M.R.O. 1—29,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political **DEPARTMENT.**

G.O. No. 290 Press Mis.

Dated 11th April 1857

Not to be folded or roughly handled

№ 186.

From The Honorable Company's Solicitor

To The Chief Secretary to Government

April 7th 1857.

Sir

I have the honor to acknowledge the Extracts from minutes of Consultation noted in the margin and the papers therein referred to.

m/c dated 10th March 1857 № 206 Political Department.

m/c dated 10th March 1857 № 207 Political Department.

In obedience to the orders of Government I forthwith submitted these papers for the consideration of Mr Dale.

I now forward a copy of Mr Dale's opinion and remarks (which I only received this forenoon) and a copy of the draft Bill which Mr Dale has prepared and to which he refers in his opinion.

I beg to suggest that copies of Mr Dale's opinion and draft Bill be forwarded to the Government of India.

I return all the papers which

and obtained as therein mentioned

and

Preamble

Recite

Death of Nabob of Carnatic without male issue

That the State and Territories of the late Nabob have lapsed to and become vested in the East India Company in trust for Her Majesty for the service of the Government of India and have become and are part of the Territories of British India under the Government of the East India Company.

That by Act No 1 of 1844 it is enacted that no writ or process shall at any time be sued forth or prosecuted against the person goods or property of His Highness the Nabob of the Carnatic or of such other persons as therein mentioned unless such writ or process shall be so sued forth with the consent of the Governor in Council of Madras first had and obtained as therein mention

and

Pet. to issue 22d Jul
Rule Nisi 22d Jul
Rule 28 Sept

18-4-25

Order to Commr. of Land Revenue 15th Oct

Recital of the Rule Nisi 22d July

Proof of the Service of the Rule

90 Dec 3rd

5 Exhibits

Affidavit

S. 4-5

Exhibits the Rules of Division in the Deputy Collectorship of the Settlement of the Talook of the Carnatic Payenghaut

Rule

15 Nov

16

cp Adv

and that any writ or process which shall at any time be sued out or prosecuted against the person or goods or property of His Highness or of any such person without such consent shoulobe utterly null and void.

That the Nabob in his life time and at the time of his death held or was entitled to the enjoyment of considerable property real and personal and doubts have aresen whether on his death the whole of such property and including that portion which is in the nature of State or public property has become vested in the East India Company in trust as aforesaid.

That the Nabob in his life time contracted debts to a large amount which remained unsatisfied at the time of his death and at that time there were also other liabilities remaining

unsatisfied which had been contracted by Ajeem Jah Bahdoor as Nabob Regent during the infancy of the late Nabob.

That the value of the property so held by the late Nabob is supposed to be of less amount than the aggregate of the debts and liabilities so contracted as aforesaid.

That it is doubtful whether the Parties with whom such debts and liabilities were so contracted have any remedy for enforcing their claims in any of the ordinary courts of Justice and whether any portion of the property so held by the late Nabob and particularly such part as is of the nature of State or public property can be made available by such claimants for the liquidation of their claims.

That

+ or rather I wish to say

That the East India Company are willing to relinquish their claim and right to the said property for the benefit of such claimants in the manner herein provided and to allow that the whole property so held by the late Nabob whether real or personal and of whatever kind should be applied in a course of administration similar to that followed for the administration of Estates of private Individuals and should be so applied in liquidation of such claims so far as such property of sufficient will extend and should there be any surplus then that the same should be applied towards making a provision for the family and dependants of the late Nabob.

And if such property should prove to be insufficient to liquidate such claims in full the said East India Company are also willing to

to pay in full to such of the claimants as shall be willing to accept the same in the manner herein mentioned all debts and liabilities that may be proved to have been fairly and justly contracted such debts and liabilities to be estimated in respect of monies lent on the amount proved to have been actually advanced and in respect of goods supplied or of any other matters on the amount which be proved to have been the fair value thereof at the time when such debts or liability was incurred and to pay interest on such debts at a rate not exceeding 6 per cent per Annum -

It is alleged that mortgages and divers liens and securities have been executed and created which purport to affect certain portions of the property so held by the Nabob as aforesaid the validity and extent of which

or

wh of some of them are doubtful
And it may also be doubtful
whether such mortgages liens
and securities can be enforced
in any of the ordinary Courts -
It is also alleged that various
conveyances deeds and Instruments
have been executed by the late
Nabob without valuable
consideration; And that numerous
frauds have been practised in
dealings with the late Nabob
and with such property so
held by him as aforesaid (and that
undue advantage has been taken
of his necessities) by obtaining
from the Nabob or from Parties
who were entrusted to execute
and create such mortgages
liens and securities certain
acknowledgments mortgages
liens and securities for larger
sums than were actually
advanced on, or were due in
respect of the same And

wh By The propriety of inserting the words in brackets I believe such is the fact; but I doubt the propriety of shewing it in the bill, having reference to the Rank of the party referred to - cD

whereas it is expedient that
provision should be made for
investigating all such claims
with the view of protecting the
property relinquished and the
bona fide claimants from
fraud as also for giving effect
to such of the said mortgages
liens and securities as shall
have been created bona fide
and for valuable consideration
and for affording a simple mode
of ascertaining the rights of
the parties claiming in respect
thereof as well as of parties
claiming to be creditors of
the Nabob by simple contract

That it is also expedient
to repeal Act I of 1844
and to withdraw from the
family and Retinue of the
late Nabob the exemption
from the Jurisdiction of
the Ordinary Courts except
as to any debts or liabilities
incurred

incurred previously to the passing of this act.

Enact and declare

II That the following words and expressions in this act shall have the meaning hereby assigned to them unless there be some thing in the subject or context repugnance to such construction (that is to say) Nabob shall be read as meaning The late Highness Ghoolam mahomed Ghouse now deceased but lately the Nabob of the Carnatic.

"Property held by the Nabob" shall be read as meaning and including property both real and personal moveable and immoveable or which may be of the nature of real property and which in his life time the said Nabob held or of which he was entitled to the enjoyment or usufruct or which he was possessed

possessed of or entitled to and whether such property were in his actual possession or in the possession of any other person or persons as Tenant of or In trust for the said Nabob or in any other capacity whatsoever As also all such property which within 12 years previously to his death had been alienated conveyed or transferred by him or by any person or persons in his name or by his orders or directions or with his assent and concurrence or without such orders directions assent or concurrence. And also all such property as at the time of his death was held by any person claiming by a title thro' or under the said Nabob derived from the Nabob within 12 years previously to his death and whether such person claimed to be entitled absolutely

absolutely as a mortgagee or otherwise and whether any conveyance or mortgage under which such party may allege he holds or claim Title was executed or signed by the said Nabob or any other person claiming Title through or under him.

Creditor of the Nabob shall be read as meaning and including all persons with whom the said Nabob and Azeem Jah Bahadoor contracted debts as aforesaid, but it shall not be interpreted as giving or conferring any rights or privileges on such persons beyond what they had by law previously to the passing of this act.

"Local limits of Madras" shall be read as meaning the limits within which the Supreme Court of Judicature at Madras exercises Jurisdiction pursuant to an order in Council passed on the 2d day of November 1798 or such other limits as may be hereafter duly prescribed for that purpose.

III That all such property held by the Nabob died on his death become vested in the East India Company in trust for Her majesty for the service of the Government of India.

