

MADRAS RECORD OFFICE.

Government of Madras.

Political **DEPARTMENT.**

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*Proceedings of the Madras Government, Political Department,
for the month of December 1859.*

No. 42. Read the following letter from THOMAS SYDNEY SMYTH, Esq., Advocate General; to the Chief Secretary to Government, Fort Saint George, dated 25th November 1859.

I have the honor to submit the following report of particulars connected with the claims of Mr. Proudfoot, and of Pondicherry Veerapermall Pillay, against the Nabob's Estate, which it seems to me it may be desirable that the Honorable the Governor in Council should be made acquainted with. Both cases were tried by Sir A. Bittleston sitting alone, the unfortunate and continued indisposition of the Chief Justice depriving Government and the public of the advantage of his greater experience. No more of these cases however are to be tried until the 18th January 1860, by which time I trust the Chief Justice may be able to take his seat on the bench—though at present the accounts of his health are not favorable.

2. Mr. Proudfoot's claim, tried on the 20th September 1859, was for a balance of Rupees 12,150, and interest. This was divided into two parts. Part 1st was for a balance of Rupees 6,004-15-1 for 23 horses sold, carriages and horses hired and money paid (the total was Rupees 10,524-6-6, but credit was given for Rupees 4,519-7) all at the request of one Inayet Oollah, said to be the Nabob's Agent, but admitted not to be in his pay or employment, and never to have had any written authority from him. Part 2nd was upon two promissory Notes for Rupees 6,145-0-11, in respect of which, notwithstanding some unsatisfactory matters connected therewith, I caused an offer of this sum, with interest, to be made to Mr. Proudfoot.

3. Part 1st was however surrounded with circumstances so very suspicious in appearance, that I felt it absolutely my duty to have the claim tried before paying it. To set them all out here would swell this communication to an undue length; I therefore annex most of them in an Appendix, No. 1, and mention here only some facts which, in connection with the Court's judgment thereon, and the line of conduct which seems to be thereby rendered necessary, with respect to claims yet undisposed of, it seems to me Government may think they ought to be informed of.

4. The items of part 1st consisted of 23 horses purchased by Inayet Oollah (said to be for the Nabob) on 13 different occasions—of 106 separate hirings of carriages and horses—and of money paid on six occasions, amounting to Rupees 921, making in all 125 items.

5. Sections XIV and XXII of Act 30 of 1858, say that the Supreme Court is to estimate the amount due to each creditor "in respect of goods supplied, and other matters, at the amount "which shall be proved to be the fair and actual value thereof," &c., &c.,—and therefore, in all former cases, it has been considered necessary to prove each item separately, and its value. Indeed I know not in what way the Court could satisfactorily ascertain the fair and actual value of goods supplied, unless the items and value of these goods were specified and proved.

6. In this case however, neither the delivery nor the value of any one of these 125 items was proved; not a single book, account, or voucher was produced. Mr. Proudfoot simply swore to the sum total. Inayet Oollah, who had no regular accounts of his own, swore to it also, and so did a man named Shajee-ool-Moolk, whose only accounts—not produced but said to be written by a servant—were, as he said himself, "made up from whatever Inayet Oollah told me."

7. Nevertheless the Judge, Sir A. Bittleston, the moment I had concluded my address, without permitting Mr. Proudfoot's counsel to reply, said he was fully satisfied the whole amount was due, and gave judgment for it in full, as claimed but without costs—including in it even a sum of Rupees 34 for a cow and a calf, which Shajee-ool-Moolk on cross examination had admitted to be *his own private purchase*, and not the Nabob's at all! It was not till the 23rd September, when the exact amount of the judgment with interest calculated was to be finally entered, that the Judge struck out this item.

8. The way in which it happened that none of the items were proved in this case, was as follows: To prove them, Mr. Proudfoot must have produced his books, and filed them in Court, under Act II of 1859, Section IV; and, unless he did so, Section VII prohibits his using them at all at the trial. The fact however was that, though Mr. Proudfoot *now* sought to

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charge all these items to the Nabob, yet in his books they were debited solely to Inayet Oollah; Mr. Proudfoot had never made any demand upon, or sent in any account to the Nabob, in his life; it was Inayet Oollah only whom he had pressed for payment, until Inayet became insolvent; and even then, he turned not to the Nabob but to Shajee-ool-Moolk, Inayet Oollah's master or patron, got security from him, and pressed him for payment, until he too became insolvent, and not till Act XXX of 1858 was passed, was any thing heard of these items being chargeable to the Nabob.

9. Under these circumstances Mr. Proudfoot chose not to file his books as required by the Act; and the Law Officers therefore had no opportunity of examining them. At the trial however, Mr. Proudfoot produced them, and tried to use them, first as evidence in proof of the items of his claim, and afterwards as memoranda, to refresh his recollection.

10. I felt it my duty to call the Court's attention to Sections IV and VII of Act II of 1859, and to object to Mr. Proudfoot's using his books, as by doing so when he had not filed them he would be violating these sections, and had already defeated the objects of Section VI. A great clamour and outcry was raised on the other side on my taking this objection, and though finally the court allowed the objection, it did so with much apparent reluctance, and as if it considered the taking the objection to be a very oppressive act. I submit that it was plainly my duty to take it, as otherwise I should have consented to making Act II of 1859 a dead letter.

11. The apparent and I think obvious intention of that Act was to put parties to a disadvantage if they declined to file the books or documents from which (and in most cases from which alone) they could prove the items of their account; but in the present case, the Court converted the exclusion of Mr. Proudfoot's books into a positive and great advantage for him, and made it a disadvantage only to Government. I was prevented from cross examining him or his two witnesses on any item in his books as they were not in evidence—but he was relieved altogether from proof of the items, and allowed to swear to a lump sum as justly due to him, without being able to give any particulars. This, I submit, cannot be the true construction of Section XIV and XXII of Act 30 of 1858.

12. The objection I took to Mr. Proudfoot's claim on the ground that his own accounts and books, according to what he admitted about them, shewed he had given credit to Inayet Oollah and not to the Nabob, were got rid of by his swearing that, in his own mind, he always looked to the Nabob for payment—with which evidence the Court was satisfied.

13. Appendix No. 2 shews what strong evidence there was in support of another objection I took, viz., that Inayet Oollah had no authority whatever from the Nabob to contract any of these debts on his behalf. He did indeed allege authority for the purchase of the horses, and for the hiring of the carriages,—but he did not even allege any authority from the Nabob to request Mr. Proudfoot to pay any money from him; nevertheless, the six sums said to have paid at his request, totalling Rupees 921, were all allowed.

14. As to the authority which he did allege, his own evidence utterly disproves it. He did not even pretend to have any general or written authority from the Nabob; he admitted he was not in his pay or employment, and the most he ventured to say was that he had spoken to the Nabob seven or eight times! Yet he was held by the Court to have been the Nabob's authorised agent on 13 several occasions in buying horses, and on 106 occasions of hiring horses and carriages!!—besides the six occasions of asking Mr. Proudfoot to pay money, said to be for the Nabob!—for the Court allowed all these items.

15. No claim, in my humble judgment, could be more completely unproved than was this Part 1st of Mr. Proudfoot's claim; and in the next case, Veerapermall Pillay's, it will be seen that even when a false claim for Rupees 50,000 on a Nabob's Promissory Note is proved by the Law Officers, after a trial of seven days, to be based on fraud and perjury, and is rejected by the Court as false and fraudulent, the claimant who has thus dragged Government into Court, is allowed to escape without paying any costs! Thus practically totally nullifying Section II of Act XVI of 1859—indeed it seems doubtful whether this Act is considered as really operative, at least until the opinion of Parliament is pronounced respecting it and the petition sent home praying that it may be rescinded.

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16. Veerapermall Pillay's claim was tried from the 7th to the 15th of September last, judgment was given on the 21st October; a motion for a re-hearing was made and refused on the 4th November.

17. In the particulars of his claim, filed in Court, Veerapermall stated that he claimed on two Promissory Notes made in his own name signed by the Nabob himself, for Rupees 50,000 each; that on the 5th February 1847, he, Veerapermall, paid Rupees 50,000 into the hands of Gholam Moortooza Khan, who then and there delivered to him the Nabob's Promissory Note, of that date, for that amount:—that on the next day, he, Veerapermall, paid Gholam Moortooza Khan Rupees 50,000 more, receiving from him another Nabob's Promissory Note, dated 6th February.

18. These two Notes were produced at the trial and marked respectively B and C. I shall henceforward mention them as B and C for greater brevity.

19. There never was any question as to the genuineness of these Notes, or as to the Nabob's having received fair consideration for them; the question was whether it was Veerapermall, or the Official Assignee as Assignee of the Estate of Mr. A. Maclean, who was entitled to recover on them.

20. My letter of the 19th September contains an explanation of many particulars respecting Mr. A. Maclean's connection with these transactions which I shall therefore not now repeat.

