M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No. 631 Press ~~Mis.~~

Dated 23 9 ~~19~~1838

Not to be folded or roughly handled

No. 5. From J. R. BOYSON, Esq., Honorable Company's Solicitor; to the Chief Secretary to Government, Fort Saint George, dated 17th September 1858, No. 507.

SIR,

I have the honor to forward for the consideration and orders of Government a copy of a Memorandum by the Advocate General as to the working of Act XXX of 1858, "to provide for "the Administration of the Estate and for the payment of the debts of the late Nabob of the "Carnatic.

COPY OPINION.

At the request of Mr. Chief Secretary Pycroft, conveyed to me through the Honorable Company's Solicitor, I have had an interview with him and Mr. Dale, about to be appointed the Receiver under the Act for payment of the debts of the Nabob of the Carnatic, concerning the working of that part of the Act, which relates to the investigation of claims which may be preferred under that Act.

Section 4 enacts that the "Receiver *shall* represent the Estate of the said late Nabob in *all* proceedings relating thereto, under this Act or otherwise," and Mr. Dale seems to be of opinion that, under these words, as he must be the Defendant on the Record in every claim under the Act, that it will be his positive duty, cast upon him by the Act, to investigate every claim himself, by himself, and his Solicitor, and to appear by Counsel at the hearing and investigation of every claim, and to be always fully aware of the proceedings in each case and concerning the Nabob's Estate, and able to answer any question that the Court may put to him concerning any of these matters, and that he will be able to be rebuked by the Court for neglect of duty unless he acts fully up to these views, and this, notwithstanding that the East India Company or the Government are investigating the same claims, and appearing under Section 24 at the hearing thereof, or consenting to the payment thereof, under Section 21.

What view the Court may take of the Receiver's liabilities under the Act, and of the duties cast on him by it, it is impossible for me to predict. There is certainly nothing expressly said in the Act to prevent his taking that course, and the words of Section 4 do, to some extent, support his view; and, at all events he is clearly entitled to say, that as long as he is not clearly and explicitly exonerated from these duties, he will consider them as imposed upon him, and will fulfil them, rather than run the risk of being publicly rebuked by the Court for neglect of Public and Official duty.

He has therefore suggested, very fairly, what may perhaps prove a satisfactory way of meeting the difficulty, *viz.*, that as soon as the first claim shall come before the Court for investigation, he will appear by Counsel, and that I, as Advocate General of Counsel for the Honorable Company, shall then object that his doing so is needless, and not according to the intention of the Act, and take the Court's opinion upon the subject.

As far as I am individually concerned, I should much prefer that Mr. Dale's views should be upheld by the Court, as I should then, as Counsel for the Receiver, be entitled to receive the usual fees of Counsel, and it is beyond all question that it never was contemplated when the Law Officers of Government were placed upon their present salaries, that hundreds upon hundreds of cases, requiring laborious investigation, should be flung upon them *en masse*, by an Act specially passed for the purpose without the slightest remuneration. There is no precedent to be found in England for such a proceeding.

My own opinion, however, is opposed to Mr. Dale's. He must indeed be a Defendant on the Record, but I do not think that the Act meant to, or does, invest him (except in the case of an Administration Suit, under Section 8) with the same responsibilities as an Administrator of an ordinary Estate. I think that, except in that case, his duties are simply to collect, sue for and realize the late Nabob's Estate, to keep all accounts concerning it, and to pay all successful Claimants, according to the orders of the Court made under Section 25.

Under Section 19 notice is to be given to the Government Solicitor, under Section 20 full particulars are to be given to the same Solicitor, under Section 21 Government may give notice to the Claimant before hearing that it is willing to consent to an order for payment, and, under

Section 25, the Public Treasury is to supply the Funds for such payment, unless, which every one knows will never happen, the Nabob's Estate is able to pay.

In all this the Act makes no mention whatever of the Receiver. The only interest, that I can see is that of the East India Company. *Their* Law Officers *must* investigate before the Government *can* consent to pay. Is there then to be one investigation by the Receiver, and another and a simultaneous one by the Government Law Officers? I can see no advantage in this, but great inconvenience, delay, and expense. Even if the Government Solicitor were told to consider himself the Receiver's Solicitor, which would not, in my opinion, deprive him of his right to fees as the Receiver's Solicitor; this, I think, would merely hamper his freedom of action, in obliging him in each case to wait for the Receiver's instructions, and to act under such instructions instead of leaving him to his own discretion and judgment, acting when necessary under my advice as Advocate General, and occasion a great deal of reference and correspondence, and sending of documentary and other information through a circuitous channel instead of direct; without any advantage that I can perceive.

