M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political **DEPARTMENT.**

G.O. No.	7987	**Press** ~~**Mis.**~~
Dated	19. 9.	~~**19**~~ 1887

Not to be folded or roughly handled

P 25-11-29

No. 40A. From the Secretary to the Government of India; to the Acting Chief Secretary to Fort Saint George, dated Fort William, the 31st August 1857, No. 3486.

Foreign Department. SIR,

With reference to my letter, dated the 18th Instant, No. 3270. I am directed to forward, for the information of the Right Honorable the Governor-in-Council, a copy of a letter from the Advocate General, dated the 16th Idem, and to state that under the circumstances stated therein the Governor General in Council does not consider it any longer necessary that he should proceed to Madras to defend the Suit instituted against the East India Company by Kamatchee Boyee Sahiba. His Lordship in Council is of opinion that the defence may with safety be entrusted to Mr. Mayne, if the Advocate General of Madras does not return before the hearing,

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

(COPY.)

From W. RITCHIE, Esq., Advocate General; to G. F. EDMONSTONE, Esq., Secretary to the Government of India, Foreign Department, dated Calcutta, 26th August 1857.

SIR,

I have the honor to acknowledge the receipt of your letter, No. 3269, dated the 18th August, forwarding for my information and guidance the copy of a letter from the Chief Secretary to the Government of Madras, dated the 8th August, regarding the case of Kamatchee Boyee Sahiba *versus* the East India Company.

2nd. I presume that it is the desire of the Right Honorable the Governor General-in-Council that I should proceed to Madras, by the second Steamer in September to defend the Suit on the part of the Hon'ble East India Company. If such should continue to be the desire of His Lordship in Council, I shall of course comply with it, but I think it right respectfully to point out that if the question as to the expediency of my going, be left in any degree to my own judgment, I should advise the Government against that course, as being in my opinion unnecessary, and rather calculated to prejudice than to promote the interests of the Government in the Suit.

3rd. I am satisfied that the Counsel who have been retained on behalf of the East India Company at Madras are fully competent to conduct the defence and to do complete justice to the interests of the Honorable Company. On this subject I may perhaps be allowed to repeat what I stated on my reporting to you my return from Madras, *viz.*, "that I have much pleasure in recording my conviction that those Gentlemen (with whom I had held a consultation there) are fully competent to do every justice to the case, and that Mr. Mayne the Professor of Law at one of the Colleges at Madras, who will be the leading Counsel in the case if the Advocate General of Madras does not return before the hearing, and if no Counsel is sent from Calcutta, though a young man is as qualified to conduct the defence with learning, ability and judgment as any person who could be sent from Calcutta for that purpose.

4. Moreover the final decision of the case will not rest with the Supreme Court but with the Privy Council to whom the unsuccessful party will doubtless appeal. The principal questions to be argued being matters of Law, the decision of the Court below, whichever way it may be, will have but little effect on the final adjudication of the case. And the case has already been before the Court so much on collateral points, and at least one of the Judges, the Hon'ble the Chief Justice (with whom even in case of a difference of opinion the decision at Madras would rest by reason of his having a casting vote) has had such full opportunity of considering the legal points in the case, that it would be difficult to suppose that an argument from any particular Counsel could have much effect in guiding his opinion, if that of another Counsel possessing the ability and thorough comprehension of the case that Mr. Mayne possesses, should fail in convincing the Court.

5th. From Mr. Maltby's letter of the June, No. 469, it appeared to be the impression of the Right Hon'ble the Governor-in-Council of Madras that it was of importance that the case for the Government should be conducted by a Counsel of higher standing and greater experience than any whose Services the Government could command at the Madras Bar. I cannot help thinking with great respect that this impression is erroneous so far as it is founded upon the as-

sumption that the Court would listen with more attention to the Advocate of higher standing, or would be more probably moved by his presence either to adopt his arguments, or to repress any irregular attack, on the part of his opponent. Where the Judge is wholly unprejudiced, as of course must be assumed in the present instance, the standing of the Advocate must be a matter of perfect indifference as long as the party to the Suit has an Advocate of equal ability and knowledge with the Advocate of his opponent; as I confidently believe would be the case in the present instance if the conduct of the case be confided to Mr. Mayne.

6th. Where on the other hand there is any tendency to prejudice existing unconsciously on the mind of the Judge, that prejudice would be in all probability more excited against the party who brought the leading Counsel of another and distant Court specially from his post on the avowed ground that there was no one of sufficient standing and authority at the Bar of Judge's own Court to cope with the Advocate who was supposed to have the ear of that Court, than against one who relied on the ordinary assistance to be obtained from the Local Bar and on the sense of justice and impartiality of the Court.

7th. With respect to any attack upon the public policy adopted by the Government in regard to Tanjore, I do not think it possible that any such can be resorted to. Mr. Norton is, I believe, too good an Advocate not to feel that he must greatly weaken his own case by it and he has moreover assured the Court on the last occasion of his addressing it in the case shortly before I arrived at Madras, that he intended to conduct the case as if the question were one between individuals limiting the claim to the private property alone of the late Rajah held by him distinct from his public character and to raise no question whatever as to dealings and sovereign rights of the East India Company in respect of the State or public property.

8th. These considerations appear to me sufficiently to establish that my presence at the argument is unnecessary and I cannot help thinking that the absence of the Advocate General of this Presidency from his post at such a time as this, is inexpedient, and can only be justified by a call elsewhere of necessity or at least of great urgency. I am not indeed aware of any cases of importance that are likely to come on or to call for my advice during my absence. But such may arise at any moment. And I feel so strongly the inconvenience that arose from my absence during the late trial for libel which ended so disastrously for the prosecution, that I trust I may be excused for urging the inexpedency of removing the Advocate General from the Presidency at such a time as this unless a case of actual necessity should call for his presence elsewhere.

9th. It will of course be understood that I do not for a moment question the fitness of my learned friend the standing Counsel, to conduct any case that may arise in my absence. But in such cases as I have alluded to, the public has, I think, a right to expect that the Officer whose proper duty it is to prosecute should be at his Post and failure where it occurs is sometimes unreasonably attributed to the absence of that Officer, and in such cases as the trial of the proprietor of the Soodahur Shun Newspaper, it is obvious that the presence of the Chief Law Officer of the Government on whose responsibility the prosecution was commenced is more desirable than it can be in the Court of another Presidency.

10th. I may also repeat a reason which I urged before my late journey to Madras which appears to me to be at least equally applicable to my proceeding there a second time, *viz.*, that the evil consequences which the Government of Madras anticipates from failure in the Suit will in case of actual failure be enhanced, if the Government be thought to have deemed the case of so much importance as to adopt the unusual course of sending their Advocate General of one Presidency to conduct the case at another where they are already represented by efficient Counsel.

(Signed) W. RITCHIE,
Advocate General.

(True Copy.)

(Signed G. F. EDMONSTONE,
Secy. to the Govt. of India.

No. 40 B. ORDER THEREON, No. 798 A; dated 19th September 1857.

Ordered to communicated to the Company's Solicitor with reference to the previous correspondence on the subject.

Exd. J. A. Wilson.

office of the Company's Solicitor
& shall be duly attended
done in the meantime.

"Ordered that the Secretary
& the Company's Solicitor
with reference to the
previous correspondence
on the subject."

E. D. S.
21st Jan. 58.

No 7981A

Ordered to be communicated to the
Company's Solicitor with reference
to the previous correspondence on
the subject.

Fort St. George
14th Sept. 1857.

To the Hon: Co's Solicitor