21. I was satisfied that in fact neither of these Notes had ever been given by Ghoolam Moortooza Khan to Veerapermall; that Ghoolam Moortooza Khan had given both these notes to Mr. Maclean, the name of Veerapermall being used in these (as that of his father Appasawmy, Mr. Maclean's dubash, had been on former occasions, till he became a partner of Messrs, Amalric and Co.) merely to screen Mr. Maclean; that Mr. Maclean had kept these Notes, and raised no money by giving Ghoolam Moortooza Khan his own (Maclean's) Notes, and that on these Ghoolam Moortooza Khan had raised the money—from Appasawmy on Maclean's Note given upon receipt of the Nabob's Note B,—and from Girder Doss on Maclean's Note given for C; and that Maclean, though compelled by the Insolvent Court to give up other Nabob's Notes, succeeded at the time in keeping his creditors and the Court in ignorance of the existence of Notes B and C, and in handing them over to Appasawmy or Veerapermall, either as a collateral security for his debt of Rupees 50,000 to Appasawmy, or else in hopes that he could trust them to recover the amount from the Nabob, and pay it over to himself.

22. The interests involved in the defence therefore were really only those of the creditors of Mr. Maclean, and they accordingly undertook to the Government Solicitor to bear the costs of the defence, if I would put Veerapermall to the strictest proof of his claim.

23. At the trial Veerapermall gave evidence considerably at variance with that contained in his particulars filed in Court.

24. He swore that on the 1st February Ghoolam Moortooza Khan came to his house, unexpectedly and asked him to lend 1 Lakh to the Nabob; that he agreed and paid Rupees 50,000 down (minus discount Rupees 1,750) receiving not a Nabob's Note, but Ghoolam Moortooza Khan's own receipt, and promised to lend the balance on the 6th February: that on the 6th he went to Ghoolam Moortooza Khan's house, and thence with him to the Nabob, in whose presence Veerapermall gave Rupees 50,000 more to Ghoolam Moortooza Khan, who gave it to the Nabob, who then signed the two Notes B and C, gave them to Ghoolam Moortooza Khan, and he to Veerapermall.

25. Gholam Moortooza Khan proved what I have already mentioned in substance; viz., that he never had any transaction whatever with Veerapermall; never gave him any Nabob's Note; never saw him at the Nabob's house; that after giving Mr. Maclean the Nabob's Note B, he Ghoolam Moortooza Khan got Rupees 50,000 from Veerapermall's father Appasawmy, but Veerapermall was not present, and it was lent on Maclean's Note, on Maclean's credit, and not to the Nabob, or on the Nabob's Note; and that when he gave Maclean the Nabob's Note C, the money in respect of that was supplied wholly by Girder Doss. Girder Doss and the books of the Bank confirmed this.

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26. This evidence the Judge, Sir A. Bittleston, said he entirely believed. There was much more evidence, of an important character too, but at present I confine myself to what I have above mentioned.

27. The Judge therefore wholly disallowed Veerapermall's claim on Note C, but allowed it, (in respect of Appasawmy as he then said) upon Note B; but as Veerapermall had received from the Nabob's Istafa Cutcherry a payment of Rupees 20,000 on account of C, he ordered that to be deducted from the amount to be paid in respect of B; thus striking off Rupees 70,000, with corresponding interest, from the amount claimed by Veerapermall. He gave no costs to either side: and he afterwards, on the motion for a re-hearing, said that he considered this *not giving* costs to Veerapermall (for this claim half of which was admitted to be false and perjured) "no inconsiderable penalty." Now according to the principles that govern Courts of Equity on the question of costs (and it has been ruled that all proceedings under Act XXX of 1858, are to be considered as on the Equity side of the court) it seems clear that, in cases of gross misconduct, even a successful suitor (which Veerapermall certainly was *not*, as regards his claim for Rupees 50,000 and Interest on Note C) may be and has been ordered to pay the costs of the other side. Whether Sir A. Bittleston did or did not consider Veerapermall's proceedings to amount to gross misconduct, or whether he considered him a successful suitor, and—being himself from the Common Law Bar—rejected the Equity rule of costs in favor of the Common Law general rule that "costs follow the event," I am unable to say, for he gave no reasons whatever for his decision on this point.

28. I now turn to the fate of Veerapermall's claim on Note B. Sir A. Bittleston's judgment as taken down by Mr. Mayne and myself (and the accuracy of our Note* was not questioned by Sir A. Bittleston) said distinctly that he believed Gholam Moortooza Khan's evidence† as to who furnished the money paid to the Nabob in respect of his Note B. Gholam Moortooza Khan's statement was that Veerapermall had nothing to do with the transaction, that Appasawmy furnished the funds, and did so solely upon Mr. Maclean's Note.

* *A copy of mine is annexed in the Appendix No. 3.*

† *"I have come without doubt and clearly to the conclusion that Gholam Moortooza Khan's evidence is confirmed as to the mode in which the funds were supplied for the Notes B and C" and again "on the whole I have come to the conclusion that these funds were furnished as Gholam Moortooza Khan has said—that Appasawmy found funds for one."*

29. It was therefore with no small surprise that I heard Sir A. Bittleston towards the close of his judgment say, "I think therefore that Veerapermall is entitled on Note B, in respect of Appasawmy" and award him Rupees 35,211-5-11.

30. Section XX of Act XXX of 1858 enacts that every creditor shall furnish to the Government solicitor "full particulars of his claim." This is obviously meant as a guide to the Law Officers of Government to let them know what case they have to meet, and it is plain that if a creditor is to be allowed at the hearing to set up a claim different from that stated in his "full particulars" (still more if judgment is to be given in his favor in respect of a claim *not* advanced by him even at the hearing, and quite *opposed* to his "particulars") these particulars can only mislead Government and their Law Officers.

31. In his "particulars" Veerapermall claimed upon B, on the ground he personally had lent Rupees 50,000 of his own upon it. At the trial he and his Uncle Rungasawmy adhered to this story, and swore that it was *not* Appasawmy who advanced the money, and that the money advanced was *not* Appasawmy's money. Yet the judge says he believes Appasawmy did furnish the funds, and therefore gives judgment in Veerapermall's favor "in respect of Appasawmy"—a claim which Veerapermall had never made, of which the Government and their Law Officers had no notice whatever, and which, if I had had notice of it, I would have met by evidence which I did not put in as against Veerapermall, but which, had I known that the Court was about to deal with Appasawmy's claim, I certainly should have put in, and thereby have shown that at least Rupees 17,000 must be deducted from the amount of the judgment. This Rupees

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17,000 is the amount of the dividends received by Appasawmy and his son from Maclean's Estate in respect of Maclean's Promissory Note for Rupees 50,000, on which Appasawmy had lent Rupees 50,000 to Ghoolam Moortooza Khan in February 1847.

32. On these and other grounds I filed a Petition for a re-hearing, * *Appendix No. 4.* (of the grounds stated in which I annex a copy*) and moved for one—supported by a very able argument from Mr. Mayne.

33. The moment Mr. Mayne had concluded, Sir A. Bittleston, without hearing a word from Council on the other side, gave judgment against us, refusing the prayer of the petition, and with costs—though admitting (as I understood) that he had used words which would fairly bear the sense in which we had understood him, though he meant them in a different sense—and though admitting that he "had not a word to say for Veerapermall."

34. The obvious course would now seem to be to appeal from these two judgments to Her Majesty in Council, but unfortunately there are circumstances in each case which prevent my taking that course. I say "unfortunately," for it certainly does seem to me, that, whether as regards the facts or the law, both these judgments eminently require re-consideration.

35. In Mr. Proudfoot's case, the evidence was unfortunately not taken down, owing to a misconception on the part of the Registrar, who supposed that both sides had agreed that this should not be done—without this there are no materials for an appeal.

36. In Veerapermall's, case I already mentioned in my letter of the 19th September last that I should advise an appeal in the event of an unfavorable judgment. I have now to explain why I cannot do so. The defence, as I have already explained, has been conducted at the cost of Mr. Maclean's creditors, as the interests involved in the case were altogether theirs. Government really had no pecuniary interest in the case, Rupees 2,50,000 and Interest were clearly due on the Nabob's four Notes, and the only question was whether the whole was due to Mr. Maclean's Assignee, or whether Veerapermall could establish a claim to some part. The creditors have now decided that they do not wish to be at the expense of an appeal, and had rather give up for the present* the Rupees 35,000 awarded to Veerapermall than be kept any longer out of the balance due to them—the payment whereof must be delayed till the appeal be decided.

* *They mean to try the question in the Insolvent Court.*

37. Government therefore could gain nothing by an appeal. If it succeeded, the gain would all go to Mr. Maclean's creditors; if it failed the expense would all fall upon the Government. For these reasons I cannot advise an appeal in either of these cases.

38. If the Chief Justice had been present, and had concurred in these judgments of Sir A. Bittleston, his authority added to that of Sir A. Bittleston would certainly have made me hesitate, and entertain serious doubts, as to the soundness of my own opinion—as it is, and as an appeal is not practicable, it would have been a great satisfaction to me but for the absence in England of the Advocate General of Calcutta, Mr. Ritchie, to have had his opinion on the several points as to the points hereinbefore mentioned relative to the construction of Acts 30 of 1858, 2 of 1859, and 16 of 1859. If he should return soon, as I believe he will, I would beg of Government the favor of their transmitting this report to Calcutta, and requesting the Supreme Government to obtain his opinion on the points already mentioned.

39. I am glad however to be able to mention that out of all the claims that have been tried before the Supreme Court, ten in number, these two are the only cases in which the result has been unsatisfactory.

40. Of the eight others, one was wholly disallowed; and in the seven others I think the result was in accordance with the substantial justice of each case: that is to say, supposing that the 19 month's accounts of the Nabob's expenditure made out by Salar-ool-Moolk and Gholam

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Mahomed, and lodged in the Nabob's Treasury after his death, are really genuine accounts. The Chief Justice and the Puisne Judge both decided that they were so. I should myself have come to a different conclusion, but chiefly, I admit, on grounds of which I came to the knowledge during my researches at the Chepauk Palace, and which were not strictly admissible as evidence.

