M.R.O. 1—29,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No.	44	Press Mis
Dated	19-1- ~~19~~ 1861	

Not to be folded or roughly handled

No. 83. Read the following letter from THOMAS SYDNEY SMYTH, Esq., Advocate General, to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 18th December 1860.

The claims filed in the Supreme Court against the Estate of His Highness the late Nabob of the Carnatic, under the provisions of Act XXX of 1858, having been disposed of all but eleven, (the amount recoverable in which may be estimated as not likely to exceed Rupees 2,00,000) I have now the honor to submit for the information and consideration of His Excellency the Governor in Council, a general report upon the result of these claims.

2. Act XXX of 1858 became law on the 24th of August 1858; the number of claims filed under its provisions was four hundred and thirteen; and the amount claimed, including interest to the day when each claim was finally disposed of (at six per cent. per annum, the rate fixed by the Act) taking the 23rd of February 1861, (or last day of next Term) as the time by which the remaining eleven will probably be disposed of, amounts to Rupees 122,08,513-6-11 or £ 1,220,851-6-10½ sterling.

3. It will, I trust, be satisfactory to Government to learn that [assuming my Estimate of Rupees 2,00,000 for the 11 remaining claims to be correct] this large sum of Rupees 122,08,513-6-11 (or £ 1,220,851-6-10½) has been satisfied [so far as the Nabob's Estate is concerned] for Rupees 32,91,610-6-7, or £ 329,161-0 9½; being less than the amount claimed by Rupees 89,16,903-0-4 or £ 891,690-6-0½.

4. I am glad also to be able to state that (exclusive of the eleven cases above mentioned, of which probably not more than four or five will be litigated) only 21 out of the 413 claims have been tried before the Supreme Court. The remainder, under the circumstances and for the reasons which I proceed to mention, were investigated and adjusted out of Court by myself and the Government Solicitor, who thus in fact settled the great bulk of these claims by acting as Commissioners, not as the Law Officers of Government contesting litigated claims. I would here beg to acknowledge, for myself and the Government Solicitor, the valuable and zealous assistance afforded us on all occasions by the Government Agent, Dr. Balfour, and his Assistant Major Snow, by furnishing us with every information that could be extracted from the Nabob's Dufters or other papers, or from any of the Nabob's former servants; as well as by their knowledge of the Persian and Hindoostanee languages, during the trials in Court.

5. Government will be able to appreciate the probable amount thus saved to them in costs, when I mention that the rule laid down by the Supreme Court with regard to costs, was, to award full costs against Government to every claimant who should not be *proved* to have *disentitled* himself to costs, either by actual fraud or dishonesty, or by inaccuracy, in matters within his own knowledge, such as was calculated to mislead the Law Officers and put Government to needless expense: and this, even in cases where the Court was satisfied that there was nothing like demerit on the part of Government, and even where the Court admitted that Government would not have been justified in allowing the claim, or making any offer in respect of it, but was bound to resist it, and require it to be strictly proved. In one case alone, I understand that the claimants costs exceeded Rupees 20,000.

6. When once this rule respecting costs was laid down, I felt how all important it was for Government, with a view to save it as far as possible from the ruinous expense of costs which this rule was calculated to entail, that we should, firstly, settle as many cases as possible out of Court; and secondly, that after taking the Court's judgment on the points involved in the two classes of claims below mentioned, we should confine our resistance of these claims to those only which we believed to be founded in fraud, and such as ought not to be even partially entertained, selecting in the first instance those of great magnitude, where the station, means, and character of the claimant rendered it probable that he would insist on his claim to the utmost—in which cases, I resolved to oppose the utmost possible resistance, so that his defeat might serve as a salutary warning to others. The two classes of cases upon which it seemed to me expedient, indeed necessary, to take the Court's judgment, were, firstly, those which depended upon a particular class of evidence, which I conside.ed unsatisfactory, and such as Government ought not to accept or

act upon, unless the Supreme Court, after solemn argument, should decide in favor of its sufficiency; and, secondly, those which depended upon a particular construction of some clause of Act XXX of 1858, (or its successors) where it seemed to me that the true meaning of the Act was opposed to the claimants' success.

7. It was upon these grounds that I resolved to contest twenty of the twenty-one cases before mentioned. To the other claim, that of the Messrs. Richardson, my objection was the total absence of regularly kept books, or satisfactory vouchers, on which ground the then Chief Justice, Sir C. Rawlinson, refused to allow them any costs, though he allowed their claim.

8. How far the twenty-one claims thus selected for resistance were properly selected, Government will best be able to judge (bearing in mind the peculiar rule laid down by the Court for allowing costs) when I state as the result, that in only four cases were full costs allowed to the claimants; in only one more were costs partially allowed; in nine more costs were wholly refused; and in the seven other cases both claims and costs were absolutely disallowed.

9. I ought to mention, to account for the Court's not awarding costs *to* Government, that it ruled (much to my surprise, and contrary to the intention of the Legislature, as it has since declared) that under Act XXX of 1858, it had *no power* to do so.