(Signed) THOMAS SYDNEY SMYTH,

16*th September* 1858. *Advocate General.*

There is another point which must be disposed of as soon as this Act comes into operation, and I therefore think it desirable to take this opportunity of bringing it formally under the notice of Government. I have already mentioned it in a demi-official way.

If, as I feel little doubt will be the case, the Court decides that there is no duty cast, by the Act, upon the Receiver, to investigate the claims preferred under this Act, it will necessarily follow that the entire *onus* of the investigation will devolve upon the Law Officers of Government. It yet remains to be seen whether the Court will take these cases in Term time only, as I contend the Court ought to do, or whether it will take them without intermission throughout Vacation and Term alike, making no distinction between them. This would be most oppressive to the Bar, and would be practically depriving them of their vacation, and setting aside the established usage of the Profession and the Court.

In any case, but more especially if the Court should decide to take these claims in vacation, it will be altogether impossible for me to conduct the current business of Government, or to attend to my private practice (the enjoyment of which has always been considered as not merely the *right* of the Advocate General, but as the *chief* and *principal* source of emolument attached to the Office, and the *chief* inducement to accept it), unless I have the assistance of a Junior. It may often happen moreover, that illness, or other unavoidable circumstances, may *unavoidably* occasion my absence either from Court, or during the progress of investigation (out of Court) of several of these claims, and in *such* case it would be *indispensably necessary* to have a Junior. I think that, independently of my own convenience, and of the propriety and fairness (indeed the *justice*, as I submit,) of allowing me the same leisure and opportunity as before the passing of this Act of attending to my private practice. I think it would be for the interest of Government to retain a Junior Counsel to assist the Law Officers of Government in the investigation and disposal of claims preferred under this Act. If so, I would suggest it as by far the most adviseable course, that, instead of delivering Briefs to various Counsel in these cases, the Honorable Company's Solicitor should be authorized to retain, generally, *one* Counsel for the *whole* of these cases. The nature of these claims will, in most cases, I apprehend, be very much alike, as well as the sort of evidence that will be adduced in support thereof, and if so it is obvious that the experience that will be gained from the earlier cases will greatly facilitate the disposal of the subsequent ones, if the same Counsel is retained throughout.

I would suggest that, if not already engaged for parties about to prefer claims, Mr. Norton should be retained; but that, if his services should not be available, the Retainer should be sent, in the order of their seniority, to the two next Senior Counsel at the Bar, Mr. MacDonald Ritchie and Mr. J. Dawson Mayne.

(Signed) THOMAS SYDNEY SMYTH,

(True Copy.)

(Signed) J. R. BOYSON,
Honorable Company's Solicitor.

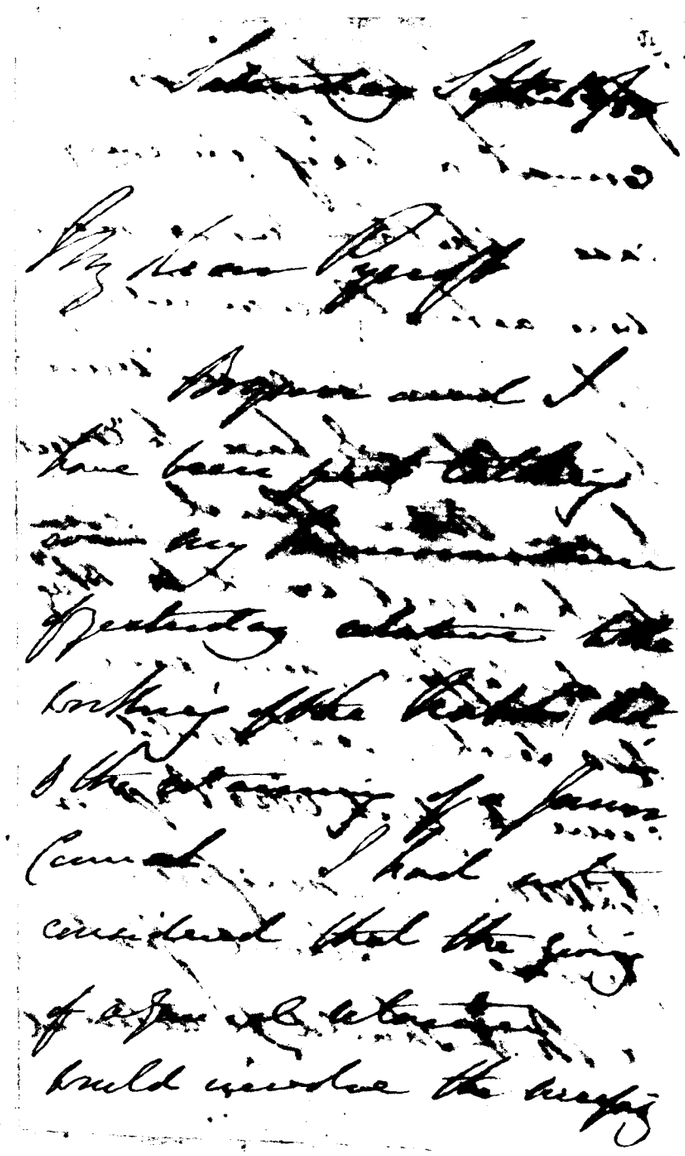
No. 6. ORDER THEREON, No. 631; dated 23rd September 1858.