41. As regards the rest of the claims preferred, I submit the following summary, which I trust will be considered satisfactory by the Honorable the Governor in Council.

	Amount claimed.	Amount paid.
In 10 cases tried the result was.....Rupees	7,60,395-14-7	4,70,267-11-11
In 190 cases settled without going to trial „	21,30,536-12-1½	16,07,085- 6- 2
Total 200 cases settled	28,90,932-10-8½	20,77,353- 2- 1

I must here explain that the amount *here* entered as “*claimed*” is *always less* than the amount claimed at the time of going to trial; for instance, in many of the claims the interest was calculated only to 24th November 1858, or 1st January 1859, and interest at 6 per cent. down to the day of giving judgment, was *always* added to these claims.

Of the remaining 213 cases, there are totally inadmissible.....	71
Groundless claims, not likely to come to trial.....	23
Tunkhee Cutcherry and Regency claims whose success depends on the chance of Act XVI of 1859 being set aside.....	21
Cases where offers have been made, not yet either accepted or rejected.....	14
Cases where further reports or further evidence is required, or where the Judge has ordered the claimants to furnish the Government Solicitor with further particulars, which they have not yet been able to do.....	53
Cases which have not yet been entered in Cause List, and where particulars have therefore not yet been furnished to the Government Solicitor.....	28

Add 10 Cases tried, and 190 settled, as above.....

Total.. 413

42. I forward for the inspection of the Honorable the Governor in Council a detailed list of these 200 cases, shewing the amount claimed and paid in each case respectively, but as I require it for purposes of reference, I request you will return it to me when no longer required.

43. In conclusion I beg to mention, that, in respect of Veerapermall's claim upon Note C, which was rejected by the Court, and the money for which Ghoolam Moortooza Khan proved was furnished by Girder Doss, there is a clear case against Veerapermall Pillay and his Uncle Rungasawmy for Conspiracy to defraud Government, and for Perjury, and (subject of course to the orders of Government,) I shall feel it my duty to have Informations sworn against them, and to prosecute them at the ensuing Sessions.

APPENDIX No. I.

Suspicious circumstances concerning Part 1 of Mr. Proudfoot's claim, preferred against the Nabob's Estate, under Act 30 of 1858.

1. Inayet Oollah is an Insolvent, a person of very indifferent character, a man (as he admits himself) never in the pay or employment of the Nabob, but a mere hanger, on of one Shajeeool-Moolk, who commanded the Nabob's Body Guard, and was one of his Nadeem-i-Khase, but an Insolvent and a person of no sort of credit, and whom no one would trust.

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2. On the 12th April 1859, Mr. Ritchie, Mr. Proudfoot's Solicitor, gave the Law Officers notice that the statement in Part 2 of the claim respecting the Rupees 6,145-0-11, was *altogether erroneous*: that the first sum of Rupees 3,000 was in fact advanced on a Promissory Note of Salar-ool-Moolk: that the money paid to Inayet Oollah on different dates, was, not Rupees 3,145-0-11, but only Rupees 145-0-11, and that the other Rupees 3,000 had been paid to take up a Note of the claimant's, discounted with P. Appasawmy Pillay and Co., the proceeds whereof were now said to have been applied by Inayet Oollah to paying monies due from the Nabob to one Janakee Ram a Soucar, and to Mr. Langford a Livery stable keeper.

3. This complete change of statement seemed rather suspicious, especially as Mr. Proudfoot had never filed his account Books in Court, as required by Act II of 1859, Section VII; and as no receipts from either Janakee Ram or Mr. Langford were filed in Court; and as *both* of them were *dead*; and as Mr. Langford's accounts, in the possession of Messrs. Arbuthnot and Co., shewed *no trace of any payment of the kind*.

4. It seemed also a suspicious circumstance, that Part 2 disclosed that Mr. Proudfoot rested his claim on an Order of the Nabob for the monthly payment of Rupees 1,000 to Shajeeool-Moolk, which Order the claim stated to be for the sum of Rupees 12,150, and which was said to have been delivered by Shajeeool-Moolk to Mr. Proudfoot as a security for his debt.

5. The Law Officers were aware that this statement was materially incorrect; that the amount of the Order was for Rupees 12,746, not for Rupees 12,150; that it had been issued by the Nabob as a security *not* for Proudfoot, but for a debt due by the Nabob to one *Hajee Cassim* a highly respectable Shawl merchant; that it was never intended for Mr. Proudfoot; and that he never gave any consideration for it.

6. The Law Officers were further aware that the sum of Rupees 12,150 was the exact amount, *not* of this Nabob's Order, but of five Promissory Notes given by *Shajeeool-Moolk* to Mr. Proudfoot; and it looked very suspicious, (especially after the *admitted* misdescription of the items of Part 2, in Mr. Proudfoot's claim, totalling Rupees 6,145-0-11, which with the total claimed for goods supplied, *viz.*, Rupees 6,004-15-1, made up *exactly* the Rupees 12,150, the amount of these 5 Promissory Notes) that there should be such a charge as “*one pie*,” or *half a farthing*, for goods delivered!! but *still more suspicious* that “*eleven Pie*” or 5½ farthings should be charged as lent *in cash* to Inayet Oollah!!

It was impossible not to suspect that the two totals of.....	Rupees 6,004-15- 1
and.....	„ 6,145- 0-11

12,150- 0- 0

were merely *concocted* in order to square with the amount of Shajeeool-Moolk's five Promissory Notes held by Mr. Proudfoot.

7. Accordingly, a Judge's Order was obtained requiring the claimant to furnish further particulars of the dates and items of this very suspicious sum of Rupees 145-0-11.

8. In reply thereto, and on the 30th April, Mr. Proudfoot's Solicitor replied, “I hereby give you notice that I am *unable* on behalf of these claimants *to furnish you with further particulars* stating the dates and items composing the sum of Rupees 145, &c., &c., I am *therefore* directed by my Clients to *abandon this sum which I hereby do*.”

9. This, I need hardly observe, looked more suspicious still. And here I may mention, that at the trial, Mr. Proudfoot's counsel never ventured to ask Inayet Oollah a single question as to his receipt of this fabulous Rupees 145-0-11, but Mr. Proudfoot himself—though on the 30th April he directed his Solicitor to admit that he could give no particulars about it, and repeated this statement afterwards to the Government Solicitor—undertook at the trial to swear that when he gave instructions for entering that sum in his claim, he did so partly from memoranda, partly from recollection, and (as I *think*, but will not be positive) partly from entries in his books; but he swore he was positive he had lent the money to Inayet Oollah in various sums, and that

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he perfectly recollected the transactions. If this were true, it seems extraordinary he should not have directed his Solicitor to state this in his letter of the 30th April:—but the lending of eleven, Pie in cash, is I confess altogether beyond my powers of belief.

10. The Law Officers however were extremely anxious, if possible, to settle this claim without litigation, and they accordingly pressed him and his Solicitor for some evidence to enable them to do so. They were therefore informed, that, before the Nabob's death, Shajee-ool-Moolk had delivered to him an account which was in fact a copy of Mr. Proudfoot's claim, and which the Nabob had virtually acknowledged to be correct.

11. We inquired for this, and learned that the Dewan had found such an account in the Nabob's box, and had delivered it to Dr. Balfour.* We had it translated and examined it, and found that the items in it which related to dealings with Mr. Proudfoot amounted to, not Rupees 10,524-6-8, but only to Rupees 5,765-12-0, thus leaving Rs. 4,758-10-6 of Mr. Proudfoot's demand wholly incorroborated.

* N. B.—On this being shown to Shajee-ool-Moolk at the trial, he admitted it was in the hand writing of Nundoo Lall, the Mootsuddy, who usually wrote his accounts, but said that, to the best of his recollection, he had put his seal to the account he gave to the Nabob; and that, as the one now shewn him had no seal, he had doubts if it was the same. On this it was suggested by the other side that the Law Officers had changed the account!

12. With Dr. Balfour's assistance we went over this account twice, with Inayet Oollah, in Mr. Proudfoot's presence, and upon their pointing out two items, amounting to Rupees 269-9-0 for which Mr. Proudfoot had credited the Nabob, but which they said were really paid on Shajee-ool-Moolk's private account, we allowed this amount to Mr. Proudfoot.

13. Neither Mr. Proudfoot however, nor Inayet Oollah, nor Shajee-ool-Moolk, (whom Mr. Boyson, with Dr. Balfour's assistance, twice examined at his, Shajee's residence) could or would, or at least did, give us any further evidence in support of any part of Mr. Proudfoot's claim. They could recollect no particulars. Mr. Proudfoot laid particular stress on a sum of Rupees 1,760, said to be the price of 8 horses sold to the Nabob, but when we asked him who could prove the delivery of them to the Nabob, offering to produce for him any persons he desired who were in the Nabob's service at the time, he admitted his inability to name any who knew anything about it, or to give us any further evidence whatever.