10. The first six cases, after the Messrs. Richardson's claim, were selected to determine the value, as evidence, of the documents known as "the 19 months' dufters," or "after death accounts," and "the 12 lakh list," and of the sworn testimony of Gholam Mahomed, *alias* Shurfood Dowlah, and his brother-in-law Hajee Moortooza, *alias* Salar-ul-Mulk, in corroboration of these documents, all written by themselves, evidence which I did, (and for the most part still do) consider wholly untrustworthy, though the Court ruled otherwise until it came to try Salar-ul-Mulk's own claim, when I at last succeeded in discrediting him. In the next case, that of Sham Doss, I wished to take the Court's opinion respecting the construction of the words in the Preamble of Act XXX of 1858, "debts fairly and justly contracted on the Nabob's behalf during his "infancy;" and *this* was the claim where the Court's ruling led to the passing of Act XVI of 1859. The next claim, that of Messrs. Proudfoot and Bain, trading as "Taylor and Co.," was contested because they had never debited the Nabob in their books, nor made any application for payment to him while alive; but, on the contrary, had in their books always debited two Mussulmans, named Hakeem Ibbadoollah and Shajee-ool-Moolk, from whom they moreover obtained part payment, and securities; and both of whom, on their afterwards going through the Insolvent Court, entered Messrs. Taylor and Co. in their Schedules as *their* creditors, *not* the Nabob's, in respect of these very transactions. I therefore considered that Taylor and Co. had originally given credit to these two Mussulmans, and had no right now to claim against the Nabob's Estate. The Court however, on Mr. Proudfoot's swearing that he had always given credit to the Nabob alone, and to no one else, allowed his claim; though it refused him costs. The next claim, P. Veerapermall Pillay's, was resisted as wholly fraudulent, on the ground that though the Istafa Cutcherry Bonds which he held were genuine, he had advanced no money upon or in respect of them; the fact being that his father had lent money to Mr. Maclean, and had afterwards, when Mr. Maclean became Insolvent, secretly obtained these Bonds from Mr. Maclean as collateral securities for his claim against Mr. Maclean. By far the greater portion of his claim was disallowed, on this ground; and the portion for which he obtained a Decree, has since (upon further evidence obtained from England since his claim was heard) been taken from him under proceedings in the Insolvent Court by the same Judge who had previously allowed it. The next claim, Salar-ul-Mulk's, was resisted as a gross fraud. He claimed, including interest, Rupees 2,98,332-12-2, and after a most severe contest that lasted eight weeks, he was allowed only Rupees 17,576-6-3, which he had previously been offered, but had refused. He was likewise refused all costs, and I understand had to pay for his own costs more than the sum awarded to him. The next claim resisted was that of Nasir-ood-deen Abdul Khader, which was selected to try the right of the Nabob's Officers to recover (under Act XXX of 1858) what were styled "arrears of deferred salaries"—in other words, to recover reductions of their allowances made by the Nabob many years before his death. The Court upheld my objections, and ruled that these were not recoverable. The next four contested claims were merely resisted as untenable generally, and the

three first were dismissed wholly—the claimant in the last recovering only Rupees 10,189-11-11; the sum I had previously offered him on behalf of Government; just one-thirteenth of the amount he claimed, *viz.*, Rupees 1,34,961-10-10. The next claim, Nabob Hameed-oon-Nissa Begum's, was selected to try the legal right of the Nabob's relatives (a pretty numerous class of claimants) to recover, under this Act, the unpaid portions of voluntary allowances which had formerly been granted to them by him or his predecessors. I succeeded in having this claim wholly disallowed. The three next claims, those of Damoodra Doss, Birjee Bokun Doss, and Munmohun Doss, (upon which I lately reported to Government, and who recovered only Rupees 1,19,014-8-3 out of Rupees 7,21,658-13-0 claimed by them) were contested to try the validity, as against the Nabob's Estate, of claims founded upon Tunkhy Cutcherry Bonds, under the new Act XXXVIII of 1860 (passed in place of Act XVI of 1859, repealed) and to determine the true construction of the concluding words of Section 1 of that Act. I succeeded in getting six-sevenths of these claims disallowed. Such portions as have been allowed, depend on the construction I have just referred to, and the Court's Decrees allowing them are now under appeal to Her Majesty in Council. The last case (last I mean in which the Court delivered Judgment) was that of Gholam Moortooza Khan Bahadoor, Moomtazool-moolk, who, in addition to 7 lakhs already received, claimed Rupees 13,37,567-14-8, but recovered only Rupees 81,000 odd, or, including interest to date of Decree, Rupees 1,14,872-5-5.

11. When I mention that out of the mass of these claims which the Law Officers succeeded in settling out of Court, no less than forty of the claimants consented to their claims, amounting to Rupees 4,31,141-3-11 being wholly dismissed, on our agreeing to forego all claim to costs against them; while others accepted Rupees 23,59,689-14-3 in full of claims amounting, with interest, to Rupees 52,72,461-12-2, Government will realise how much time and labor must necessarily have been involved in investigations so thorough, complete, and convincing, as to induce the claimants themselves to abandon so large an amount as Rupees 33,43,913-1-10. It entailed in fact the exclusion and sacrifice, in a very great measure, of all private professional practice during two years and a half.

12. Another proof of the amount of labor involved in the settlement of these claims will be found in the fact, that though, exclusive of the eleven cases yet undisposed of, only twenty-one cases were actually tried in the Supreme Court, yet so protracted were these trials, and so strenuously were the claims contested, that they occupied a working period equal to the entire of nearly seven Terms of the Supreme Court.

13. Having shewn the final result of these claims, so far as the interests of Government are concerned, I trust Government will now permit me to bring under its consideration, the manner in which the interests of its Law Officers have been affected by the exclusive devotion of our time and labor to meeting the wishes of Government by effecting an early settlement of these claims, and to protecting its interests in a two-fold manner, *viz.*, by saving it as far as possible from the payment of costs, and by thoroughly sifting every item in these claims before admitting any of them. I am particularly glad to be able to submit the matter for the consideration of the Government as at present constituted, from the fact that His Excellency the Governor in Council, and all the present Members of Government, have been personally cognizant of these proceedings, have perused the reports that I submitted from time to time, and have on more than one occasion expressed their approbation of the exertions of their Law Officers.

14. I believe I am correct in stating that the salaries of the Law Officers of Government were fixed at their present moderate amount upon the understanding that they should and would have sufficient time to attend to private practice; and that, if fit to be the legal advisers of Government, they would have such an amount of private practice, as would insure them a competent income, and enable them to provide for their ultimate retirement. On this ground it was, I understand, that the Court of Directors in 1856-57, refused even a small pension of £500 to Mr. Le Messurier, the Advocate General of Bombay, when his health prevented his returning to India. They said "no, it will be a bad precedent, if he be a good Lawyer, an Advocate General "ought to make so much by his private practice that £500 a year would be no object to him."

