M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No. 546 Press ~~Mis.~~

Dated 20. 9 ~~19~~ 1839

Not to be folded or roughly handled

Read the following Papers.

No. 6. Read the following letter from THOMAS SYDNEY SMYTH, Esq., Advocate General; to the Chief Secretary to Government, Fort Saint George, dated 19th September 1859.

I have the honor to request the instructions of the Honorable the Governor in Council under the following circumstances.

2. Among the numerous claims preferred against the Nabob's Estate is one by the Official Assignee as Assignee of the Estate of Alexander Maclean, Esq., late of the Madras Civil Service, and who, shortly previous to his retirement, filled the Offices of Member of the Board of Revenue and Judge of the Sudr Udalut. This claim is for nearly Rupees 1,80,000.

3. On the 26th January last, I caused an offer to be made to the Official Assignee, in this matter, of Rupees 1,73,423-11-1. This offer he has not yet accepted, and I have this morning formally withdrawn it, in order to obtain the instructions of Government.

4. The Official Assignee's claim in this matter is preferred in respect of a sum of $2\frac{1}{2}$ lakhs of Rupees said to have been raised for the Nabob on Mr. Maclean's security. For $1\frac{1}{2}$ lakhs of this amount the Official Assignee holds two genuine promissory notes of the late Nabob, for which the Nabob unquestionably received value chiefly from Mr. Arathoon, who however lent the money not on the Nabob's notes, but on Mr. Maclean's notes for a similar amount.

5. It was in respect of these two notes of the Nabob that I caused the above offer to be made. As regards the other one lack of Rupees, it is claimed by two persons, by the Official Assignee and by P. Veerapermall Pillay, the son of Mr. Maclean's old Dubash, who has possession of two Nabob's notes for this amount, *viz.*, 2 notes of Rupees 50,000 each, but who, I am quite satisfied in my own mind, never gave any value for either; the money for one having been advanced by Girder Doss a wealthy Soucar, on the joint promissory note of Messrs. Maclean and Hicks, the money for the other by Appasawmy, Veerapermall's father, not on the Nabob's note, but on a note of Mr. Maclean's, for which Appasawmy, (now dead) proved in the Insolvent Court against Maclean's Estate and upon which Veerapermall has received 4 or 5 dividends from Maclean's Estate. When Mr. Maclean got into difficulties, and was unable to take up his note to Appasawmy (after several renewals) he gave to Appasawmy, as collateral security, one certainly, perhaps both, of the Nabob's notes for Rupees 50,000 each, and also a box of the Nabob's jewels worth at least $2\frac{1}{2}$ lakhs of Rupees. On these two Nabob's notes, Veerapermall has received no less than Rupees 40,000 from the Nabob's Istifa Cutcherry, without the knowledge of the Official Assignee, and he has taken advantage of the want of a written receipt, and of Mr. Maclean's absence, to deny having ever had the Box of Jewels, and has preferred his claim under Act 30 of 1858, for the balance of the one Lakh represented by these two Nabob's notes. Thus for one single sum of Rupees 50,000, he holds Mr. Maclean's promissory note for Rupees 50,000, two Nabob's notes for Rupees 50,000 each, and above $2\frac{1}{2}$ lakhs worth of Jewels, and has already received above Rupees 53,000.

6. His claim has been tried. I resisted it to the utmost of my ability, though very unwell throughout the whole trial. The trial began on Wednesday the 7th and ended on Wednesday the 14th Instant, and the Judge has taken time to decide. If he should decide against Government, I intend to appeal the case to Her Majesty in Council, on the ground, 1stly, that he improperly rejected important evidence, *viz.*, a letter of the Nabob to Government, dated 21st April 1853, declaring that the money was due to Veerapermall *only on account of Mr. Maclean*, and, 2ndly, on the ground of its being against evidence. Veerapermall had not a scrap of any accounts to shew, and only accounted for their absence by saying the white Ants had eaten them all.

7. Mr. Maclean was tried before the Supreme Court in July 1848, under the 37th Geo: 3rd Cap. 142, Sect. 28, for being concerned in lending, and in raising and procuring money for the Nabob, a Native Prince, and for being security for such money. The late Mr. Osborne, myself and Mr. Burgass were Mr. Maclean's counsel, and he was acquitted upon a point of Law, which really had nothing whatever to do with the merits of the question. During the trial we raised another point which both the Chief Justice and Puisne Judge said they considered a very important one, and they reserved it for consideration in arrest of judgement in case Mr. Maclean should be convicted. As he was acquitted the point was never decided.

8. The point last referred to was this. The preamble of the 28th Section recites that the lending of money by British subjects to Native Princes had been "the source of much usury and extortion."

9. Now it is matter of history, that this usury and extortion arose from the practice of granting to these lenders Assignments upon the *revenues* and *territories* of Native Princes. See Mill: Vol. 4, P. III, respecting the notorious Paul Benfield's Assignments upon the Tanjore revenues in 1776 for £2,34,000 sterling. Page 131 shows Sir Thomas Rumbold to have been little better; and Lord Hobart's minute, as Governor of Madras, on the 24th October 1795, goes fully into "the usurious loans which it has long been the practice, principally among the "European gentlemen of the Presidency to make to the Durbar, *for mortgages upon the differ-* "*ent provinces of the Carnatic.*"

10. He draws a vivid picture* of the extortion, oppression, and misery, thus arising, and says that he sees but one remedy, *viz.*, for the Madras Government to "assume the collection of the revenue and the whole of the internal Government."