IV. That all conveyances alienations and Transfers thereof or of any part thereof or of Instruments or documents purporting to be conveyances alienations or Transfers thereof or any part thereof whether executed or made by the late Nabob or by any other person by his order or directions whether such other person shall have been a Trustee for the said

said Nabob or whether such other person shall appear on the face of such Instrument as the actual owner of the property or in any other character or capacity whatsoever were absolutely null and void ab initio -

V That all actions suits or other proceedings which may have been commenced instituted or prosecuted against any person or persons who may have been a party to or may have executed or made any such conveyance or Transfer or any such other Instrument or document as in the last para mentioned - shall abate on the passing of this act and shall not be revived and no decree or order heretofore made in any such suit or proceeding shall be enforced.

That

I fear the act cannot go further and declare the execution of any decree which has been executed before the passing of the act shall be void. Such ought to be the result to meet the real merits of the case - If all the original transactions are declared null and void, and the proposed powers be given to the Receiver General the effect will really be to open all such proceedings -

C D

VI That the whole of the property held by the Nabob as aforesaid shall be collected, taken possession of and got in and shall be sold and disposed of or converted into money and the proceeds thereof shall be applied in liquidation of the claims before mentioned when proved as hereinafter mentioned so far as such proceeds if sufficient will extend -

VII If such proceeds shall prove to be insufficient for liquidating all such claims in full then the East India Company shall provide such funds as may be required for liquidating in full all such

This can easily be qualified if thought to be too general — Co

such of the said claims as may be proved as hereinafter mentioned.

VIII That for the purposes mentioned in the 6th para and for carrying out the provisions of this act the Government of Madras shall immediately after the passing of this act appoint such person as they may think fit who shall be designated "The Receiver General of the Carnatic property" and it is hereby declared that the Administrator General of Madras for the time being may be appointed and act as such Receiver General.

That

IX That the Government of Madras shall assign such salary to the said Office as shall from time to time be deemed proper.

X That the Government of Madras shall have full power to suspend or remove such person so to be appointed as such Receiver General or any person who hereafter may be appointed to that Office. as also from time to time and so often as the same shall happen to fill up any vacancy which may at any time hereafter occur in such Office by death

death retirement suspension or removal.

XI Such Receiver General shall do and perform all acts in performance of his duties or office under his official designation and in all processes whether in Courts of law or Equity he shall be so styled and designated and no proceedings in which the Receiver General may be a party shall abate by reason of the death retirement suspension or removal from office of any such Receiver General but the same shall be continued and carried on as if no such death resignation suspension or removal had occurred.

XII The Receiver General shall have full power to collect take possession of and get in all property held by the late Nabob and he shall proceed to do so with all convenient speed immediately after the passing of this Act.

XIII That in Cases where such Receiver General shall have reason to suppose that property held by the Nabob is in the possession power or control of any person who claims to be entitled thereto for any Estate or interest whether absolute or fiduciary such Receiver General shall call upon such person to deliver up to him such property. If such person shall refuse to deliver up the

the same, then a State-
=ment shewing the reasons
for supposing that such
property did form part of
the property held by the
Nabob as aforesaid shall
be referred to the Advocate
General at Fort Saint George
and if he shall be of
opinion that there is reason
to suppose that the pro-
=perty which may be the
subject of such reference
did form part of the pro-
=perty held by the Nabob
as aforesaid he shall si-
signify his approval
that proceedings should
be adopted by the Receiver
General for enforcing the
delivery thereof to him
the said Receiver General
whereupon the said Receiver

General

E. I am inclined to think "on motion by the Advocate General on his information" would be preferrable. At any rate I think it should be so, after the contemplated Suit should have been instituted.
C.D.

General shall proceed to
enforce such delivery.

XIV That for the pur-
=pose of enforcing such
delivery The Supreme Court
of Judicature at Madras
is hereby authorized and
required on the E application
of the said Receiver General
or his Solicitor to issue
under the Seal of that
Court a Writ in the nature
of an Extent which may be
in the form A set out in
the Schedule to this Act or
as near thereto as the cir-
=cumstances of each Case
shall require and no Af-
=fidavit shall be required
previously to issuing such
Writ.

XV Or if the said Advo-
=cate General shall deem

it

it desirable that the Receiver General may sue in the name of his Office for and recover such property in such manner as the said Advocate General shall direct.

XVI Upon receipt of any such Writ as is mentioned in Para 14. the Sheriff of Madras shall proceed to empannel a Jury to consist of not less than 6 persons in the same manner as is prescribed by and subject to the "Jury Rules" that may be for the time being in force in the said Supreme Court And that when a sufficient pareel shall have been summoned such "Jury rules" shall be carried out and enforced

so

I do not see any objection to making 6 the minimum.
C. D.

so far as the same may be applicable.

XVII That on the application of the said Receiver General or his Solicitor or of any party interested in the Enquiry or his Solicitor the said Supreme Court is so hereby empowered and required to issue under the Seal of the said Court such Subpœnas as may be required for the attendance of Witnesses before the said Sheriff on the taking of the inquisition under the said Writ. Such Subpœnas to be in the form usually issued by the said Supreme Court with such alterations as may be required to meet the exigency of the Case and the same shall be served in

the

the same manner as Sub-
=poenas usually issued by
the said Court.

XVIII If any Witness
after being duly summoned
shall not attend as by such
Subpœna he shall be re-
=quired, he shall be called
on his Subpœna by the
said Sheriff and such
Witness shall be punished
by the said Supreme Court
in the same manner as if
he had been subpœned or
summoned before the said
Court and had made
default.

XIX Every Witness shall
answer all questions that
may be put to him even
though against his own
interest in the same man-
=ner as Witnesses are
compelled

compelled to answer when
examined on the taking of
an inquisition under a
Writ of Extent issued out of
Her Majesty's Court of
Exchequer at Westminister
and in case of refusal or
neglect to answer such
Witness shall be punished
by the said Supreme Court
in the same manner as if
such Witness had so re-
=fused or neglected to answer
the said Supreme Court in
any matter pending before
such Court.

XX In the taking of
an Inquisition under this
Act by the Sheriff and in
making his return and
filing the same, and on
such return being made
and filed in entering a
rule

rule or order for the issue of a Writ of Vindicationi & Exponas the course and practice pursued in England under Extents issued by Her Majesty's said Court of Exchequer shall be pursued so far as the same can be pursued with reference to the rules and practice of the said Supreme Court & where such rules and practice may be applicable.

XXI No such Writ as is mentioned in para: 14 shall be set aside for any matter of mere form or for want of Affidavit & (which it is hereby de= =clared shall not be re= =quired) or on the ground that the practice of the said Supreme Court does not

not authorize the issue of prerogative process and if any such Writ be set aside on Motion for any other & Cause, it shall be competent for the said Receiver General when and so often as the same shall happen, to proceed denovo, as though no such Writ had been & issued and on the approval of the said Advocate General to apply for and the said Supreme Court is hereby authorized and required to issue a fresh Writ under the provisions herein contained as if no previous Writ had & been issued. Whereupon & such proceedings may be had and such steps taken and such Writs or process issued as are hereby autho= =rized

=rized and required with
reference to Writs issued
under the authority of Para:
14 of this Act and as if no
previous Writ had issued.

