whether if there be an appeal to any Court of Law a power of appeal is the last resort to a tribunal so much better qualified than any other to pronounce authoritatively on questions of such difficulty and public importance as the Privy Council would not be of great value to the Government and the public.

25. If it be resolved by the Court to give up absolutely all claim of the East India Company to any portion of the Naulah Estate in favor of the heirs or family, and this concession be secured by the act the objection to the finality of the Commissioners Report will be much less strong and the reservation of an appeal in such case to the Privy Council the Governor of Madras in Council exclusively would appear wholly unobjectionable so far as the claims of unsecured

unsecured creditors were concerned. - As to the Mortgages perhaps it may be thought that the ultimate decision of the rights of persons who are by the Act deprived of their legal remedies should be reserved for a tribunal consisting of professional Judges - and if so an option might be given to Mortgagees of appealing either to the Government of Madras, or to the Supreme Court - or the Sudder Court may be selected as that of appeal, either as to the mortgages alone, or as to the both sets of claimants.

26 I have inserted in the margin of the Abstract (C) a provision for an appeal to the Government of Madras in case it should be thought right to substitute that appeal for that to the Supreme Court given in the body of the Abstract an option to Mortgagees to appeal either to the one or the other tribunal may easily be inserted if thought advisable. - but if this be done it will be necessary to retain the Sections providing the details as to the hearing appeals in the Supreme Court.

27 Any measure that may be adopted by the Legislature will probably be ineffectual unless the creditors and mortgagees are precluded from suing the East India Company or their

their Officers, or from taking any steps other than those prescribed by the Act for the recovery of their claim. - It may be objected that such an immunity from action will relieve the Government from any legal obligation to apply the estate in payment even of debts established before the Commissioners. - The objection will be obviated by requiring that full publicity be given through the Gazette to all receipts and payments by the Government and by leaving open to any person aggrieved the remedy by mandamus in case the Government withholds a dividend which the state of the accounts so published clearly shows they are in a condition to declare and pay on the claims established by the final Report, or in case the Government should refuse to acknowledge and pay a dividend or any particular claim established by the Report. -

28. With respect to the proceedings taken against the Auctioneers for the recovery of the proceeds of sale of the horses of Body Guard. - I think that those proceedings were unfounded and that the course taken by authorizing the Auctioneer to submit to the claim was erroneous and much to be regretted. -

29. It appears to me that the action thus brought was open to a double defence: First. That the Auctioneer could not be properly treated as Executor de son tort because that character only attaches to persons assuming to act as representatives of the deceased and possessing themselves of his property when there is no legal representative of the Estate (as in the case where property of a British subject is possessed by a Defendant, and where no probate or letters of Administration from the proper Ecclesiastical Court have been granted and where the representation is commonly vacant whereas in the present case as in all cases of Mahomedan or Hindoo successions, where the authority of the Ecclesiastical Court is not necessary in order to constitute a legal representation to the estate, there was no contemplation of law, and legal representation of the deceased in his next heirs according to Mahomedan Law - The circumstance that they were exempted from suit by Act of the Legislature would make no difference in the application of the above principles.

30. It has accordingly been held in the Supreme Court here by the late and present Chief Justices (and I think quite correctly) that in the case of Hindoos or Mahomedans where the representation is always full in contemplation

Wentworth v. Wentworth
G. J. W. v. W.
1841 8 D. 111
report
1840.

contemplation of law, the relation of Executor of his own wrong - which is only created by the Law, in the absence of any legal representative upon the necessity of the case does not arise.

2^d. Secondly the horses of the Body Guard must I think from the very nature of the property be considered in point of law public or state property which devolved on the British Government with the state of the Carnatic - Whether that property in the hands of the British Government was legally subject to the debts of the late King or not, was a question that could not I think be properly tried in a Municipal Court at all; and at all events, it would be impossible to treat the Auctioneer who sold by the lawful authority of the Government, as Executor of their own wrong as such responsible to any individual Creditor who chose to sue.

