

MADRAS RECORD OFFICE.

Government of Madras.

Political **DEPARTMENT.**

G.O. No.	297	Press ~~Mis.~~
Dated	4.5	19/8/58

Not to be folded or roughly handled

12-11-58

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

No. 18. From THOMAS SYDNEY SMYTH, Esq., Advocate General ; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 27th April 1858.

SIR,

On the 25th of March last I had the honor to forward through the Honorable Company's Solicitor a Memorandum in reply to the inquiry made by Government whether any of the privileged Members of the late Nabob's family had preferred any Appeal to Her Majesty in Council against the decision of the Supreme Court that Act I of 1844 was merely a personal Act, and as such expired with the late Nabob.

2. I therein promised to bring to the notice of Government anything that might take place in the Supreme Court with reference to this subject.

3. I have now the honor to report, for the information of His Lordship the Right Honorable the Governor in Council, that on the 8th Instant cause was shown by Messrs : Ritchie and Branson against a Rule previously obtained by Mr. Norton, on behalf of the Prince Azeem Jah Bahadoor, (in the case of Teekum Doss Soucar *versus* Prince Azeem Jah Bahadoor, Administrator of Syud Oon Nissa Begum,) calling on the Plaintiff to shew cause why all the proceedings in the Suit against the Defendant should not be set aside for irregularity, on the grounds, 1stly, that the Defendant was privileged from being *sued* by Act I of 1844 ; and, 2ndly, that the Summons issued against the Defendant was process against the person, and therefore prohibited by Act I of 1844, Section 2.

4. Mr. Ritchie contended that the Defendant having voluntarily come in as Administrator and collected the assets of the deceased under the authority and by means of the powers granted by the Court, had voluntarily submitted himself to the jurisdiction of the Court, and cited a Case where an Ambassador having submitted to the jurisdiction by voluntarily appearing, was held to be precluded from afterwards applying to have the proceedings against him set aside on the ground of privilege, so long as no steps were taken against his person or goods. That as to Summons being process against the person, the contrary had been frequently ruled, it was merely a *Notice*, which the Defendant might attend to or not as he pleased, without his goods or person being in any way affected if he neglected it. It was only process against the goods or person that was prohibited by Section 2 ; the preamble, it is true, was more general, but the well known Rule was that the Court could only look at the *enacting* part of a Statute, so long as its meaning was clear, and it was only where its meaning was doubtful, or there was a conflict between two enacting clauses, that the Preamble could be let in to explain. That as to Act I of 1844 being in force now, the question could not now be re-argued ; it was "*res judicata*," by a solemn and final decision of the Court, until that decision was reversed by a higher tribunal.

5. Mr. Branson observed that in addition to the objections urged by Mr. Ritchie, the Defendant had come too late. The Summons was served on him on the 15th December ; a party complaining of irregularity is bound to come to the Court promptly, in fact within 4 days, but the Defendant did nothing till the 6th of February ; and then he made no complaint : quite the contrary, he entered an appearance, and so waived the irregularity if there had been one. True he entered his appearance under protest, but such a protest was unknown to the law ; it was a nullity. It was only known to the Ecclesiastical Court.

6. Mr. Norton in reply said that when an irregularity amounted to a nullity, no delay could waive it. The issue of a Summons forbidden by the law was so irregular as to be altogether null. There was no proof before the Court that the letter acknowledging the receipt of the Summons was written or signed by the Defendant. The assertion that the Defendant by taking out Letters of Administration had made himself liable to the jurisdiction in all matters concerning the deceased's Estate was incorrect. It was true that a Foreign Sovereign was subject to a Court's jurisdiction in any Suit where he appeared voluntarily, but not so therefore in any other Suit though concerning the same matter. The case cited by Mr. Ritchie went upon a different point from that now before the Court. The exemption by *that* Statute of Ann was from *process whereby he might be imprisoned*. In 1844, this Court had set aside, as irregular, a Subpoena for costs issued against Sharfool Moolk, one of the exempted persons. This supported his view that Summons was a process contemplated and forbidden by Act I of 1844. The preamble shewed

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clearly that the Act was meant to protect the Nabob and all exempted persons from "litigation and claims;" and Section I spoke not merely of process against the goods and person, but used the general and comprehensive words "entitled under this Act to privilege from Civil and Criminal process." It was only the 2nd Section that limited the privilege to a case of "Writ or process against the person, goods or property." Therefore there was such a doubt, such a conflict of the enacting clauses, as would let in the preamble: that once let in, the matter was clear. No doubt the Court had decided, after hearing the case fully argued, that Act I of 1844 was merely a personal Act and had expired, but it might if it pleased decide the point once more, so as to enable the Defendant to take the opinion of the Court of Appeal.

7. Rawlinson, C. J., said that the Rule Nisi had been granted on the first point somewhat against the expressed opinion of the Court which saw no grounds for doubting the correctness of its former decision, and until it was questioned or reversed by a competent Court it would be quite unusual to give a second decision on the point. Several points had been taken on both sides, but the material one, and the only one necessary for the Court now to decide was whether any of the proceedings taken against the present Defendant came under the denomination of "Writs or process against person, goods or property." There had been several decisions to the contrary, and nothing had been adduced to show that those decisions were wrong, he therefore saw no reason for departing from them.

Davison, J., was of the same opinion.

8. The result is that no Appeal can be preferred from this decision that would enable the Court of Appeal to decide or entertain the point whether the Supreme Court's decision as to Act I of 1844, being merely a personal Act, is correct or not.

No. 19. To the Secretary to the Government of India, dated Fort Saint George, the 4th May 1858, No. 297.
SIR,

In continuation of my letter of the 27th Ultimo, No. 281, I am directed by the Right Honorable the Governor in Council to forward, for submission to the Government of India, copy of a communication from the Advocate General reporting certain recent proceedings in the Supreme Court, in reference to the enquiry made by this Government, whether any of the privileged Members of the late Nawaub's family had preferred any Appeal to Her Majesty in Council against the decision of the Court that Act I of 1844 was merely a personal Act, and as such expired with the late Nawaub.

2. It will be seen that the result of the proceedings is that no Appeal can be preferred from the decision now reported that would enable the Court of Appeal to decide or entertain the point in question.

(Signed) T. PYCROFT,
Chief Secretary.

Edw. J. A. Wilson.

In the name
of the Governor

Political Department

No. 297

To the Secy to the Govd of India

April 1858.

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now reported

Forb. & George,
4 May, 1858.

JF

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Pittsfield. 1858. against

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Prussia

27th May/58.

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