M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No. 340. 341 Press ~~Mis.~~

Dated 1—6— ~~1~~ 1859

Not to be folded or roughly handled

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340-41

No. 5. Read the following letter from THOMAS SYDNEY SMITH, Advocate General; to the Chief Secretary to Government, Fort Saint George, dated 30th May 1859.

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 Sham Doss, Sahookar, preferred under Act 30 of 1858, against the Estate of the late Nabob of the Carnatic.

2. The Court delivered its judgment at 7 O'clock on Saturday night, 28th Instant disallowing the claim. The amount claimed was small, being only Rupees 6,000 for principal, and a little above Rupees 6,000 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 to a debt, contracted by the Naib-i-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 "Nabob Regent."

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

5. This Judgment 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 Judgment, 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 Nabob's 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 from June 1841 to June 1859, or 18 years, at 6 per cent, on 20 lakhs of Rupees, is Rupees 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 and 50 lakhs of Rupees.

8. Of the principal amount of 20 lakhs, nearly 14 lakhs are represented by what are called Tunkhy Cutcherry Bonds, or Char-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 about 5 lakhs) consists of debts for which no Tunkhy Cutcherry Bonds were ever issued. For this 5 lakhs 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 Tunkhy 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, as 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 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.

proceed

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 lakhs debt, he began to liquidate it by instalments and had actually paid Rupees 29,914-11-6 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 lakhs 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 lakhs 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 Tunkby 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 Court's 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 Tunkhy Cutcherry Creditors? In November 1854 the Prince himself moved the Nabob to reappoint the Tunkhy Cutcherry Commission, in order to liquidate the Prince's personal debts, and he set apart half his monthly, allowances, or Rupees 2000 a month 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 Court in resisting claims made against Government by the holders of Tunkhy 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 it's own authority, the Prince to conduct the affairs of the Circar during the minority, as Naib-i Mooktar.

17. Government therefore had the right to impose terms upon, and exact engagements from the Naib-i 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 Naib-i 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 Naib-i Mooktar paid off 18 lakhs of Circar debts, bearing 24

Proceedings of the Madras Government, Political Department, from 1st to 10th June 1859.

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 Naib-i-Mooktar that he would incur no fresh debt without their knowledge. This promise he gave in the most express terms and repeated 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 Rupees 14,000) 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 the 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-Mooktar's relations, *viz.* 5 lakhs and upwards to the Begum his Mother, Rupees 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 some benefit or advantage. I admitted, 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:—but that, when he was a minor, unable to act or judge for himself, the words must have a very different meaning, 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 the words "fairly and justly" meant only what was just and fair as between borrower and lender, *i. e.* between the Naib-i-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 Naib-i-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 Naib-i-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

proceed

Her Majesty in Council, in cases of above Rupees 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.

No. 6. ORDER THEREON, 1st June 1859, No. 340.

Resolved that a copy of the above letter be despatched by express to the Supreme Government, and that it be recommended to them, that if the meaning which they and the Legislature intended to attach to the words "fairly and justly" and "on his behalf" in Act XXX 1858, was that supposed by the Advocate General—and not that put upon those words by the Judges of Her Majesty's Supreme Court, a short Declaratory Act to the effect suggested by Mr. T. S. Smyth in para: 25 of his letter should be passed as expeditiously as possible, and that the two points noticed by the Advocate General in para: 26, should also be provided for in it.

2. The Government concur in the view expressed by Mr. Smyth in para: 12 of his report and they accordingly authorize him to exercise his own discretion as to the payment of the five lac debt claims, on being satisfied that money was actually lent by the respective creditors.

3. The Government would not be disposed to take the initiative in the matter adverted to in para: 14, but if such a proposal should emanate from His Highness Prince Azeem Jah himself, they would be prepared to give it due attention.

No. 7. TO THE SECRETARY TO THE GOVERNMENT OF INDIA, FOREIGN DEPARTMENT, dated Fort Saint George, the 1st June 1859, No. 341.

SIR,

I am directed by the Honorable the Governor in Council to forward, for submission to the Right Honorable the Governor General of India in Council, the accompanying copy of a letter from the Advocate General, under date the 30th Ultimo, relative to certain claims now being brought under litigation in the Supreme Court, under Act XXX of 1858, and to the construction which has been placed by the Supreme Court at Madras on the Provisions of the said Act.

"*An Act to provide for the Administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic.*"

2. In the Act in question the East India Company agree to pay in full, all such debts as shall be proved to have been *fairly* and *justly* contracted by the Nabob, or *on his behalf* during his infancy by His Highness Prince Azeem Jah as Nabob Regent, the property of the Nabob being applied in the first instance for that purpose, but any deficiency therein being made good by the said East India Company.

