

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No.	286	Press ~~Mis~~
Dated	7-5-1859	

Not to be folded or roughly handled

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*Proceedings of the Madras Government, Political Department,
from 4th to 10th May 1859.*

No. 18. Read the following letter from J. R. BOYSON, Esq., Government Solicitor; to the Chief Secretary to Government, dated Madras, 21st April 1859, No. 691.

1. I have the honor to acknowledge the
Extract Minutes of Consultation, dated 9th April 1859, No. 231, Political Department. Extract from Minutes of Consultation, noted in the margin.

2. I submitted same for the consideration of the Advocate General and I have since conferred with him thereon and afforded him all such further information as he required.

3. I now forward a copy of his opinion and, have, &c.

COPY OPINION.

With respect to para: 17 of this precious Petition, I have only to state that it is perfectly true that under Act II of 1859 claimants are obliged to file such books, accounts, and documents as they mean to rely on in support of their claims.

It must however be remembered that all those claims are necessarily, prior to October 1855, the date of the Nabobs death, most of them of much earlier date. The hardship therefore of parting temporarily with books accounts and documents, four years old and upwards can hardly be very serious or be very often felt in practice. I do not believe that one just claim has been abandoned in order to avoid the inconvenience of filing the claimants books. If any such case were brought to my notice, I should not hesitate to advise Government to deal with it in a liberal spirit. No claimant who asked for further time, was restricted to the one week limited by Act II of 1859, and the Government Solicitor never objected to any one who asked for more time having any time that a Judge in Chambers thought reasonable.

I would here bring to the notice of Government that Section IX of Act II of 1859 has been practicably nullified by Mr. Justice Bittleston, the Government Solicitor in communication with me moved in Chambers to appoint an early day for hearing the claim of Salar Ool Moolk respecting which I have recently written to Government, and stated that he so applied by my directions, on the ground that the Law Officers had received information concerning this claim which could not be disclosed without defeating the ends of public justice, but which shewed this claim to be one which it was highly desirable to investigate as early as possible, the judge refused the application, saying it was not a case within the scope of the Act, as the claimant had himself got a day appointed (a very distant one it will prove to be) for the hearing of his claim—I here close these remarks as Government, have only requested my opinion on para: 17 of this Petition, but as several other paras: are open to complete refutation, I append my remarks concerning them in case Government should think those facts of the Petition worth notice.

(Signed) THOMAS SYDNEY SMITH,
Advocate General.

20th April 1859.

Para: 3. No. 1, true apprehension was both felt and expressed at the time respecting the consequences of the loss of the Seals.

Para: 4. I was expressly informed that the stolen Seals were used during the Regency to authenticate Sircar Bonds.

Para: 6. I do not believe that any enactment for this purpose could have been framed (short of declaring all Sealed Bonds invalid) that would not have been evaded.

Para: 7. According to my information the Dufter accounts were not secured by the Madras Government on the Nabob's death but remained for many months in the Custody of the Dewan who himself, his three Sons and his Nephew and Son-in-law, are the instigators and supporters and witnesses of great part of the most suspicious of the claims now brought forward against the Nabob and who are the confessed dictators, writers and signers of the various documents and accounts now adduced in support of such claims while some of their own Servants allege (and the Dewan swore the same thing in Court when first examined) that these accounts were not in the Treasury at the time of the Nabob's death but were first written between one and two months after the Nabob's death.

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Para: 13. This is an incorrect statement of the provisions of Act 30 of 1858. The Act provides that the Government Solicitor shall not be at liberty to make an offer to the claimant such as to exempt Government from costs, later than 7 days before trial. There is no provision, that a claimant must proceed to trial within 7 days after his refusal of the Government Solicitor's offer and in no case as yet tried, have the claimants done so.

Para: 14. This complaint of excessive costs is quite unfounded. In the first place it is not true as the Taxing Officer can prove that the average amount of costs, for work actually done especially in heavy cases is higher at Madras, than in the Equity and Common Law Courts in London. It is true however, I believe that in case of some of these claims the usual costs have been considerably exceeded. If claimants choose to authorize or permit the incurring of unusual costs, the fault is their own. If they did not they have their remedy in their own hands in the taxation of their Bills of Costs.

Para: 15. The cases have been taken as rapidly as possible unless the Legislature had meant either to create a new Court for hearing them alone, or to enact that the Supreme Court should take no other business till all these claims have been disposed of and should have no vacation till then. It was not true of last year, nor is it of this year, that these cases were taken only in term time. They have been and are to be taken in sittings out of term, held entirely on account of these claims.

Para: 16. This complaint of the necessity of translating Documents and examining witnesses, as preventing a "Summary" decision is shere folly. What English Court could deal with Persian Bends and long Hindustani accounts unless translated? What suitor could be trusted in any Court to translate his own papers unchecked by the Court. Interpreter? Is the Court expected to decide for the claimants *without* examining witnesses? As for Briefs that rests solely with the claimants and their Solicitors.

Para: 18. As for "witnesses being now held in readiness," I believe this is only true to the extent that the great majority of the witnesses are in readiness, in as much as they are residents of Madras chiefly in Triplicane, such at least have been all the witnesses who have been hitherto examined.

No. 19. ORDER THEREON, 7th May 1859, No. 286.

Resolved that copy of the Advocate General's opinion be furnished to the Member for Madras of the Legislative Council for his information in reference to his letter of the 19th March last.

(Signed) T. PYCROFT,
Chief Secretary.

No. 286.

Resolved that copy of the
Advocate General's opinion
be furnished to the Member
for Madras of the Leg. Council
for his information in reference
to his letter of the 19th March
last.

P.C. No. 17+18
12/6/59

J.P.

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P.C. No. 17
21/6/59

For the Advocate General
7th May 1859

For the Member for Madras
Leg. Council