14. Thereupon, I instructed the Government Solicitor to write to Mr. Proudfoot's Solicitor, shewing what we had done, what evidence was wanting and offering to give our best attention to any further evidence Mr. Proudfoot could produce; but stating that, unless he could do so, I could only offer him Rupees 6,000, upon the two Pro. Notes named in Part 2, with Interest, and Rupees 1,615-13-7, on the 1st Part, being the amount in Shajee's account, less the amount admitted by Mr. Proudfoot to have been received by him on the Nabob's account. By a clerical error, I in fact, offered Rupees 100 too much; it ought to have been only Rupees 1,515-13-7.

15. Shortly after this, the Government Solicitor was served with notice of a claim against the Nabob's Estate, by the Official Assignee of Shajee-ool-Moolk (whom I have already stated to be an Insolvent Debtor) claiming Rupees 6,163-12-0 for money due to him, by the Nabob, on Proudfoot's account; and about the same time, we learned that Proudfoot's own books, which he had so cautiously abstained from filing in Court, shewed that all the horse hiring, horses sold, &c., &c., were entered in his books in the name of Inayet Oollah only, never mentioning the Nabob; and that Inayet Oollah, when he became Insolvent, had entered Proudfoot in his schedule as his Creditor in respect of these transactions.

16. I consider therefore, under a well known decision of Lord Tenterden,* that Mr. Proudfoot having chosen to enter Inayet Oollah as his debtor (as every Madras tradesman used to insist on having some of the Nabob's people to deal with, whom they could sue—not the Nabob who could never be

* Thompson and Davenport 9 B and Cresswell 78.

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sued) though knowing, as he said that the articles supplied were for the Nabob, had in fact given credit to Inayet Oollah;† and could not now turn round, and say he had given credit to the Nabob.

† N. B.—This objection was, got rid of at the trial by swearing away the fact. Mr. Proudfoot swore he had not given credit to Inayet Oollah, but always looked to the Nabob for payment. He admitted he had never sent in any bill or account to the Nabob, and had never entered his name in his books, that he had charged every thing to Inayet Oollah in his books, but, he insisted, it was to the Nabob he gave credit, and Sir A. Bittleston was satisfied by this evidence.

17. Thus there was not only the objection in fact that we had no evidence of goods, &c., supplied; beyond the value of (the balance I mean) Rupees 1,615-13-7, but there was also the objection in law irrespective of the amount, against Mr. Proudfoot's claiming any thing from the Nabob's Estate, in respect of that for which he had chosen to give credit to Inayet Oollah; and which, if the Law Officers should now pay to the wrong party, Government might have to pay over again, either to Inayet Oollah or to Shajee-ool-Moolk. We were moreover, assured by all the Cutcherry servants that Inayet Oollah never had any authority whatever from the Nabob, to enter into any such transactions; and that in fact, the transactions were altogether Inayet Oollah's own.

18. I therefore withdrew the offer already made, and offered instead Rupees 7,332-5-3 being the amount of only the two Promissory Notes in Part 2, with Interest at 6 per cent. This was not accepted and the case came on for trial.

APPENDIX No. 2.

Admissions by Inayet Oollah and Shajee-ool-Moolk.

As regards Inayet Oollah's having any authority from the Nabob, he and Shajee-ool-moolk made the following admissions on their cross examination by Mr. Mayne. Inayet Oollah: "I had no employ-

" ment under the Nabob. I got no pay from him. I have spoken to him 7 or 8 times, I spoke about these dealings; also when the mother of Auzeem-oon-Nissa was ill. Two or three times I spoke about that lady; 5 or 6 times about these dealings. He did not tell me to buy a

* N. B.—The account charges for 23 horses bought on 13 different occasions by Inayet Oollah, value Rupees 6,245, besides a Palankeen carriage for Rupees 250, and an old Palankeen for Rupees 111, &c., &c.

† The claim charges 106 hirings of carriages and horses.

" do so. That was very rarely done; generally the carriages were for my own use."‡ Again, "Shajee-ool-Moolk had the sole management of the Nabob's horses, except the Circus. All the Nabob's orders about horses were given to Shajee-ool-Moolk; also to buy for the Circus too." Shajee-ool-Moolk, on his cross examination admitted as follows: "Two or three times

Shajee-ool-Moolk's admission.

"I saw Inayet Oollah with the Nabob; one day at the Circus; another time, I am told, when Proudfoot's horses were brought to Nabob.§ I

§ N. B.—Mr. Proudfoot admits no horse was bought on this occasion.

"had the sole management of the Nabob's horses: all purchases were made through me, and all sales." * * * "I did not see the Nabob give any order to Inayet Oollah, except once he told him to buy a horse for Gizah Khan, 5 or 6 months before the Nabob's death; I was present then. It was Wednesday, and he told the

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"Nabob the sale was to be that day, and so he told him to go and buy it." Respecting the accounts he had given to the Nabob, Shajee-ool-Moolk admitted that he "did not keep accounts from day to day," that he "sometimes took down" "on small bits of paper, but that was of little use." Also that his "accounts were made up from what ever Inayet told me." "He brought me a translation of an English account, and I told my servant to enter it in my account."

|| N. B.—Shajee cannot read or understand English, and there was no proof as to correctness of this translation; and Shajee's account, even where the articles correspond with Proudfoot's account, generally charges about $\frac{1}{4}$ or $\frac{1}{3}$ rd more than the price charged by Proudfoot: thus showing the untrustworthy general character of the man and of his account.

Notwithstanding evidence, the Judge gave Mr. Proudfoot a judgment for every thing he claimed!!—for these 106 charges for hiring of carriages and horses—for money paid at Inayet Oollah's request and for these 23 horses, priced at Rupees 6,245, though neither the delivery nor the value of any one single item was proved.

I urged that the Act 30 of 1858 required that each item and its value should be proved, whereas here not one was proved; that though the Nabob himself might admit any charge or any account he pleased, and so bind himself, yet the Act showed that he could not bind the Government, who were to pay only "the fair and actual value of goods supplied," whereas here the only proof offered was not of any particular articles supplied or of any particular value of any one article, but merely a general admission that an account said to have been furnished, but not produced was correct, this admission too being by Inayet Oollah, who had no authority to make any such admission, and by Shajee-ool-Moolk, who kept no accounts himself, but who told his servant to write down, what Inayet Oollah told him; and who also had no authority to make any such admission, and, as was said, by the DEAD Nabob, who was notoriously ignorant of the details of his domestic expenditure!

APPENDIX No. 3.

Judgment of Sir A. Bittleston, in the claim of Pondicherry Veerapermall Pillay and the Estate of the late Nabob.

October 21st, 1859.

The claimant claims in respect of two Promissory Notes of the late Nabob, for Rupees 50,000 each, dated the 5th and 6th of February 1847. His case rests almost entirely upon his own evidence, and that of his uncle, P. Rungasawmy Pillay.

They say that Veerapermall paid the Rupees 50,000 on the 1st of February 1847, partly by a cheque for Rupees 37,000 on the Oriental Bank, which bears that date, and which was no doubt duly paid.

The claimant also relies much on the fact that both the Notes are in his own name, both in his own possession, and that no one but himself could give them up to the Government.

Also he relies on the fact that the Istafa Cutcherry of the late Nabob dealt with him as the holder of these Notes, and the person entitled to receive payment of them; and on the fact that he has actually received from the Istafa Cutcherry Rupees 20,000 on each of these Notes.

If the question here, as in other cases, was merely whether any money had been lent to the Nabob, these acts of the Istafa Cutcherry would be very cogent evidence; but in the present case, those circumstances have not the same weight, for the only question here is who is the party entitled to be paid: the receipt of the money by the Nabob has never been questioned.

The circumstance too of the Notes being in the name of Veerapermall Pillay, which would otherwise possess so much weight, loses all its force, or very much of it, when it is found that other Notes of the Nabob are in existence, also in Veerapermall's name, but upon which Veerapermall has no claim whatever. I mean the Promissory Notes marked Nos. 5 and 6.

The evidence of Veerapermall moreover is not confirmed, as to the transaction which he sets up, by such evidence as has been produced in other cases; no books are forthcoming, no accounts. He says they are destroyed. However that may be, the fact is that no books or papers made at the time are forthcoming to confirm his statements as to his having paid one lac of Rupees.

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He offered in evidence a certain paper, which was rejected, but he looked at the paper as his Memorandum, while giving his evidence. The paper professed to give an account as to where, from whom, he got the funds for the second Loan of Rupees 50,000, so much from Streenavassa, so much from others, but that paper not having been made at the time it stands only on the same footing as Veerapermall's own oral evidence, and can add no weight to it.

Veerapermall is obliged to call as a witness Gholam Moortooza Khan, but he merely asks him was the money advanced to the Nabob on these Notes, and never asks who advanced it. Gholam Moortooza Khan however says that there were only four Promissory Notes signed by the Nabob, in the name of Veerapermall. Of these one, No. 5, was for one lac of Rupees, and Mr. Arathoon gave the money for that, not indeed on that Note, but on a Note of Mr. Maclean's for that amount. In February 1847 Mr. Arathoon gave Rupees 50,000 more, on another Note of Mr. Maclean's. This was the money given to the Nabob for Notes Nos. 5 and 6.

Gholam Moortooza Khan is confirmed by Mr. Arathoon, the dates do not tally precisely but Mr. Arathoon says that on the 8th he gave Rupees 50,000, and Gholam Moortooza Khan says it was on the 6th. This discrepancy is easily accounted for by a lapse of memory, after so many years, and in no way affects the substance of the transaction.