XXII If any party shall
claim to be entitled to the
Premises appraised and
extended by any such Writ
he shall be entitled to
traverse any inquisition
taken thereunder or other=
wise to show his right
in the same manner as
is provided by the several
Statutes made and passed
in England in the 34th year
of the reign of King Edward
the 3d Chapter 14 the 36th
year of the same reign
Chapter 13 and in the 2d
and 3d years of the reign
of King Edward the 6th
Chapter

Chapter 8th: whereupon
such proceedings shall be
had and taken as are
usually had under the
practice pursued in Her
Majesty's said Court of
Exchequer in cases where
Writs of Extent are issued
out of that Court and
such party shall be
deemed to be a Plaintiff
and shall be obliged to
prove his Title in the
same manner as a Party
would be required to do in
Her Majesty's said Court
of Exchequer when pro=
=ceeding under a Writ of
Extent. And the same
rights powers and pri=
=vileges are hereby de=
=clared to vest in the
Advocate General at

Fort

Fort St George with respect
to all such proceedings
as appertain to and
are exercised by the
Attorney General in
England in respect of
Extents issued out of
Her Majesty's said
Court of Exchequer.

XXIII. In the event
of a Suit being instituted
as hereinafter mentioned
the said Receiver &
General shall act as
the Receiver in that
Suit and for such
purpose shall be
deemed an Officer &
of the said Supreme
Court and shall be
subject to the orders
and general practice
of the said Court in
the

the same manner as any
other Receiver specially
appointed by the said &
Court except that he shall
not be called upon to
give security.

XXIV. Until such a
Suit shall be institu-
tuted the said Receiver
General shall collect
all property held by
the late Nabob and
shall sell or otherwise
dispose of the same
and shall keep separate
accounts of the pro-
ceeds of the Sales
of such portions of the
said property as &
shall not be subject
to any claim in

respect

respect of any Mort=
=gage lien or Security
which may purport
to affect the said or
property so held by
the late Nabob or some
part thereof and where=
=of notice shall have
been given and a
separate account
for each portion of
the said property re=
=garding which a
claim shall be
made in respect
of such a Mortgage
lien or Security.

That

XXV That all moneys which the said Receiver General shall receive as part of the property held by the Nabob or arising from the sale of such property or any part thereof shall be immediately after its receipt paid by the said Receiver General into the General Treasury at Fort Saint George with the privity of the Accountant General of Fort St. George. And that the said Accountant General and the Sub Treasurer shall keep the accounts relating to such moneys in the same manner as Accounts are kept by them in respect of moneys paid in under order from the said Supreme Court and that separate accounts shall be kept by them in all such cases as the said Receiver General shall require so as to correspond with the Accounts which by this act such Receiver General is required to keep

XXVI No action or suit shall be brought against the East India Company or any person

for

for any thing done under the passing of this Act or for or by reason of any act for the protection of the said property or for realizing the same which may have been done before the passing of this act by any person under the orders or with the sanction of the Government of Madras or to compel the payment of any debt or liability or sums of money out of property held by the said Nabob as aforesaid

XXVII It shall be lawful for any person claiming to be interested in the proper administration of the property so held by the said Nabob under the provisions of this act to apply to the said Supreme Court for and obtain in a Summary way in the manner provided by act 6 of 1854 upon a Summons to be served upon the said Receiver General an order for the Administration of the property so held by the said Nabob under the provisions of this act

XXVIII In case any such application shall be so made the said Supreme Court shall thereupon by

by such order in addition to the ordinary directions contained in the usual order for the administration of the moveable and immoveable Estate of a deceased Mahomedan direct that all persons claiming to be Creditors of the late Nabob and who may claim to hold any mortgage lien or Security which purports to affect any part of the property held by the said Nabob as aforesaid shall come in and prove and establish their claims under the provisions of this act or that in default thereof they shall be barred and precluded from all benefit of the said order and the said Court shall also by the said order give such directions as to the notice to be joined to such claimants and otherwise and shall direct such enquiries as to the Court shall seem fit.

XXIX Upon such order being made the Court shall take an account of all debts and liabilities which were so contracted by the said Nabob and by the said Nabob Mookteer Azzum Jah Bahadoor as aforesaid and which remained unsatisfied at

at the time of the death of the said Nabob and also of all property held by the said Nabob as aforesaid liable and available for the payment of such debts and liabilities under the provisions of this act and shall also determine whether any and which of the said claimants had any and what mortgage lien or security which if the Nabob had been a private individual would have constituted a valid security upon some and if so what portion of the property held by the said Nabob and for any and what amount. Provided that the said Court in fixing the said amount shall not allow to any person claiming to be a creditor in respect of money lent or advanced any larger sum than the amount proved to have been actually advanced or in the case of interest alleged to have been converted into principal then such sums as shall be proved to have been legally so converted together with simple interest thereon respectively not exceeding the rate of 6 per Cent per annum

Together

Together with any costs which the said Court may consider that such claimant had bon a fide incurred in properly endeavouring to enforce any mortgage lien or security given in respect of a Debt which the said Court shall allow and Provided further that the said Court shall not allow to any person claiming to be a Creditor in respect of goods sold or any other matters any larger sum than the amount which shall be proved to have been the fair and reasonable value thereof at the time when such debt was incurred with simple interest thereon not exceeding the rate aforesaid Together with any costs similarly incurred by any such claimant in endeavouring to enforce his claim which shall be so allowed. Provided that no higher rate of Interest than 6 per Cent shall be allowed notwithstanding that it may appear that any larger sum shall have been stipulated for by agreement except in cases where the claimant

may

may hold a mortgage lien or
Security which under the provisions
hereinbefore contained the said
Supreme Court shall determine
would have constituted a valid
Security had the Nabob been a
private Individual and it is
hereby declared that in such cases
the said Supreme Court may allow
to such claimants the rate of
Interest agreed upon in their
mortgage lien or Security provided
the same do not exceed the rate
at which such claimant could
have recovered interest under a
Decree of the said Supreme Court
had the Nabob been a private
Individual and a Mahomedan.
But if the rate of Interest so
agreed upon should exceed the
rate at which such claimant
could have so recovered interest
then the said Supreme Court
shall allow Interest at such
a rate only as could have been
so recovered had the Nabob
been

been a private Individual and
a Mahomedan Provided also that
all such Costs as shall be allowed
under the provisions contained in
this Section shall be allowed as between
Solicitor and client.

xxx The said Supreme Court
shall sell or otherwise dispose of
and convert into money all such
property as under the provisions of
this act is appropriated for the
liquidation of the said Debts
and liabilities and shall keep
separate accounts in respect of
each sale of property whereon any
such mortgage lien or Security
may have been executed and
created as aforesaid

xxxi Upon the decree or final
order of the Court in such Administration
suit any claimant holding such
a mortgage lien or Security as aforesaid
whose claim shall have been allowed
by the Court in the manner in the
29th para mentioned under the
circumstances there referred to would
have constituted a valid Security
upon the property comprised in

such

such mortgage lien or security shall
be entitled to receive from the
said Court the whole of the sum
standing to the credit of the
account of such particular mortgage
lien or security provided the same
does not exceed the amount so
allowed to him with interest at
the rate allowed by the said
Court up to the date of payment
and in case the said sum so paid
from the separate account shall
be insufficient to satisfy the sum
amount so allowed with interest
as last aforesaid such claimant
shall be entitled to rank for
such deficiency as a Creditor
upon the general fund. But
if the sum standing at the credit
of the said separate account shall
exceed the amount so allowed with
interest as last aforesaid then the
surplus thereof shall be carried to the
credit of the said general fund

