M. R. O. 1.—10,000—16-10-50.

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT

G.O. No. 187 Press Mis

Dated 11-3 1858

Not to be folded or roughly handled

No. 47. From G. F. EDMONSTONE, Esq., Secretary to the Government of India; to T. PYCROFT, Esq., Chief Secretary to Government, Madras, dated Fort William, the 4th July 1857, No. 2813.

Foreign Department. SIR,

With reference to your letter, No. 476, dated 22nd Ultimo, calling the attention of the Government of India, to the subject of the debts of the Nawab of the Carnatic, as referred for consideration with your Despatch, No. 290, dated 11th April last, I am desired to inform you that, after full consideration, the Governor General in Council is disposed to concur with the Advocate General, in preferring the general principle of the draft D, which was forwarded to you with my Despatch, No. 835, dated 23rd February last, to the revised draft Bill which has been prepared by Mr. Dale. A Bill, framed on the basis of the draft D, with such modifications in the details as a consideration of the remarks of the Government of Madras, and the suggestions of Mr. Dale may shew to be expedient, will be brought before the Legislative Council, and read a first time on Saturday next the 11th Instant. It will be read a second time on Saturday the 18th Instant, and passed through its subsequent stages with all practicable despatch,

2. Copy of a Bill, which has been passed by the Legislative Council, and has received the assent of the Governor General today, relative to the issuing of Writs against members of the Carnatic family is enclosed. This Law, it is hoped, will obviate some of the political evils, which are thought by the Madras Government likely to result from the construction put by the Judges of the Supreme Court at Madras, upon Act, No. 1 of 1844.

No. 48. ORDER THEREON, No. 180, dated 11th March 1858.

Resolved that the Honorable Company's Solicitor be requested to ascertain and report to Government at an early date whether agreeably to the opportunity afforded by Act XVIII of 1857, Prince Azeem Jah Bahadoor or any other of the parties exempted under Act I of 1844 have petitioned Her Majesty in Council, for leave to appeal against the decision of the Supreme Court at Madras that the said Act was a personal Act which ceased to have effect on the death of the late Nawaub. If they have appealed, it should be stated what progress has been made in the prosecution of the Appeal.

2. Resolved also that the Government Agent at Chepauk be directed to explain to Prince Azeem Jah and the other parties affected by the decision of the Supreme Court, the position in which they stand under Act XVIII of 1857. He will point out to them that this Act expires on the 4th July next, when if no Appeal from the decision of the Supreme Court has been made and is being proceeded with, they will cease to enjoy the privileges and immunities conferred by Act I of 1844, and continued temporarily by Act XVIII of 1857, and that consequently that no time should be lost in appealing to the Privy Council, if no Appeal has yet been preferred, or in prosecuting any that may have been preferred.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. J. A. Wilson.

The Calcutta Gazette.

EXTRAORDINARY.

Published by Authority.

SATURDAY, JULY 4, 1857.

Legislative Council.

The 4th July 1857.

THE following Act, passed by the Legislative Council of India, received the assent of the Right Honourable the Governor General, and is hereby promulgated for general information :—

ACT No. XVIII OF 1857.

An Act relating to the issuing of writs or process against certain Members of the Family Household and Retinue of His late Highness the Nabob of the Carnatic.

WHEREAS it has been decided by Her Majesty's Supreme Court of Judicature at Fort St. George that Act No. I of 1844 was a personal Act, and that upon the death of His late Highness the Nabob of the Carnatic it ceased to have any effect, and whereas doubts are entertained as to the correctness of the decision, and it is desirable that persons against whom any such decision has been given should have an opportunity of petitioning Her Majesty in Council for leave to appeal against the same, and that litigation should be prevented in the mean time: It is enacted as follows :—

Preamble.

I. NO writ or process shall at any time within the period of one year from the time of the passing of this Act be sued forth or prosecuted against the person, goods or property of any person whose name was included in any list which was published under the provisions of the said Act, and which was in force and effect for the purpose of the said Act at the time of the death of His said late Highness the Nabob of the Carnatic, unless such writ or process shall be sued forth or prosecuted with the consent of the Governor in Council of Fort St. George first had and obtained such consent on one of the Secretaries of Government.

No process to issue against the Family or Retinue of the late Nabob of the Carnatic for one year unless with the consent of the Governor in Council.

II. If an appeal against any such decision as aforesaid be admitted by Her Majesty in Council, no such writ or process shall be sued forth or prosecuted against the person, goods or effects of any person named in such list as aforesaid until after the determination of the appeal, unless such writ or process be sued forth or prosecuted with the consent of the said Governor in Council to be testified as aforesaid, or unless the Court out of which such writ or process shall be sued forth or prosecuted shall be satisfied that the appellant has been guilty of unreasonable delay in prosecuting the appeal, and shall make a special order authorizing such writ or process to be sued forth and prosecuted.

If appeal to Queen in Council be admitted, no process to issue until after the determination of the appeal.