As to the two Notes on which Veerapermall claims, marked B and C, Gholam Moortooza Khan says that the money for C was furnished by Girder Doss: that Mr. Maclean shewed him Girder Doss's cheque, as the cheque that was to produce the money for C the cheque was produced and marked No. 9; it is dated 1st February, and was paid on the 4th, and the proceeds may very well have been paid for a Note dated the 6th.

Girder Doss confirms Gholam Moortooza Khan; he says that about this time he paid Rupees 50,000 partly by a cheque, for I think Rupees 39,000, and partly in Kincob; and Gholam Moortooza Khan had said that the payment to the Nabob was made exactly in this way.

Therefore, if this be true, there remains but one more Note of the Nabob in Veerapermall's name; and for this Gholam Moortooza Khan says that Appasawmy Pillay, Veerapermall's father, furnished the money, upon a Promissory Note of Mr. Maclean's. On this point there is no direct evidence, but looking at Mr. Maclean's Schedule, Appasawmy is entered as his creditor, on two Promissory Notes, one of which is for Rupees 50,000. True it is that this is entered as of a date viz., November 1847, which does not tally with the date of the loan, February; but still it is a Note for Rupees 50,000, and the only one of that account, and on the Debtor's side we find Gholam Moortooza Khan, who says it was to himself Mr. Maclean gave the Note which Appasawmy cashed, entered as Mr. Maclean's debtor for that very Note; and it may have been renewed.

There is no reason to suppose that there were any more than those four Promissory Notes in Veerapermall's name. Veerapermall knows of no more; he knows nothing of Nos. 5 and 6.... he refused to endorse them; when he was examined before the Insolvent Court, in Mr. Maclean's case, he was asked if he had ever had any such transactions, and he answered with the greatest reluctance; and taking it most favorably for him, his answer may be taken to mean that he declined to answer. But why not answer? If he had advanced it out of his own money, why decline to say so?

Again, when the Istafa Cutcherry was established in January 1848, he does send in a claim and in 7 days is directed to send in particulars, but he gives no answer. Why? If the case is as he now represents it. This is not satisfactorily accounted for.

In 1853, 5 years afterwards, the Istafa Cutcherry apply to him; again he does not answer; nevertheless they go on to inform him "we have compared your Notes, and are willing to pay you" "on the same terms that Mr. Ritchie has accepted," and they actually paid him some money to agree to those terms. It is however in evidence that the Istafa Cutcherry looked only to the holder, and never inquired (and indeed 'tis not easy to see what means they had of doing so with any effect) as to his right or title.

In document, No. 8, the account sent in by Gholam Moortooza Khan to the Istafa Cutcherry, there is written by Tirazish Khan against the first of these four Notes, "Veerapermall on account of Mr. Ritchie," four Notes against two others, and "Veerapermall on account of Mr. Ritchie" against the fourth. Tirazish Khan says he meant the same thing by all these entries

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this may be so, but 'tis perhaps doubtful. Mr. Ritchie had first preferred his claim on two of these Notes as Mr. Maclean's Assignee.

It was much urged on the Court that Government had not examined Mr. Maclean as a witness; Mr. Norton said that this fact would relieve the Court from all doubt as to how it ought to decide; that he Mr. Maclean must know the truth, and if the truth were as the Government contended, they would have been sure to call Mr. Maclean. I considered this a good deal, Mr. Maclean's Schedule cannot be taken as confirming Gholam Moortooza Khan's evidence taken on behalf of this claimant that Mr. Maclean has not claimed on these two Notes B and C. The Court however must bear in mind Mr. Maclean's peculiar position, and how and with what difficulty it was that the Official Assignee got from Mr. Maclean the two Notes 5 and 6. Mr. Maclean was obviously desirous, and indeed deeply interested to deny all connection with the Nabob. So, though it is true that Mr. Maclean has never claimed on the Notes B and C, yet, looking at all the circumstances, and at Mr. Lecot's offer on behalf of Mr. Maclean to hand over to Mr. Arathoon Nabob's Notes for 2 lakhs of Rupees if he would agree to certain terms, I have come without doubt, and clearly, to the conclusion, that Gholam Moortooza Khan's evidence is confirmed as to the mode in which the funds were supplied for the Notes B and C.

If Mr. Maclean were called as a witness for Government, he could only prove their case by saying his Schedule is false; but the claimant might have called him, and would have had a hold on him by means of his statements in his Schedule.

On the whole, I have come to the conclusion, that these funds were furnished as Gholam Moortooza Khan has said; that Appasawmy found funds for one; this is in some degree confirmed by the claimant's uncle Rungasawmy, who says Appasawmy was present when the Rupees 50,000 was paid. It was asked, if so, how should Veerapermall have possession of these Notes; but that is plain, as Appasawmy was Maclean's dubash, and Appasawmy is dead, and his son naturally would have his papers.

I think therefore that Veerapermall is entitled on Note B in respect of Appasawmy.

As to the jewels, they have not been traced to Veerapermall in such a way as that I could act on it; they may have been otherwise disposed of.

Veerapermall has received Rupees 40,000 from the Istafa Cutcherry; that must be deducted. As to the dividends he has received on the Promissory Note of Mr. Maclean to his father for Rupees 50,000, I don't think they ought to be deducted. I think I shall leave that point to be settled in the Insolvent Court; the dividends at all events were not paid out of the Nabob's money, and I don't think the Note was clearly identified with that on which Appasawmy paid the Rupees 50,000 to Gholam Moortooza Khan.

Interest at 6 per cent. deducting interest at a like rate on the payments made by the Istafa Cutcherry.

No costs.

APPENDIX NO. 4.

Conclusion, and Grounds of Petition for Re-hearing.

Your Petitioner is advised that such Order is erroneous; and that the Court ought to have disallowed with costs the claim preferred and filed by the claimant in this Honorable Court in respect of the said Note B upon the following grounds amongst others:—

1stly.—That the claim allowed was one which the claimant had not only never made, in his claim filed of Record in this Court, nor even by his Counsel or witnesses at the hearing of his claim, and of which consequently your Petitioner never had any notice, but was one which the claimant had expressly denied, and had sworn to have no foundation or existence.

2ndly.—That if your Petitioner had had notice of a claim by claimant in respect of his father P. Appasawmy Pillay for money lent by P. Appasawmy Pillay to the Nabob upon Note B, your Petitioner, in addition to the evidence given by him at the hearing, (and which this Honorable Court in its judgment said it believed) shewing that P. Appasawmy Pillay in February 1847, had given Gholam Moortooza Khan Rupees 50,000 (minus discount) not upon B, but upon Mr. A. Maclean's note for Rupees 50,000, would have put in evidence P. Appasawmy Pillay's examination before the Insolvent Court, under

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Mr. A. Maclean's Insolvency, which (your Petitioner is advised) would have proved that the Promissory Note of Mr. A. Maclean for Rupees 50,000, in respect of which P. Appasawmy Pillay is entered in Mr. A. Maclean's Schedule as a creditor, under a judgment obtained upon such Note and another Note for 14,000 Rupees, (and in respect of which said judgment, claimant has received dividends amounting to Rupees 22,220 Annas 9 and Pice 4) was the renewal of the Promissory Note on which P. Appasawmy Pillay had paid the said 50,000 Rupees to Gholam Moortooza Khan in February 1847; and that, therefore, even if the representative of P. Appasawmy Pillay was entitled to recover at all against the Nabob's Estate, a proportionate part of the said dividends (amounting to the sum of 17,000 Rupees) ought to have been deducted from the amount adjudged in respect of the said Note B.

3rdly.—That if claimant's claim had been made by him as the representative of P. Appasawmy Pillay deceased, for money lent by P. Appasawmy Pillay to the Nabob, no judgment could have been given in favor of such claim till the Nabob's jewels, which were clearly traced to P. Appasawmy Pillay's possession, (with full knowledge that they were the Nabob's) had been accounted for.

4thly.—That if the claimant at the hearing had claimed as the representative of P. Appasawmy Pillay, such claim would have been barred, as not filed within the time required by the provisions of Act II of 1859; and that the judgment given in claimant's favor as the representative of P. Appasawmy Pillay, though no such claim was filed, nor could have been filed inasmuch as the same was and is barred by the Statute,—was, as if, in a suit by A for a sum due to himself, which he failed to prove, the Court should give judgment in his favor as Executor of B, upon a debt to B, though moreover such debt were barred by the Statute of Limitation.

5thly.—That though your Petitioner from motives of liberality and from unwillingness to avail himself of any advantage arising from claimant's not having preferred any claim as the representative of P. Appasawmy Pillay and being now barred from doing so, and also from a wish to purchase peace and to avoid litigation, might well offer to the claimant the sum of Rupees 12,735 Annas 12 and Pice 2 which your Petitioner then (not having full knowledge of P. Appasawmy Pillay's having received the Nabob's jewels) erroneously (as your Petitioner is now advised) believed to be due to P. Appasawmy, yet that such offer, rejected by the claimant, forms no legal ground for a judgment in his favor in respect of a claim not preferred by him at all, and moreover barred by Statute.

6thly.—That the Nabob's letter, dated the 20th of April 1853 tendered in evidence by your Petitioner, but refused by this Honorable Court, was, as your Petitioner is advised, improperly rejected.

