M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

~~Public~~ Political DEPARTMENT.

G.O. No. 259 Press / Mis.

Dated 2-7-62 19 .

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Proceedings of the Madras Government, Potitical Department,
2nd July 1862.

Read the following papers :—

No. 7. To His Excellency Sir W. DENISON, K.C.B., Governor in Council of Fort Saint George, dated 12th May 1862.

The humble petition of G. G. K. RICHARDSON, J. S. S. RICHARDSON, and GOOLAM MAHOMED SHURFOODDOWLAH BAHADOOR, Executors of the late GOOLAM MOORTOOZAH KHAN alias MOOMTAZUL-OOL-MOOLK BAHADOOR, a Mahomedan Inhabitant of Madras.

SHEWETH,

1. That your Petitioners as such Executors of the late Goolam Moortoozah Khan alias Moomtazul-ool-Moolk Bahadoor aforesaid, duly named and appointed by his last Will and Testament, dated in Madras 20th of February 1860, beg hereby most respectfully to submit their claim against the Estate and Effects of His late Highness the Nabob of the Carnatic to the aggregate balance amount of Rupees 46,137-10-4 for and on behalf of the Estate of the said Testator in the matter of three Istapha Cutcherry Bonds issued by and under the order and direction of his said late Highness, with many others to the total amount of 7 lacs of Rupees subsequently recognized, sanctioned and, with the exception of the three Bonds as aforesaid, paid and discharged by Government.

2. That your Petitioners beg to submit that at the time of the said Testator's pecuniary embarrassment, in the year 1851, His late Highness being largely indebted to the said Testator, directed the issue of the said Istapha Cutcherry Bonds to the extent of 7 lacs of Rupees *in part liquidation of His Highness' debt* to the said Testator as aforesaid, to several of the said late Testator's creditors, in adjustment of their claims against the said Testator. As the matter of these Istapha Cutcherry Bonds are well known and admitted by Government and held as valid claims against the Estate of His late Highness the Nabob of the Carnatic, your Petitioners deem it unnecessary to dwell further on the subject, but humbly to refer Your Excellency to the reports of the Government Law Officers on them.

3. That among the creditors of the said Testator was one Fakeer Saib, whose aggregate claim for money lent to the Testator and commission agreed to be paid to the said Fakeer Saib by the said Testator for some mediatorial work on his behalf with his creditors formed a very considerable amount, for all of which he obtained several Istapha Cutcherry Bonds, among which the following three Bonds were included, viz :

One Bond No. 8 for...	...	...	Rupees	18,500	0 0
One do. No. 22 for...	...	...	„	4,960	0 0
One do. No. 41 for...	...	...	„	31,924	13 2
		Total Rupees...		55,384	13 2

4. That subsequent to the date of the issue of the said three Bonds, the said Fakeer Saib received the following dividends on them, viz :

On the Bond No. 8 for Rupees		18,500.....	Rs.	1,892	8 9
On do. No. 22	„	4,960.....	„	988	14 10
On do. No. 41	„	31,924-13-2	„	6,365	11 3
		Total Rupees...		9,247	2 10

thus leaving a balance of Rupees 46,137-10-4 of the original aggregate amount of the Bonds aforesaid, namely, of 18,500, 4,960 and 31,924-13-2 still undischarged.

5. That pursuant to the provisions and requisitions of Act No. XXX of 1858, the said Fakeer Saib on or about the 16th day of October 1858 filed his particulars of claim against the Estate of His late Highness the Nabob of the Carnatic in the Supreme Court, and claimed such balance due. But the Supreme Court, although admitting and decreeing a certain sum of Rupees 10,189-11-11 claimed by the said Fakeer Saib upon other claims and transactions of the said Fakeer Saib with His late Highness, independent and totally unconnected with the balance of these three Istapha Cutcherry Bonds as aforesaid, the Supreme Court disallowed such his claim to recover the balance of the amount, so due upon the three Istapha Cutcherry Bonds aforesaid. Hence your Petitioners submit that *as* the said claim of the said Fakeer Saib to the said Bonds have only been disallowed by the Supreme Court in their said decision and not the debt due upon the said Bonds by the Estate of His late Highness the Nabob of the Carnatic, the balance so claimed by the said Fakeer Saib and so refused him *reverts of itself* to the *Estate* of the said Testator that the late Goolam Moortoozah Khan alias Moomtazul-ool-Moolk Bahadoor aforesaid, and becomes claimable by your Petitioners as such Executors of his as aforesaid as comprising part and parcel of the said Testator's Estate and Effects.