XXXII Every Person who shall
claim to be a creditor of the said
Nabob who shall not come in

and Numbered of 1857. And
we being willing that the truth of
the premises should be known and
that possession of the said
should
be obtained for the purposes of the
said Act with all speed as is just,
do Command that you do diligently
enquire on the oaths of good and
lawful men of your bailiwick
or otherwise by the testimony upon
oath of the like good and lawful
men by whom you may be well
informed concerning the matters
hereby enquired after and by whom
the truth of the premises may
more plainly appear as by all
other ways means and methods
whatsoever whether the said
Nabob do hold the said
within
the meaning and intent of the
said Act or Statute or whether
such were
held at any and what time
by

by any other person or persons and
whom by name for the use of the
said Nabob or in trust for him
and into whose possession or
hands such
came and in whose possession or
hands the same now are, And
that all and singular the said
as you
shall find to have been so held by
the said Nabob or by any other
person or persons for his use or
in trust for him as aforesaid
in whose hands soever the
same now are you diligently
appraise and cause on the oaths
of such good and lawful men
and do take and seize the same
into our hands there to remain
until you receive our further
command so that at our will
and pleasure you may be able
to answer us the said
(describe the property to be
appraised)
according to the form of the statute
in such case made and provided
and

And that you do certify to the
Justices of our Supreme Court of
Judicature at Madras what you
shall so do in the premises so
that you distinctly and openly
notify to our said Justices on
the day of
next in what manner this our
command shall have been execu
and that you then have there
this writ. Provided that what
you
shall seize into our hands by
virtue hereof you do not sell
or cause to be sold until we
shall otherwise command you
Witness Sir Christopher
Rawlinson Knight the C
Justice of our said Court at
Madras the day of
in the year of our Lord 18

True copy
J. A. Boyson
Actg Sol

and prove their claims under and according to the said Order shall be barred from all benefit given by this act in respect of their said claims

XXXIII Repeal Act I of 1841 — except as to all acts done B before this act came into operation by the said Nabob or by any of his said Retinue under his order or strictly in the performance of a duty properly performable by such Retinue as such and except as to any writ or process that may be sued out in respect of any claim which accrued or debt which was contracted before the passing of this act against the late Nabob of the Carnatic or any previous Nabob or the said Queen Zah: Bahadoor as Regent or otherwise or against any member of the family or Retinue of the said late Nabob who at the time of the death of the late Nabob was exempted or privileged from any writ or process under said

B I submit the Nabob or did no act under the Act No I of 1841 and that therefore this is an incorrect Expression

C J.

said Act of 1844.

The Schedule referred to

A

Victoria by the grace of God of the
United Kingdom of Great Britain &
and Ireland Queen Defender of
the Faith and so forth.—
To The Sheriff of Madras Greeting
Whereas we are given to understand
and be informed that His late
Highness Ghoolam Mahomed
Ghouse late Nabob of the Carnatic
in his life time held a certain
[describe the property in general terms]

A If this be the fact within the meaning and intent of the act or Statute passed by the Right Honorable the Governor General of India in Council and

Pol. Dep. to Engd. 22d. July No. 11
of 1857 / Paris 28 C 37

Draft

Act (prepared by Mr. Dale) for giving effect to the proposed arrangement for adjusting the debts of the late Nabob of the Carnatic.

Pal Cons

21-4-57
No 15 A

Copy Opinion.

Para: 1. As required by the instructions of the Honorable Company's Solicitor I have perused the accompanying Draft Bill D, as also Mr. Ritchie's 2 Letters to the Secretary to the Government of India Foreign Department dated the 3d & 22nd February 1857 and Mr. Edmonstone's letter to this Government dated 23d February 1857 No. 835 which accompanied that Draft Bill; and agreeably to the wishes of the Right Honorable The Governor in Council as expressed in the Minute of Consultation dated the 10th March 1857 No. 206 Political Department, I purpose now to offer for consideration of Government such suggestions or observations as have occurred to my mind.

2. In dealing with a matter of this nature, there is so much that must necessarily arise, if not strictly of a political character, yet not of a character which it is strictly the province of a mere retained Counsel to touch upon, that I have experienced some difficulty in determining as to the extent to which I might with propriety carry my observations, and it is with much hesitation and diffidence that I enter on any thing beyond the mere legal points which arise with respect to

Vol. of 185

to the Draft under consideration. If however in offering some of the following observations, I have been carried away beyond what may have been desired of me as Counsel, I trust I shall be excused and that my doing so will be attributed to the right motive.

3. On my return to Madras and resuming my late appointment of Solicitor to the Honorable Company I heard of the appointment of the Commissioners. I then felt that a Commission so constituted was not likely to inspire general confidence but on the contrary would in all probability deter many from appearing before it; at the same time I must own, that it did not then occur to me that there was another course open for Government to pursue, which was more free from objection. However after addressing Government in November last, it did occur to me that as legislation was contemplated, a better course might be adopted, either by empowering and requiring the Judges of the Supreme Court to investigate the claims on petition, or giving them summary jurisdiction much in the same manner as I see is now provided for by the Draft Bill D; but my being immediately afterwards relieved from my then office I have had no further opportunity

opportunity until now of offering my opinion officially on the subject.

4. Great difficulty must necessarily have been in making a selection of persons fitted for such an office; and let the Government make any selection they might, I believe it would be impossible to inspire general confidence, I have reason to believe that few, if indeed any servants of Government, would be free from objection in the opinions of the Creditors; and certainly any Native Gentleman however high his position or character for ability, would not be generally acceptable; indeed there is no body who can be considered in any manner as dependent on the favor of Government, whether present or prospective, but who would be regarded with a degree of jealousy if not suspicion, of course the Judges of the Supreme Court would be entirely free from any such objection.

5. In considering the subject, difficulties innumerable certainly suggest themselves, and it is indeed "very difficult to decide on the particular kind of legislation that should be resorted to." I must own that I do not think that a Commission will prove itself generally acceptable to

the

the Creditors, and from my perusal of the papers I arrived at the conclusion, that if a suit were instituted under Section 6, that the existence of the Commission would cease; now as I foresaw that there must be (sooner or later) a suit, it occurred to my mind that for the very little good that would arise from a continuance of the Commission for a short period, the Bill might be made less cumbersome and a very considerable saving effected, by at once authorising Government to appoint a Receiver, whose duties should be defined, under extensive powers, leaving it to a Creditor to institute a suit as provided by Section 6 for the administration of the Assets and I prepared a Draft Bill for the consideration of Government embodying such objects. I am now however informed by the Honorable Company's Solicitor that he understands it is the intention of The Right Honorable The Governor General that the functions of the Commission should not be concluded by the institution of a suit, but that the Commissioners should continue their operations continuously with the working of the suit - If this be the intention of His Lordship it follows that the

suggestions

suggestions which I purposed to submit would be inapplicable to a very great extent; and the (as it appeared to me) more simple plan cannot be adopted. There is nothing in the Draft Bill D. or the 3 Letters before referred to, which declares that the functions of the Commissioners were to cease on a suit being instituted: but the contrary is not declared; and from that correspondence and the supposition that the smaller would be absorbed in the larger, I was led to the conclusion that such was the intention. Indeed if such were not the intention I submit for consideration that Mr. Teed can scarcely be continued as a Commissioner, unless it were considered compatible for him to exercise the double functions of Commissioner and Master of the Court by whom any reference would have to be carried out.

6. I must admit that I experienced considerable difficulty in satisfying myself what was precisely intended to be the effect of a Suit.