15. This, I would submit, most clearly recognizes my position that Government contemplated and intended that their Law Officers should have sufficient time for private practice.

Such, however, has not been the case with myself or the Government Solicitor. On the contrary, since August 1858 (when Act 30 of 1858 was passed) our time has been so much and so continuously engrossed by our public duties that the result has most materially affected our private practice.

16. For myself this loss will probably be but temporary; but still the nearly total loss of private practice for two years and a half is a serious matter. To the Government Solicitor it may be more serious, because more lasting; many of the claimants were his clients; the discharge of his duty to Government precluded both him and his partners from acting for the claimants, and compelled him to act most hostilely against them. They had therefore no other course than to leave him, and go to other Solicitors, with whom their business may perhaps remain. Their claims were scrutinised and resisted far too effectually to admit of their now feeling much good will towards their former legal adviser.

17. I would here solicit the attention of Government to the fact that the whole of the labor, with its consequent loss, upon which I have already observed, has been *extra*, and in addition to our ordinary duties, and was expressly *created* for us by a *special* Act of the Legislature; for Government was not legally liable to pay the Nabob's debts, but *elected* so to do, and to pass a law *creating* such liability. Whether this measure was considered politically expedient, or only just to the Nabob's creditors, need not now be discussed; but I think I may fairly assume, from the known justice and liberality of the Indian Governments towards their servants, that they never intended either to give effect to political expediency, or to do justice to the Nabob's creditors, to the prejudice of their own Law Officers. As yet however they alone have suffered, while the creditors of the late Nabob and the Government have materially benefited by their exertions.

18. In former similar cases, such as the Carnatic and Tanjore debts, a Commission was appointed to investigate the claims, and such it was generally expected would have been the course taken in this instance. The Tanjore Commission at Madras (besides a Tanjore Commission in England, as to whose salaries however, I cannot speak with certainty) was composed of three Members, gentlemen of the Civil Service, who received considerable allowances—I believe about Rs. 8,000 a month. This Commission was appointed in March 1825; the amount claimed before them was Rupees 157,90,366-6-2; the amount allowed was Rupees 56,13,836-15-10 or upwards of one-third; and it was not till February 1840, (fifteen years after the date of its appointment) that this Commission held its last consultation. In the present case I have already shewn that myself and the Government Solicitor settled for Rupees 32,91,610-6-7, or just one-fourth, claims amounting to Rupees 122,08,513-6-11; and did so in two years and a half.

19. Even supposing however that it should be considered that the Law Officers are bound, as such, and for their ordinary salaries, to undertake whatever new and extra work the Government may, upon public grounds, think fit to create for them *in* the Courts—it would, I would venture to submit, be opposed to the understanding that has always hitherto existed between the East India Company and their Law Officers, to require the Advocate General and Government Solicitor to act for Government *out of Court, quasi* Commissioners, in settling claims that do *not* become the subject of adverse litigation before a Legal Tribunal, without special remuneration.

20. With these remarks I respectfully submit my case and that of the Government Solicitor for the consideration of Government with full confidence in their wish to do whatever they shall deem just.

No. 84. ORDER THEREON, 19th January 1861, No. 44.

The Advocate General reports that the claims filed in the Supreme Court against the Estate of His Highness the late Nabob of the Carnatic, under the provisions of Act XXX, 1858, have all been disposed of with the exception of eleven, and that the amount recoverable in these remaining 11 cases is not likely to exceed Rupees 2,00,000. He therefore submits to Government a general report on the result of these claims.

2. Act XXX of 1858 was passed on the 24th August 1858. The number of claims filed under its provisions was four hundred and thirteen, and the amount claimed, including interest to the day when each claim was finally disposed of (taking the 23rd proximo, or the last day of next Term, as the time by which the remaining eleven will probably be settled) is in round numbers Rupees (1,22,08,500) one crore, twenty-two lacs, eight thousand, five hundred Rupees.

Paragraph 2.

3. The 402 claims already disposed of have been settled for Rupees 30,91,610-6-7 and this sum includes the award amount Rupees 1,10,664 in the case of Damoodra Doss and others now under appeal to the Privy Council. Supposing that the remaining eleven claims be, as is estimated, arranged for 2,00,000 Rupees, the entire amount for which all the claims filed under the Act will have been settled, as far as the Government are concerned, will be Rupees 32,91,610-6-7 or in round numbers 33 lacs of Rupees, being less than the aggregate amount claimed by 89 lacs of Rupees, and being also little more than one-fourth of that aggregate amount.

Paragraph 3.

4. Nor has the sum which Government have had to disburse on account of these suits been greatly enhanced by costs of Court. Only 21 of the 402 cases hitherto settled were tried in the Supreme Court. In only four of these cases were full costs allowed to the claimants, in only one more were costs partially allowed, in nine more costs were wholly refused, and in the seven other cases both claims and costs were absolutely disallowed. Of the eleven cases remaining to be settled, it is probable that not more than four or five will be litigated.

Paragraph 4.
Paragraph 8.
Paragraph 4.

5. The reasons why so small a number of claims were brought into Court are explained by the Advocate General in paras. 5 and 6 of his letter. The rule laid down by the Supreme Court in respect to costs awardable under Act XXX, 1858, was in a high degree favorable to the claimants. It was therefore deemed by the Law Officers all important, with a view to save Government as far as possible from the ruinous expense of costs which this rule was calculated to entail, that they should, firstly, settle as many cases as possible out of Court; and secondly that, after taking the Court's Judgment on the points involved in the two classes of claims below mentioned, they should confine their resistance of these claims to those only which they believed to be founded in fraud, and such as ought not to be even partially entertained; selecting in the first instance those of great magnitude, where the station, means and character of the claimant, rendered it probable that he would insist on his claim to the utmost, in which cases the Advocate General resolved to oppose the utmost possible resistance, so that his defeat might serve as a salutary warning to others. The two classes of cases upon which it seemed to the Law Officers expedient, indeed necessary, to take the Court's Judgment, were, firstly, those which depended upon a particular class of evidence, which the Advocate General considered unsatisfactory, and such as Government ought not to accept, or act upon, unless the Supreme Court, after solemn argument, should decide in favor of its sufficiency; and, secondly, those which depended upon a particular construction of some Clause of Act XXX of 1858, (or its successors) where it seemed to him that the true meaning of the Act was opposed to the claimants success.

