M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political **DEPARTMENT.**

G.O. No. 487 Press ~~Mis.~~

Dated 15-6-~~19~~1857

Not to be folded or roughly handled

P 18-11-30

No. 30 A. From G. F. EDMONSTONE, Esq., Secretary to the Government of India ; to T. PYCROFT, Esq., Chief Secretary to the Government of Fort Saint George, dated Fort William the 2nd June 1857, No. 2439.

Foreign Department. SIR,

With reference to your despatches, dated respectively the 24th April last, No. 319, and the 14th Ultimo, No. 381, I am directed by the Governor General in Council to forward to you, to be laid before the Right Honorable the Governor in Council, the accompanying Copy of a letter from the Advocate General, dated the 30th Ultimo and of its enclosure, being his opinion as to the evidence to be adduced at the hearing of the cause Kamatchee Bhoye Sahiba *versus* the East India Company.

2. I am likewise directed, in pursuance of Mr. Ritchie's advice, to forward to you a duplicate of the Despatch from the Honorable the Court of Directors, No. 17, dated the 16th April 1856, and your letter, No. 260, dated 10th July, in Original.

(Signed) G. F. EDMONSTONE,
Secretary to the Government of India.

No. 31. ORDER THEREON, No. 457 ; dated **15th June 1857.**

Ordered that copy of this letter and its enclosure be sent to the Honorable Company's Solicitor and to the Commissioner of Tanjore, with instructions to take immediate measures for preparing evidence to meet the Suit brought by Camatchy Bhoye.

Exd. J. A. Wilson.

(Copy)

To

G. F. Edmonstone, Esquire –
Secretary to the Government
of India
Foreign Department.

Sir,

I have the honor to acknowledge
the receipt of your letters of the 12th and 22d inst
with their enclosures from the Chief Secretary
to the Government of Fort St George, and in
reply to send the accompanying Opinion as
to the evidence to be adduced at the hearing
of the cause Vannatchee Bhoye Sahiba vs
The East India Company.

I return all the original enclo
sures.

I have the honor to be &c
(sd) N. Ritchie
Advocate General.

Calcutta
30th May 1857

Opinion

Opinion.

1. I do not think that any great amount of evidence will be required at the hearing of this cause. – It will be impossible at the hearing to go into details as to the different kinds of property possessed by the late Rajah, or to distinguish between the particulars of those which the Defendants have possessed themselves of and claim to retain, those which they have possessed themselves of and are willing to give up, and those which they have not possessed themselves of. This enquiry must be taken afterwards in the Masters Office, if the Court should hold at the hearing that the suit is tenable with respect to any one of these Classes of property, and should direct an account of any kind:- And the enquiry will be unnecessary at any stage, if the Court should hold on any of the general grounds taken by the Answer, that it has no jurisdiction to entertain the suit at all.-

2nd. – If indeed it appeared from the Answer, that the Government had not possessed itself of any property, which it did not claim to retain as being strictly State or Public Property, it might be important to go into evidence in detail as to the Nature and history of the Property so taken and claimed by the Government and upon the strength of such evidence to resist any Decree or account, even if the Court should hold that it had jurisdiction in respect of private, although it had none in respect of State or Public property. – But as the Answer admits that the defendants have possessed themselves of the property in Schedules A & C, which they are willing to give up as being real and personal property acquired since 1799 and not from its nature essentially State or Public property, there must necessarily be a General account for the purpose of ascertaining the correctness of those Schedules, and whether any other property not included by the Defendants therein falls within the same Category, if the Court hold that it can entertain the suit at all, and can make a decree as to the private property though it may hold that it can make none as to property claimed, rightly or wrongly, as strictly State or Public property by the Defendants. –

3rd. – It is to be observed however that the Defendants do not in their Answer admit that even the property in B and Q is strictly private property, or that they are not entitled to hold it if they stood on their strict rights. – They admit indeed that it is property acquired since 1799, and that it is not, like the property in E and K, from its nature essentially State property. – But they do not admit that it is from its very nature essentially private property, e.g.: that it was acquired or used for private purposes having no connexion with the

the shew or Rejecting of the Sovereign or of the State, as is admitted with respect to the Articles in D, of which the Government have not taken possession. — This distinction should be borne in mind at the hearing, in case the Court should be of opinion that it has no jurisdiction to determine the question as to any particular property, which the Government claims as public, being really private property: — but that it has jurisdiction to award to the Plaintiff all such property as the Government admits to be private. For in that case as the Government denies that it ever possessed any of the Articles in D. which it alone admits to be strictly private property, the Bill cannot be sustained unless the Plaintiff proves that some of the Articles in D, have been taken possession of by the Government Officers and it will not suffice to entitle the Plaintiff to a Decree to point out to Schedules G. and O, the property in which the Defendants admit that they have received. — It is improbable that the Court will take this qualified view of their own jurisdiction: — but it is important to present the facts so as to establish either in the Madras Court or before the Privy Council that upon that view, if taken, the Bill should be dismissed. —