The Government fully concur in the opinion of the Advocate General, as to the position and duties of the Receiver of the Carnatic property under Act XXX of 1858, and quite agree with the remarks in the concluding para: of his Memorandum as to the inconvenience and embarrassment that would result from the adoption of any other course of procedure. There will however be no objection to the decision of the Judges of the Supreme Court being, as suggested, taken on the question, on the first claim coming before the Court for investigation.

2. With regard to the Postscript to Mr. Smyth's opinion, looking to the length of time that has already elapsed, and the desirableness, on every account, that the demands against His Highness the late Nabob should be settled as speedily as possible, the Government would hope that, with the concurrence of their Honors the Judges, the earliest steps might be taken for the adjudication of those claims. They are desirous of affording their Advocate General every assistance for the discharge of the duties that will devolve on him under the Act, but they do not consider it expedient to have one Junior Counsel for all the cases. It will be sufficient, they think to authorize the Honorable Company's Solicitor to retain a Junior Counsel in all those cases in which such aid may be required.

(Signed) T. PYCROFT,
Chief Secretary.

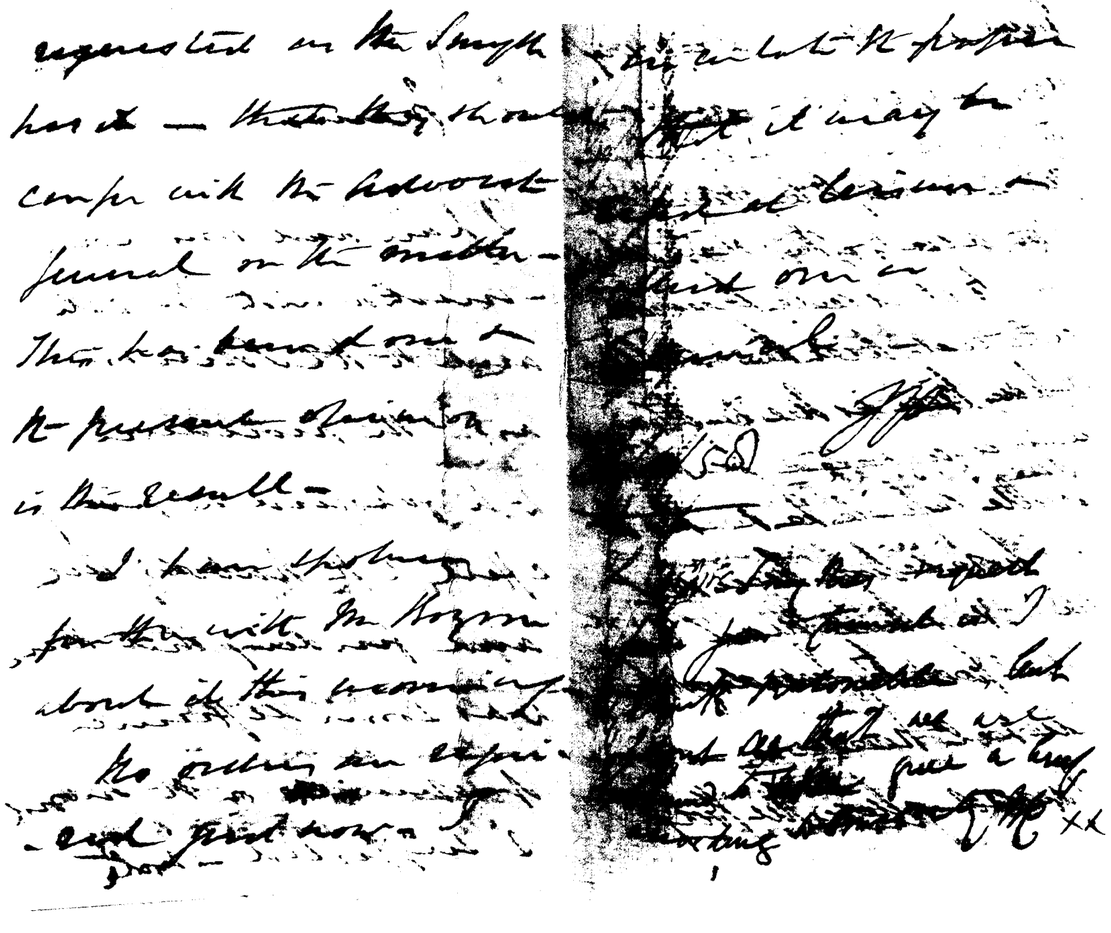
Exd. J. A. Wilson.

