

MADRAS RECORD OFFICE.

Government of Madras.

Political **DEPARTMENT.**

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19-30

Fort Saint George, Political Consultation, 4th May 1858.

No. 16. From THOMAS SYDNEY SMYTH, Esq., Advocate General : to the Chief Secretary to Government, Fort Saint George, dated 24th April 1858.

SIR,

With reference to the Petition of Appeal in the Tanjore case, (Kamachee Boye *versus* the East India Company and others,) I have the honor to transmit some remarks upon the Parol evidence given before the Court as bearing upon the Chief Justice's judgment in case His Lordship the Right Honorable the Governor in Council should think them likely to be of any use to the Honorable Company's Counsel in London in support of the Petition of Appeal.

MEMORANDUM.

1. There are very few points in the Parol evidence which require any remark from me, beyond what I have already made, for though there are several points open to remark as not (I think) bearing out the Chief Justice's observations yet these seem to me to go rather to the *quantum* of the Plaintiff's claim, than to the root of it. In fact the more I consider the case the more convinced I am that the plea of the Defendants' acts being acts of State, and as such not cognizable by any Municipal Court is the only ground for a successful defence, for I do not think it can be successfully contended that the *whole* of the property seized was State property, for instance the contents of Schedule M. and when once it is admitted or proved that *private* property of the late Rajah was seized, this seems to me to cut away the whole ground of defence so far as it rests on the plea that the property seized was "Revenue." I can see no ground for contending that *private* property is *Public Revenue*. The success of *this* ground of defence must therefore rest upon how far Counsel can make good the two positions, 1stly, that there is not and cannot be any distinction between the public and private property of an absolute Sovereign, who can dispose of the whole as he thinks fit : and, 2ndly, that Rajah Seevajee was such an absolute Sovereign.

2. With these preliminary remarks, I proceed to notice the few points that seem to call for any remark.

3. The Chief Justice observes that on the death of Rajah Seevajee, in October 1855, the East India Directors decided that the Raj had lapsed to the East India Company, and proceeds thus, "though this lapse was not immediately publicly announced the East India Company must "I think be considered to have become the Sovereign Power throughout the Kingdom of Tanjore "from the death of Seevajee." This seems to me a very important admission. The Chief Justice denies that Rajah Seevajee was an absolute Sovereign : but, if not, how was his power limited as regards the property of his subjects ? If it was absolute over *that*, this is sufficient, I think for the purposes of the defence, for whatever his Sovereign Powers were, the East India Company, as the Chief Justice admits, succeeded to them on his death. It is plain that the Supreme Court could not have questioned any exercise of authority by Rajah Seevajee over the property of any of his own Subjects, if so, how has it authority to question the acts of the East India Company, *quâ* the Sovereign Power of Tanjore. Mr. Forbes was the representative in Tanjore of the East India Company, and his acts were their acts, at least until disowned by them. In another place the Chief Justice charges against Mr. Forbes' acts a "want of *bonâ fides*," or, as he elsewhere words it "nor had we any proof that there was any *bonâ fide* belief that all was Public property. On the contrary, Mr. Forbes in his letter of the 17th October 1856, written the day before the seizure, shews that he *knew* that there *was* private property amongst that about to be seized : "for he *expressly* states 'that all property to which a claim shall be established shall be restored "to its Owner.' It appears then *from the above*, that, an order having been issued to take possession of public property, property *was taken*, &c.

4. This does seem straining Mr. Forbes' words in a most extraordinary manner ; 1stly, the letter does not "shew that Mr. Forbes knew there *was* private property among that about to be seized." It only says if any such be found it shall be restored. He thought *it possible* there might be some such, and, to prevent needless apprehensions, gave the above assurance ; 2ndly, the letter taken, does it shew that such private property was *the late Rajah's*, or that Mr. Forbes had any does *not* shew that any "private property was taken : " nor 3dly, if any private property was

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idea such was the case. This it is that the Chief Justice insists that Mr. Forbes' letter does shew: for, if he took it to imply only an admission that there was private property belonging to some third party, not before the Court, a *stranger* in fact to the *Suit*, the fact would be wholly immaterial: the Plaintiff would not be damaged by the seizure of such private property. It is a mere and most unfounded assumption to say that Mr. Forbes' letter admits any knowledge on his ground (so far as expressed in his judgment) on which the Chief Justice denies to Mr. Forbes the immunities which attach to acts done *bonâ fide*, and it being a well known rule that *malâ fides* can never be presumed, it follows that Mr. Forbes' acts are protected by the case of *Spooner v. Juddow*, 4 Moore J. A. cases 353, and what the Chief Justice himself calls, "the large class of cases establishing the rule that parties *bonâ fide* believing they are acting in pursuance of a Statute, and according to law, are entitled to the special protection which the Legislature may have afforded them, though they have been guilty of an illegal act."