4th. — In case any attempt should be made on

on the Plaintiffs part to bring her case within this Category by proving that some of the Articles in D. were taken possession of by the Government Officers, it will be well to be prepared with evidence that such was not the case. — Mr. Forbes and the person who was principally employed in furnishing the information upon which the Schedules were made up should be in attendance at the hearing, and should be called to rebut any evidence that the Plaintiff may give on this head by proving that none of the Articles in D or generally in any of the Schedules E. F. G. H. I. have been taken possession of by the Government. —

5th. — The main issues to be established on the part of the Government, however, are, 1st. That the matters involved in the Bill, including the question as to which part of the property is Public, and which private, are matters of State and therefore beyond the Jurisdiction of the Court. 2nd. — That the subject matter of the Bill is also beyond the Jurisdiction of the Court, either as being matter of Revenue, or matter done under the order in writing of the Governor in Council of Madras, or as to the real property in Campore, as being beyond the local limits of the Courts Jurisdiction. — 3rd. — That the

Plaintiff

Plaintiff admitting the general right of the Defendants to the Raj & and with it to the State and Public Property belonging thereto / there is no ground for making any distinction between any of the Property hereby sued or claimed by the Defendants and property strictly and confessedly State or Public Property. This will involve the question whether considering the position of the Rajah as an absolute Monarch subject to the Treaty any distinction can be made in point of law between his public and private property. —

4th That the Plaintiff is not, as eldest widow exclusively entitled to the private property of the late Rajah, but if entitled at all is only entitled jointly with the 16 other Widows. —

5th To these might have been added a 5th Issue that the Plaintiff has not established that Serajee was not the Member of an undivided family joint with the Male Descendants of Ameer Sing in which case those Descendants would be entitled in preference to the Plaintiff — but that Issue that Para: 30 of the Answer has been allowed to remain as it was originally framed, without embracing the alterations suggested in my letter of 24th January 1857 to Mr. Edmonstone, and in the Telegraphic Message sent on the 25th or 26th. Probably this has been done from the

Conviction

conviction that this point is not tenable, and in conformity with the views expressed in the 8th & 9th Paras: of the Chief Secretary of Madras's letter of 11th January 1857 — and certainly my own opinion entirely concurs with those views though I thought it would be safer if the point was not felt to be quite clear at Madras to leave it open for argument and for proof as to the question of fact involved in it. — As it is, however, though no proof can be gone into, the Court will have to express an opinion upon the point, which will be sufficient practically to save the Government harmless against any second claim by Jehojee or any person claiming under Ameer Sing. —

7th Upon the first issue, the Defendants should give some general evidence of the position of Rajah Serajee, as absolute Sovereign of

the

the Fort of Tanjore and the Lands surrounding it, and as titular Sovereign of the Province. Mr. Forbes is probably better qualified than any other person to give evidence on this subject and he should if possible be examined at the hearing.

8th. — The Declaration by the British Government, as an act of State, of the extinction and lapse of the Raj and the consequent measures of State for the enforcement of such lapse should be proved. —

9th. — The Declaration will, I think, be sufficiently proved by the Despatch of the Court of Directors of 16 April 1856 No. 17 and by shewing that that Despatch was acted on by the Government taking possession of the property attached to the Raj.

10 As there has been no Proclamation of the Lapse or annexation — it is necessary to shew by evidence of Official Acts these have been declared and enforced and the despatch therefore of the Court of Directors should be produced. The Original being in Calcutta, it will be better to avoid Cavil to send it to Madras unless a duplicate under the Signature of the Directors was sent there: in which case the Duplicate alone need be produced. The Signature of the Chairman or of one or two of the Directors should be proved. But it will be unnecessary to prove the Signature of all.

11. The following letters subsequent to the despatch should be produced and proved.

From the Government of India to the Government of Madras forwarding a Copy of the despatch and the Copy

Dated 11th June 1856.