Unless with consent of Governor in Council.

Or unless by special order of Court.

III. Every writ or process sued forth or prosecuted contrary to the provisions of this Act shall be utterly null and void.

Process issued contrary to the Act to be void.

W. MORGAN,
Clerk of the Council.

JOHN GRAY, CALCUTTA GAZETTE OFFICE.

Recm—

During the life time of the late Howard, Government as is well known proposed to the Govt of India to escheat Act 1. 1844 on account of the Rawuns misconduct—

The Govt of India consented to the escheation but on the express condition that it was not to have a retrospective effect—

On the death of the Howard one of the 17 June 1850. P17
arrangements specified by the Govt of India on the succeeding consequence of the escheat was the repeal of the Act but prospectively only—

17 Sept/56 L 16

The Supreme Govt approved and

a bill for repealing Act I. 1846 with the
proviso was introduced into
the Leg: Council by the Hon'ble Mr D'Souza.

Hitherto it was supposed that the
Supreme Court at Madras decided
that Act I. 1846 was a proposal but
that it vested absolutely with the
death of the Howard - leaving all parties
hitherto protected by it, in fact of all
liabilities for Emancipations post to
passing as if it had never been pas-
-sed at all —

26 Feb 1857

Dr Stein having been appointed a
Member of the Leg Council suggested his
3 June 1857
Bill and the Supreme Court concurred
in the step —

16 June 57

the Madras Supreme Court pronounced
against Private Agency & themselves —
20 June 57

The Inst of Madras therefore addressed
the Govt of India and on the ground both
of the hardship to which the Members of
the Late Howard's family would be
and by being stripped of all protection
retrospectively, and the unquiet state
of the times, urged the grant to them of
- tion of the Christian Family and their retain
of at least that retrospective protection which
had been provided in that draft act.
unanimously thus "that"

From the debates which ensued in
the Legislative Council it will be seen that the
constitution of the two Local Courts
settled by the Madras Supreme Court

much questioned and that to admit of its being fully tested Act XVIII. 1857 was passed —

This Act continues the immunities of Act I. 1844 for one year expressly on the ground that doubts had arisen as to the construction of the decision of the Supreme Court of Madras, and that it was desirable that persons against whom any such decision had been given sh^d. have an opportunity of petitioning H.M. in Council against the same and that litigation should be prevented in the mean time". It provided further that if appeal was preferred the exemption should continue until it was decided unless there sh^d. be any unreasonable delay on the part of the appellant —

What has now I conceive to be ascertained is whether such appeal has been preferred and this I suppose may be learnt from the Company's Law Officers —

It would hardly be a propos [illegible] clear from the speeches of Mr Peacock & Sir J. Colvile[+] that no extension of Act XVIII. 1857 is to be looked for —

JP

4.3.58

[+] as well as from the previous report of the Committee on the draft bill sent from Madras and the views then held in 4 June 1857 by the Gov^t of India

4 April 57

Inquiry sh^d be made as to whether an appeal has been made at once — if not — the case sh^d be reported to the Gov^t. of India — I think with an intimation that this Gov^t is

Little if opinion that the doctrine of the
Act of 54 did not effect retrospectively
those who were protected by it- that
they could be removed by a legislative
Enactment.

And the Genl Assembly explain
the Nevada Family the Precedent
in 58. they stand
the remedy open to them by
an Appeal to the Court

Political Dept

No 180

Extract from the Minutes of Consultation
Dated 11 March 1858.

Read letter from the Secy
to the Govt of India Forgn Dept
Rec'd under 4 July 1857 No 3813

Resolved that the Advocate
Solicitor be requested

to prosecute and depart
to Surat
at an early date whether
the opportunity afforded by
appeal by Act XVIII of
1857 Rajah Rajeem Sah
Bahadoor or any other
of the parties excepted
under Act 1. 1846 has
petitioned Her Majesty in
Council for leave to
appeal against the
decision of the Supreme
Court at Bombay that
the said Act was ex-
-tended to Surat and
Cambay by Law & that

Remark — If they have appealed, it should be stated what progress has been made in the prosecution of the appeal —

2. Resolved also that the Agent and Counsel be directed to explain to Prince Edward Island & other parties affected by the decision of the Supreme Court, the position in which they stand, under Act XVIII 1857

[illegible]

the draft forwarded to them with Act XVIII

[illegible]

4th July

Prince Council — If no appeal has been prosecuted — or if prosecuting any that may have been prepared.

JPP

H.M. Solicitor
Asst Agent (Chancery)
Dispt 13th

Where an appeal for Prince Edward Island has been entered in the Supreme Court, but the case is not yet completed by the delivery of the printed copies to the Registrar, it is competent to the Appellant to withdraw the appeal by [illegible]

Pol. Letter to Govt. d/31st May No. 9 of 1858.

Paras 78 @ 81.

47 - 48

No. 4 to Cons. 12th June

Political Dept.

No 180

Extract Mins. of Cons.

8/11th March 1858.