Paragraph 6.

6. That the twenty-one claims thus selected for resistance were well chosen for the purpose has been proved by the result as shown above in paragraph 4. In paragraph 10 of his letter Mr. S. Smyth has given a brief notice of these cases, and shown the large amount of claim in them which was disallowed.

7. Although thus only twenty-one cases were actually tried in the Supreme Court, yet so protracted were the trials and so strenuously were the claims contested, that they occupied a working period equal to the entire of nearly seven Terms of the Supreme Court.

Paragraph 12.

8. Deducting from the 402 cases already settled the 21 litigated in Court, there remain 381 which were disposed of out of Court. In no less than 40 of these, the claimants consented to their claims amounting to Rupees 4,31,141-3-11 being wholly dismissed,
Paragraph 11. on the law Officers agreeing to forego all claim to costs against them. Others accepted Rupees 23,59,689-14-3 in full of claims amounting, with interest, to Rupees 52,72,461-12-2, the total amount abandoned by these two classes of claimants being Rupees 33,43,913-1-10.

9. When the Government consider the vigor with which those 21 cases which were brought into Court were contested, and the period occupied in their litigation, and when they reflect upon the searching scrutiny to which those which were settled out of Court must have been subjected 'ere the claimants themselves could have been induced to forego so large a porportion of their demands, and abandon claims to the extent of 33½ lacs of Rupees or one-third of a million sterling, they are more concerned than surprized to learn that the attention given by the Advocate General and Government Solicitor to the settlement of these claims entailed
Paragraph 11. "the exclusion and sacrifice in a very great measure, of all private professional "practice during two years and a half."

10. In reference to the above circumstances, the Advocate General in the concluding paragraphs of his letter submits for consideration the manner in which the
Paragraphs 13 *to* 20. interests of the Law Officers of Government have been affected by an exclusive devotion of their time and labor to accomplishing an early settlement of these Carnatic claims, and protecting Government in a two-fold manner, viz., by saving it as far as possible from the payment of costs, and by thoroughly sifting every item in these claims before admitting any of them.

* *Rupees* 2,187-8-0 *per mensem.*
† „ 1,175-0-0 „

11. Mr. S. Smyth submits that the salaries of the Advocate General,* and Government Solicitor,† were fixed on their present moderate scale, and those Officers were excluded from the benefit of pensions, on the supposition that they would have sufficient time to attend to private practice, thereby to supplement their official incomes, and enable them to provide for their ultimate retirement.
Paragraph 15. "Such however" he states "has not been the case with myself or the Govern-"ment Solicitor. On the contrary, since August 1858, (when Act 30 of 1858, "was passed) our time has been so much and so continuously engrossed by our public duties "that the result has most materially affected our private practice."

"For myself this loss will probably be but temporary; but still the nearly
Paragraph 16. "total loss of private practice for two years and a half is a serious matter. To the Government Solicitor it may be more serious and lasting: many of the "claimants were his clients; the discharge of his duty to Government, precluded both him and "his partners from acting for the claimants, and compelled him to act most hostilely against "them. They had therefore no other course than to leave him, and go to other Solicitors, "with whom their business may perhaps remain. Their claims were scrutinised and resisted "far too effectually to admit of their now feeling much good-will towards their former legal "adviser."

12. Further, Mr. S. Smyth remarks that the whole of this labor and
Paragroph 17. consequent loss has been *extra* and additional to the duties ordinarily devolving on the Government Law Officers, and has been expressly created for them by a *special* Act of the Legislature.

13. Lastly, he adverts to the time occupied and expense involved in the Commission for the settlement of the debts of the Rajah of Tanjore, and to its results, as compared with those connected with the arrangement of these Carnatic claims. For the Tanjore debts there were two sets of Commissioners, one in England, and one, consisting of three Members of the Civil Service on liberal salaries, in India. The Commission lasted 15 years; the amount claimed was Rupees 157,90,366; the amount allowed Rupees 56,13,836, or upwards of one-third. In the case of the claims upon the Estate of the late Nawaub, demands to the amount of Rupees 122,08,513

have been settled by the Government Law Officers in two years and a half, and for Rupees 32,91,610 or about one-fourth of the sums claimed.

14. The Advocate General represents that supposing the Law Officers to be bound in virtue of their office to undertake all business whether of an usual or of a special
Paragraph 19. character which the Government may require to have transacted for them *in Court*—their employment out of Court, to act as quasi Commissioners in settling claims that do not become the subject of adverse litigation before a Legal Tribunal, can hardly have been contemplated, unless on special remuneration.

15. The Government have very carefully read and considered the Report of the Advocate General upon the settlement of the claims on the Estate of the Nawaub of the Carnatic, of which a summary has been given in the preceding paras. The result of the investigation and adjudication of these claims has been highly advantageous to the State and honorable to the Law Officers. It is fully shown that those gentlemen not only had great difficulties to encounter in dealing with these claims in Court, but that in the settlement of such as were, for good reasons, kept out of Court, their time has been fully occupied, and they have thus for the last two years and a half been called upon to give up their time and labor to an extent, and in a manner, never before exacted of them by Government.

16. That the interests of Government have been protected, and the debts of the late Nawaub of the Carnatic speedily and satisfactorily adjusted, the results detailed by Mr. Smyth in his present letter fully prove. To the zeal and diligence of its Law Officers the Government are therefore largely indebted. To permit them under these circumstances to be in a pecuniary point of view sufferers, could never have been intended, and should not in the opinion of Government be allowed.

