M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No. 334 Press ~~Mis.~~

Dated 31. 5. ~~11~~ 1859

Not to be folded or roughly handled

Lu
334

Proceedings of the Madras Government, Political Department, from 28th to 31st May 1859.

No. 5. Read the following letter from CLEMENT DALE, Esq., Receiver of the Carnatic Property; to THOMAS PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 27th May 1859, No. 144.

21st May 1859, No. 135.

In continuation of the letter I had the honor to address to you under the date and number, noted in the margin, in para. 2 of which, I mentioned that the orders of the Supreme Court there alluded to, would fully exhaust the Funds realised by the sales already effected by me of the Nabob's property, I do myself the honor further to report for the information of the Honorable the Governor in Council, that I have been since served with copies of other orders issued by the Supreme Court, whereby I am ordered within 10 days to pay to the several Claimants noted at foot, the respective sums there mentioned, in full discharge of what is due to such Claimants respectively from the Estate of the late Nabob of the Carnatic.

2. I have therefore the honor to request that His Excellency in Council will be pleased to issue the necessary Orders for payment to me out of the Treasury of the sum of Rupees 70,000 to enable me to comply with the terms of such orders.

Mahomed Ameenooden Hoossain Saib's claim.....	Rupees	1,622- 2- 2
James Scott, Savory Richardson's.....	,, ...	,,	2,686-14- 3
Chabelay Raw's.....	,, ...	,,	1,551- 4- 0
Kishore Doss'.....	,, ...	,,	4,327-10-10
Muzzur Ally Saib's.....	,, ...	,,	2,472- 2- 1
Cassi Doss'.....	,, ...	,,	49,301- 0- 0
		Rupees	61,961- 1- 4

No. 6. ORDER THEREON, 31st May 1859, No. 334.

Ordered to be communicated to the Accountant General, and that he be requested to place at the disposal of the Receiver of the Carnatic Property, the sum of Rupees (70,000) Seventy thousand, for payment to the Claimants therein mentioned in discharge of the debts respectively due to them from the late Nawaub's Estate.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. A. P. W. Begbie.

Said Ayeem Jah as Nabob Regent.

The

Received
30 May 1854

1 2

From

The Advocate General

To

The Chief Secretary to Government
Fort St. George

Sir,

I have the honor to report, for the information of the Honorable the Governor in Council, the result of the trial of the claim of Shaw Daga, Sahookar, preferred under Act 30 of 1858, against the Estate of the late Nabob of the Carnatic.

2. The Court delivered its judgement at 7 o'Clock on Saturday night, 28th instant disallowing the claim. The amount claimed was small, being only Rs. 6000 for principal, and a little above Rs. 6000 for interest, from the 1st August 1841; but there are circumstances connected with the claim, and others which arose during the hearing, that are of considerable importance.

3. This was the first claim preferred under Act 30 of 1858, in respect of a debt contracted by the Naibe Mooktar during the Nabob's minority — the Act stating the East India Company to be willing to pay in full, with 6 per cent interest "all such debts as shall be "proved to have been fairly and justly contracted "on the Nabob's behalf during his infancy by the "said Azeem Jah as the Nabob Regent."

The

4. The Court's decision amounts in substance to this, that, taking the whole of the evidence — nay almost upon the Claimants own evidence — it was not proved that the particular debt now claimed by Sham Dass had been contracted by Prince Azeem Jah as Nabob Regent on the Nabob's behalf — or, as the Court had before expressed itself, as tensibly for the Nabob, and in his name.

5. This Judgement may, possibly, affect a large number of these claims, and if so will be valuable, but it does not necessarily do so. The Court may, quite consistently with this Judgement, allow all future claims of this class, if they shall give credit to witnesses who shall swear (as they probably will all do, now that they see the point on which the Court has decided) that all monies borrowed by Prince Azeem Jah were expressly stated by his Agents to be wanted for the Nabob's Circar.

6. The Court has not as yet said any thing from which I can learn what weight they are disposed to give to the express and positive evidence of Prince Azeem Jah, given a few days ago under a Commission, issued by the Supreme Court for his Examination in this very case.

7. The Claims for debts contracted by the Prince during the Nabobs minority, amount altogether, so far as I have yet learned, to about 20 Lakhs of Rupees for Principal, and about as much more again for Interest.

Interest

Interest from June 1811 to June 1859, or 18 years, at 6 per cent, on 20 Lakhs of Rupees, is Rs. 21,60,000; and as interest may, in some cases, be claimable for even a longer period, the total amount of these claims may, in round numbers, be stated at between 40 & 50 lakhs of Rupees.