3^d. The course adopted in submitting to the action and paying the proceeds of the sale into Court to be paid out to the Plaintiffs appear to me to have been singularly unfortunate in the present position of things - It was thereby admitted that the Auctioneer

Auctioneers were Executors of their own wrong and having once pleaded in that character they could not afterwards successfully deny it in respect of any other property that might afterwards come to their hands unless they could show that they had since received legal authority, a single creditor was thus enabled to obtain payment in full of his claim so far as the sum of it should turn out that there any debts of higher degree than that so paid, the Auctioneers may be compelled in the same character to pay the amount over again to another Creditor - Moreover the fact that one Creditor has thus received payment (and that without any judicial examination of his claim) will go far to induce the belief that the creditors have in every branch remedy and to cause dissatisfaction with any act that may be passed to take away their remedies - It renders it more difficult to put the act on the footing on which it is of course desirable that it should be, but if it can be done consistent with strict legal accuracy vizt. that all the creditors were before the act without legal remedy and the act provides means which the law did not provide for the recovery of their debts and is therefore a boon to them.

33. If any similar action be brought before any Act is passed it should I think be defended that judgment of the Court should be taken upon it and the right of appeal to the Privy Council should be reserved - Care should be taken too that until an act be passed, no more property be entrusted for sale to the same Auctioneers, as the same or other creditors may again sue them in respect of such further assets, and may rely on the admissions made by the Defendants in the first action of their representative character.

Inclose the original enclosures.

Respectfully,
14th February 1857.

I have the honor to be,
Sir W. Pritchett,
Advocate General.

Enclose,
G. J. Brownstone
to the Govt of India

To

16

G. F. Compton, Esquire
Secretary to the Gov^t of India
Foreign Department

Sir,

March D

I have the honor to enclose a fourth draft of an act for the settlement of the Nabob of the Carnatic's debts. The draft has been prepared in communication with Mr. Peacock and principally by him. It differs in principle from the drafts A. B. & C. before submitted, and appears to me better calculated to effect the object that the Government has in view, without undue interference with any just rights of creditors or of mortgagees than any of the former drafts.

2^d Those drafts were all based upon the assumption that the Government was willing to devote the whole of the property of the late Nabob, whether private or public, to the payment of his just debts. But was not prepared to undertake at least without further knowledge of the amount of assets & of debts, the payment of any claims from the funds of the East India Company.

Company irrespective of the assets realized.

3^d. The present draft is based upon the assumption that the Government is willing not only to devote the whole of the property to the payment of the just debts, but to undertake absolutely the payment in full of all creditors who will agree to accept payment upon the footing mentioned in the despatch of the Court of Directors of 19th March 1856. viz. as to money lent, allowing only such sums as can be proved to have been actually advanced, and as to goods sold and other matters, the real value of such goods and matters at the market rate of the date of the supply and upon the further assumption that for the purpose of enabling it to make such payments,

payments, it will take possession through some person to be appointed for the purpose of the whole available property and will order payment of such debts to be made in the first instance from the proceeds of the property realized by such person.

4th. The first five sections of the present draft accordingly provide for the payment of creditors who agree to be bound by the award of the commissioners according to the above principle of estimating the amount of their claims, & for the appointment by the Government of Masters of some person to collect the assets, & to make payment from such assets of the sums awarded by the commissioners. The draft then provides that the East India Company

Sec. 1 to 5

Sec. 6

and all persons shall be exempted from liability to suits for anything done ~~under~~ the act, or for any act reasonable or proper for the protection of the estate as for realizing the assets, done before the passing of the act ^{as adopted by the Legislature}. This will protect the Government & all persons acting under its orders from liability in respect of any acts of the character above mentioned, that may be done before the act can be carried through its several stages in the Council. —

5. In order to meet the probable case of some of the creditors or mortgagees holding out and refusing to enter into any such agreement, the Draft next provides for proceedings in the Supreme Court in the nature of an administrative suit, to be instituted upon a simple summons, in which mortgagees as well as creditors shall be compelled to come in & prove their claims, & in default shall be barred of all benefit of their mortgages & claims. The powers given to the Court for this purpose are more extensive than those which it would possess in an administrative suit. but I do not think that any injustice can be done either to mortgagees or creditors by the provisions made for determining the rights of all parties interested in the estate. The Court may Sec. 134/4 order all mortgaged estates as well as other property of the Nabab to be sold, & provision is made for giving to the mortgagees the just benefit of their securities in case they are re-established to the satisfaction of the Court.

Secs. 10 & 11.