17. The Government therefore resolve in laying before the Right Honorable the Secretary of State this present report on the settlement of the Carnatic claims, to solicit his attention to the indefatigable exertions of the Advocate General and Government Solicitor, to the success that has attended them, and, at the same time, to the personal sacrifices on the part of those Officers at which they have been rendered. They resolve also on a full consideration of all the circumstances of the case strongly to recommend that the sum of Rupees 55,000 be presented to the Advocate General, and Rupees 27,000 to the Government Solicitor, in special remuneration of their services during the last two years and a half in the disposal of these claims. They regard these sums being in each case slightly in excess of two years' official salary, as no more than a fair and equitable compensation for the extra labors that they have undergone, and professional losses that they must have sustained during this long and arduous investigation.

18. The Government observe with much gratification, the honorable testimony borne by the Advocate General, in para. 4 of his letter, to the valuable and zealous assistance afforded to the Law Officers on all occasions by the Government Agent, Doctor Balfour, and his Assistant Major Snow, both in and out of Court. They will have much pleasure in bringing the conduct of these meritorious Officers to the notice of Her Majesty's Government.

19. The settlement of all the claims against the Estate of the late Nawaub, by creditors, members of the family, Officers, servants and dependants, conducted both under Act XXX, 1858 by the Law Officers of Government, and, in respect to claims not properly falling, or not desirable to be brought within the scope of that enactment, by the Government Agent at Chepauk, has now approached so near to a conclusion that the financial results of the whole arrangement may be calculated with sufficient exactness.

20. It has been already shown that the settlement of the 413 claims filed under Act XXX, 1858, will be effected for ... ... Rupees 33,00,000

The amount already disbursed, after investigation made by Doctor Balfour, for gratuities to servants, arrears of pensions and wages, as well as for sundry charges, is according to a Memo. furnished by him... ... „ 8,21,192

And the claims on account of wages and petty debts which he still has to settle and pay may amount to ... ... „ 91,618

Or in all Rupees.....42,12,810

21. On the other hand the amount already realized by the Receiver of the Carnatic property from the sale of the Nawaub's property, including the Chepauk Premises purchased by Government, and from the balance of the Punjum Hissa due to the Nawab at his death, is, as appears by a Memo. furnished by Mr. Dale, Rupees 12,40,000, and he estimates that he may realize Rupees 4,00,000 for property not yet disposed of, making Rupees 16,40,000. Allowing 1,40,000 for commission and charges, and deducting the net surplus (Rupees 15,00,000) from the total amount (Rupees 42,12,810) for which the liabilities of the late Nawaub of all kinds will be satisfied, the remainder, or the net cost incurred by Government in settlement of these claims will be Rupees 27,12,810 or little more than 27 lacs of Rupees, being about 5 years purchase of the amount whereby the stipends and allowances now paid to the members of the Carnatic family, their servants and dependants fall short of the payments (*A*) which were made by Government to the Nawaub, or in other words of the sum now accruing to this Government by his death.

22. But in truth much of the above sum of Rupees 27,12,810 has been already made good out of the lapsed income of the Nawaub since his death in October 1855. From a statement made up by the Accountant General to the 31st of October last, and brought up to the end of the past year in the Government Office, it is found that the total amount that has been disbursed by Government since the decease of the Nawaub, on account of his Estate and the Carnatic family, for payment of stipends, pensions and gratuities, for arrears of stipends, pensions and wages, for the settlement of debts and for sundry expenses, is Rupees 69,97,760, while the amount for the same period of the Punjum Hissa, &c., income which has accrued to Government by the Nawaub's death, together with the balance of Punjum Hissa due to him when he died are Rupees 66,16,218, (*B*) showing an excess of expenditure above receipts of only Rupees 3,81,542. If to this be added the probable amount still required for payment of debts (inclusive of the amount Rupees 1,10,664 of the decree award under appeal to the Privy Council in the case of Damoodra Doss and others) and for the discharge of the arrears of stipend undrawn by Prince Azeem Jah Bahadoor, (*C*) and if credit be taken for the estimated sum yet to be realized by the Receiver of the Carnatic Property, the entire amount yet to be paid will be Rupees 9,39,191. This will be recovered in less than two years from the excess of the income (*D*) which has reverted to Government by the death of the Nawaub above the amount payable for stipends, pensions and other charges.

(Signed) T. PYCROFT,
Chief Secretary.

(*A*) *Note.*—The income derived from Government by the late Nawaub was made up of two items:

1st. The one-fifth of the Net Revenues of the Carnatic.....	Rupees 11,65,824-12-10
2nd. Travancore Peshcush and Nuzzeranah.....	13,319- 8- 0
Total Rupees	11,79,144- 4-10

This amount never varied. See from Accountant General, 7th October 1856, in Government Proceedings, Political Department, 23rd December 1857. The present payments as stipends to the Members of the Carnatic family, officers and servants and miscellaneous charges amount to Rupees 6,35,561-7-0 per annum. Of this nearly all, Rupees 6,27,074, is for stipends and pensions. The pensions for officers and servants are, in all cases, life-grants. The stipends to the immediate family are in no case to last beyond two generations, and are to be reduced by at least one-half on each lapse. The largest stipendiaries are,

1. Prince Azeem Jah Bahadoor, Rupees 1,50,000 per annum; he is an aged man and has none but Nicca sons.
2. The widows of the late Nawaub.
   Her Highness Kyree-oon-Nissa Begum, Shadi widow, has Rupees 1,12,200 per annum, she has no children.
   Azeem-oon-Nissa Begum, the Nicka widow, who has no children by the Nawaub, receives Rupees 48,000 per annum.

(*B*) Punjum Hissa and Travancore Peshcush for 5¼ years at Rupees 11,79,144-4-10 per annum.. 61,90,507
a. Arrears of do. at date of Nawaub's decease.. 4,25,711
66,16,218

a. The Nawaub drew a fixed allowance of 70,000 Rupees a month, and the difference between this and his full income (11,79,144-4-10—8,40,000=3,79,144-4-10) was paid to him after the close of each year on the account being made up. This balance for 1854-55 had not been paid to the Nawaub at the date of his death in October 1855.

