MR. G. 1—32,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No. 278 Press ~~MIS.~~

Dated 18-7- ~~19~~ 1862

Not to be folded or roughly handled

Proceedings of the Madras Government, Potitical Department, 18th July 1862.

Read the following papers:—

No. 40. From JOHN MILLER, Esq., Acting Government Solicitor, Madras; to T. PYCROFT, Esq., Chief Secretary to Government, dated 18th December 1861, No. 849.

1. I have the honor to acknowledge the Proceedings of Government noted in the margin, transmitting to me copy of the petition of Nabob Ahmud-oon-Nissa Begum for any information that the Law Officers of Government might be able to give regarding it.

Dated 5th December 1861, Political Department, No. 537.

2. As the hearing of the Petitioner's claim under Act XXX of 1858 took place before I assumed charge of the Office of Government Solicitor, I know nothing of the merits of the Petitioner's case or of what took place at that hearing, excepting what appears on the face of the Records in my Office.

3. I send however a copy of the Judgment delivered by Sir Adam Bittleston, the Judge who disposed of the claim, from which Government will perceive the grounds upon which the learned Judge considered that the claimant was not entitled to the arrears of the allowances claimed by her.

4. His Lordship, the presiding Judge, finds that the Nabob had clearly recognized what had been the amount of the customary allowance to the claimant's mother Azeem-oon-Nissa Begum and had made no objection to it, and he considered it to be clearly proved that there was no dispute about the amount of allowance which the Nabob must be taken to have *promised* to give. The Judge's difficulty was that he found nothing beyond a promise to give, but that promise was not supported by any such consideration as rendered it binding. Sir Adam Bittleston further remarks that the strongest *act* the claimant had referred to, was the Nabob's Order of the 21st June 1855, in which is stated "His Illustrious Highness is therefore of opinion that she (claimant) should be considered as a creditor of the Circar instead of Arathoon's sister, and to pay her the sum claimed by her from the Istafa Cutcherry by way of instalments is advisable." Again the learned Judge says the reason or excuse assigned for not paying the arrears of Azeem-oon-Nissa's allowance was pronounced a bad one at last by the Istafa Cutcherry, when it was found that that amount had been included in the Return of Regency debts which the Nabob agreed to pay, the refusal to pay on that ground was then withdrawn, and it was resolved that the arrears should be paid. But (says the Judge) it all ends as I have said, in agreement, and undertaking, and promise, founded upon a *meritorious* but not upon a valuable consideration.

5. I would next call the attention of Government to the communications between the late Nabob and the Government respecting the arrears of similar allowances. Sir Adam Bittleston in alluding to these communications says, "On the part of Government there is remonstrance and advice, an appeal to the Nabob's sense of what was honorable and befitting his dignity, together with something approaching to apology for interference in his domestic concerns."

6. These are the conclusions arrived at by the Judge who tried the case, and though doubtless he was of opinion that the claimant could not in law be considered a creditor of the late Nabob's Estate, it is impossible for any one to arrive at any other conclusion than that he considered the claimant had established firstly, the amount of allowance; secondly, that the Nabob had promised to give this allowance; and thirdly, that the Government had in their communication with the late Nabob advised him and remonstrated with him in strong terms for not paying similar allowances to other members of his family.

7. As the claim now put forward is one which it has been decided cannot be supported in law, I have thought it my duty to bring forward these circumstances to the notice of Government, with whom rests the disposal of the claim.

8. I have also the honor to submit for the information of Government, a copy of Mr. Advocate General's remarks on the petition.

COPY—OPINION.

I know nothing whatever of the facts, except that the Petitioner filed a claim under Act 30 of 1858 for Rupees 1,22,203-6-6, and for interest on Rupees 66,599-15-11 from 1st March 1859 to date of decree, and after a very long trial, and examination of numerous witnesses, the Court on the 8th November 1860 dismissed the claim, but without costs, on the ground that there was no legal obligation on the Nabob to pay any fixed allowance to any of his female or other relations; that whatever their moral claims, he was legally bound only to maintain them decently; and consequently that no legal debt, binding on the Nabob or his Estate (even if he had been subject to any Court's jurisdiction) could be created by the non-payment of (or by the arrears occasioned by such non-payment) any allowances which the ladies had formerly received from the Nabob's predecessors.

(Signed) T. SYDNEY SMYTH,
Advocate General.

14*th December* 1861.

(True Copy.)

(Signed) JOHN MILLER,
Acting Government Solicitor.

No. 41. From Major R. S. WILSON, Government Agent at Chepauk and Paymaster of Carnatic Stipends; to A. J. ARBUTHNOT, Esq., Acting Chief Secretary to Government, Fort Saint George, dated 10th July 1862, No. 369.