3. The claims for debts contracted by the Prince during the Nabob's minority as far as has yet been ascertained amount, as will be seen from Mr. Smyth's letter, prin-
Para. 7. cipal and Interest, in round numbers to between 40 and 50 lacs of Rupees.

4. The circumstances under which these debts were contracted are fully stated by the Advocate General in paras. 16 to 22 of his letter. It will be perceived that
Para. 18. at the commencement of the Nabob's minority the Government lent the Prince, as Naib-i-Mooktar 13½ lacs of Rupees, of which 4½ lacs was without interest for the purpose of paying off the Sircar debts, that the Naib-i-Mooktar reported to Government that he had done so, and that the Sirkar then, *i. e.* in 1826,
Para. 19. owed nothing,—that Government exacted, and the Prince gave in the most express terms, and repeated in several letters, a solemn promise that he
Para. 20. would incur no fresh debt without the knowledge of Government—that Government 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 Govern-
Para. 21. ment that he had given this warning accordingly—that subsequently the Naib-i-Mooktar assured the Government on several occasions that the Sirkar 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 expences, but sufficient to admit of his laying by, from 1833, a sum of one Lac of Rupees annually, to form a
Para. 22. Fund for the expences of the young Nabob's majority—lastly that from 1833 to 1842, the Naib-i-Mooktar every year reported to Government that he had laid by this one lac for this purpose; and in August 1842, when the Treasury was found to contain but 1 lac instead of 9 lacs, the Naib-i-Mooktar sent in a Memorandum shewing that the missing 8 lacs had been expended not for the Nabob's use, or in necessary expences, but chiefly in loans to his, the Naib-i-Mooktar's relations, *viz.*, 5 lacs and upwards to the Begum his Mother, Rupees 60,000 to Gholam Moortooza Khan and others.

5. The Nabob, it will be observed, long refused to acknowledge
Para: 10. or become responsible for *any* debt contracted during his infancy, as it was clear that none of it had ever been contracted for his benefit, or applied to
Para: 11. his use, subsequently however he informed the Government in 1853, and again in 1854, that he had admitted and undertaken to discharge the 5 lac 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 lac debt he began to liquidate it by instalments and had actually paid Rupees 29,944-11-6 on account of it before he died.

6. Under these circumstances, and on the considerations adverted to by the Advocate General in para: 12 of his report this Government have not felt disposed to resist the payment of this 5 lac debt and they have authorized him to exercise his discretion in the payment of the claims included in it (with interest) so far as he may be satisfied that money was actually lent by the respective creditors.

7. There will then still remain what is termed the Tunkhy Cutcherry debt, because represented by what are called Tunkhy Cutcherry Bonds, which the late Nabob has uniformly repudiated. The principal of these is nearly 14 lacs of Rupees. The interest at 6 per cent will be at least as much more, so that the whole will amount to between 30 and 40 lacs of Rupees. Yet if the claimants can succeed in proving to the satisfaction of the Court, (and evidence to that point will of course not be wanting) that this money whether raised for or applied
Para: 24. to, the use of the Minor Nabob or not, was borrowed "in his name" the Court according to the construction which they have placed on the words "in his behalf" in the preamble to the Act will give Judgment against Government for this larger sum.

8. It is true that the Prince never applied to the Nabob his Nephew
Para: 9. for payment of this Tunkhy Cutcherry debt, which he always said was his
Para: 8. own personal debt, that he has lately addressed Government to the same effect, and has made a similar statement in the evidence which he gave when
Para: 13. examined under a Commission issued by the Supreme Court a few days since. But it must be doubtful whether these admissions would outweigh the positive testimony which would in all probability be brought forward by the Tunkhy Cutcherry creditors that there money was borrowed of them as for the Minor Nabob.

9. The Prince might also possibly, as suggested by Mr. Smyth, con-
Para: 14. sent to the arrears of his stipend which he has never yet drawn, being applied towards the payment of the Tunkhy Cutcherry debt. These arrears however amount only to about 6 lacs of Rupees, and bear but a small proportion to the debt.

10. It will be for the Supreme Government to consider, whether it was their intention and that of the Legislative Council, that the State should undertake the payment of such of the debts

only contracted by the Regent during his ward's Minority, as were really and *boná fide* incurred for his use and applied to his benefit, or whether they meant to pay all debts contracted by the Naib-i-Mooktar ostensibly for and in the name of his Nephew although really raised by the Prince for his own purpose and from which his Nephew derived no advantage. If the former be the correct view, this Government would concur with the Advocate General in recommending that the point may be settled and the meaning of the words "fairly and justly" and "on his behalf" set at rest by a declaratory Act. The same opportunity should also be taken for removing doubts on two further points noticed in para: 26 of Mr. Smyth's letter.