6. That your Petitioners further beg to submit that the said Testator, the late Goolam Moortoozah Khan alias Moomtazul-ool-Moolk Bahadoor aforesaid, in his particulars of claim against the Estate of the late Nabob of the Carnatic, clearly and distinctly deducted the total amount of the 7 lacs of Rupees for which the Istapha Cutcherry Bonds were issued, and laid his claim for the balance of his demand against His late Highness' Estate, and as no objection was taken either by the Supreme Court or the Government Law Officers to such deduction, it is to be held as adopted by them; and as the whole of the said Istapha Cutcherry Bonds for the *entire amount of 7 lacs of Rupees* aforesaid (with the exception of the balance on the three Bonds aforesaid) have been duly and unhesitatingly paid and discharged by Government to the parties holding them, among whom your Petitioners beg to submit the names of the parties and the amounts paid them as per margin.

Mr. G. G. K. Richardson.. ..	...Rupees	11,330
Abdool Wahab..	,,	10,000

Your Petitioners therefore as such Executors of the late Goolam Moortoozah Khan alias Moomtazul-ool-Moolk Bahadoor aforesaid, humbly pray that your Excellency in Council will be pleased to direct that the balance aforesaid of Rupees 46,137-10-4 so due be paid and discharged to your Petitioners to enable them to give effect to the directions contained in the said Testator's last Will and Testament aforesaid. And your Petitioners will ever pray.

(Signed) G. G. K. RICHARDSON.
(,,) J. RICHARDSON.
غلام محمد شرف الدوله

MADRAS, *12th May* 1862.

Referred for the report of the Acting Government Solicitor.

FORT SAINT GEORGE,
16th May 1862.

(Signed) A. J. ARBUTHNOT,
Acting Chief Secretary.

No. 8. From JOHN MILLER, Esq., Acting Government Solicitor, Madras; to A. J. ARBUTHNOT, Esq., Acting Chief Secretary to Government, Madras, dated 22nd May 1862, No. 258.

Dated 16th May 1862, and endorsed upon petition of the Executors of the Will of Goolam Moortooza Khan deceased, to Government of the 12th idem.

1. I have the honor to acknowledge the Order of Government noted in the margin, and which is herewith returned.

2. The claim of Goolam Moortooza Khan being one of those resisted by the Advocate General whilst Mr. Boyson was in Madras, I considered it advisable to confer with the Advocate General on the present petition of the Executors of Goolam Moortooza Khan.

3. I therefore submitted the petition together with all the information in the records of my Office relative to the subject of it for the consideration of the Advocate General with whom I also conferred.

Proceedings of the Madras Government, Political Department,
2nd July 1862.

4. The Advocate General went very fully into the case and has sent me the observations noted on the petition as well as the opinion and remarks, a copy of which I have the honor to forward for the information of Government.

5. The claim put forward by the Executors is certainly one which could not be sustained in any Court. The Executors however do not put it forward in that light, but simply as a claim which they have a right in fairness and in equity to urge.

6. Government may therefore dispose of the petition without going into the equities of the claim, but if they enter upon the merits of the Petitioners' case there is no doubt, there is much to be said, both in support of and against the claim; the true version of the story may have been given by Goolam, but if not so given by him, the facts will never now be known.

7. The Petitioners' application is one which the Government can alone dispose of; and the review of the whole case which is most fully and fairly put by the Advocate General in his remarks, will I trust enable Government to dispose of the matter satisfactorily.

COPY—OPINION.

