M.R.O. 1—50,000—16-10-10.

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT

G.O. No. R 27-228 Press

Dated 3.8.38

Not to be folded or roughly handled

Read the following letters

No. 38. From Surgeon E. G. BALFOUR, Government Agent at Chepauk and Paymaster of Carnatic Stipends; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 22nd and 29th March 1858, No. 612 and 662 of G. A.

SIR,

I have the honor to report to the Right Honorable the Governor in Council that copies of Extract Minutes of Consultation, No. 180 of 11th Instant, have been circulated to each of the exempted parties, present in Madras.

No. 39.

SIR,

I have the honor to enclose a List showing of His Highness the late Nabob's family, household and retinue, the persons now surviving exempted under Act I of 1844, by the order of Government, dated 5th January 1855.

List of Persons belonging to the Family, Household and Retinue of His Highness the late Nawaub of the Carnatic who are declared entitled under Act I of 1844, to the privilege of exemption from Civil and Criminal process and Jurisdiction of Courts of Justice, published in Page 17 of Fort Saint George Gazette of the 5th January 1855.

LIST No. 1.

1. Prince Azeem Jah, Ameer Ool Oomrah, Oomdut Ool Moolk, Ussud Ood Dowlah Mohummud Ally Khan Bahadoor, Zoolfakhar Jung.
2. Bauker Hoossain, styled Bauker Hoossain Khan Bahadoor.
3. Gholam Mohummud Hoossain, styled Rusheed Ood Dowlah, Gholam Mohummud Hoossain Khan Bahadoor, Iyalut Jung.
4. Gholam Mohummud, styled Mooneer Ood Dowlah, Gholam Mohummud Khan Bahadoor, Jassarut Jung.
5. Gholam Russool, styled Etebar Ood Dowlah Gholam Russool Khan Bahadoor, Ukbur Yar Jung.
6. Ahmud Oollah, styled Moontuzim Ood Dowlah, Ahmed Oollah Khan Bahadoor, Nubbee Yar Jung.
7. Noor Oollah Meyan, styled Oomdut Ood Dowlah, Mohummud Noor Oollah Khan Bahadoor, Joorut Jung.
8. Gholam Mohi Ood Deen, styled Mowzaz Ood Dowlah, Mohi Ood Deen Yar Khan Bahadoor, Hummyut Jung.
9. Mohummud Buddee Oollah, styled Zaheer Ood Dowlah Mohummud Buddee Oollah Khan Bahadoor, Fitrut Jung.

LIST No. 2.

1. Nawaub Khyroon Nissa Begum.
2. Auzum Oon Nissa Begum.
3. Shurf Oon Nissa Begum.
4. Fukhr Oon Nissa Begum.
5. Fazeelut Oon Nissa Begum.

6. Fatimah Begum.
7. Koolsoom Begum.
8. Ahmudy Begum.
9. Mookhtar Oon Nissa Begum.
10. Nabob Khaderiah Begum.
11. Nabob Ghousiah Begum.
12. Moomtauz Oon Nissa Begum.
13. Umutool Walee Valeyutoon Nissa Begum.
14. Umtolah Hammeedut Oon Nissa Begum.
15. Raheem Oon Nissa Begum.
16. Ahmed Oon Nissa Begum.
17. Umutool Ali Ulyut Oon Nissa Begum.
18. Umutool Azeem Monazzazoon Nissa Begum.
19. Umutool Azeez Monazzazoon Nissa Begum.
20. Umutool Humeed Humeed Oon Nissa Begum.

List No. 3.

1. Mouluwee Abdool Wahaub, styled Madaar Ool Omrah, Moodubbir Ool Moolk, Mookhtar Ood Dowlah, Wuzarut Khan Bahadoor, Urusthoo Jung.
2. Mohummud Nukhy, styled Bukshee Ool Moolk Bukshee Ood Dowlah, Meer Uskur Khan Bahadoor, Salar Jung.
3. Mouluwee Mohummud Oollah, styled Cauzee Ool Moolk, Moonsif Ood Dowlah, Dandrus Khan Bahadoor, Moostuid Jung.
4. Gholam Ghouse, styled Mohtamid Ood Dowlah, Meer Samaun Khan Bahadoor, Moontuzim Jung.
5. Mahmood Ally, styled Dubbeer Ool Moolk, Mooshcer Ood Dowlah, Rauzdar Khan Bahadoor, Moojuwwiz Jung.
6. Mouluwee Gholam Ally, styled Moonshee Ool Moolk Dubbeer Ood Dowlah, Etimaud Khan Bahadoor, Ootarid Jung.
7. Hajee Khader Moortuza Hoossain, styled Salar Ool Moolk, Mohtashim Ood Dowlah, Meer Atush Khan Bahadoor, Mohtashim Jung.