17
6 It is provided that the Government may in settling the Accounts in such Administrative suit stand in the place of such Creditors as they have paid under the Agreement: that the awards of the Commissioners shall be prima facie evidence that the amount awarded by them was legally due; that if the amount awarded by the decree of the Court in respect of the debts of such Creditors shall fall short of the amount paid by order of the Government out of the assets, the balance shall be paid by the East India Company out of the estate. and that in the event, improbable but possible, of the amount awarded by the decree of the Court by way of dividend in respect of such debts exceeding the amount awarded by the Commissioners to such Creditors, the balance shall be received by the East India Company and shall be divided ratably among such Creditors. It seems advisable to show distinctly that the East India Company cannot in any case retain, by standing in the position of the Creditors they have paid under the Agreement, a larger sum than they have paid: and it appears but just to the Creditors who came in under the Agreement that if the Court should award a larger sum as legally due than the Commissioners have awarded on equitable grounds, such Creditors generally, and not the Creditors who have refused to enter into

has occurred to me.

22nd February 1857
Calcutta

I have the honor to be,
Sir,
Your most Obedt. Servant
W. Ritchie
Advocate General

(True Copy)
G. Edmondstone
Secretary to the Govt. of India.

into the Agreement, should reap the benefit of a ~~such~~ ^{such} ~~case~~ ^{case} of dividend.

The Draft also compares the necessary powers in the Commissioners for conducting their business. It also contains provisions as to the purchase by the Government of the Chupank ~~Palace~~ ^{Palace} or of any portion of the property in it ~~which the~~ ^{which the} ~~family~~ ^{family} may wish to retain. ~~These powers will enable the Government to carry into effect the~~ ^{These powers will enable the Government to carry into effect the} ~~draft~~ ^{draft} ~~imposed by the~~ ^{imposed by the} ~~order of~~ ^{order of} Directors in their Despatch of 19th March 1856 - but they will be only required in case it shall be decided that the Chupank Property is liable to be made available either for the general debts of the Nawab or for any mortgage debt with which it may be charged. - and they are therefore limited to that extent.

Sec: 15 to 22

Sec: 23 & 24

The Draft ~~lastly~~ ^{lastly} provides for the repeal of Act 2 of 1856 ~~prospectively~~ ^{prospectively}, continuing the exemption from the jurisdiction of the ordinary Courts in respect of all acts done or contracts made before the passing of the present Act.

Sec: 25

8 If the Government is prepared to proceed upon the assumption stated in Para. 3 of this letter, I think the present Draft will be attended with fewer difficulties than any other legislative provision that ~~has~~ ^{has}

Dr. De la Cruz 22nd July 1921
from Paris 28@37.

19 21
India
H. H. H.
This has just been received from
Calcutta by the steamer. It will
probably be proper to send the
papers to Mr. Boyer from any
remarks that he may wish to
make on draft D after consult-
ing counsel - i.e. Mr. D.

Section 23 of that draft will
hardly be required at least on
the grounds stated - as it is not
intended nor desired that the
Request should occupy the

for

Cheramb Palace.

28/2/57 -

JH

[Faint, mostly illegible handwritten text, possibly a letter or report, spanning several lines.]

* Council Note in margin of
letter from Secy to the Govt.
of India d/23rd Feb/57 No 835.

Sent in original as
time will not admit of
their being copied.

It is requested that
transcripts be made
by the Madras Govt and
sent here for record.

From
G. J. Edmonstone Esquire,
Secretary to the Govt of India.
To
J. Pycroft Esquire,
Chief Secretary to the Government of
Fort St George
Dated, Fort William, 23rd February 1857

Foreign Dept^y Sir,

I have the honor to state, for the information of the Madras Government, that your letters N. 533 dated 24th December and N. 21 dated 7th January last, relative to the affairs of the Carnatic, have been laid before the Right Honble the Governor General in Council, and have also received the consideration of the Advocate General in Calcutta.

In reply I am directed by the Governor General in Council to forward to you, for submission to the Right Honble the Governor in Council, copies of a letter from the Advocate General, conveying his views on the several points referred to him, and of the three Draft Bills (A. B. C.) which accompanied it, and to state that, in preference to adopting either of the three courses of action suggested by Mr Ritchie, His Lordship in Council has caused another Draft Bill (D) to be prepared, a copy of which is herewith transmitted for the opinion of the Madras Government. The object and intent of this

28/3rd Instant

[Faint handwritten notes and signatures in the left margin]

this Draft Bill will be explained in the succeeding paragraphs of this address.