* *See Mill: Vol. 6, Page 49 to 56.*

11. This was done by the treaty of 31st July 1801, and the Nabob then ceased to possess any territory, but meantime Parliament, in 1797, passed the 37 Geo. 3, Cap. 142.

12. The argument therefore was, that, as the Act was clearly aimed at preventing the oppression arising from *loans secured on mortgage or Assignment* of *territory, or territorial revenues*, it could not apply to loans to a Native Prince, who had *no* territory or territorial revenues; and therefore not to the Nabob.

13. The inclination of my own opinion is that the Act does not apply to such a case; but the point has never been decided.

14. The way that point applies to the present case is this. If Mr. Maclean was really concerned in such loans to the Nabob (as in fact it is certain and notorious he was) then the 37 Geo. 3, Cap. 142, Sec. 28, says that "*all securities for money* of what kind soever held directly or "indirectly for the use and benefit of any British subject shall be and are hereby declared to be "*null and void* to all intents and purposes"—and if so Government might legally refuse to pay upon them.

15. It is on *such* securities, (as I believe in point of fact) that Mr. Maclean's Assignee has preferred his claim.

16. Mr. Maclean, however was *acquitted* by the verdict of a jury of being concerned in any loans to the Nabob; *i. e.*, that was the *legal effect* of their verdict, though really given on a purely collateral point of law.

17. Mr. Maclean, moreover subsequently swore in the Insolvent Court, that he never lent his name to the Nabob, but only to his old friend Gholam Moortooza Khan Bahadoor, and that it was only after the latter was unable to provide money to take up Mr. Maclean's notes, that, (in order to enable Mr. Maclean to appease his creditors by the offer of security) he got the Promissory notes and jewels from the Nabob.

18. This being the state of things when the Official Assignee preferred his claim, there being no doubt that the Nabob had really received valuable consideration to the amount of these notes from Mr. Arathoon, Girder Doss and others, not British subjects, and the Official Assignee's claim being really on behalf of *these parties*, and not on Mr. Mclean's behalf, I considered that I was carrying out the intentions of Government to act liberally towards all the Nabob's *bonâ fide* creditors, in not disputing this claim upon a doubtful point of law, and I therefore offered the Official Assignee Rupees 1,73,423-11-1, and should have also offered the amount of the other 2 notes, but for Veerapermall Pillay's claim.

19. During the trial however of Veerapermall's claim, Gholam Moortoza Khan deposed (as I am well assured is the fact) that Mr. Maclean well knew that his Promissory notes were given merely and solely to enable Gholam Moortaza Khan, to raise money for the Nabob, and that he had often received the Nabob's jewels as security.

Proceedings of the Madras Government, Political Department, from 17th to 23rd September 1859.

20. There is therefore *now* this evidence to set against the verdict acquitting Mr. Maclean; and it is *possible*, that, *if* the Court can be satisfied that the acquittal went on a collateral point of law (and, as I think, a misdirection by Sir W. Burton on that point) that it *may* feel itself at liberty to prefer Gholam Moortaza Khan's evidence to a verdict given under such circumstances. *If* it should do so the point would *then* arise, are the Promissory notes "null and void" under the 37 Geo: 3rd C. 142 S. 28, or not?

21. What I wish therefore to know, is, whether Government wish me, under these circumstances, to raise all these objections, and to take the opinion of the Court upon them, or whether it will sanction my renewing the offer I formerly made.

22. I would suggest that I be allowed to renew the offer. The claimants are not Mr. Maclean, but Natives and Armenians, there is no doubt the Nabob got their money—there is nothing to shew they knew they were lending it to the Nabob, except in Mr. Arathoon's case, and the Advocate General, Mr. Norton, in reporting to Government* the circumstances of Mr. Maclean's trial, recorded that he was satisfied that Mr. Arathoon was acting *bonâ fide*, and with perfect openness, without the least idea that the Act in question had any reference to the loans he then made.

* *3rd August* 1848.

No. 7. MINUTE BY THE HONORABLE THE PRESIDENT, dated 20th September 1859.

I concur with the Advocate General that the offer should be renewed in reference to the 1,73,423 Rupees. The other case stands on quite a different footing.

(Signed) C. E. TREVELYAN.

No. 8. ORDER THEREON, 20th September 1859, No. 546.

Under the circumstances stated by the Advocate General, the Government sanction his renewing the offer for Rupees 1,73,423-11-1, made to the Official Assignee, and withdrawn on the considerations explained in the above letter.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. A. P. W. Begbie.

Advocate General. Disp.d 20th Mch

I concur with the Advocate General that the Offer should be renewed in reference to the 173,423 Rupees. The other case stands on quite a different footing.

W Muir

20 Sept 59

The former offer of Rs. 1,43,423 should be renewed without delay.

J. M.

Political Depart^t 4

Proceedings of the Madras Government.

Read the following letter
from the Advocate General.
(Here enclosed 19 September 1857)

Read also Minute by the President ——— 20 ——— do ———

Fort St. George 20th September 1857. No 5116.

Submitted in circumstances stated by the Advocate General with the recommendation that Rs. 1,73,493:11:1 - made to the Official Assignee - and with reference to the consideration explained in the above letter

JP

To the Advocate General. Dispd 20th Sept.

Pol.l Letter to Engd 26th January No 3 of 1860

Pro: of Govt 22 Septr
Political 1859. Departt.

No 546

Proceedings of Govt

Dated 20 Septr 1859.