Government Agent's Office, 29th *March* 1858.

(Signed) EDWARD BALFOUR,
Government Agent.

No. 40. From J. R. BOYSON, Esq., Honorable Company's Solicitor; to the Chief Secretary to Government, Fort Saint George, dated 25th March 1858, No. 156.

Sir,

Minutes Consultation, dated 11th March 1858, No. 180, Political Department.

I have the honor to acknowledge the Extract Minutes of Consultation, noted in the margin.

I obtained all needful information on the matter therein referred to and submitted same for the consideration of the Advocate General with whom I have also conferred on the subject.

I now beg to forward a copy of his remarks and opinion.

COPY OPINION.

I find that no appeal has been preferred to the Privy Council that will raise the question as to the correctness or otherwise of the decision of the Supreme Court that Act 1 of 1844 was not a perpetual, but merely a personal Act, and therefore ceased to have operation on the death of the late Nabob. There was but one case in which such an appeal could have been preferred, that of Mahomed Ghouse *versus* Prince Azeem Jah, for a sum of Rupees 8,685. In this case a Writ of sequestration issued and a motion was made to set it aside, on the ground of defendant's exemption under Act 1 of 1844, and the Court refused the motion on the 16th June 1857. In December 1857, and after more than six months had elapsed, the Defendant petitioned for leave to appeal against the Court's refusal to set aside the sequestration; but the Court refused the Petition and correctly so, on two grounds, 1stly, that more than 6 months had elapsed since the making of the decision sought to be appealed against, and, 2ndly, that the amount in dispute was below the appealable limit of Rupees 10,000.

This latter objection could have been easily got over had application been made in time to the Privy Council, which has power to give leave to appeal in such cases, though the Supreme Courts have not; but the objection arising from the delay would, I believe, have been fatal there too.

This so far as I can find is the only case in which an appeal touching the Supreme Court's construction of Act 1 of 1844, could have been preferred, and Act 18 of 1857, so long as it is in force, prevents the possibility of any similar case occurring, as the Court will not issue any Writ against person or property; and as to mere Writs of Summons, the Court has decided (and rightly in my opinion looking to the terms of Section 11) that *they* do *not* come within the meaning of Act 1 of 1844, though looking to the terms of the premable, I think it very likely that the Legislative Council may have *intended* to prohibit the issuing of such Writs as well as of those specified in Section II.

In fact Act 18 of 1857, instead of facilitating an appeal upon the question of the proper construction of Act 1 of 1844, renders such appeals impossible, unless, 1stly, either some Writ or process against the person or property of some protected person has been issued before Act 18 of 1857 came into operation (which I believe is not the case) or unless the Court should violate that Act which is not to be presumed and not likely to occur.

The question therefore when Act 18 of 1857 expires, as it soon will do, will remain just where it was before that Act was passed, and it is for the Legislature to consider what course they will adopt under the circumstances.

If they consider that Act 1 of 1844 *ought* to be perpetual, it would seem the simple and obvious course to *make* it so.

In England after there have been conflicting decisions of different Courts of Law respecting an Act of Parliament, it has been not unusal for the Legislature to pass a declaratory or explanatory Act, reciting that doubts have arisen (meaning doubts in the mind of those Courts of Law) respecting the proper construction of such an Act, but I believe Act 18 of 1857 is the only instance in which the Legislature has thought proper to declare in effect, that *it* doubted the correctness of the decision of a Court of Law.

There is I understand a case in which Prince Azeem Jah, is likely to apply to the Court to set aside a Writ of Summons issued against him and if the Court should, as it *may* do, refuse the application on the ground that Act 1 of 1844 has ceased to operate, I shall bring the matter to the notice of Government.