From the Government of Madras to the Government of India the further Communications Mr. Bayley regarding Mr. Forbes's appointment

— 10th Sept —

The reply thereto — Government of India to Government of Madras No 1464.

— 24th Sept —

12. Of this Reply the 1st 2nd and 3rd Paras only are material and the Court will doubtless admit* after the Original has been produced and the Signature proved a Copy of those Paras only to be substituted for the Original which may then be withdrawn.

* I do not think it necessary to produce and prove any of the despatches or Consultations of the Government of India or of Madras upon which the Minutes &c. of the Court of Directors Dated 11th. of the 16th despatch were founded — H.R.

* This is the Course adopted in Calcutta where sometimes it is necessary to prove one part of a Government despatch the rest of which does not relate to the Matter in hand and some part of which it may not be desirable on public grounds to have made public with the Case in which it is. — H.R

10 1/2

The Original of Mr Cyaroft's letter of 10th July ought to be sent to Madras for production in Court in order to save the trouble of proving an Duplicate evidence of its contents and proving the despatch of the Original

13 The letter from the Government of Madras to Mr Forbes appointing him ~~[illegible]~~ directing him to take measures for preserving the property of the Raj as stated in Paras 16 of the Answer and any subsequent instructions of the Government of Madras regarding the property under which Mr Forbes or Mr Chasy acted in taking possession of it, or in what they approved of Mr Forbes' measures should be proved, and the Signature and Official character of the Chief Secretary to the Government proved

14 As to the 2d issue the evidence beyond that given on the 1st will be necessary

15 Upon the 3d Issue the Defendants should not for the reasons given in the First Part of this Opinion go into extensive evidence as to the details of the property taken possession of as claimed by them or attempt to trace the history of the different items. But they should give some general evidence of the possession by the Rajahs [* Sahoojee & Serfojee] of the different kinds of property mentioned in Paras 4. 5. 6. 7. 8. 9. 10 & 11. of the Answer according to the Statement therein made - made in which these different sorts were dealt with by the Rajahs early of their being in the habit [of general kinds of property and particularly of mixing up Jewels

17

Jewels and property of all kinds however accumulated and for whatever purposes used with the Property of the State without making any distinction between public and private property

16. On these points the facts stated in Mr Forbes' letter to the Government of Madras of 24th December 1856 are important and should be proved - The following letters should be produced and proved - as to such of them as are forthcoming

The Governor General (Lord Mornington) to Rajah Serfojee ——— 1798.
Mr Josse to Governor of Madras 2d July 1798.
Ditto to Ditto 25th " "
Ditto to Ditto 2d Augt "
with list endorsed if forthcoming
Ditto to Ditto 2d Sept "
The Government of Madras to Josse 4th " "
Josse to Government of Madras 31st Oct "
Ditto to Ditto 27th Jany 1800
Ditto to Ditto 22d Feby "
Ditto to Ditto 29th March "
Ditto to Ditto 22d May "

[* Sahoojee & Serfojee]

[* ? This letter apparently bears the date 2nd & must be the letter referred to in Lord Mornington's Minute of 30th May 1798. The Wellesley Despatches Vol I p. 418 & 445 - It seems to be found the signature in case it should be proved.]

Note I think the Official Report of Mr Josse alone sufficient to make evidence in favor of his clerk and handwriting of the letters therein referred to when shown to have come from him. On the same grounds an official entries in Reports made in the usual course of business are evidence after the death of the Writer

It will not be necessary to put in all of these - but proof as to all should be ready in case of need - The four last are the most important on this issue. The Signature and death of Mr Josse should be proved - Where the Original cannot be found an attempt should be made to give secondary evidence

Mr Forbes himself will be an important

important witness as to the general character of the property. Some of the persons from whom the information was obtained upon which the property was originally taken possession of by the Government Officers, and some old and respectable inhabitants of Tanjore or persons who from their position have acquired a knowledge of the nature of the Rajahs Property and their mode of dealing with it should be called. Mr Forbes should express generally his having imposed his Sanjeers & property which either was meant for State or Public Purposes or was to be kept up with such property as to be indistinguishable from it. and should state the principle which guided him in taking possession as explained in his letter to the Government

Testimony in Rec. of 24th Dec. 1856.