The petition of Ghoolam Moortooza Khan's Executors to Government for the payment of Rupees 46,137-10-4 to them, because Fakeer Saib, the bolder of the Istafa Cutcherry Bonds, numbered 8, 22, and 41 respectively (issued originally for Rupees 55,384-13-2) was unable to prove that he had ever given, or that the Khan had ever received, any consideration for them, involves no matter of law whatever, inasmuch as no legal claim can ever be founded on them. Fakeer Saib has accepted and received payment of Rupees 10,000 odd "in full discharge of what is justly and fairly due to him," and so is barred under Sections XIV and XXI of Act XXX of 1858. Ghoolam Moortooza Khan never included any of these Bonds in his claim, and he is therefore barred, under Section XVI from now setting up any claim in respect of them.

2. After reading the petition, I read over carefully my Report to Government, dated 14th December 1860, and the Judgment of Sir Adam Bittleston, upon the claim of Ghoolam Mootooza Khan, and I can find no reason to change the views I there expressed, or to doubt the correctness of the Judgment then delivered.

3. Wishing however to give the Petitioners every opportunity of satisfying me, if they could do so, of the justice of their claim—or at least of enabling me to lay the grounds of it fully before Government, I informed them that, if they wished it, I should be ready to listen to any thing their legal adviser could urge on their behalf. Accordingly their Solicitor Mr. Ritchie, attended at my chambers with the Acting Government Solicitor, and we discussed the matter very fully for nearly two hours.

4. The Petition is founded partly upon the fact that the Nabob ordered his Istafa Cutcherry in 1851 and 1852 to issue Istafa Cutcherry Bonds to Ghoolam Moortooza Khan, most of which were paid over to his creditors, who had agreed to accept them in payment of his debts, and thereon executed to him a general release—and partly upon Sections XVIII and XXII of Act XXX of 1858, which make the holders of these Istafa Cutcherry Bonds creditors of the Nabob, with this difference, that, whereas under Section XIV, all other Nabob's creditors must have proved some amount to have been actually paid to the Nabob, the holders of *these* Bonds, under Section XXII, had only to prove some amount actually paid to Ghoolam Moortooza Khan; and when they did this, it was immaterial whether the Nabob had ever received any consideration or not for the issue of any of these Bonds.

5. The argument of the Petitioners is this: Istly, The Government, by Section XXII of the Act, has undertaken to pay these 7 lakhs of Istafa Cutcherry Bonds—irrespectively of, and without demanding, any proof that the Nabob received any consideration for issuing them.

I do not agree in this reading of Section XXII, I read it as promising to pay *not* the full amount of these Istafa Cutcherry Bonds, but so much only as the holders could prove to have been paid to Ghoolam Moortooza Khan. There is no proof, and I do not understand it to be even *alleged*, that the Rupees 46,137 now petitioned for, was ever paid to Ghoolam Moortooza Khan.

6. 2ndly, The Government under Act XXX of 1858 are in fact Trustees of the Nabob's Estate for the payment of his just debts, and it must be assumed that Government would never have agreed, and ought not to have agreed, to consider these Istafa Cutcherry Bonds as representing actual debts of the Nabob, unless they believed he had received actual consideration for issuing them.

In a Court of Law no discussion of the probable motives of the Legislature could arise—the only question would be, what has the Act said, and is this claim within its provisions? But, in my opinion, the view taken by the Legislature was probably rather to this effect—the Nabob has promised to pay the Khan's debts, and has issued Bonds for their discharge, for which the Khan's creditors have given him a discharge, and on which Bonds several annual instalments were actually paid during the Nabob's life, shewing a strong probability that, if the Nabob had lived, the Bonds would have been paid in full. These Bonds thus obtained credit in the bazaar or Native money market, and became negotiable Securities—under all these circumstances we think it only equitable to enact that the holders shall be regarded as creditors of the Nabob's Estate, to the amount actually advanced by the original creditor; *whatever* may have been the Nabob's reason for issuing them, *as to which we know nothing*.