8. Of the principal amount of 20 Lakhs, nearly 14 lakhs are represented by what are called Sunkhy Cutcherry Bonds, or Chur Mohurry (i.e. 4 Seal) Bonds. Respecting this debt, Prince Azeem Jah lately wrote to Government, stating it to be his own private and personal debt, for which he alone is responsible and I also submitted a Report on the subject.

9. The remainder of the 20 Lakhs, (or above 5 lakhs) consists of debts for which no Sunkhy Cutcherry Bonds were ever issued. For this 5 lakh debt the Prince addressed the Nabob in 1842, shortly after his accession, requesting him to become responsible for it, as having been contracted on his behalf; but he never made any such requests, then or since, respecting the Sunkhy Cutcherry debt of 14 lakhs, which he always said was his own personal debt.

10. The Nabob long refused to acknowledge or become responsible for any debt contracted during his infancy, so it was clear that none of it had ever been contracted for his benefit, or applied to his use. He had moreover been led to expect that he would find 9 Lakhs of Rupees in his Treasury for the

the immediate expenses of his Installation, Marriage, &c, instead of which he found therein but One lakh, and found that it was attempted to saddle him with 20 lakhs of debt — 5 lakhs and upwards on behalf of the Prince, and 14 lakhs by other creditors. He repudiated the whole.

11. Subsequently however, in his letter to Government in April 1853, and again in August 1854, the Nabob informed them that he had admitted and undertaken to discharge this 5 lakhs debt, but merely out of regard to his uncle, and emphatically protesting that he was under no moral obligation so to do, as no part of it had been contracted for his use, or expended for his benefit. Having thus however acknowledged the 5 lakh debt, he began to liquidate it by instalments and had actually paid Rs. 2,99,44:11:6 on account of it before he died.

12. Under these circumstances, though I am clearly of opinion that Government is not legally liable to discharge this 5 lakh debt, yet as the Nabob had actually and formally admitted it, and promised to pay it, and had actually paid part of it, and would have paid the rest had he lived, and as the Government has taken possession of the income from which the Nabob would have paid this debt, I would submit to Government whether there is not something like a moral obligation on them to discharge this 5 lakh debt,

debt, and request to be favored with their instructions as to whether they wish me to pay the same (so far of course only as I shall be satisfied that money was actually lent by the respective creditors) or to resist the claims made in respect of it, or to exercise my own discretion upon the subject. If Government should resolve to pay it, the sooner I can make offers to the creditors the better will be the effect — even with the Supreme Court.

13. As regards the Sunkey Cutcherry debt, there is another proposition which I beg to submit for the early consideration of Government. The Prince Azeem Jah has expressly, and repeatedly, and on oath, under the Supreme Courts Commission, stated that he received the money, that he alone is liable for it, and that he is willing to pay it whenever he shall have the means.

14. I understand that the Prince's allowances undrawn by him since the Nabob's death, now amount to more than six lakhs of Rupees. If this be so, would there be any objection to the Government, if petitioned by the creditors, or of its own motion, asking the Prince whether he will consent to this sum being rateably divided amongst the Sunkey Cutcherry creditors? In November 1854 the Prince himself moved the Nabob to reappoint the Sunkey Cutcherry Commission,

in

in order to liquidate the Prince's personal debts, and he set apart half his monthly allowance, or Rs. 2000 a Monthly, for this purpose. I therefore think it not unlikely that the Prince might assent to such a proposition as I have suggested, not only as to past arrears, but as to his allowances for the future. If this were done, I think it would strengthen my hands very considerably in the Supreme Courts in resisting claims made against Government by the holders of Tunkah Cutcherry Bonds.

15. I now come to another subject, and a very important one, viz the construction put by the Supreme Court on the words "proved to have been fairly and justly contracted on the Nabob's behalf;" and if Government shall be of opinion that my construction of these words is the correct one, according to the meaning and intent of the Supreme Government, then I would humbly move the Honorable the Governor in Council to apply at once to the Supreme Government to have a short Declaratory Act passed to give effect to that construction, and also to remove doubts on two other matters which I shall presently notice.

16. When the late Nabob's father died, the Government in 1825, "recognized" the infant Nabob as his lawful successor, but it appointed, of

of it's own authority, the Prince to conduct the affairs of the Circar during the minority, as Naibi Mooktar.

17. Government therefore had the right to impose terms upon, and exact engagements from, the Naibi Mooktar, with a view to protect the Nabob's interests — and it did so. It informed him of its wish and readiness to aid him in freeing the Circar from Debt, in order to enable him to keep it so during the minority, and to lay by a fund for the young Nabob's use when he should attain his Majority, to meet the expenses of that occasion, ex: gr: his Installation, Marriage, &c.