7thly.—That though costs are always in the Court's discretion, yet that such discretion is exercised according to certain well known usage and rules; and that according thereto, when a Plaintiff compels a Defendant to come into Court to meet an unfounded claim, and the Defendant succeeds in disproving, to the satisfaction of the Court, the whole of the Plaintiff's claim as stated by himself, and no demerit is shown to exist on the Defendant's part, the Court always in such cases award a Defendant his costs, and that to refuse them, without such demerit, where the Court has entirely disbelieved the oath and the witnesses of the Plaintiff, and disallowed his whole claim as filed of Record, is to hold out a premium to vexatious and unfounded litigation, and to perjury.

No. 43. ORDER THEREON, 10th December 1859, No. 717.

The Government quite appreciate the exertions of the Advocate General in the two cases referred to in the above letter, but they think it unnecessary to refer to the Advocate General of Bengal upon the points in question. They will leave it to their Law Officers to proceed against Veeraperoomal Pillay and Rungasawmy for conspiracy and perjury as proposed by them.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. S. T. Augustin.

Madras, April 9th, 1861.

From

J. R. Boyce

Government Solicitor, Madras.

To

J. P. P. P. P.

Chief Secretary to Government, Madras.

Sir,

1. With reference to the Proceedings of Government under date the 19th January 1860 No. 68 I have the honor to forward herewith the Claim of Pondicherry papers particularised at foot in the accompanying Bill and relating to the claim noted in the margin preferred against the Estate of the late Nabob of the Carnatic under Act xxx of 1858.

2. I do not consider it necessary that these papers should be forwarded to the Secretary of State for India: but recommend that they be placed amongst the Records of Government as I am satisfied that the Claimant does not intend to prosecute the appeal to the Privy Council which he obtained liberty to prefer or to take any further steps in the matter.

3. The order to list the Claimants in default of appearance to the Judge in Chambers for the redelivering to me on behalf of Government of all papers &c produced from the Records of Government and put in and read as evidence on the hearing of the Claim

Memo: of Enclosures-

- Copy Order of Court dated 21st October 1859 for payment to Claimant of £35,211. 5. 1.
- Copy Petition by the Secretary of State for India in Council for leave to appeal to Her Majesty in Council against such order.
- Copy Order of Court dated 20th April 1860 granting leave to appeal accordingly.
- Copy Petition by the Claimant for leave to appeal to Her Majesty in Council against the Order of 21st October 1859.
- Copy Order of Court dated 20th April 1860 granting leave to appeal accordingly.

Claim. This Summons was returned by the Claimant's Solicitor as well as by myself, and Mr. Justice Billington ordered the delivery of the papers to me on any under- taking to re-deposit them in the Registry of the Supreme Court upon being required by the Claimant or his Solicitor to do so. As much as artificial copies of these papers have necessarily have been forwarded with the Record to the Privy Council if the appeal was to be prosecuted, it is clear that the Claimant would have objected to their retention to me if he had had any intention of proceeding further.

It seems to me that it will be times enough to trouble the Secretary of State with these papers when there appears any probability of the Claimant's proceeding further and this, as I have before stated I feel quite assured will never be the case.

I have the honor to be,
Sir,

Your most Obedient Servant

Albion
Gov. Solr.

No 1799 of 60

In the Supreme Court of Judicature at Madras

Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith

Her Court held this Twentieth day of April one thousand Eight hundred and Sixty, in the Vacation after the second Term one thousand Eight hundred and Sixty.

Present:

The Honorable Sir Adam Phillimore, Knight
one of Her Majesty's Justices

Under Act XXX of 1858
In the matter of the Estate of the late Nubob of the Carnatic.
The Claim of Pondicherry Veerapermall Pillay

Upon the Motion of Edward Leake General on behalf of the Secretary of State in Council for India - and upon hearing read the humble Petition of the said Secretary of State in Council for India filed on the Tenth day of April instant and this day preferred unto this Honorable Court: It is ordered that the said Petition of the said Secretary of State in Council for India be received and that the said Secretary of State in Council for India do have leave to appeal to Her most Gracious

Majesty in Council against the Judgment Order and determination of this Honorable Court dated the Twenty first day of October one thousand Eight hundred and Fifty nine upon the said Secretary of State in Council for India giving Security for the payment of all such Costs as may be incurred by the said appeal and also for the performance of such Judgment or order as Her said Majesty in Council may think fit to give or make thereupon and that it be referred to the Master of this Honorable Court to take such Security and that the said Master be at liberty to take and accept the Security of the said Secretary of State in Council for India if he shall think fit.

By the Court
Signed J. N. Boyson
Court Secy

By the Court
Signed J. N. Boyson
Court Secy

Three Copies
J. N. Boyson
Court Secy

Claim of Pondicherry Veerapermall Pillay
Under Act XXX of 1858
In the matter of the Estate of the late Nubob of the Carnatic.
The Claim of Pondicherry Veerapermall Pillay

1861
J. N. Boyson
Court Secy
Dated April 9
1861
J. N. Boyson
Court Secy

~~Order of Council dated 20th~~

Order of Council dated 20th
April 1862 granting the
Secretary of State for India
in Council leave to appoint
to the Agency in Council
against the Order of 21st
October 1857

Johnson
for vice

James G. Bick
attorney at law
under seal of office

In the matter
of
The Estate of the late
a Father of the Canada

The claim of
the various estate

(Copy)

Order of Court dated 20th
April 1860 granting the
decree of State for the
in Council, leave to appeal
to the High Court in Council
against the Order of 21st
October 1859

Copy
for the

original

In the Supreme Court of Judicature at Madras.

Witness by the Queen of God of the United Kingdom of Great Britain
and Ireland Queen Victoria of the Faith.

This Court held this Twentieth day of April one
thousand Eight hundred and sixty in the Vacation
after the Second Term one thousand Eight hundred
and sixty.

Present

The Honorable Sir Adam Bittleson Knight

One of Her Majesty's Justices

Under Act XXX of 1852
In the matter of the Estate of the late
Nabob of the Carnatic
The Claim of Pondicherry Therapermall
Pillay

Upon the motion of Mr. Branson on behalf of Pondicherry
Therapermall Pillay the Claimant above named and
after hearing read the humble Petition of the said Pondicherry
Therapermall Pillay sworn and filed on the Seventeenth day
of April instant and this day preferred unto this Honorable

Court: It is Ordered that the Petition of the said Claimant Pondicherry
Therapermall Pillay be received and that the said Claimant Pondicherry
Therapermall Pillay be allowed to appeal to Her Most Gracious Majesty in
the Court of Her Majesty's High Court of Chancery against the judgment, Order
and decree of the said Court made the Twenty first day of October
last and that the said Claimant Pillay give security for the
payment of all such costs as may be incurred by the said appeal and
also for the performance of the judgment or order as heretofore made
and that it be referred

Supreme Court
Massachusetts
under Act 300 of 52

Chittenden
The & title of the text
a habit of the Canadian

The claim of the
Massachusetts River

(Copy)
Order of Court dated 20
April 1850 granting the
claimant, leave to apply
to Her Majesty in Council
against the order of 21
October 1850.

Johnston
London

In the Supreme Court of Judicature at Madras.
In Equity
Under Act XXX of 1858.

In the matter of the Estate of the late Nabob of
the Carnatic.

The Claim of Pondicherry Veerapermall Pillay.
To The Honorable Sir Henry Davison, Knight, Chief Justice
To The Honorable Sir Adam Dittleson Knight, and
Justice of the said
Supreme Court.

The humble Petition of Pondicherry Veerapermall
Pillay the Claimant above named of Madras
Merchant residing at No. 107 in the Trivellore
High Road at Tondiarpet.

Sheweth,

That your Petitioner under the Provisions of the said Act No. XXX of 1858
duly filed his declarations and Particulars against the Estate of the late Nabob
of the Carnatic claiming the balance of principal and interest due to your
Petitioner by the Estate of the said late Nabob upon two Promissory Notes
marked respectively B and C for 50000 Rupees each drawn by the said
Nabob in favor of your Petitioner bearing date respectively the 5th and 6th day
of February 1847 to which said Declarations and Particulars your Petitioner
craves leave to refer as part and parcel of this his Petition.

That your Petitioner's said claim was heard before this Honorable
Court on the 7th, 8th, 9th, 13th, 14th, and 15th days of September 1859 and that
Judgment was pronounced by this Honorable Court in the said matter on
the 21st day of October 1859 disallowing your Petitioner's said claim on the
said Promissory Note marked C and this Honorable Court was pleased
by its order of the said 21st day of October 1859 to direct payment to be
made of the sum of Rupees 35000 Annas 5 and Pice 11 as the amount
of Principal and Interest ascertained by this Honorable Court to be
justly and fairly due to your Petitioner from the Estate of the late
Nabob of the Carnatic at the time of his death and up to the date of such
order inclusive to which said order your Petitioner craves leave to refer
as part and parcel of this his Petition.

That your Petitioner is aggrieved by so much of the said Judgment
and

and order of this Honorable Court as disallows your Petitioner's claim upon the said Promissory Note marked C. and is advised and humbly submits that such your Petitioner's claim upon the said Promissory Note marked C ought to be allowed for the following reasons vizt.