The case however would be an unfortunate one, in which to prefer an appeal, for 1stly, the question would be raised respecting a Writ of Summons, to which it was decided that Act 1 of 1844, even if in operation, does not apply; and 2ndly, it is a case in which the Prince is sued *as Administrator*. He has therefore by petitioning the Court for letters of Administration, by accepting them from the Court and by acting as Administrator under the Court's authority, given the Court a ground of jurisdiction against him in this case, which they would not have in other cases.

(Signed) THOMAS SYDNEY SMYTH,
Advocate General.

No. 41. Minute by the Right Honorable the President, dated 26th March 1858.

I think still that the Prince Azeem Jah and the Begums should be exempted from the action of the Courts during their lives, pending of course the pleasure of Government, and that

the exemption of the others named in the List should cover the period during which the Act lasted, but no longer.

(Signed) H.

No. 42. ORDER THEREON, No. 227; dated 30th March 1858.

Ordered that the following letter be despatched.

No. 43. From H. FORBES, Esq., Acting Secretary to Government of Fort Saint George; to C. BEADON, Esq., Secretary to the Government of India, dated Fort Saint George, 30th March 1857, No. 228.

SIR,

Act 18 of 1857 provides that no Writ or process shall at any time within the period of one year from its passing, or from 4th July 1857, be sued forth or prosecuted against the person, goods or property of any person whose name was included in any List published under the provisions of Act* 1 of 1844, and which was in force at the time of the death of the late Nabob of the Carnatic, unless such Writ or process be sued forth or prosecuted with the previous consent of the Governor of Fort Saint George.

**An Act for securing certain immunities and privileges to His Highness the Nabob of the Carnatic, His family and retinue.*

2. The object for the passing of this Act is stated in the Preamble, *viz*: that it had been decided by Her Majesty's Supreme Court of Judicature at Fort Saint George, that Act No. 1 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; that doubts were entertained as to the correctness of such decision; and that it was desirable that persons against whom any such decision had 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 meantime.

3. The Act provided further, that, if any appeal against such decision of the Supreme Court at Madras should be admitted by Her Majesty in Council, no process should issue against the person, goods or property of any one named in the List, until after the determination of the appeal, unless with the consent of the Governor in Council, or unless by the special order of Court on their being satisfied that there had been unreasonable delay on the part of the appellant in the prosecution of the appeal.

4. As the period for which Act XVIII of 1857 is to be in force is drawing to a close, the Government have recently inquired of their Law Officers whether agreeably to the opportunity afforded by it, Prince Azeem Jah Bahadoor or any other of the parties exempted under Act 1 of 1844, had petitioned Her Majesty in Council, for leave to appeal against the decision of the Supreme Court, and if they had what progress had been made in the prosecution of the appeal.

5. From the enclosed copy of the opinion given by the Advocate General at Madras it will be perceived that no appeal has been preferred to the Privy Council that will raise the question as to the correctness or otherwise of the decision of the Supreme Court, that Act 1 of 1844 was not a perpetual but merely a personal Act, and therefore ceased to have operation on the death of the late Nabob. There appears to have been only one case on which an appeal could have been preferred and in that instance the appeal time was exceeded and although petition for leave to appeal was presented to the Supreme Court, the Court was on that ground unable to admit it.

6. It would seem too from Mr. T. Sydney Smyth's opinion that no case for appeal can arise now, nor so long as Act XVIII of 1857, or any similar Act is in force, so that in fact that Enactment which was passed in view to the testing the correctness of the decision of the Supreme Court by appeal to the highest Judicial Authority, does of itself present a complete bar to such appeal being made.