3 The purpose of the Madras Government in applying for a legislative enactment is to enable them to give effect to the liberal intentions of the Honorable Court towards the creditors of the ^{late} Nawab. Their intention is to pay all the creditors in full according to the principle laid down by the Honorable Court, vizt to pay all claims proved to have been actually advanced, and the value, at the market price of the day, of all goods &c. proved to have been supplied, no interest is excepted of 6% per annum being in any case allowed.

To enable the Honorable Govern-
ment to ascertain the amount due to the
several creditors upon the principle above
mentioned, Commissioners have been appointed,
and it is necessary to confer upon them
certain powers to compel the attendance
of witnesses, the production of documents &c.
There cannot, as it appears to the Governor
General in Council, be any objection to
the conferring of such powers, and the
Gift Bill (D) provides adequately for
the purpose.

The Madras Government, it is true, have proposed a short Act, similar to that which was passed for Surat; but the

Gordon

Commons General in Council cannot think it expedient to pass such an Act, especially after the discussions which took place in the House of Commons regarding that measure, and the Bill which passed that House in consequence.

6 Nor does it seem proper to His Lordship's infameil to pass an Act, which would deprive any creditor of his strict legal rights, and would compel him to accept payment of his debt adjugated upon the principle laid down by the Honble Court of Directors, if he should prefer to insist on his strict rights and to take the chance of obtaining only that amount to which he may be able to prove that he is legally entitled. For example, if a Creditor, who contracted for 12% Interest, or who gave credit for goods, sold at double the market value to compensate for the risk of never obtaining payment, should prefer to stand upon his legal rights to receiving payment of his demand adjugated upon the principle laid down by the Honble Court, there seems to be no valid reason for compelling him to submit to this latter mode of adjustment, and to accept payment of what might be found to be due accordingly. —

Wherefore the Governor General in Council is of opinion that it should be left open.

optional with the Creditors either to accept the terms offered by the Government, or to insist upon their strict legal rights.

8 The Draft Bill (D) has been framed upon this principle. It provides for the payment, in full, upon the principle laid down for adjustment, of all Creditors who consent to submit their claims to the Commissioners, and to be bound by their award.

9 It authorizes the Government to appoint an officer to collect the assets, and to make payment, thereout, of the claims of such of the Creditors as may consent to have those claims adjusted by the Commissioners. It prevents dissentient Creditors from commencing separate actions against the Officers of Government as Exécuteur de son test, or otherwise, in respect of his taking possession of the assets: but it leaves to any such creditor a right to commence a suit for the general administration of the assets according to Law, in which the Court must determine what portion of the property left by the decedent may by Law be applicable to the payment of his debts.

10 Further, it allows the Government to stand in the place of the creditor who may be paid off, and provides that, if the amount paid out of the assets to such creditor exceeds the dividend which such creditor would

93
would have been legally entitled to if he had not acquiesced in the offer of Government, the difference shall be made good to the Estate; and 2nd, it provides that, if the amount of the dividend of such creditor exceeds the amount paid to him out of the assets, the balance shall be paid to Govt. The first provision seems necessary in order that the dissentient creditor may not be deprived of their strict legal rights; for, if the Government acting upon its liberal intentions should pay more to the creditors who may accept the terms offered, than the amount to which they would otherwise be legally entitled as against the dissentient creditor, the dividend of the latter would be reduced, unless the sum overpaid were made good to the Estate. — The second provision is equally necessary: otherwise the dissentient creditors would derive a benefit to which they are not entitled, and would have their dividends increased pro tanto; a result which, if many of the creditors came in, would induce a few to hold out in the hope that, by these means, they might obtain payment in full of their exorbitant demands, instead of the amount equitably due upon the principle of adjustment laid down by the Honorable the Court of Directors. —

11 But, in order that it may not be urged against the proposed measure that

that the Government might obtain a benefit by paying the consenting creditors in full according to their principle of adjustment, and receiving the full amount of the dividends to which such creditors might be declared legally entitled, the Draft Bill (D) seems properly to provide that the excess of any of the dividends over the amount paid under awards of the Commissioners, when received by the Govt., shall be applied rateably for the benefit of the assenting creditors. — Possibly it may be preferable to enact that such surplus shall be applied towards providing for the maintenance of the family of the Nawab, for, by giving it to the assenting creditors it may seem to be admitted that the adjustment of the claims upon the principle laid down by the Honourable Govt. may cause the assenting creditors to receive less than is fairly due to them, which is not the case.