18. Government accordingly lent the Naibi Mooktar 13½ lakhs of Rupees; 4½ lakhs in cash without interest, and 9 lakhs in Company's Paper at 5 per cent interest. With this liberal aid, and 5 lakhs of Circar funds, the Naibi Mooktar paid off 18 lakhs of Circar debt, bearing 24 per cent interest, and reported to Government in 1826, that he had done so, and that the Circar now owed nothing.

19. Government then exacted a solemn promise from the Naibi Mooktar that he would incur no fresh debt without their knowledge. This promise he gave in the most express terms, and repeated

in

in several letters.

20. Government also ordered him to inform all who had had money dealings with the Circar, that, in future, they must look for payment only to the individuals to whom they might lend money, and that no such debts would be discharged from or recognized as binding upon the Nabob's income, and the Naib-i-Mooktar in reply, assured Government that he had given this warning accordingly. This was in 1827.

21. Subsequently, and on several occasions, the Naib-i-Mooktar assured the Government, (which at his request had increased the monthly allowance by Rs. 11,000) that the Circar was quite free from debt— that there was no occasion whatever for contracting any fresh debt— that the income was not only ample for all necessary expenses, but sufficient to admit of his laying by, from 1833, a sum of one Lakh of Rupees annually, to form a fund for the expenses of the young Nabob's Majority.

22. Nay more, from 1833 to 1842, the Naib-i-Mooktar every year reported to Government that he had laid by this one Lakh for this purpose:— and, in August 1842, when the Treasury was found to contain but 1 Lakh in stead of 9 Lakhs, the Naib-i-Mooktar sent in a Memorandum shewing that the missing

8 Lakhs had been expended not for the Nabob's use, or in necessary expenses, but chiefly in loans to his, the Naib-i-Mooktars relations, viz 5 Lakhs and upwards to the Begum his Mother, Rs. 60,000 to Gholam Moortooza Khan, and so on.

23. When I was stating to the Supreme Court the case for the defence, I opened all these facts, and I said, that, with reference thereto, I was prepared to contend, that by the words "debts fairly and justly contracted on behalf of the Nabob during his infancy by Azeem Jah," the Legislature must be taken to have meant, not all debts contracted in the Nabob's name, however unlimited in amount, however unnecessarily and improperly contracted, and without reference to whether they were contracted for the Nabob's use or expended for his benefit, but such only as were contracted necessarily or properly in his name, or, at least, such as were (though perhaps not necessarily) actually contracted for his use, and from which he had had some benefit or advantage. I submitted, in reply to a question from the Court, that with regard to debts contracted by the Nabob himself, after he had attained his majority, the words "fairly and justly" must mean such as he or his authorized agent, had received fair value for:—

for: but that, when he was a Minor, unable to act or judge for himself, the words must have a very different meaning, and must mean debts "properly and necessarily contracted for his use," and not merely such as had been unnecessarily and without propriety or excuse, contracted in his name, and expended without regard to his use or benefit.

24. The Court however ruled the point against me, refusing to receive any evidence on the points I have above mentioned, and decided that words "fairly and justly" meant only what was just and fair as between borrower and lender, i.e. between the Naibe Mooktar and the Sahookars, and that therefore whenever the latter had lent the money and the former had received it, that was a debt "justly and fairly" contracted within the meaning of the Act, without any reference to the question whether the debt was necessarily or properly contracted as between the Naibe Mooktar and the Minor Nabob, or whether it was for the latter's use or not: and that the words "on his behalf" meant merely "in his name," and were satisfied by proving that the Naibe-Mooktar had pledged the Nabob's name.

25. If the Supreme Government, and the Legislature did not mean this, (and I cannot think that they did) I would suggest the passing of a short Declaratory Act that whereas doubts had arisen as to the intent and meaning of such words, be it enacted that the same shall be taken and construed to mean "properly "and necessarily contracted for the Nabob's "use".

26. I would also suggest a short clause that nothing in Act 30 of 1858 shall be construed as depriving or intended to deprive any suitors under the said Act of their right to appeal to Her Majesty in Council, in cases of above Rs. 10,000, or as preventing or intended to prevent the Supreme Court from awarding costs to the Government against any claimants under the said Act, in cases where the Court shall think it just to award such costs.

27. The Court has of late more than intimated doubts on both these points.

I have the honor to be
Sir
Your most Obdt. Servt.

Fort St. George
30th. May 1859

Advocate General

Political Letter to Engd dd 21st June
No 19 of 1859.

Political. 1859. Dept.

From the Advocate General.

dd 30th May 59.

No 1185.

Reports for the information of Govt. the result of the trial of the claim of Shaw Doss, Sahookar, preferred under act 30 of 1858, against the Estate of the late Nabob of the Carnatic - and brings to notice circumstances connected with the claim, and others which arose during the hearing, that are of considerable importance.

5.