1. That the evidence establishes as your Petitioner submits that the said Promissory Note marked C was drawn by His Highness the Nabob in favor of your Petitioner and that such Note was delivered by your Petitioner out of his own possession to the Receiver.
2. That the evidence also establishes as your Petitioner submits that your Petitioner was treated and recognized by His Highness the Nabob and his Selepe Cutcherry as the bona fide holder of such Note.
3. That the evidence also establishes as your Petitioner submits that considerable part payments were made by duly authorized officers of His said Highness to your Petitioner upon such Promissory Note.
4. That the evidence also establishes as your Petitioner submits that the duly authorized officers of His said Highness paid your Petitioner a considerable bonus to induce your Petitioner to consent to the terms proposed on behalf of His said Highness for the liquidation of the said two Notes Bond C.
5. That your Petitioner was obliged to call and did call Ghoolam Moorthooza Khan to prove (amongst other things) His Highness's signature to the said two Notes B and C and to trace the considerations of the said Notes back to His said Highness and this Honorable Court was pleased on his representation to permit your Petitioner to treat the said Ghoolam Moorthooza Khan as a hostile witness and under all the circumstances your Petitioner humbly submits that upon the whole of the evidence the said Ghoolam Moorthooza Khan's statement as to the source whence such consideration was derived cannot prevail.
6. That your Petitioner submits that such statement of the said Ghoolam Moorthooza Khan ought to have no operation against your Petitioner in the absence of Mr. McLean who was not called by the Government.
7. That your Petitioner submits that the Schedule of the said Mr. McLean shews that no claim was made by him the said Mr. McLean on the said Promissory Note which is the subject of this appeal.
8. That your Petitioner humbly submits that his legal right as holder of such Note must prevail.
- ~~9. That your Petitioner humbly submits that the whole of the evidence~~
establishes your Petitioner's right to recover upon the said Note under the provisions of the said Nabob's Act.
10. And your Petitioner submits that this Honorable Court ought to have made an Order for payment to your Petitioner of the Principal and Interest due in respect of such Promissory Note marked C.

For all which reasons as well as for others your Petitioner prays leave to appeal to Her Most --
gracious

Gracious Majesty in Her Most Honorable Privy-
Council assembled against the said Judgment and
Order of this Honorable Court in this matter bearing
date the 21st day of October 1859 so far as the same
disallows your Petitioner's said Claim upon the said
Provisory Note marked C upon such terms as your
Honorable Court shall be pleased to direct.
And your Petitioner shall ever pray &c.

I Pondicherry Veeraperumall Pillay of Madras Esquire residing at
Tondiarpettah on the main Road leading to Travetoor and the Petitioner
named in the foregoing Petition upon my Oath say that the Contents of the
said Petition are true in substance and matter of fact.

Sworn to at Madras by the Petitioner Pondicherry
Veeraperumall Pillay the Contents hereof having
been previously explained to him by the Court -
Interpreter this day of April 1860.

True copy /
M. J. S. /
Gov. Secy.

Supreme Court
of Maryland
Under act ~~no~~ of 1795.

In the Matter of the
Estate of the late Holders
of the Comstock.

Re
The Claim of Bondholders
on the Pennsylvania Bill.

(Copy)

Given by the Plaintiff
for leave to appeal to
the Registry in Council
against the order of 21st October
1857.

Richard Howard
Attorney at Law

In the Supreme Court of Judicature at Madras
under Act 30 of 1858

In the Matter of the Estate of the late Stabob of the
Carnatic

In the Claim of Pondicherry Veerapermall Pillay

To the Honorable Sir Henry Davison Knight Chief Justice

and

To the Honorable Sir Adam Pitt Rivers Knight one of Her Majesty's Justices
of this Honorable Court

The humble Petition of the Secretary of State in
Council for India

Sheweth

That on or about the 18th day of September 1858 the above mentioned Pondicherry
Veerapermall Pillay filed his Declaration under the provisions of Section XIV of
Act XXX of 1858.

That on or about the 17th day of December 1858 the said Pondicherry Veerapermall
Pillay, filed the Particulars of his Claim under the provisions of Section XX of Act XXX
of 1858 and thereby sought to recover the sum of 6000 Rupees being the

balance of Principal remaining due on 2 Promissory notes each for Rupees 5000
purporting to be drawn by the late Stabob of the Carnatic in favor of the Claimant
and bearing date respectively the 5th and 6th days of February 1847 together with
interest upon the amounts of the said 2 Notes as from time to time reduced
by payments on account of the principal thereof from the respective dates upon
which the said notes became due at the rate of 6 per Centum per Annum.

That much further proceedings were had in the said Claim that the
same came on to be heard before Mr Justice Pitt Rivers Justice of this
Honorable Court on the 6th and other subsequent days of September 1859
whereupon and upon debate of the Matter and divers witnesses having been
examined and certain evidence put in on both sides an order dated the 21st
day of October 1859 was passed by your Honorable Court whereby your
Honorable Court did order that Clement Dale Esqre the Receiver of the Carnatic
property should within 10 days after service of that order upon him pay
to the said Claimant Pondicherry Veerapermall Pillay or to Mr Alexander
Macdonald Esqre the sum of Rupees 3521. Annas 5 and
penn 11 being the amount of principal and interest therein adjudged by your
Honorable Court to be justly and fairly due from the Estate of the late Stabob
of the Carnatic at the time of his death and up to the date of the order inclusive
to the said Claimant Pondicherry Veerapermall Pillay but your Honorable
Court refused to make any order as to Costs whereby each party became
liable to pay his own Costs.

That thereupon and on the 31st day of October 1859 your Petitioner filed a
Petition giving Notice thereof to the said Claimant praying that the
matter of the said Claim might be heard before the full Court which said
Petition

Petition came on to be heard upon the 11th day of November 1859 before the said Mr Justice Bittleson when the said Claimant appeared by his Counsel to oppose the same whereupon and upon hearing Counsel for your Petitioner and without hearing Counsel for the said Claimant the said Mr Justice Bittleson ordered your Petitioner's said Petition to be dismissed with Costs -

That the said amount of Rupees 35211 Annas 5 and pice 11 in the said Order of the said 21 October 1859 mentioned was made up of the principal and interest remaining due upon a certain Promissory Note for Rupees 50,000 made by the late Stabob of the Carnatic and dated the 5th day of February 1847 and which said Promissory Note was at the hearing of the said Claimant marked by the Registrar of your Honorable Court with the letter B after deducting from such amount the sum of Rupees 20,000 received by the Claimant from the Istafu Cutcherry upon the said Note B together with interest thereupon from the date of the receipt thereof and after deducting also a further sum of Rupees 2000 of with interest taken from the date of the receipt thereof) received by the said Claimant upon a certain other Promissory Note for Rupees 50,000 also made by the said late Stabob of the Carnatic and dated the 6th day of February 1847 which at the said hearing was marked by the said Registrar with the letter C and which said last mentioned Promissory Note was also included in the said Claim of the said Claimant whose Claim however in respect thereof was wholly disbelieved and disallowed by the said Mr Justice Bittleson but without Costs.

That your Petitioner is advised and humbly conceives that both the said Orders were erroneous and he considers himself aggrieved thereby for the following amongst other reasons -

1 Because the said first mentioned Order in allowing the Claimant to recover upon the Note marked B was contrary to the weight of evidence in as much as the Claimant's Case as stated in his particulars of Demand and in his own evidence given in support thereof was that he had himself personally paid to Goolam Moorsooza Khan for the use of the said late Stabob the sum of Rupees 30,000 which was the consideration of the said Note B and had himself a few days afterwards received the said Note B from and in presence of the said Stabob at his the said Stabob's House by the hand of Goolam Moorsooza Khan whereas it was established by the evidence that the Claimant had not paid any money to Goolam Moorsooza Khan and that the Claimant had not received the said Note B either from the said Stabob or from the said Goolam Moorsooza Khan but that the said Note B was given by Goolam Moorsooza Khan to Mr Alexander

Moore and was advanced to the said Stabob by Mr Alexander Moore and was procured by means of a Promissory Note drawn by Mr Alexander Moore in favor of Pandicherry Appasawmy Pillay the father of the said Claimant -

2 Because if the said first mentioned Order proceeded upon the ground that the money paid by Mr Alexander Moore for the use of the Stabob through the said Goolam Moorsooza Khan

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was really the money of Pondicherry Appasaamy Pillay and that the Claimant Pondicherry Veerapermall Pillay was as his heir entitled to be repaid the same then the said order is erroneous in point of law in awarding money to the Claimant upon a representative title which he never set up in his particulars of demand and which he distinctly denied in his own evidence.

3 Because if the said Claim had been preferred by Pondicherry Veerapermall Pillay as the representative of Pondicherry Appasaamy Pillay your Petitioner could have put in evidence Pondicherry Appasaamy Pillay's examination before the Insolvent Court under Mr Alexander Maclean's Insolvency which your Petitioner is admitted would have proved that the Promissory Note of Mr Alexander Maclean for Rupees 50,000 in respect of which Pondicherry Appasaamy Pillay is entered in Mr Alexander Maclean's Schedule as a Creditor under a Judgment obtained upon such Note and another Note for 4000 Rupees (and in respect of which said Judgment Claimant's said father in his life time and Claimant since his said father's decease have received dividends amounting to Rupees 22,220 Annas 9 and pie 4) was a renewal of the Promissory Note on which the said Pondicherry Appasaamy Pillay had paid the said 50000 Rupees to the said Ghoolam Murtooza Khan in February 1847 and that therefore even

if the Claimant as representative of Pondicherry Appasaamy Pillay was entitled to recover at all against the Stabbs Estate, a proportionate part of the said dividends amounting to the sum of Rupees 17000 ought to have been deducted from the amount expended by the said Mr Justice Bristle to the said Claimant in respect of the said Note.