7. 3rdly, The Nabob either issued these Istafa Cutcherry Bonds out of mere grace, as a mere gift, to Ghoolam Moortooza Khan, or else he received *some* consideration. The latter is surely the most probable, especially as it is proved, and not disputed, that *before* they were issued, the Istafa Cutherry insisted on Ghoolam Moortooza Khan surrendering the Nabob's Promissory Note for 7 lakhs of Rupees. This therefore was a consideration, and if he did receive any consideration, then, setting apart strict law, as a matter of fairness and equity, the Government who hold his Estate ought to discharge Bonds for the issue of which he thus received a consideration to which he, indisputably attached very great importance.

This is the part of the Petitioner's argument that weighs most with me. It is the fact that the Istafa Cutcherry on behalf of the Nabob did insist on and did attach great importance to the surrender of the Nabob's Promissory Note for Rupees 7,00,000 as a preliminary to and as a condition for the issue of the Istafa Cutcherry Bonds and the Note was unquestionably a genuine one. The main question however seems to me to be this, what was the consideration for that Promissory Note for Rupees 7,00,000? For if no consideration for it passed from Ghoolam Moortooza Khan (or his family) to the Nabob, then I cannot see how his surrender of a document on which he had no right or title to found any claim, can be regarded as a consideration which Government ought to recognize. I can only say with Sir Adam Bittleston, that it was for Ghoolam Moortooza Khan to prove this part of his case, and that he failed to do so. It *may* have been his misfortune, owing to the deaths of his mother, and of the Nabob's mother and grandmother, and of the Nabob himself; but this much is certain, that the history of the 7 lakhs Note was part of "the secrets of the Palace"—as Sir Adam Bittleston called them; and that Mr. Arathoon, the *nominal* payee of the Note, never knew of its existence.

8. 4thly, There is also the fact—tending strongly to shew that these Istafa Cutcherry Bonds were issued to Ghoolam Moortooza Khan by the Nabob, *not merely* to pay his creditors, and as a gift to him for *that* purpose, but in payment or settlement of some thing due to him from the Nabob—that the Istafa Cutcherry, though not friendly to Ghoolam Moortooza Khan, paid him, openly, on his own receipt, two instalments amounting to Rupees 20,000, on the lost Istafa Cutcherry Bond, for one lakh of Rupees, issued in July 1852.

This is no doubt the fact, and deserves consideration; but it seems to me to lose much of the force it would otherwise have, when it is considered (as was repeatedly proved) that, when once these Istafa Cutcherry Bonds were issued, the Istafa Cutcherry paid the instalments without question or inquiry of any kind. It is however the fact that the Istafa Cutcherry were certainly not friendly to Ghoolam Moortooza Khan in this matter, but, on the contrary opposed the issue of these Bonds repeatedly and strenuously.

he answers to the grounds set-forth in the petition itself, I have noted in the margin. round, namely that because Ghoolam Moortooza Khan, in his claim filed under Act 1858, gave credit for these 7 lakhs of Istafa Cutcherry Bonds, and neither Govern- or the Law Officers objected, therefore Government is bound to pay these 7 lakhs in full, ctive of the provisions of the Act, seems to me quite untenable. It was for the claimant, r him alone, to determine the amouut and nature of his claim, and to consider what deduc- he ought to make to avoid the consequences of an untenable demand. Government had ing whatever to do with it, beyond taking care to resist any improper demand, and their ce therefore can never it appears to me, be construed into such an assent, still less such an ied promise as Petitioners would suggest.

10. The real truth of the origin of this whole matter, the Nabob's Promissory Note for 7 s of Rupees in the name of Mr. Arathoon, or of the real reasons for the issue of the 7 lakhs of fa Cutcherry Bonds in favor of Ghoolam Moortooza Khan, is a matter which, now that the ob, and the Khan, and the two Begums, are all dead, will probably never be known. It was of "the secrets of the Palace." It may have been the Khan's misfortune, and owing to these ns, that he could not prove his case—but the fact is that in my opinion, and still more, in of the Court, he did not do so.

11. The main points now relied on by his Executors, I have here set forth as fully as I ld, together with my remarks thereon, for the full and fair consideration of Government.