(*C*) Excess of expenditure above receipts, Rupees.	Rs.
Amount estimated for 11 cases which the Law Officers still have to settle.....	3,81,542
For wage claims and petty debts to be investigated and settled by the Commissioner, Dr. Balfour...	2,00,000
Arrears of stipend undrawn by the Prince Azeem Jah and due on the 31st October 1860.....	91,618
Amount decreed in the case of Damoodra Doss and others now under appeal.....	5,55,367
Total Rupees..	1,10,664
Deduct sum yet to be realized out of the Nawaub's Estate.....	13,39,191
Amount that will yet remain to be paid.....	4,00,000
	9,39,191

(*D*) Income reverted to Government by death of Nawaub, Rupees.....	
Stipends, Pensions, &c., chargeable upon it, Rupees	11,79,144
Excess or net amount accrued to Government, Rupees.....	6,35,561
	5,43,583

Exd. F. Cartledge.

Dec 19th 1860

Sir Thomas Pycroft

Will you kindly circulate the accompanying Letter to the Members of Govt. as early as possible — and will you beg them to excuse the very hurried & incorrect manner in which the many corrections which appear in it, unless having it fair copied. The last is the calculations I intend have entered

so many alterations & corrections, to ensure accuracy, that it has already been delayed beyond what I could have wished. If it is to be printed I should be obliged if you would allow me to correct the proofs. I have already, as you will see, myself corrected every paragraph of the present draft.

Yours truly
H. Spencer Smyth

6

Political Department.

Proceedings of the Madras Government.

Read the following letter from the Advocate General.
(Recd enter 18 Decr 1860.)

Order thereon 19 January 1861, No 44.

The Advocate General reports that the claims filed in the Supreme Court against the estate of His Highness the late Nabob of the Carnatic, under the provisions of Act XXX - 1858, have all been disposed of with the exception of eleven, and that the amount recoverable in these remaining 11 cases is not likely to exceed

Rupees

Rupees 2,00,000. I therefore submits to Govt. a general report on the result of these claims.—

Para: 2.

2.— Act XXX of 1858 was passed on the 24th August 1858. The number of claims filed under its provisions was four hundred and thirteen, and the amount claimed, including interest to the day when each claim was finally disposed of (taking the 23rd proximo, or the last day of next term, as the time by which the remaining claims will probably be settled) is in round numbers Rupees 4,22,08,500, one crore, twenty two lacs, eight thousand, five hundred Rupees.—

3.— The 402 claims already disposed of have been settled for Rupees 30,91,610-6-7 and this sum includes the award amount Rs. 1,10,664: in the case of Damoodra and others Doss now under appeal to the Privy Council. Supposing that the remaining eleven claims be, as is estimated, arranged for 2,00,000 Rs. the entire amount for which all the claims filed under the Act will have been settled, so far as the Govt. are concerned, will be Rupees 32,91,610-6-7 or in round numbers 33 lacs of rupees, being less than the aggregate amount claimed by 89 lacs of rupees and being also little more than one fourth of that aggregate amount.

P 3.

4.— Nor has the sum which Govt. have had to disburse on account of these suits been greatly enhanced by costs of Court.

P 4

Only

Para: 8.

Only 21 of the 402 cases hitherto settled were tried in the Supreme Court. In only four of these cases were full costs allowed to the claimants, in only one more were costs partially allowed, in nine more costs were wholly refused, and in the seven other cases both claims and costs were absolutely disallowed. Of the eleven cases remaining to be settled it is probable that not more than four or five will be litigated.

14

5. The reasons why so small a number of claims were brought into Court are explained by the Advocate General in paras: 5 & 6 of his letter. The rule laid down by the Supreme Court in respect to costs awardable under Act XXX 1858, was in a high degree favorable to the claimants. It was therefore deemed by the Law officers all important, with a view to save Govt. as far as possible from the ruinous expense of costs which this rule was calculated to entail, that they should, firstly, settle as many cases as possible out of Court; and secondly that, after taking the Court's judgment on the points involved in the two classes of claims below mentioned, they should confine their resistance of these claims to those only which they believed to be founded in fraud, and such as ought not to be even partially entertained; selecting in the first instance those

Para: 6.

~~The Law Officers~~

those of great magni=
=tude, where the station
means and character
of the Claimants, con=
=sidered it probable that
he would insist on his
claim to the utmost=
in which cases the
Advocate General re=
=solved to oppose the
utmost possible resist=
=ance, so that his de=
=feat might serve as
a salutary warning
to others. The two
classes of cases upon
which it seemed
to the Law Officers ~~to me~~, expedient, in=
=deed necessary, to
take the Courts judg=
=ment, were, strictly,
those which depend=
=ed upon a particular
class of evidence, or
which the Advocate
General considered
unsatisfactory, and
such as Govt. ought
not to accept, or
act upon, unless
the

the Supreme Court, after
solemn argument, sh=
should decide in favor
of its sufficiency; and,
secondly, those which
depended upon a par=
=ticular construction
of some clause of
Act XXX of 1858 (or its
successors) where it
seemed to him that
the true meaning of
the Act was opposed
to the Claimants succes.
6.— That the twenty
one claims thus se=
=lected for re~~cc~~sistance
were well chosen for
the purpose has been proved
by the result as shown
above in para: 4. In
para: 10 of his letter
Mr. L Smyth has
given a brief notice
of these cases, and
shown the large a=
=mount of claim
in them which was
disallowed.—
7.— Altho' thus only
twenty one, cases were
actually

Para: 12.

actually tried in the Supreme Court, yet so protracted were the trials and so strenuously were the claims contested, that they occupied a working period equal to the entire of nearly seven Terms of the Supreme Court.—

8.— Deducting from the 402 cases already settled the 21 litigated in court, there remain 381 which were disposed of out of court— In no less than 40 of these, the claimants consented to their claims amounting to Rupees 1,141-3-11 being wholly dismissed, the Law Officers agreeing to forego all claims to costs against them— Others accepted Rs. 23,59,689-14-3 in full of claims amounting, with interest, to Rupees 52,72,461-12-2 the total amount abandoned by these two classes of claimants being Rupees 33,43,913-1-10.—

9.— When the Govt. consider the bijor with which those 21 cases which were brought into Court were contested, and the period occupied in their litigation, and when they reflect upon the searching scrutiny to which those which were settled out of court must have been subjected ere the claimants themselves could have been induced to forego so large a proportion of their demands, and abandon claims to the extent of 33½ lacs of Rupees or one third of a million Sterling, they are more concerned than surprized to learn that the

the attention given by the Advocate General and Government Solicitor to the settlement of these claims entailed the exclusion and sacrifice in a very great measure, of all private professional practice during two years and a half."

