

MADRAS RECORD OFFICE.

Government of Madras.

Political **DEPARTMENT.**

G.O. No.	530	Press
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BACK NO: 42-43		
Dated	14-9-	1860

Not to be folded or roughly handled

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*Proceedings of the Madras Government, Political Department,
14th September 1860.*

No. 42. Read the following Despatch from the Right Honorable Sir C. WOOD, Bart., Secretary of State for India, to His Excellency the Honorable the Governor in Council, Fort Saint George, dated London, 2nd August 1860, No. 28.

I herewith transmit as a No. in the Packet, copy of a Legislative Despatch, dated 29th June (No. 6) 1860, which was addressed to the Government of India, respecting the claims of Gunsham Doss against the Estate of the late Nabob of the Carnatic.

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From the Right Honorable Sir C. WOOD, Bart., Secretary of State for India, to His Excellency the Right Honorable the Governor General of India in Council, dated London 29th June 1860, No. 6.

Paragraph 1. Your Public letter (No. 19), dated 2nd March last, transmitting certain documents relative to the judgment delivered by the Judges of the Supreme Court at Madras, in the matter of an application on behalf of Gunsham Doss, a claimant against the Estate of the late Nabob of the Carnatic, has been laid before me in Council, together with certain other papers on the same subject from the Government of Madras.

2. The full report of the Select Committee of the Legislative Council, which accompanies your letter, renders unnecessary any further statement of the mere facts of this case.

3. From the correspondence which preceded the passing of Act XXX of 1858, it is manifest that the Court of Directors undertook the payment only of the legitimate debts of the late Nabob of the Carnatic, and that they enjoined the importance of taking the utmost care against the admission of improper claims, by which Her Majesty's Government understand claims the liability for which did not attach to the Nabob himself. It certainly could not have been the intention of the Court to render the Government of India liable for debts which the Nabob had not incurred, or which had not been incurred by the Regent, Azeem Jah, *bond fide* on his behalf, and which he had in fact repudiated after attaining his majority.

4. On a question of a legal character, on which a difference of opinion prevails between the Judges of the Supreme Court at Madras and the Legislative Council, I do not think it is the duty of the Secretary of State to pronounce a judgment. I will, therefore, only say that, to ordinary understanding, it would appear as if the Legislature intended by the Act of 1858, to provide for the payment of all such debts as might have been enforced at law on ordinary principles against the Nabob of the Carnatic, and of no others; and this, whether such debts were in fact contracted by the Nabob himself, or by the Regent during his infancy on his behalf. Such is, apparently, the meaning of the Act itself, and into the reasons which may have induced the passing of that Act the Supreme Court could not properly enter.

5. Now, in the case of the claim of Sham Doss Sahoo, the Court decided against the claimant, and refused to admit the debt. There was, therefore, no judgment against the Local Government. But, in the course of the argument, the Judges appear to have ruled in favor of the Petitioner, first, that they would not put him to establish by proof that the debt was one which it was necessary and proper for the Regent to have contracted; secondly, that it was sufficient to establish the claim if the debt were "ostensibly" contracted for the Nabob by the Regent. It is essential to keep these two rulings distinct, as they are a little mixed together in the observations on the subject made in the debates in Council.

6. These, as I have said, were interlocutory rulings only, and no part of the judgment. The Council, however, appear to have thought that if such views were acted upon in any case, there would be danger of the establishment of a number of claims, either wholly fictitious or of a class which Government had no original intention to discharge. In order, therefore, to avoid this danger, they, immediately on the receipt of the papers from Madras, suspended the standing orders, and passed the Act No. XVI of 1859, which has now been brought under my consideration.

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14th September 1860.

7. By that Act, although it professes to be only a declaratory one, they do in fact introduce a new element of proof. They require the creditor of the Regent to show that the debt was such as it was "necessary and proper" to incur, words which might certainly be so construed as to render proof, especially after many years, extremely difficult, and to exclude from the benefit of the former Act, persons who might actually and rightfully have considered their cases provided for by it, as having *bond fide* lent their money for the Nabob's use to the Regent, as the legal representative duly authorized by the British Government to act on behalf of the said Nabob.

8. Taking this view of the Act XVI of 1859, Her Majesty's Government are precluded from giving their sanction to it. They accordingly disallow it, under the provisions of 3 and 4 William IV, C. 85, Sec. 44, and it is hereby disallowed.

9. The Act in question being repealed, it remains to be considered what course should be adopted for the protection of the Government from the effects of the interpretation which the Judges of the Supreme Court at Madras are considered by the Legislative Council as having placed on the terms of the enacting clauses of Act XXX of 1858.

10. This may be done, if thought necessary, by passing, on the repeal of Act XVI of 1859, another Act explanatory of Act XXX of 1858, and providing that no debt contracted by the Regent during the minority of the Nabob shall be deemed a debt or claim within the meaning of Act XXX of 1858, unless such debt was incurred by the Nabob himself, or by the Regent actually and *bond fide* on behalf and for the use of the Nabob. While, on the one hand, the Government should be protected against liability for the private debts of the Regent, on the other hand, the claimant should not be called upon for an impossible amount of proof; and where, in the case of a debt proved to have been incurred by the Regent, the question of liability is doubtful, the Government, like any other defendant, should be required to prove its right of exemption from responsibility for the claim.

11. I purposely abstain from entering into any personal question as between the Council and the Judges of the Supreme Court at Madras. I do not think it expedient, on public grounds, to criticise the language which those functionaries may think proper to use on the bench, respecting measures which are brought under their notice. I will only permit myself the observation, that it is a subject of regret to me that they did not consider that their object could be sufficiently attained without the use of expressions calculated to diminish respect in the public mind for the supreme legislative authority.

12. A copy of this letter will be transmitted for the information and guidance of the Government of Madras.

No. 43.

ORDER THEREON, 14th September 1860, No. 550

Resolved, that a copy of the above Despatch and its enclosure be furnished to the Advocate General, with reference to his letters dated 20th August and 1st September 1859.

(Signed) T. PYCROFT,
Chief Secretary.

Edw. F. Copley.

Political Department

Proceedings of the Madras Government

Read the following Despatch
from the Right Honble the
Secy. of State for India

(Dated 20th August, No. 28 of 1860)

Order thereon - 14th September 1860. No. 550

Resolved that a copy of
the above Despatch and its
enclosure be furnished to the
Advocate General with
reference to his letters dated
20th August and 1st September
1859 and that his
attention be directed
to the views expressed
by the R. H. the Secy.
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W. H. M.

To the young solicitor - Sept. 19th

1871
To the young solicitor -
Sept. 19th
1871

(Filed 1860 & 1861)

1855

Gov. of Government

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