11. I am desired respectfully to solicit that the subject of this letter and of its enclosure may receive the earliest attention of the Supreme Government. The sum at stake is very large. The Court have granted a short adjournment which will expire on the 13th Instant, when these Tunkhy Cutcherry Bond suits may again be proceeded with. If a declaratory Act is to be introduced into the Legislative Council it is hoped that it may be passed through it with all expedition under suspension of the standing orders. I have further to request that the proceedings taken by the Supreme Government in the matter, may be communicated to me by Electric Telegraph.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. A. P. W. Begbie.

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Political Department.

Proceedings of the Madras Government

Read the following letter from the Advocate General.

(Here enter 30th May 1859.)

Order thereon 1st June 1859 No. 340.

Resolved that a copy of the above letter be despatched by Express to the Supreme Government, and that it be recommended to them, that if the meaning which they and the Legislature intended to attach to the words "fairly and justly" and "on his behalf" in Act XXX 1858, was that supposed by the Advocate General - and not that put upon those words by the Judges H. M.s Supreme Court, a short declaratory Act to the effect suggested by Mr. J. S. Smyth in para: 25 of his letter should be passed as expeditiously as possible

possible, and that the two points noticed by the Advocate General in para: 24 should also be provided for in it.—

2.— The Government concur in the view expressed by Mr. Smyth in para: 13 of his report, and they accordingly authorize him to exercise his own discretion as to the payment of the five lac debt claims, on being satisfied that money was actually lent by the respective creditors.—

3.— The Government would not be disposed to take the initiative in the matter adverted to in para: 14 - but if such a proposal should emanate from His Highness Prince Azeem Jah himself, they would be prepared to give it due attention.—

J.P.

To the Advocate General. dis[illegible]/6. ms.
" Govt. Agent at Chepauk. with copy of para 13 and 14 of the Advocate Genl's report.— } Dis[illegible] 3/6.

10 4/ M Obnaxed

Jm Rawly

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

Replied to by the Secy of State for India in 28c Dec: No 22 of 159

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Pros: of Govt 10 June

Political 1859 Depart.

No 340

Pros: of Government

No 341

To The Secretary to the Govt of India -

5/1 June 1859.

Replied to from the Govt of India 20th June 159 No 540.

Directing a reference to be made to the Supreme Govt in accordance with the opinion expressed by the Advocate Genl, respecting the construction placed by the Judges of H: Mts Supreme Court on certain words in act XXX of 1858 - in view to a short declaration act to the effect suggested by Mr Smyth being passed - authorizing Mr Smyth to exercise his own discretion as to the payment of the five lac debt claims -

5@/

Disp: by Express 16.
1 Encls:

Political Department

No 341.

To,
The Secretary to the Government
of India
Foreign Department

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2. In the Act in question the East India Company agree to pay in full, all such debts

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"An Act to provide for the administration of the estate and for the payment of the debts of the late Nabob of the Carnatic."

as shall be proved to have been fairly and justly contracted by the Nabob, or on his behalf during his infancy by H. H. Prince Azeem Jah as Nabob Regent & the property of the Nabob being applied in the first instance for that purpose, but any deficiency thereon being made good by the said East India Company.

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3. The claims for debts contracted by the Prince during the Nabob's minority, as far as has yet been ascertained amount, as will be seen from Mr. Smyth's letter, principal and interest, in round numbers to between 40 and 50 lacs of Rupees.

4. The circumstances under which these debts were contracted are fully stated by the Advocate General in paras 16 to 22 of his letter. It will be perceived that at the commencement of the Nabob's minority the Government and the Prince, as Nail-i-Moottar 13½ lacs of Rupees, of which 4½

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most express terms, and repeated in several letters, a solemn promise that he would incur no fresh debt without the knowledge of Government — that Government ordered him

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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 Nail-i-Moottar, in reply, assured Government that he had given this warning accordingly — that subsequently the Nail-i-Moottar

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6 Under these circumstances, and on the considerations adverted to by the Advocate General in para 12

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of his report this Government have not felt disposed to resist the payment of this 5 lac debt and they have authorized him to exercise his discretion in the payment of the claims included in it (with interest) so far as he may be satisfied that money was actually lent by the respective creditors.

7- There will then still remain what is termed the Tuckey Cutcherry debt, because prosecuted by what are called Tuckey Cutcherry bonds, which the late Nabob has uniformly repudiated. The principal of these is nearly 14 lacs of Rupees. The interest at 6 p% will be at least as much more, so that the whole will amount to between 30 and 40 lacs of Rupees. Yet if the claimants can succeed in proving to the satisfaction of the Court - and evidence to that point will of course not be wanting - that this money whether raised for or applied to the use of the minor Nabob or not, was borrowed "in his name" the Court according to the construction which they have placed on the words "in his behalf" in the preamble to the Act will give judgment against Government for this large sum.

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para 14

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