18. For the purpose of shewing the general position of the Rajah and to what extent he can be treated in respect of property as an absolute Sovereign. the treaty of 25th Oct. ratified on the 26th November 1799 should & must be put in evidence, a Copy of the Record contained in any Collection of Treaties published by authority of the Government or in any work of authority and respectively admitted probably be evidence under Section 11 of Act 2 of 1855. But it will be safer not to trust solely to this mode of proof but to produce either the part of the Original

Treaty

Mr. Forbes to the Collector dispatch & enclosure Papers Extract from Consultation of Mr. Forbes letter & enclosure Extract from Consultation of Mr. Forbes letter & enclosure Vol. 24 Pp. 65 92. Vol. 24 Pp. 65 97.

Treaty executed by Rajah Serfoojee which I presume is at Madras (and which will probably with being shewn that it is produced from the proper Government Office) or a Government Gazette containing a Copy of such Treaty if the Treaty was published in the Gazette. If no such Gazette Copy exists and if the Original Treaty is not at Madras, search should be made at Tanjore for the part of the Treaty executed by him which was delivered to the Rajah, and if this cannot be found proof of the search for both Originals should be given and the Copy in the Archives of the Madras Government should be produced with proof that it has been acted on and treated as containing the terms of the last Treaty between the British Government and Tanjore

See Sec. 8 of the Act.

19. Some of the receipts granted by the Rajah for the instalment of his Tanjore Assessee for the instalment of his Tanjore Assessee mentioned in Para 5 of Mr. Forbes' letter of 6th November 1855 & Mr. Byrons Minute should be produced and the seal thereto proved. The several facts mentioned by Mr. Forbes in that Paragraph and elsewhere relating to the degree of Royal State kept up and the occasions of Royalty exercised by the Rajah may also be proved by Mr. Forbes or by some person Conversant with them from having resided at Tanjore

20. According to the practice which prevails in the Equity side of the Calcutta Court his evidence would be given at the hearing as to the correctness of the Schedules

or

as to the particular nature of the property taken or claimed by the Defendants but the Court would only determine at the hearing whether it should direct an inquiry if all matters in question upon the account were to be taken open for determination upon the Masters Report whether any and what property fell within the principle so ascertained. It is however not actually necessary for a party Plaintiff or Defendant to give evidence at the hearing to impeach or support items in the answer or schedule { x See per Wigram V.C. Sanders v Jenkins Mac 236 } this it is possible. I think not I think very likely. But the practice in the Supreme Court at Madras may differ in the respect from ours and that evidence may not be opposed to any actual. -ly taken there. Mr Dale will be able to say how this is, and to determine whether in case there is no rule of practice against giving such evidence at the hearing it will be desirable to give notice of the correctness of the Schedule. If so I should think it better to add one and to limit the proof

proof to rebutting any evidence that the Plaintiffs may be likely to adduce as to any items which they may select for attack and to general evidence as to the general correctness of the Schedule so far as they distinguish between the Classes of property taken or not taken or Claimed and not Claimed, and so far as they point out what property was from the date of its x as in A & I. { acquisition x& or finish very native and the purposes for which it was acquired and x as in D F & K { used x& adversely State Property pertaining to the Raj which property was to be handed up thereafter as to be undistinguishable from x as in M & N. { it x& and what property has been x& sold or x as in R. destroyed x& with the reasons for such sale or x as the Judges destruction.

21. In that case heard by Mr Forbes some of the persons employed under him in taking possession and in making out the Schedules should be examined. But the mode in which the general case of grievants all can best be framed, or how far it will be practicable to support such general case by evidence at the hearing will be much better understood at Madras than here. And therefore should be left very much to the discretion of Mr Dale in communication with Mr Bryson.

22. I think it will be well to frame the letters from Mr Forbes (of 7th Oct 1856) and from Mr Cherry to the Schedule previous to the Ruling

nothing pertinent to this the letter of the Register of the Plaintiff of 18th Oct 1856 further requiring all these letters should be given up the Exhibits should be subpoenaed to produce the letters addressed to him in case they were not handed to the Plaintiff. In case of their non production the official copies of the letters therein after kept in the Register's Office should be proceeded and the despatch of the letters proved.

23 On the 4th Issue I do not think any evidence for the Defendant absolutely necessary. We shall wish to know whether the Court at Madras takes judicial notice of the ordinary usages of inheritance in Mahratta families and whether it recognises the general Rule stated in Mr Phillips letter of 8th May 1857 Para 7. that all the widows of a Mahratta or private person dying without issue would inherit jointly. If so no evidence as to usage need be given But if not evidence of persons of Mahratta descent or such acquainted with Mahratta usages should be called to establish that the Rule is that which obtains in private Mahratta families.