5. The Chief Justice in another place observes that, when admitting Mr. Forbes to have been justified in his subsequent acts, by the orders of the Madras Government, dated 25th September 1856, "It was proved however, I may here remark that, previous to this authority being given, the rents and profits of the lands, &c., bought by Seevajee, had been received by Mr. Forbes since the Rajah's death. The evidence of Ramachendra Row uncontradicted is that Mr. Forbes had been receiving the rents and profits of those villages since Seevajee's death. The sale also of the contents of Schedule R. had taken place early in 1856."

6. Now on neither of these points does the parol evidence, I think, bear out the Chief Justice's remarks. To take the last point first, the sale of the contents of Schedule R. was it Mr. Forbes' act at all? The only evidence about it is what he himself says, "The Sirkele wishing to diminish the expenditure, asked my assistance to sell off the useless horses and conveyances, which was done.* The proceeds were paid to the Circle, and credited to the cash chest in the Palace." Thus Mr. Forbes neither took possession of the contents of Schedule R, nor gave any orders to sell them, nor ever received or meddled with the disposal of the proceeds of the sale. Thus this charge wholly falls to the ground. As to the other, viz., that he received the rents, &c., of the Rajah's villages before the 25th September 1856, it rests entirely upon the word "since." True it is Ramachendra Row does say, Mr. Forbes received them since Seevajee's death and this may mean "ever since;" but Ramachendra Row has not said that Mr. Forbes interfered with them before the 18th October 1856, and his "since" is quite consistent with what Mr. Forbes says, viz. "I wrote a letter 17th December [it should be October] 1856 to him, (the Circle,) on the next day I proceeded to take possession of the property. I effected this by placing my private seal on the doors, and placing sentries over the doors, I threw the Gunpowder into the ditch. I called on Mr. Cherry the Acting Collector to assume charge of the land in the name of Government. I mean the lands held by the Rajah, or those held by people who received them on Sunnuds of the Rajah."

* N. B.—Mr. Forbes wrote to Taylor & Co., Livery Stable Keepers, to request them to meet the Sirkele's wishes.

7. Mr. Forbes here says expressly that it was on the day after the 17th October 1856, that he proceeded to "take possession of the property." Unless his evidence is to be disbelieved, which is not even suggested, it surely cannot be set aside by the equivocal word "since," and the act which he fixes as taking place on the 18th October 1856, thus antedated a whole year, viz., to the Rajah's death in October 1855.

8. What Mr. Forbes really did do on the Rajah's death he states very plainly—"On the Rajah's death I gave permission to the Circle, who made a request to me, to collect all the jewels into one room, I was absent from May to October, and on my return, I found the jewels in that room."—and farther down he says, "I never saw the jewels."

9. The evidence therefore, I think shews on this point the very reverse of what the Chief Justice says it proves, I think that there is literally no evidence that Mr. Forbes took possession of any of the late Rajah's property before the receipt of the orders of Government to do so. These orders, the Chief Justice admits, would make the seizure, at least of the public property, an act of State, and not recognisable by him.

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10. I can see nothing in the rest of the Parol evidence that seems to me to bear upon the root, and not the *quantum* only, of the Plaintiff's claim. The evidence as to the jewels is most vague and inconclusive, and shews that the witnesses had little or no knowledge of how the Rajah got them, or where he kept them, or how he dealt with them, except that they admit that they seldom saw them, that he kept them where he pleased, lent them where he pleased, even the three articles called the Regalia—broke them up when he pleased and that any he bought were paid for out of the Public Treasury, showing them to be State or Public property (in contradistinction to private) and that he was absolute Master of them. This however is only matter of observation.

No. 17. ORDER THEREON, No. 295; dated 3rd May 1858.

Ordered that a copy of the foregoing letter be transmitted to the Honorable the Court of Directors, in reference to paras: 1 and 2 of the Despatch in this Department, dated 22nd April, No. 5 of 1858.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. J. A. Wilson.

By 295
Ordered that a copy
of the foregoing letter be transmitt-
ed to the Honble the Comr of Si-
-cilities in reference to paras 1 & 2
of the Despatch in this Department
dated 22 April No 5 of 1858.
Per G. H. George
30 May 1858