7. Under these circumstances I am directed to solicit the attention of the Honorable the President in Council, to Mr. E. Maltby's letter of 20th June last, No. 477 and to the Minutes of the Members of this Government, therewith transmitted. The measures adopted in consequence of that communication have, it will be seen, failed of their intended effect. Looking to the present condition of the Carnatic family, the suffering and indignity to which they will be exposed by the withdrawal of the privileges which they have so long enjoyed and to the bearing which it becomes the British Government to hold towards them, this Government would earnestly recommend the case of the parties protected by Act 1 of 1844 and Act XVIII of 1857, to the consideration of the Supreme Government. In forwarding the accompanying list of those Members of the family, Household and retinue enjoying immunities under Act 1 of 1844, at the time of the late Nawaub's death, and still surviving, they would solicit that the privileges conferred by the Act may be continued to Prince Azeem Jah Bahadoor and to all the Female Members of the family, as shown in Column No. 2 of the present List for their lives, and that as regards all other persons borne in the List, those privileges be withdrawn *prospectively* only, that is from the expiration of Act XVIII of 1857, or from the 4th July next, protection being secured to them for all previous transactions on the same conditions as to the pleasure of the Governor in Council, on which it is now accorded.

8. Should this proposal be approved, I have to request that the papers may be made over to the Member for Madras of the Legislative Council in view to his bringing a Bill to the above effect before the Council.

(Signed) H. FORBES,
Acting Secretary to Government.

Exd. J. A. Wilson.

Memo.

I received this morning the accompanying Telegram from Mr Slack—

I have likewise just got the opinion from Mr J S Smyth—

It seems from this that [illegible]
[illegible] case on which an appeal
could have been preferred to the Privy
Council by any of the exempted parties,
and that in this instance the appeal
time was absolutely expired—

[illegible]
[illegible] Act XVIII 1867 as amended

Act XVIII 1857

25-3-58.

Political Letter to Beng dt 31st May No 9 of 1858.

Paras 78 & 81

In Comr. 30 March
Political. 1858 Septt
6

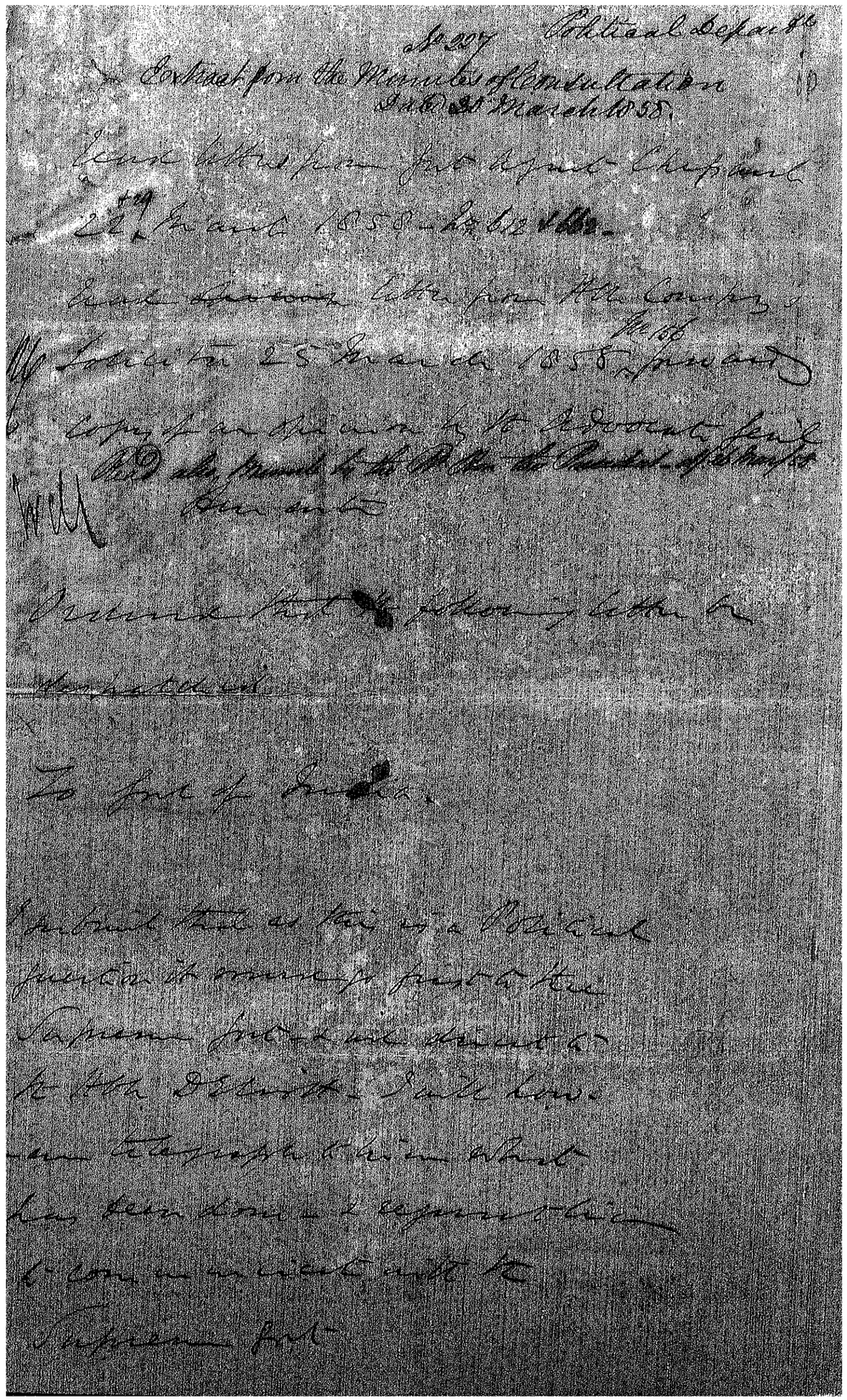
Minute by the Right
Honble the President.