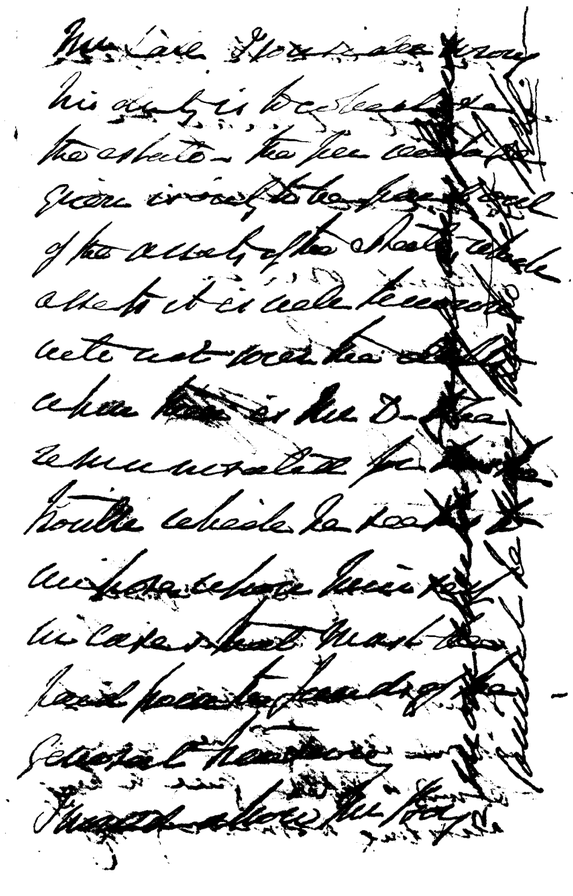


[illegible] each party
consult a brief in every
case, whether his services
were actually required or
not — even in case where
he could not have to appear
to any Court — for
such a brief could be kept
as he supposes there were
few such, that would
come to [illegible] per. in
all 21000. Therefore
he first instructed that
a brief should be taken

any three considered
necessary. & the best
counsel those services
can be had for the
particular case. — but
retaining any. the
consequences of such a
Retainer, with such a
heap of claims in prospect
could involve an expense
to which I should not
like to put the Govt.

Believe me
Yours truly
Sydney Smyth





No 31.

Chathams Circs dated 23 Sept 58.

Read the following letter

From Adt Comt Lorimer - 17 Oct 1858

No 507

The first fully concur
in the opinion of the
Advocate General, as
to the position of this
and duties of the
Rescue of the Cam-
-tic property under
Act XXX - 1858 -
and puts upon with
the remarks in the
concluding part of
this his interpretation
as to the incumbrances
and encumbrances and
that would result
from the adoption of
any other construction

procedure – That
Lordship has no objection
to the decision of the
Judge of the Supreme
Court being, as suggested
– last, taken on the
question, or the first
claim coming before
it could be entertained
– tion

2. With regard to the
participation of Mr Smyth
petition, Lordship's
length of time that has
already elapsed, &
the distressed state of
way account, that
the demands against
H.M. the late Nabob should
be settled as speedily
as possible, the Govr
would have the

H.C. Solicitor
to prepare
with copy of
Mr Boyd's letter
enclosed

Sept. 29th

The Concurrence of their
Honors the Judges, the
earliest steps must
be taken for the adjus-
-dication of their claims.
They are desirous of
affording their Lordships
fullest every assis-
-tance in the discharge
of the duties that will
devolve on him under
the Act, but they do not
consider it expedient
to have one Junior
Counsel for all the
cases which will
they think, be entitled
the H.C. Solicitor to
retain a Junior Coun-
-sel in all those cases
in which such aid
may be required

J.P.

F. O. Despatches 25th Nov. No 2
of 1858 Paras 8 & 9.
Published by the Secy of
State for India & F. Dis:
No 19 of 1859

Ind. Repts Jams. 28 Sept.
Political & Mil. Department

(No. 631.

Extract Minute of Council,

Dated 25th September 58.