7. Assuming however that it is the intention to continue the Commission, and that their functions should be exercised after the institution of a suit, I now proceed to submit such observations

as

as have occurred to me on a reperusal of the Draft Bill D.-

8. As the Bill is at present framed, each claim that is preferred to the Commissioners may be subjected to a double investigation, Claimants may prefer their claims to the Commissioners who may investigate and adjudicate upon them, and if such adjudication be favorable and a suit be instituted under Section 6, each claim so adjudicated upon is liable to undergo a fresh investigation, not in the nature of an appeal, but a fresh substantive investigation, the award made by the Commissioners affording only prima facie evidence of the amount due from the Nabob. The result of any such fresh investigation, is not under any circumstances to prejudice the claimant, for if the Court sees reason to disallow the claim, or any portion of it, and as it appears to me, whether from fraud having been practised by the claimant before the Commissioners, or whether the claimant (having got his claim allowed by the Commissioners) becomes lukewarm or indifferent and apathetic, and thus the claim is not vigorously or duly pushed before the Court, yet under all circumstances the claimant is not to be called upon to refund but the East India Company are to be the losers, while on the other hand if the Claimant can induce the Court to allow more such Claimant is to have the advantage of such increase. I observe that in Mr. Secretary Edmonstone's Letter para: 12 it is suggested as preferable that such increase should be applied towards providing for the maintenance of the family of the Nabob, and I agree in the propriety of that suggestion.

9. As regards an appeal Mr. Ritchie in his letter of the 3d. February 1857, Paras: 21 to 26 has so fully and ably entered into the subject I feel it unnecessary to offer any opinion.

10. But as framed, it appears to me the Draft Bill D gives no appeal. A Party who comes in voluntarily, and signs an agreement has no appeal from the award of the Commissioners, whether the award disallows or is partially favorable to his claim. If the award disallows the claim and a suit be instituted the Claimant may bring forward his claim denovo to the Court and if allowed by the Court he will be entitled to a Dividend and has any right of appeal from the

as have occurred to me on a reperusal of the Draft Bill D.-

8. As the Bill is at present framed, each claim that is preferred to the Commissioners may be subjected to a double investigation, Claimants may prefer their claims to the Commissioners who may investigate and adjudicate upon them, and if such adjudication be favorable and a suit be instituted under Section 6, each claim so adjudicated upon is liable to undergo a fresh investigation, not in the nature of an appeal, but a fresh substantive investigation, the award made by the Commissioners affording only prima facie evidence of the amount due from the Nabob. The result of any such fresh investigation, is not under any circumstances to prejudice the claimant, for if the Court sees reason to disallow the claim, or any portion of it, and as it appears to me, whether from fraud having been practised by the claimant before the Commissioners, or whether the claimant (having got his claim allowed by the Commissioners) becomes lukewarm or indifferent and apathetic, and thus the claim is not vigorously or duly pushed before the Court, yet under all circumstances the claimant is

is not to be called upon to refund, but the East India Company are to be the losers, while on the other hand if the Claimant can induce the Court to allow more, such Claimant is to have the advantage of such increase. I observe that in Mr. Secretary Edmonstone's Letter para: 12 it is suggested as preferable that such increase should be applied towards providing for the maintenance of the Family of the Nabob, and I agree in the propriety of that suggestion.

9. As regards an appeal Mr. Ritchie in his letter of the 3d. February 1857, Paras: 21 to 26 has so fully and ably entered into the subject I feel it unnecessary to offer any opinions.

10. But as framed, it appears to me the Draft Bill D gives no appeal. A Party who comes in voluntarily, and signs an agreement has no appeal from the award of the Commissioners, whether the award disallows or is partially favorable to his claim. If the award disallows the claim and a suit be instituted the Claimant may bring forward his claim denovo to the Court and if allowed by the Court he will be entitled to a Dividend and has any right of appeal from the

the decision of the Supreme Court to Her Majesty in Council, which now is, or may be at the time existing.

If a claim be partially allowed by the Commissioners the Claimant has no appeal, but if a suit be instituted the claim must be preferred to the Supreme Court, and if more be allowed than was allowed by the Commissioners the Claimant (as the Bill now stands) will be entitled to the Dividend paid by the Court, if in excess of the sum paid to him by the Honorable Company under the award of the Commissioners, such a Party I apprehend has no appeal whatever.

I believe the foregoing is a correct resumé of the effect of the Bill as at present framed on that subject.

11. If the Commission be retained I would suggest as desirable that the Bill should declare how the evidence is to be taken, whether in the shape of a Deposition to be signed by each witness, or orally, the Commissioners merely taking notes as Her Majesty's Judges do. If by the former mode, much time must be necessarily consumed, and an establishment must be maintained, which if no (or only a few) claimants come in will entail an expense without adequate advantages, while on the other hand if numerous claimants come in an increased Establishment must be entertained. On the other hand if the evidence be given orally and notes only taken, how are parties guilty of perjury to be punished? I do not suppose a case ever occurred in which a Judge appeared to give evidence on a Trial for perjury on evidence taken before him; probably however it may be considered not incompatible with the office of a Commissioner that he should appear as a witness for such a purpose.

12. In the preamble para: 4 I would suggest a slight alteration so as to avoid an apparent admission that without doubt the Nabob was free and undisputed Owner of the property held by him or of which he had the usufruct, with all the rights incident to such ownership of full free and absolute power of disposition; such power is questionable at any rate so far as applies to state property and it occurs to me, that it is better to qualify that part of the preamble. Then again I would suggest as preferable not to recite that it is doubtful whether the whole of the property was not vested in

but

but rather to recite that doubts have arisen whether such property had become vested as stated in the 2nd para: and to remove such doubt &c. In Paras: 5. 6. 9. & 12. I think the language might be qualified slightly, with the same view of avoiding any apparent admissions as to liabilities contracted by the Nabob being Debts liable to be dealt with in the ordinary modes as Debts of a private Individual. If those qualifications be adopted slight alterations will be necessary in paras: 7. & 8 to make the language consistent. With reference to Para: 10. I suggest for consideration whether if the functions of the Commissioners are to be exercised after a suit is instituted, Mr. Teed's name should be continued in the Commission, he being the Master of the Court. The 12th Para: of the preamble appears to me to require amendment, I believe it will be found that the Nabob did not mortgage, or create any lien or security on any portion of the property held by him. I believe that latterly no person would deal with him direct, or take any security from him; because (among other reasons) 1st he was exempt from the jurisdiction of all Courts, and 2nd as I believe from a feeling of doubt (if not very

very certainly defined yet prevalent) how far the Nabob could deal with property held by him. I believe however it is quite certain that the transactions referred to in this para: were conducted in the following manner. The Nabob conveyed his property to one or more of his Dependents who created the Mortgages or liens. The conveyances said to have been executed by the Nabob, purported to be absolute conveyances, but were merely colorable Instruments without consideration. I apprehend great advantages have been taken of the Nabob, and of his necessities and great frauds have been practised in respect of all these transactions. By the Draft Bill D. it is not (as I understand it) intended to question these transactions. If the transactions be as I have described them, it is evident that the alleged Mortgagees are not creditors of the Nabobs; but are creditors of the Parties creating the Mortgages. Now if the Securities were worth ten times the amount advanced, that property could not easily be recovered, if at all without special legislation.

13. If the suggestions made in the preceding para: should be adopted, the language in other parts of the Bill will require alterations.

If

14. If the Commission be continued I agree with the view taken by Mr. Ritchie in the concluding portion of his Note to the 1st Section.