Para: 11.

10.— In reference to the above circumstances, the Advocate General in the concluding paras: of his letter submits for consideration the manner in which the interests of the Law officers of Govt. have been affected by an exclusive devotion of their time and labor to accomplishing an early settlement of these fanatic claims, and protecting Govt. in a two fold manner, viz. by saving it as far as possible from the payment of costs, and by thoroughly sifting every item in these claims before admitting any of them.—

Paras 13 to 20

11.— Mr. S. Smyth submits that the salaries of the Advocate General, and Govt. Solicitor, were fixed on their present moderate scale, and those officers were excluded from the benefit of pensions, on the supposition that they would have sufficient time to attend to private practice, and thereby to supplement their official incomes, and enable them to provide for their ultimate retirement.

"Such however" he states, "has not been the case "with myself or the "Govt. Solicitor. On the "contrary, since August "1858 (when Act 30 of 1858 was

a- R 2187-8 per mensem
b- R 1175- "

Para: 15.

"was passed) our time
"has been so much
"and so continuously
"engrossed by our public
"duties that the result
"has most materially
"affected our private
"practice."

Para: 16. "For myself this loss
"will probably be but
"temporary, but still
"the nearly total loss
"of private practice for
"two years and a half
"is a serious matter.
"To the Government So-
"licitor it may be more
"serious and lasting;
"many of the claim-
"ants were his clients;
"the discharge of his
"duty to Govt., precluded
"both him and his
"partners from acting
"for the claimants,
"and compelled him
"to act most hostilely
"against them. They
"had therefore no
"other course than to

P. 17 "to leave him, and go
"to other Solicitors, with
"whom their business
"may perhaps remain.
"Their claims were scru-
"tinised and resisted
"far too effectually to
"admit of their now
"feeling much good
"will towards their
"former legal adviser."

12.- Further Mr.
J. Smyth remarked
that the whole of
this labor and conse-
quent loss has been
extra and additional
to the duties ordina-
rily devolving on the
Government Law offi-
cers, and has been
expressly created
for them by a special
Act of the Legislature.

13.- Lastly, he adverts
to the time occupied
and expence involved
in the commission for
the settlement of the
debts of the Rajah
of Tanjore, and to its
results,

results, as compared with those connected with the arrangement of these Carnatic claims. For the Tanjore debts there were two sets of Commissioners one in England and one, consisting of three Members of the Civil Service on liberal salaries, in India. The Commission lasted 15 years; the amount claimed was Rupees 157,90,366; the amount allowed Rs: 56,13,830 or upwards of one third. In the case of the claims upon the estate of the late Nawab, demands to the amount of Rupees 12,208,513 have been settled by the Government Law officers in two years and a half - and for Rupees 32,91,610 or about one fourth of the sums claimed.

The

P19:

14. The Advocate General represents that supposing the Law Officers to be bound in virtue of their office to undertake all business whether of an usual or of a special character which the Government may require to have transacted for them in Court, ~~or in their established official capacities~~ their employment out of Court, to act as quasi Commissioners in settling claims that do not become the subject of adverse litigation before a Legal Tribunal, can hardly have been contemplated unless on special remuneration.

15 The Government have very carefully read and considered the report of the Advocate General upon the settlement of the claims on the estate of the Nawab of the Carnatic, of which a summary has been

been given in the preceding paras. The result of the investigation and adjudication of these claims has been highly advantageous to the State and honorable to the Law Officers. It is fully shown that those gentlemen not only had great difficulties to encounter in dealing with these claims in Court, but that in the settlement of such as were, for good reasons, kept out of Court, their time has been fully occupied, and they have thus for the last two years and a half been called upon to give up their time and labor to an extent, and in a manner, never before exacted of them by Government.

16. That the interests of Government have been protected, and the debts of the late Nawaub of the Carnatic speedily and satisfactorily adjusted, the results detailed by Mr. Smyth in his present letter fully prove. To the zeal and diligence of its Law officers the Government are therefore largely indebted. To permit them under these circumstances to be in a pecuniary point of view sufferers, could never have been intended, and should not in the opinion of Government be allowed.

17 The Government therefore resolve in laying before the Right Honorable the Secretary of State this present report on the settlement of the Carnatic claims, to solicit his attention to the undefatigable exertions of the Advocate General and Government Solicitor, to the success that has attended them, and, at the same time, to the personal sacrifices on the part of those officers at which they

they have been rendered. They resolve also on a full consideration of all the circumstances of the case strongly to recommend that the sum of Rs. 55,000 be presented to the Advocate-General, and Rs. 27,000 to the Govt. Solicitor, in special remuneration of their services during the last two years and a half in the disposal of these claims. They regard these sums + as no more than a fair and equitable compensation for the extra labors that they have undergone, and professional losses that they must have sustained during this long and arduous investigation.

18 The Government observe with much gratification, the honorable testimony borne by the Advocate General, in para 4 of his letter, to the valuable and zealous assistance afforded to the Law officers on all occasions by the Government Agent Mr. Balfour, and his assistant Major Snow, both in and out of Court. They will have much pleasure in bringing the conduct of these meritorious officers to the notice of His Majesty's Government.