Ltr dt 27 March 58
No 337

21/26 March/58.

No 219.

With reference to a Tele-
graphic message from the
Legislative Councillor at
Calcutta, stating that the
Prince Azeem Jah and
the Begums should be
exempted from the ope-
ration of the Courts during
their lives &c.



Political Department

No. 238.

To C. Bridson Esquire
Secretary to the Government
of Malacca.

Sir,

Act 18 of 1857 provides that no writ or process shall at any time within the period of one year from the passing or from 4th July 1857 be issued forth or prosecuted against the person goods or property of any person whose name was included in any List published under the provisions of Act 2 - 1844, and which was in force at the time of the death of the late Sovereign of the Barotse, unless such writ or process be issued forth or prosecuted with the previous consent of the Governor of Straits Settlements.

2 — The object for the

the Rule for determining certain Succession to titles and privileges of His Highness the Rajah of Tringanu — His family &c.

in the Preamble - viz: that it had been decided by Her Majesty's Supreme Court of Judicature at Fort St. George that Act No. 1 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 — that doubts were entertained as to the correctness of such decision, and that it was desirable that persons against whom any such decision had 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 meantime —

3 — And be it provided further, that if any appeal against such decision of the Supreme Court at Madras should be admitted by Her Majesty in Council, no process should issue against the

person, goods or property of any one named in the List, until after the determination of the appeal unless with the consent of the Governor in Council or unless by the special order of Court on their being satisfied that there had been unreasonable delay on the part of the appellant in the prosecution of the appeal.—

4. — And the period for which Act XXIII 1854 is to be in force, as regards to a close, the Government have recently enquired of their Law Officers whether agreeably to the opportunity afforded by Act Power Bahadoor or any of the parties exempted under Act I of 1844 had petitioned Her Majesty in Council, for leave to appeal against the decision of the Supreme Court and if they had what progress had been made in the prosecution of the

Appeal &c

5. The Government Agent at Chilliwack was also directed to explain to the Indians and the other parties affected by the decision of the Supreme Court the position which they stand under the Act.

6 - From the enclosed copy of the opinion given by the Advocate General in March it will be perceived that no appeal has been suspended the Privy Council that will decide the question as to the Colonists or otherwise of the decision of the Supreme Court, that Act 1. 1884 was not a perpetual but merely a personal Act, & Stamps could not have operation on the death of the late Edward. There appears to have been only one case in which an appeal could be [illegible] the present and in that

entertained the appeal time was exceeded & petition for leave to appeal to the Supreme Court, the Court seem to think provisions similar to Admiral

It would seem to follow from the foregoing that no appeal can now be [illegible] Act 1887 or any other Act in force - In fact that Court in giving their decision [illegible] the Supreme Court & appeal to the highest Court [illegible] decided a conflict between Provincial & Dominion Legislation

Feb 6th 1889.

30 March 1889.

£3.