12. I have only to add that the Petitioners are correct in stating that the whole of these stafa Cutcherry Bonds (Rupees 7,00,000) are now in the hands of the Registrar or of the Carnatic Receiver.

(Signed) T. SYDNEY SMYTH,
Advocate General.

20th May 1862.

(True Copy.)

(Signed) JOHN MILLER,
Acting Government Solicitor.

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9. ORDER THEREON, 2nd July 1862, No. 259.

the petition above recorded the Executors of the Estate of the late Ghoolam Moortooza ly to Government to pay to them a sum of Rupees 46,137-10-4, being the balance llege to be due on three of his Istafa Cutcherry Bonds issued by the late Nabob of Ghoolam Moortooza Khan and to which reference is made in Section XVI, s.

which the Petitioners refer were transferred by Ghoolam Moortooza Khan ho instituted a suit to establish his claim to the amount alleged to be due bove cited, but failing to prove that he had given consideration for the his claim for the sum of Rupees 10,190-2-7.

Council cannot comply with the Petitioners' application. The Bonds by Ghoolam Moortooza Khan to Fakheer Sahib, from whom the Govern- interest of Ghoolam Moortooza Khan in these Bonds ceased entirely to Fakheer Sahib, and it is to be presumed that he then made the best

which Fakheer Sahib preferred his claim, it was provided that the the Istafa Cutcherry Bonds so much as the holders could prove that d this the Government have done.

vanced by the Petitioners is in fact a claim in behalf of the Estate of for payment on Bonds which Ghoolam Moortooza Khan had disposed

Proceedings of the Madras Government, Political Department,
2nd July 1862.

6. The Government would further observe that Act No. XXX of 1858 was specially passed for the administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic, and it is only in accordance with that Act that any claims against the Nabob's Estate can be dealt with.

(Signed) A. J. ARBUTHNOT,
Acting Chief Secretary.

Political Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following papers:

Petition of the Executors to the Estate of the late Ghoolam Moortoza Khan

(Dated 12th May 1862.)

From the Advt. Govt. Solicitor

(——, —— 22 —— , —— . —— No. 258)

Order thereon 2d July 1862 No. 259

On the Petition above recorded the Executors of the Estate of the late Ghoolam Moortoza Khan apply to Govt to pay to them a sum of Rs. 46,137-10-4, being the balance which they allege to be due on three of his Estate Sotcherry Bonds issued by the late Nabob of the Carnatic to Ghoolam Moortoza Khan

to which reference is made in Section XXV Act XXX of 1858.

2 The bonds to which the Petitioners refer were transferred by Ghoolam Moortoza Khan to one Fakheer Saheb who instituted a suit to establish his claim to the amount alleged to be due on them under the Act above cited, but failing to prove that he had given consideration for the full amount, compromised his claim for the sum of Rs. 10,190-2-7.

3 The Governor in Council cannot comply with the Petitioners' application. The Bonds in question were paid over by Ghoolam Moortoza Khan to Fakheer Saheb, from whom the Govt. acquired them. The interest of Ghoolam Moortoza Khan in these bonds ceased entirely when he disposed of them to Fakheer Saheb, & it is to be presumed that he thus made the best bargain he could.

3 In the Act under which Fakheer Saheb preferred his claim, it was provided that the Govt. should pay on the Estate for Kutcherry Bonds so much as the holders could prove that they had given for them. By this the Govt. have done.

4 The claim now advanced by the Petitioners is in fact a claim in behalf of the Estate of Ghoolam Moortoza Khan for payment on bonds which Ghoolam Moortoza Khan had disposed of before his death.

5 The Govt. would further

To the Executors to the Estate of the late Ghoolam Moortoza Khan — Nisf 2.

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Political 1862. Department.

No. 259.

PROCEEDINGS of GOVERNMENT.

Dated 2 Sept 1862

further pleadings that Act
XX of 1858 was specially
passed for this province.
- Exclusion of the Estates by for
the payments of the debts
of the holders of the law.
- Petitioner is only one pers.
- pardonnes with their debt
that many pleaders against
the Zemindars Estates pay the
debts rights.

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