15. My observations in paras: 16 to 45 will be founded on the contingency of the Commissioners being continued and that they are to exercise their functions after the institution of a Suit.

16. In Section 1 it is proposed to be enacted that the Commissioners shall allow only the principal lent and simple Interest. If the Nabob had been a private Individual and had borrowed money, the Interest on which had been permitted to run into arrears, and he had subsequently converted that interest into principal, giving an acknowledgment or security for the amount, that would have constituted a valid Debt. as this Section is now worded the Commissioners could not allow such a Demand - Is it desired that a Creditor so circumstanced should be excluded from recovering that Debt? with subsequent simple Interest on it?

17. I would suggest that the Para: immediately following the Agreement in Section 2 commencing "Debts contracted" should be ingrafted on Section 1.

18. In Section 3 the term unreasonable delay

delay is open to great controversy; I would suggest that a certain time be named; I would suggest that the blank be filled up by making the period 3 Months, and that provision should be made for the Claimant being paid Interest at 6 per Cent per annum on the full amount allowed (both principal and Interest) from the date of the award, to the time of payment - In England every Judgment debt carries interest until satisfaction by the 1st and 2nd Vict. Ch: 110. Sec: 17.

19. In Section 4 I would suggest that the language be slightly altered and that for the words "to enable the Government "of Madras to provide for the payment "of any Sum which may be awarded "under the provisions above mentioned. They "should be substituted" for the "purpose of ascertaining and collecting "and getting in or obtaining possession "of the property held by the Nabob and "for the purposes of this Act the Govern- "ment of Madras" I would suggest for consideration, that it is desirable to appoint such a Receiver immediately, and without reference to any creditor coming in under the Act, and as at present worded it would scarcely be consistent to appoint a Receiver, if no

Creditors

Creditors came in I would also suggest the Receiver should have some official Designation, and should do all official acts, and sue, and be sued in his official name. That provision be made for a Salary. That the Government should have power to suspend, or remove, and fill up vacancies. That proceedings should not abate by vacancy of office.

20. I collect from Section 4, that it is not contemplated by the framers of the Bill, that the Receiver should have any extraordinary powers vested in him for the recovery of the property; but that he is to do so by resort to a Court of law in the ordinary mode prescribed in the case of a dispute between subject and subject. In preparing the Draft Bill before alluded to, I introduced clauses giving the Receiver special powers, by authorising the issue of a Writ in the nature of an extent, under the previous sanction of the Advocate General; with provisions for the Sheriff's empaneling a jury, & taking an Inquisition, summoning witnesses; their punishment for disobedience to summons. Their examination as under an extent in England and & declaring that in taking the Inquisition a similar practice should be pursued to

to that of the Court of Exchequer in & England. That no Writ should be set aside for mere form &c.; and authorising the issue of fresh Writs giving the right of traverse under similar terms to those existing in England; and vesting in the Advocate General the same power as can be exercised by the Attorney General in England.

21. No provision is made for the deposit of Cash and valuables collected by the Receiver; and from the language of Para 5 it may be inferred that it was contemplated for the Receiver to retain these in his own hands, to enable him to do so and to disburse, the Receiver must have a Treasury, and a larger Establishment. I would suggest for consideration that all moneys received by him should be immediately paid into the Treasury with the privity of the Accountant General in the same manner as moneys are paid in & under directions of the Supreme Court and that similar accounts should be kept by the Accountant General and Sub Treasurer.

22. All Salaries of the Receiver & and his Establishment, as also the & expenses of his Office, might be disbursed to him on Abstract, and if the

amount

amount drawn for the latter were con-
-siderable, an account might be opened
at Bank of Madras - This latter
provision need not form part of the
Bill but would rather be matter
of arrangement for Government on the
Receiver being appointed as also any
directions regarding the Deposit of
Jewels &c. (if any) which the Receiver
might recover.

23. By the arrangement referred to
in Para: 21. the expense of a Treasury
and increased Establishment would be
saved, and the safety of the Cash &
for payments being made on the order
of the Receiver, with the privity of
the Accountant General.

24. Under such an arrangement
also, if a Suit be instituted, the ac-
-counts so kept by the Sub Treasurer
and Accountant General can be adopt-
-ed by the Court.

25. In Section 6 the words "Rea-
-sonable or proper" are used, it does
not occur to me to suggest any other
expression in substitution, but Judges
sometimes take very different views of
such expressions from the Legislature,
that it is desirable where practicable
to avoid any doubt, and I do not see

that

that there would be any impropriety
in omitting those words, for if the Act
be done for the protection &c. of the
Estate, it must be a reasonable and
proper Act, and if any Act be done
which does not protect &c. the Estate,
the omission of those words would not
render the persons the less amenable
for their Act - nor is it to be surmised
that the Government would order or
sanction any Act that was unrea-
-sonable or improper.

26. I would suggest that in the proviso
some time should be limited, within
which a Suit may be instituted &c.
within 12 Months from the passing of
the Act.

27. I would also suggest for consi-
-deration whether it would not be de-
-sirable to add that the Receiver General
should be the Defendant in such Suit
as representing the Estate of the Nabob.

28. Section 7 makes it compulsory
in all Creditors to come in under the
Decree whether such Creditors hold
Securities or not, and they are to
prove their claims and establish
their Securities or in default to be
barred and excluded from all
benefit of their Securities - This is
not the usual form of Decree in an
administration

administration suit; but as the introductory part of the Section shews "it is an addition" to the ordinary direction. Two questions suggest themselves to my mind 1st. In what manner are the Creditors holding Securities to be compelled to "establish" those Securities? the ordinary way is to put in their Deed and prove its execution by the Mortgagor - Is any thing more to be required in the present Case? If not then all the fraud which it is believed has been practised by the holders of such Securities (see para: 12 of the Preamble) will have accomplished its end, and for the payment of the Creditors who come in and sign an agreement, the Honorable Company will have to provide additional funds. If it be intended that the holders should prove the consideration &c., then I submit such must be declared specifically - The 2nd question is how are the Securities from the benefit of which these holders are declared to be debarred and excluded, to be made available for the Estate of the Nabob? This I submit also requires further enactment. The 2nd question applies equally to Section 8.

But

29. But I solicit attention to the concluding portion of the 12th Para: of these observations, for if the state of facts there alluded to, really exists, this provision will not touch any one of the Securities created on the property of the Nabob; and I do not see how the Case is to be met, other than by declaring by Enactment all such transactions to have been null and void; at the same time giving all parties holding such Securities as purport to affect property of the Nabob, the right to come in and prove their transactions giving them by the act a claim to all money bonâ fide advanced, or converted into principal, with Interest at the rate agreed upon, if not exceeding the then legal rate, and a prior claim to all moneys arising from the sale of their particular Securities - As I understand the Draft Bill the Supreme Government are not prepared to pay such Creditors in full.

30. In Section 8, to what period are the words "shall have entered into an agreement" to have reference? to the commencement of the Suit? or are Creditors at any time before the time fixed by the Order of the Court to be

at

at liberty to enter into such Agreement and then come in before the Master? I submit it is desirable to make this more specific.