19. The settlement of all the claims against the estate of the late Nawab, by creditors, members of the family, officers, servants and dependants — conducted both under Act XXX 1858 by the Law officers of Government, and in respect to claims not properly falling, or not desirable to be brought within the scope of that enactment, by the Government Agent at

+ being in each case slightly in excess of two years official salary —

Copy of Para 4 to 19 to the Advocate General
do Govern Solicitor
do Govt Agent at Chepauk
do Major P. L. Snow

Sep. 21st

18
16

at Chepauk — has now approached so near to a conclusion that the financial results of the whole arrangement may be calculated with sufficient exactness.

20 It has been already shown that the settlement of the 413 claims filed under Act XXX - 1858 will be effected for Rupees — 33,00,000
The amount already disbursed, after investigation made by Dr. Balfour, for gratuities to servants, arrears of Pensions and wages, as well as for Sundry Charges, is according to a Memo furnished by him — 8,21,192
and the claims on account of wages, and petty debts which he still has to settle and pay may amount to — 91,618
or in all Rupees — 42,12,810

On

21 On the other hand the amount already realized by the Receiver of the Carnatic Property by the sale of the Nawab's property, including the Chepauk Premises purchased by Government, and from the balance of the Pungum Hipsa due to the Nawab at his death, is, as appears by a Memo furnished by Mr. Dale, Rupees 12,40,000 - and he estimates that he may realize Rupees 4,00,000 for property not yet disposed of - making Rupees 16,40,000 - Allowing 1,40,000 for Commission and charges, and deducting the net surplus (Rupees 15,00,000) from the total

total amount (Rs. 42,12,810) for which the liabilities of the late Nawaub of all kinds will be satisfied, the remainder, or the net cost incurred by Government in settlement of these claims will be Rupees 27,12,810 or little more than 2½ lacs of rupees, being about 5 years purchase of the amount whereby the stipends and allowances now paid to the members of the Carnatic Family their servants and dependants fall short of the payments which were made by Government to the Nawaub or in other words of the sum now accruing to this Government by his death and the extinction of his dynasty.

But

A

Note. The income derived from Govt by the late Nawaub was made up of two items.
1st The one fifth of the Net Revenues of the Carnatic Rs. 11,65,824-12-10
2d Tavaneea Peshcush and Nuzzeranah 13,319-8-"
Total Rupees 11,79,144-4-10

This amount never varied. See Accountant General's 7th October 1856 in Govt Pro: Political Dept 23d Jan: 1857.
The present payments as Stipends to the members of the Carnatic Family Officers and Servants and miscellaneous charges amount to Rs. 6,35,561-7 per annum. Of this nearly [illegible]

Rs. 6,17,674 is for Stipends and pensions in reversion for Officers and Servants are in all cases life grants. The Stipends to the immediate family are in no case to last beyond two generations and to be reduced by at least one half on each lapse. The largest Stipends are Prince Azeem Jah Bahadoor Rs. 50,000 per annum he is an aged man and has none but his ha[illegible] sons.
2. The widows of the late Nawaub M.A. Khan one is Bibi Begum, Shadi Bibi, has Rs. 12,200 per annum she has no children. Azeem Oon Nissa Begum, the other widow, who has no children has Rs. 8,400 per annum.

receives

22. But in truth much of the above sum of Rs. 27,12,810 has been already made good out of the lapsed income of the Nawaub since his death in October 1855. From a statement made up by the Accountant General to the 31st of October last, and brought up to the end of the past year in the Government Office, it is found that the total amount that has been disbursed by Govt since the decease of the Nawaub, on account of his Estate and the Carnatic family - for payment of Stipends, Pensions and Gratuities - for arrears of Stipend, pensions and wages for the settlement of debts and for sundry expenses - is Rupees 69,97,760 - while the amount for the same period of the Pungum Hissa Rs. income

Income which has accrued to Govt. by the Nawaubs' death, to the [illegible] of the balance of Punjum Hissa due to him when he died are Rs 66,16,218, showing an excess of expenditure above receipts of only Rupees 3,81,542- If to this be added the probable amount still required for payment of debts (inclusive of the amount Rs 1,10,664 of the decree award under appeal to the Privy Council in the case of Damoodra Dos and others), and for the discharge of the arrears of Stipend undrawn by Prince Azeem Jah Bahadoor and if credit be taken for the estimated sum yet to be realized by the Receiver of the Carnatic Property, the entire amount yet to be paid will be Rupees 9,39,191- This will be less than be recovered in two years from the excess of the income which has reverted to Govt. by the death of the Nawaub above the amount payable for Stipends, Pensions and other Charges--

Punjum Hissa and Travancore Peshcush for 5¼ years at Rs 1,179,144-4-10 per annum — 6,190,507

[a] Arrears of do: at date of Nawaubs decease — 4,25,711

66,16,218

a. The Nawaub drew a fixed allowance of 70000 Rs a month, and the difference between this and his full income (1,179,144-4-10 - 8,40000 = 3,79,144-4-10 was paid to him after the close of each year on the accounts being made up. This balance for 1854/55 had not been paid to the Nawaub at the date of his death in October 1855-

	Rs
Amount estimated for 11 cases which the Law Officers still have to settle	2,09,000
For wage claims & petty debts to be investigated & settled by the Commissioner, Dr. Balfour	91,618
Arrears of Stipend undrawn by the Prince Azeem Jah paid due on the 31st October 1860	5,55,367
Amount decreed in the case of Damoodra Dos and others now under appeal	1,10,664
	Rs 9,57,649

* Excess of expenditure above receipts Rs. 3,81,542
Add probable amount still required for payment of debts 9,57,649
Total Rs 13,39,191
Deduct Sum yet to be realized out of the Karnatic Estate 4,00,000
Amount that will yet remain to be paid 9,39,191.

Income reverted to Govt by death of Nawaub — Rs 11,79,144
Stipends Pensions &c chargeable upon it — " 6,35,561
Excess or net amount accrued to Government — " 5,43,583

Pol. Let. to Engd. 25th Jany No. 3
of 1861.

D3784

Political 1861 Despatch

No 44

Proceedings of Govt

Dated 19th January 1861.

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