- 12 The other sections of the Draft Bill (D) seem sufficiently to explain themselves.
- 13 I am desired to request that the Madras Government will be pleased to give their earliest consideration to this Bill (D) and communicate their opinion upon it without delay, in order that the requisite

18 Feb 1857
Copy of a letter from
Campbell's Solicitor
despatched to you
yesterday by Express
stating that this
Govt. would incur
serious loss by collusive
sales of the Nawab's
property, unless his
affairs are soon settled.
Early attention is
directed to the subject.

requisite steps may be taken for bringing it before the Legislative Council. —
I am to take this opportunity of stating, with reference to your Telegraphic message copied in the margin, that, if the Madras Govt. apprehend that collusive sales of the Nawab's property will take place, they had better at once assume possession of all existing assets, and resist any suit that may be brought against them as Executors de son tort. —

Fort William,
The 23rd February
1857.)

I have the honor to be,
Sir,
Your most Obedient Servant
G. P. Morrison
Secretary to the Govt. of India

+1/11

№ 206
Extracts of Cons. Dated 10th March 1857.
From file of India 23 Feb 1857 No 835

Recd that the above
letter and its enclosure
— is original to be
returned — to be sent to
the Hon Comr; and
Solicitor and that
he be desired to con-
-municate with
the Duke to give in-
-struction con-
-sistent to the Draft
Bill II sent to him.
-with to get as early
as possible any sug-
-gestions or observa-
-tions upon it that
may occur to him or

St. J. G.
M. G.
M. G.

the Comd^r of the
M. G. 1857 (Department)

28th Feb 1857
28th Feb 1857

the Secretary to the
Government of India

28th Feb 1857
28th Feb 1857
28th Feb 1857

Merley

28th Feb 1857

Bucks

also that the Secretary to
the Govt of India
Bill (S) proposed, copy of
which is forwarded, and
the reasons being that, five
the latter Bill the
reference

submitting that the Govt
passage from the House of
relative to the affairs of the Govt.
in the House of Commons the in-
-vestigation of the High Court
of the House of Commons the in-
-vestigation in reply a letter
from the Secretary to the Govt.
-ing the House of Commons the in-
-vestigation in reply a letter
from the Secretary to the Govt.
-ing the House of Commons the in-
-vestigation in reply a letter
from the Secretary to the Govt.

to Mr Dale —

2. In the report of
 June Sept. 23 & 24 of
 the Draft it is observed
 that as has been stated
 - material to the fact of
 Indian it has not
 been desired for the
 Ladies of the family
 of the late President
 to occupy the Chapin
 Palace as a residence -
 and is it advisable
 that they should
 have no so - There
 sections are therefore
 unnecessary as
 respects their Ladies -
 The H. C. Society
 with state ~~will~~

to compare with the
 fact the house for
 the purchase of
 the Palace containing
 within sections -
 or considerations
 inspection of the
 Begans —

3. The Boggs's alter-
 tion is drawn to the
 concluding Part
 of the Secretary Ed-
 -monstone's letter.
 He will advise further
 if it be necessary
 to take the course
 indicated in that
 paper.

J.P.

Mr. Solinger
 with copy of the letter } Dec. 10
 H. 835.

Q. R. L. to Eng. 22 July
 No. H. of 1857 (Paris)
 28037

Incom 10 E March
Political 1857 Sept 8

N^o 256

Extractillus: of bones

24/10 March 157

To advise that it is whether it
is necessary to visit the same
this condition.

19-20

The letter from the Dept. of Indian with its enclosures forwarded to the Hon. Secy. Comptrolr Solicitor with instructions to give the communications with the H. P. Co., immediate & considerable consideration of the Draft Bill. It is desired to ascertain & to give our own observations thereon for the coming session. Certain directions given to the Hon. H. Holt in the communication to the Hon. Secy. of the Draft Bill in question - & that officer requested, with reference to the concluding para of the letter