31. I now come to Section 9. I believe the greater portion if not all the Houses and land of the Nabob were conveyed by him by means of the colorable Instruments alluded to in para: 12- If so, how is it intended that the Court shall act in taking the account of the Estate and Effects of the Nabob? under the relinquishment of the Honorable Company by this act all property of the Nabob would be liable and available for the payment of those Debts, but by far the most valuable part had been alienated from the Nabob before his Death; colorably it is true, but in law validly so until disturbed. Is all that property, whatever its value in excess of the Securities on it may be, to be lost to the Estate? If not, how is it to be recovered? I confess I see no way of doing so, without the aid of the Legislature or lengthened and expensive litigation, virtually (although not ostensibly) carried on by Government the Trustees for the Crown.

32. Then at what determination can the Court arrive as to what mortgages had been created upon the property of the Nabob? or whether such mortgages constituted a valid charge upon such property? Assuming the state of facts set out in para: 12 to be correct, the parties holding Securities on the Nabob's property are not his Creditors so the Court would have no jurisdiction in the matter and further these parties have not as matters now stand any mortgage or Security upon property of the Nabob he having alienated it before his death so that this Section could not be brought into play so far as such Mortgagees are concerned.

33. It strikes me that the provisions of Section 12 are objectionable as likely to cause collision between the Government and the Court- I would suggest that after suit instituted the Government should pay the class of Creditors here referred to, from out of the Treasury and then come in and receive out of Court the Dividend in respect of such Debt.

34. I would however suggest as desirable, that it should be enacted that if any suit be instituted the Receiver appointed by Government should continue to

to act as Receiver under the Court, and for that purpose should be deemed to be an Officer of the Court and subject to the Orders and general practice of the Court, the same as any other Receiver, except being called upon to give security. I do not believe there is any objection to a mere formal Defendant being the Receiver. I remember one instance. In this Case the Receiver General although the Defendant would have no personal interest in this Suit, and no Interest beyond that of faithfully performing a public Duty cast upon him.

35. If the last suggestion be approved the portion of Section 13 that refers to the appointment of a Receiver by the Supreme Court should be omitted.

36. A similar alteration will be required in Section 14.

37. In Section 15 the name of the Supreme Court will require amendment.

38. Referring to Section 16. If any witness is residing in the Territory of a Foreign Prince in alliance with the British Government where we have Officials, such as Mysore Hydrabad &c., might not provision be made for summoning witnesses so located, providing

providing probably (to prevent jealousy of interference) that such Summons should be backed by the Commissioner or Resident, or some other official person within such Territory. The word Secretities is omitted in the second capitulation of Documents, it would be desirable to make both parts conformable. Some of the Documents may be in the control of the witness but not in his possession and control. In 5 B Book is not mentioned witnesses often refuse to produce Books of account.

39. I would suggest as desirable that the Commissioners should have power to issue Commissions for the examination of witnesses resident beyond 20 miles from the Fort at Madras, or who living within that distance but beyond the local limits may be incapacitated from attending before the Commissioners at their Office as also of such witnesses as may be resident beyond the Presidency of Madras.

40. In Section 18 I would suggest that the word lawfully should be introduced in the 3rd line between the words "shall be" and "put". The Commission consists of only 1 Gentleman accustomed to judicial enquiry, and the 2 remaining Commissioners may

deem

impressed by Mr

deem it right to put questions that should not lawfully be put, and may insist on their being answered.

41. If the Commissioners are to have power to commit, authority must be given to the Sheriff and Jailor to receive and keep the person so committed, and provision should be made for such person obtaining his discharge.

42. In Section 19 provision is made for the witnesses expenses being paid to them; I submit that it would be fair and equitable if compensation were made to witnesses for loss of time as is now done in England. If a man in business be summoned before the Commissioners, and detained a whole day, he must necessarily sustain loss, which would be increased if detained for any number of days, and by the distance from which he was brought. It has often struck me as a defect in the procedure of our Courts in this Country.

43. I would submit that the Receiver General should pay the expenses when a Summons is issued on the motion of the Commissioners, or on behalf of the Estate.

44. I would suggest that provision should be made for appointing one of the Commissioners as Chief Commissioner and that he should have a higher salary than the 2nd & 3rd Commissioners and should preside at all meetings - I would also suggest the propriety of the Chief Commissioner being a professional man, and that no proceedings or adjudications should take place in his absence, and that in the event of only 2 Commissioners being present the Chief Commissioner should have a casting vote. Provision should be made that on a vacancy occurring the Senior puisne Commissioner should not become Chief Commissioner, but that the Chief Commissioner should be specially appointed - I have reason for believing that such a precaution is essentially necessary, for the proper working of the Commission if it be retained.

45. It occurs to me that on principle it is incorrect that a party who has to adjudicate a question should be also an actor in the Investigation getting up the Case on one side or the other if not both and I would suggest that the Receiver should be the Conductor of the proceedings before the Commissioners on behalf of the Estate, aided by professional assistance either generally

generally or at any rate in particular cases where intricate or difficult questions might arise.

46. I understand it is not proposed to retain the 23rd and 24th Sections.

47. Notwithstanding the decision of the Supreme Court in the Dewan's Case I would suggest the propriety of inserting the words "or Retinue" after the word "family" in the 5th line from the bottom of Section 25.

48. I have now gone through the several enactments contained in this Draft Bill D and for the reasons before referred to I would submit for consideration whether it might not be the most advisable course that the Commission should now be abandoned.

49. If the functions of the Commissioners are to cease on a suit being instituted, I apprehend it would be creating a Tribunal that is not likely to prove satisfactory for a short period and at a great expense without the probability of any corresponding advantage.

50. If on the other hand it be contemplated that the Commissioners should continue to exercise their functions after a suit is instituted it is not without difficulty that any other course can be suggested. If the Supreme Government were prepared to pay all debts in full with interest on the Securities being given up and the consideration proved, I do not apprehend that much difficulty would arise, (provided of course that the Legislative Council deemed such a course equitable and just towards Creditors, who have obtained Securities and would therefore pass such an act) but assuming that the Supreme Government are not so prepared, and that they will decide that it shall be left to Creditors to pursue their own course, as provided by this Draft Bill, then I must admit that great difficulty presents itself to my mind in attempting to suggest a substitution for a Commission.

51. At present the only measure that has suggested itself is, that Creditors should be at liberty in coming in before the Master under the Decree to elect whether they would sign the Agreement provided by the act, or come in as in ordinary cases solely under the Decree and having made their election they should abide by it, where parties elected to sign the Agreement the Master might be authorised

authorised and required by the Act to investigate these Cases on the principle laid down by this Draft Bill and report accordingly. The effect of such procedure would be, to substitute the Master of the Court solely for the 3 Commissioners, and only one investigation of these claims would be made; I apprehend exceptions might be taken to the Masters report in the same manner as in ordinary Cases. I do not foresee any difficulty with regard to the Dividends. The Master would be remunerated by fees, and pay his own establishment (that is I believe the Establishment of the Master is not paid by Government) and of course the expense of Salaries of the Commissioners and their Establishment would not be incurred - The Receiver General should by himself personally, and his Solicitor watch all these Cases, and he should be enabled to demand the assistance of the Government Agent (and Dewan - if practicable) for affording information

52. If Government and His Lordship the Governor General should approve of the suggestion made in the foregoing para; I would further suggest that the Bill should authorise and require the appointment by this Government of the Receiver immediately with such powers as may be deemed desirable. Then enact that no other suit or action should be brought except as under Section 6 and then proceed to enact the course the Master should pursue.

53. Mr. Ritchie has referred to the importance of dealing with the Mortgagees and the delicacy that must attend any legislative enactment, authorising any interference with them and has shewn what in his opinion might be considered a fair equivalent to that class of Creditors if compelled to come in to a general arrangement.