24 If the Rule be once established as a general one among Mahrattas, I do not think the Circumstances on which the impeached Bill seeks that Sreejee Bhyya the widow of one of the Rajahs of the race succeeded to the Raj and its property & the exclusion of the other widows is material to the present case. The six widows could not be raised to the Musnud and the Raj being indivisible it was necessary if the widows succeeded to it at all, that one only should succeed and it was natural that the selection should fall on the eldest. In the same way on the death of a Hindoo Sovereign, having several sons, his kingdom descends from necessity on the eldest. But the better opinion appears to be that according to Hindoo Law, "the private estate of a Sovereign ought to be divided like the property of others among all his sons" and certainly if he leaves no kingdom to descend but only private property, that property is divisible, according to the ordinary rules of inheritance, and therefore among all his sons, if more than one. There seems no greater reason for allowing the eldest widow than there is for allowing the eldest son, to succeed exclusively, unless the general Rule of inheritance in private families gives an exclusive right to the eldest widow

In the opinions of Mr Ellis and the Court

2 Strange's Hindoo Law 320

See 1 Strange 198. 208. 9.

24th. Moreover the elevation of Soojan Bhyee in the mode described in Para 12 of Mr. Phillips's letter by a party in the State, followed in a year by her deposition by the same or another party can afford no guide as to the real usage of this Family. If the facts connected with her elevation and short reign can be easily proved from records among the Papers of the Raj, it will be well to prove them: but it will not be worth while to go to any trouble or expense for the purpose.—

25th. I do not understand Mr. Phillips's Statement in Para 11 that the Papers shewing these particulars are under the Seal imposed in consequence of the Supreme Court's Injunction— The Injunction did not extend to the sealing up, or preventing the fullest access of the Government and its Officers to all the Papers and Records of the Raj— and I think there must be some misconception as to its effect.

27th. The nature and effect of the ceremony called the "Puttabee Shattum" described in the 17th and 18th paras of Mr. Phillips's letter, and the fact that it never was performed by the late Rajah with the Plaintiff, but was performed with some of the other wives should be proved, if the proof will not be attended with any great difficulty.—

28th. In connexion with this issue it will be well to produce and prove the letters or notices served on Mr. Forbes from four of the younger widows, and by the several persons claiming to be Creditors of the late Rajah, mentioned in Para: 35 of the answer, and from the persons claiming to represent the daughter named in Para: 34— Some general evidence also may be given by Mr. Forbes or some person cognizant of the fact that the Rajah left debts unpaid.— If other claims have been preferred subsequently to the Answers being prepared here, they should be proved.—

Dated 3d Jany 1857 and d 10th & 13th Jany 1857

d 13th Jany 1857. The letters are annexed to Mr. Forbes's letter to Mr. [illegible]croft of 15 Jany 1857

29th. As the point as to the late Rajah's being the member of an undivided family is not taken by the Answer except as a point of law, no evidence should be offered as to the existence of [illegible] or any possible claim on his part. It may be proved generally that no actual division of property took place [illegible] and Ameer Sing further than as [illegible] in Para: 30 of the Answer, and that Ameer Sing left male issue, [illegible] that any such issue is [illegible] will sufficiently raise the

the question suggested by Mr. Forbes, to leave to the Court the decision as to the division by the one or other assuming all the property of the State, or else the other was subsequently allowed a yearly stipend being a supposed conservance of the joint tenancy.—

30th. In copying Para: 22 of the Answer there has been a slight clerical mistake. For "all property similarly circumstanced as really belonging to the said R. Savage", as the copy now runs, read "all property similarly circumstanced and really belonging to Dec'd". The mistake may be corrected at the hearing, as is of no importance, though at first sight the passage as it now stands might convey a different meaning from that intended.—

[signed] W. Pitcher.

Calcutta. 30th March 1857.—

True Copy

Pitcher

Offg Under Secy to Govt, Jud. Dept.

No. 457.

Ordered that copy of this letter and its enclosure be sent to the Hon'ble Company's Solicitor and to the Commissioners at Sangor, with instructions to take immediate measures for preparing evidence to meet the suit brought by Canadey Bhagat.—

Fort St. George
15 June 1857

Copy to the Court of Enquiry - with copy of the letter from the Secretary — Disp. 25th
do — do — to the Solicitor — Disp. 16th
with do — do

Dis.