4 Because if the said Claim had been preferred by the Claimant as representative of Pondicherry Appasaamy Pillay no Judgment could under the provisions of Act xxx of 1832 have been given in favor of such Claim until the Stabbs Goods which were clearly traced to and into the possession of Pondicherry Appasaamy Pillay with full knowledge that they were the Stabbs had been accounted for.

5 Because if any such Claim had been made at the hearing by Pondicherry Veerapermall Pillay as representative of Pondicherry Appasaamy Pillay it ~~must have been barred as not filed within the time~~ ~~of Act II of 1834~~ ~~of Act II of 1834~~

6 Because no admission of the Claimant's right to represent Pondicherry Appasaamy Pillay can be drawn from the fact that your Petitioner before the hearing tendered him a sum of Rupees 12735 Annas 12 and pie 2 which he then refused to receive from the Estate as the balance of the Stabbs to him of Pondicherry Appasaamy Pillay inasmuch as the said offer was made out of an illiberality and not from a desire

and at a time when your Petitioner was not aware that the Statute Books had come into the Possession of Pondicherry Appaswamy Pillay and in as much as such offer was in fact rejected by the Claimant and therefore become absolutely null and void.

7 Because if such first mentioned order proceeded upon the ground that the money advanced by the said Mr Alexander Maclean to the said Statob through the said Ghoolam Alloochoya Khan in respect of the 1st B was in fact the individual money of Pondicherry Appaswamy Pillay himself this is a ground which is wholly in opposition not only to the evidence of the witness Ghoolam Alloochoya Khan whose account of the transaction Mr Justice Billington expressly said he believed but even to the Claimant's own evidence and to the Hindoo Law as bearing thereon.

8 Because your Petitioner is advised and believes that the Statob's letter dated the 20th April 1888 which he tendered in evidence and which was rejected by your Honorable Court ought to have been received and read and would have been material evidence in his behalf.

9 Because the said first mentioned order is erroneous in not allowing your Petitioner his Costs in as much as it has always been held by your Honorable Court that proceedings under the Act xxx of 1880 are governed by the rules which apply to proceedings in Equity and because in Equity a Defendant who was

himself guilty of no demerit and who had succeeded in resisting the greater part of the Claim advanced by the Plaintiff and in showing that the whole of the Case set up by the Plaintiff himself was unworthy of belief would have been held entitled to his costs.

10 Because the said secondly mentioned Order of the 4th November 1889 is erroneous in rejecting the prayer of your Petitioner's said Petition that the said Claim might be reheard before a full Court.

11 Because the said Petition even if rejected ought not under the circumstances of the case / as your Petitioner is advised / to have been rejected with Costs.

In all which reasons as well as for others your Petitioner begs leave to appeal to Her Majesty in Council against the said order bearing date the 21st day of October 1889 upon such terms as your Honorable Court shall be pleased to direct.

and your Petitioner shall ever remain

True Copy

M. M. M.

For Solr.

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1859
In the Supreme Court of Judicature at Madras.

Victoria by the Grace of God of the United Kingdom of Great Britain
and Ireland Queen Defender of the Faith.

At a Court held this twenty first day of October
one thousand Eight hundred and fifty nine, in
the Vacat^{ion} after the fourth Term one thousand
Eight hundred and fifty nine.

Present:
The Honorable Sir Adam Pitt Rivers Knight
One of Her Majesty's Justices.

Under Act XXX of 1838
In the matter of the Estate of the late
Nabob of the Carnatic
The claim of Pondicherry
Veera-permaul Pillay

This matter coming on the seventh, eighth, ninth, thirteenth
fourteenth and fifteenth days of September last to be heard
before the Supreme Court of Judicature at Madras in the
presence of Council learned on behalf of the claimant Pondicherry
Veera-permaul Pillay and Mr. Adair General and Mr. Mayne on behalf
~~of the Government of Fort Saint Louis in the dominions of the~~
Council of India now upon hearing what was alleged by Mr. Norton Mr. Titton
and Mr. Branson of Counsel for the said claimant Pondicherry Veera-permaul
Pillay and upon hearing read the Declaration of the said claimant
Pondicherry Veera-permaul Pillay in this matter filed on the eighteenth day
of September one thousand Eight hundred and fifty Eight. The further
Declaration of the said claimant Pondicherry Veera-permaul Pillay in this
matter filed on the seventeenth day of December one thousand Eight hundred
and fifty Eight and the Exhibit thereto annexed marked B and the particulars
of the said claim of the said Pondicherry Veera-permaul Pillay in this
matter filed on the said seventeenth day of December one thousand Eight
hundred and fifty Eight and upon hearing the Examination and cross Exam-
ination Viva Voce of the said claimant Pondicherry Veera-permaul Pillay and of
~~the following witnesses that is to say John Anthony Hopwood, P. Rungasawmy~~
~~Pillay, Muhammad Ali Khan, Muhammad Ali Khan, Babu durr, John Bruce Norton~~
Esquire, Faruq Khan, Gholam Akbar, Gholam Akbar, Gholam Akbar, Gholam Akbar
severally produced sworn and examined on behalf of the said claimant
Pondicherry Veera-permaul Pillay and upon hearing read evidence for the
said claimant Pondicherry Veera-permaul Pillay the Exhibits respective

marked **ABCDEFGHIJK** and **S** and upon hearing the examination and cross examination viva voce of Mr John Strathorn Mr E. Leet, Girdler does Moses Kera Kooxe F.G. Paulson and Mr A. M. Ritchie witnesses severally produced sworn and examined on behalf of the Government of Fort Saint George so acting for the Secretary of State in Council of India and upon a hearing read as Evidence for the said Government the notice to produce a letter from the said Claimant Pondicherry Veerapermaul Pillay to Satoga Butchery bearing date the twelfth day of April one thousand Eight hundred and forty Eight and the Exhibits marked N^o 1 and N^o 2 and the notice to the said Claimant Pondicherry Veerapermaul Pillay, to produce all Books in which his fathers transactions with Mr Macdonald were respectively entered and the Exhibits respectively marked N^o 3. N^o 4. N^o 5. N^o 6. N^o 7. N^o 8. N^o 9. N^o 10. N^o 11. N^o 12. N^o 13. N^o 14. N^o 15. N^o 16 and N^o 17 and the Office Copy of the Examination of Mr Leet in the Court for the Relief of Insolvent Debtors at Madras and the Exhibits respectively marked N^o 19. N^o 20. N^o 21. N^o 22 and N^o 23 Whereupon and upon debate of the matter and hearing what was alleged by the Counsel on both sides - and the same having stood over until this present day for

Judgment now upon mature consideration had thereon. His Court doth order that Clement Dale Esquire the Receiver of the Carnatic Property do within Ten days after service of this Order on him pay to the said Claimant Pondicherry Veerapermaul Pillay or to Mr Alexander Macdonald or to his Solicitor the sum of Rupees thirty five thousand two hundred and eleven annas five and Pice eleven / 35,211-5-11 / being the amount of Principal and Interest thereon as ascertained by this Court to be justly and fairly due from the Estate of the late Nabob of the Carnatic at the time of his death and up to the date of this Order inclusive to the said Claimant Pondicherry Veerapermaul Pillay

Per A. M. Ritchie

By the Court
Per R. Brooks
By Registrar

True Copy /
M. H. Day
Gov. Secy

Supreme Court
of the State of
New York
Under Act 30 of 1892

In the Matter

The Estate of the late
John J. O'Brien }
deceased of the County of New York }

The Court of Probate
of the County of New York }

(Copy)

Let it be the order of the Court
that the said John J. O'Brien
do leave his appeal to the
Honorable the Court of Appeals
the Order of 27th October 1892.

J. J. O'Brien
for the

Supreme Court
affidavits
under Act 30 of 1878

In the matter
of
The Estate of the late
Robert of the Carriacou

The claim of R. D.
is in favor of the Carriacou,

(Copy)

Order of Court dated 21st
October 1889 for payment
to the claimant of £2000 10 11

Copy to
for date

that, in respect of Veerapermal,
upon Note C, which was rejected by the
Court, and the money for which Ghoolam
Moortogah Chan proved was furnished by
Girdar Doss, there is a clear case against
Veerapermall Pillay and his Uncle Runga-
sawmy for conspiracy to defraud Govern-
ment, and for perjury, and (subject of course
to the orders of Government,) I shall feel
it my duty to have Informations sworn
against them, and to prosecute them at the
ensuing Sessions.

Fort St. George }
15 November 1859 }

I have the honor to be
Sir
Your Most Obedt. Servt.
The Hon. J. F. W. S. P. S.
Advocate General

See
Council
9-12-59

Order therein 10 December 1859. 20/7/77.
The Govt. will appreciate the
attention of the Advocate General
in the two cases referred to in the
above letter, but they think it nec-
essary to refer to the Advocate
General of the Govt. upon the points
in question.

Law Office
issued against
- personal Pillay &
Rungaswamy for
conspiracy & perjury
as proposed by
them.

Proc. of Court 10 Dec

Political 1859 Department

From
The Advocate General

To the Advocate General
with a list of copies of the
"Govt. Solicitor"

O/25th
O/26th { November 1859.

Political Letter to End of 1st Dec
1859

2 Copies:

N^o 920

Submits a report
of particulars connected
with the claims of Mr.
Rondfoot, and of Pundarik
Veerapermall Pillay, against
the estate of the late Mahob.

With an order
[Signature]