54. It appears to me that under the legislation proposed by Draft Bill D, the Cases of the parties who have obtained Securities purporting to affect property really and bonâ fide belonging to the Nabob, though divested from him before his Death under the colourable Instruments before alluded to cannot be reached, and that this Draft Bill will not affect them; and that therefore if they can by any means get hold of the property they will be able to retain it,

let

Let its value be what it may - and however desirable it might be to adopt the liberal policy proposed by His Lordship the Governor General, if this were an ordinary case, it strikes me that it can only be worked out (as provided for by this Bill) by the total abandonment of the valuable portion of the Nabob's property to the parties who have obtained or can obtain its possession.

35. This is however not an ordinary case and the ordinary rules of procedure are not sufficient to meet its exigencies. The Parties knew the dangers they were running in their dealings, and they concerted their measures accordingly - They would not deal in the usual manner and openly, but recourse has been had to circuitous modes of attaining the object, and crooked courses can rarely be met, but by bold measures.

36. In conclusion I must apologise for the delay which has occurred in forwarding these observations - as when the papers reached Madras, I was fully engaged with the Draft answer in the Tanjore Suit, and when these papers were laid before me the 2nd Term was approaching and for which I had to prepare, I was not therefore able to devote my undivided attention to this matter as I could have wished for the purpose of insuring their speedy return.

(Signed) Clemt Dale

Madras April 6th, 1857.

True copy.

W. Boyd

Ry Secy

Pol. Let. to Engt. 22d July No. 11
of 1857, Pages 28 & 37

Re

The proposed Arrangements for adjusting the debts of the late Nabob of the Carnatic -

Copy,

Mr Dale's Opinion dated 6 April 1857

In Cons 24 April 57
No 15 A

Boyson
Bom. Sols.

No 290.

Political Dept
41

Secretary to the Govt of India - Foreign Dept.

11 April 1857

Sir

I am directed to acknowledge the receipt of your letter under date the 23d. July last, forwarding a letter from the Advocate General of Bengal with three drafts by A.B. & C for the settlement of the debts of His Late Highness the Nawaub of the Carnatic - and a fourth draft like D prepared under orders of the Supreme Govt and proposed by them for

reasons stated - The
Reasons for an appeal
- ed to pin their earliest
consideration to this
Last bill and to comu-
-nicate their opinion
upon it, in order that
the requisite steps may
be taken in bringing it
before the Legislative
Council —

2. In reply I am desired
to state that the papers
were immediately on
receipt placed in the
hands of Mr Dale, formerly
Crown Solicitor to the Hobart
Company at Launceston,
but Lately called to the
bar and now practising
there

Supreme Court - Mr
Dale's long residence &
professional employment
at Launceston having
given him much experi-
-ence in such questions
proper to be considered
in connection with the
draft bill -

3 - For reasons explain-
-ed in the concluding
para of his Opinion,
considerable delay
has occurred in the
submission of Mr Dale's
views on this important
subject, and as the
Govt are anxious that
no more time should
be lost, and that the
papers should if
possible be transmitted

to Calcutta by the Steamer
how homely as pertains, I
am directed to forward
herewith original re-
cord - with a few
marginal notes - & the
points to which this Govt
would desire to speak especi-
-al attention is indi-
-cated by numbers in
the margin -

4 - The Govt conceives
Mr Dick to have been
evidently under a
misconception respect-
-ing the lapse of the
Commission, in the
event of any one suit
being brought by a
dissentient creditor
in the regular Courts -
5 - His remarks to

both on the draft bill. D.
sent from Calcutta,
and as to the course
to be pursued here
are valuable - more
especially hereafter,
already said, his posi-
-tion and long resi-
-dence in Burmah
must have afforded
him ample opportu-
-nity of knowing
in what manner the
pecuniary transac-
-tions of the late Rebel
Govt managed - no
less than as to the feeling
which prevailed
most interested in
the settlement of
the liabilities, as
to the confidence in
the Commission or

the cause

6 — It has been decided that the debts of the American shall be liquidated in a straightforward manner & to the full extent to which they are justly due — It would be deeply to be deplored, if any opportunity, that could be avoided, were given to arouse distrust or ill-will or discredit on the intentions & acts of God —

7 — In postponing a Convention, and nominating the members who were to sit on it, this Govt believed that they had suggested the most simple and expeditious

mode of obtaining the views of the 2 last Provinces. Further consideration, and recent information had led them to change that opinion — and they are now disposed to concur with the decisions of the Convention would best be suited with satisfaction — This proceedings in the matters already entrusted to their enquiry give also reason to apprehend that their investigations would probably be protracted & informal.

8 — The Duke has pointed out one objection to the appointment of Mr Jesse — the only professional means

I am not sure that this part is necessary if not the object to it- may be struck out but it seemed to me best to say

every thing that was
to be said — that it might
not be objected by the
Govt — for hereafter
that any thing was
kept from them —

of the Committee, arising
from his position in the
Supreme Court and the
inquiries which as
Master he may have
to conduct in the case
of those who elect to
bring their claims before
the ~~Supreme Court~~ Tribunal — It
should further be
noted that instances
have lately come under
the cognizance of this
Govt in which a near
relation of the Dewan
was shown to
have been largely con-
-cerned in carrying
money for the deceased
Peishwah by means
of the colorable trans-
-fers described by the
Dewan in his Opinion &
although it is stated
by the Dewan that he

had no share in such
transactions & always
disapproved them, &
his disclaimer is
fully believed by the
Govt Agent R Balfour,
yet it cannot happen-
-ed to be equally credi-
-ted by the public at
large —

On the other hand
the Govt entertain no
doubt that the Judges
of the Supreme Court
would pronounce
more satisfactory
tribunal to the parties
concerned than the
present Commission
or than any other that
could be named —
10 — The motion

operandi of the Supreme
Court acting in this cha-
-racter would have it
in its definition by a
special Act - the details
of which must be left
for the consideration
of the Supreme Govt &
of the Legislative Council -
No 2 Mr Dalis draft of this
it will need modification
may prove useful -
This Govt would have
strongly urge on the Govt
of India the policy of
not permitting, by an
excess of liberality
payments to be made
to fraudulent Creditors
our property to be left
in the hands of those
who if at present

possessed themselves
of it by most questionable
-able means
10 Relating to Sections
23 & 24 of the Draft
bill I have to
observe that it has
not been usual for the
Ladies of the Family
of the late Nawaub
to occupy the Chepauk
Palace as a Residence
nor is it advisable
that they should
now do so - Such
sections as these
are therefore unnecessary -

11 - The suggestion
contained in the con-
-cluding para of
your letter of the 23d
July on the the consti-

to be taken - in the Court of Colonial Pleas of the Mauritius property being apprehended - will be duly attended to should occasion arise - which has not yet been the case

Fort St George
11th April 1857

J.P.

Chief Secy.

Desp.d Apl. 11
with Orig.l enclosures
& Draft Bills A.B.C.D

Ind.a to Cons. 21st Apr.
Political 1857 Depart.t
13-4-Dgt
No 290

To
The Secretary to the
Government of India

dated 11th April 1857.

Forwarding Mr. Dale's
opinions with 2 Bills
prepared by him in con-
nection with the settlement
of the affairs of the Carnatic
together with draft Bills
A, B, C and D

Pol.l Dis.h to Cons.a 22.d July
No. 11 of 1857 Q 28 to 37

18/15/16

16