I have the honor to acknowledge receipt of G. O., No. 537 of the 5th December 1861, directing me to give any information that may be in my power regarding the subject of a petition addressed to His Excellency the Governor in Council, by Nabob Ahmed-oo-Nissa Begum. In reply I beg to submit the following statement, which I believe contains the material facts of the case.

II. During the time of the Regency, Petitioner's family had occasion to borrow Rupees 40,000. They applied to the Regent to assist them in doing so. The Regent consented to assist them, and by his orders the sum required was borrowed from Miss Arathoon* on a Bond signed by the Dewan.

2. When the Nabob attained his majority and took charge of his own affairs, he refused to acknowledge any of the debts contracted during the Regency. Miss Arathoon therefore, whose debt was still due, sued the Dewan on his Bond, and obtained a judgment against him. The Nabob then paid the money and recovered it from Petitioner's family, by stopping Petitioner's mother's allowance till the stoppages amounted to the sum which he had paid in release of the Dewan.

3. Having carefully studied all the papers connected with this petition, I believe the above to be the true state of the case, and I consider that under these circumstances Petitioner's claim is unfounded.

III. In support of that opinion, I beg to submit the following remarks:—

IV. Petitioner naturally gives a marked place in her petition to the opinion passed by Sir Adam Bittleston on the *merits* of her case when it was tried before him in 1859-60. Such an opinion appears indeed of great weight, if considered by itself, and without reference to the circumstances under which it was given. It becomes necessary therefore to explain that the opinion in question was simply an "*obiter dictum*." The case was decided not on its *merits*, but on legal grounds, and the opinion as to the *merits* given by Sir Adam Bittleston was irrelevant to the case. It was founded on two documents laid before the Court by the claimant, an examination of which was not necessary to the line of defence taken by the respondent, but which when examined, appear to be worthless.

V. The documents in question are first, a Report of the Istiffa Cutcherry (Petition Appendix O.) recommending Petitioner's claim to the favorable consideration of the Nabob; and secondly, an order passed by the Nabob (Petition Appendix S.) approving of that recommendation, and expressing an intention of acting on it.

* Note.—In Petition Appendix J, 3rd line from the bottom, *Miss* Arathoon is erroneously printed for *Mr.* Arathoon.

Proceedings of the Madras Government, Political Department,
18th July 1862.

VI. It cannot be a matter of surprize that Sir Adam Bittleston should have considered these documents as strong proofs in favor of Petitioner's claim. Taken without examination and from an European point of view, they may well appear so. It happens however that both documents give the reasons for their decisions; and these reasons, when examined, are so far from supporting the said decisions, that they do not appear in any one instance to have any connexion with them.

VII. The Report of the Istiffa Cutcherry states that the Nabob on his accession repudiated the debts contracted during the Regency; that he ought therefore not to have paid Miss Arathoon's debt, which was one of those so contracted, that having (as mentioned in paragraph II, Clause 2 of this letter), done so, he ought to consider it as his own loss, and pay the money a second time to Petitioner.

2. The reasons here given do not appear to bear out the recommendation, or rather they do not appear to have any connection with it. The Nabob was in no way bound to repudiate Miss Arathoon's debt merely because he had seen fit to repudiate others. He had the power, and it was his duty, to exercise his own discretion in the matter; to pay such claims as appeared just, to repudiate such as did not appear so; nor was any injustice done to any one by his paying Miss Arathoon. The money was borrowed for the benefit of Petitioner's family, by order of the Circar, on the responsibility of the Dewan. When a Decree of the Court had been obtained against the Dewan, the Nabob had no choice except to leave the Dewan to pay, to pay himself, or to make Petitioner's family pay. He chose the last, which seems quite just.

3. As there appears, however, a wish to convey the impression that the Nabob in settling Miss Arathoon's claim alone and not (at that time) settling any of the other Regency debts, acted somehow or other, in an irregular and objectionable manner; it may be mentioned in explanation that of all the said debts, Miss Arathoon's was the only one that was sued out in Court; a circumstance which fully accounts for its having been the only one that was paid. Why this one claimant should have applied to the Law when all the others were willing to wait the decision of Government, I cannot positively say; but I am informed on good authority, and I believe, that it was caused merely by a private intrigue, that it had no public character at all.

4. The Report of the Istiffa Cutcherry further states that the Nabob in recovering the amount paid to Miss Arathoon, out of the allowance of the mother of Ahmed-oo-Nissa Begum (Petitioner) "acted without any reason." This is so far from having been the case that the Nabob appears to have had a very good and sufficient reason for acting as he did. It has been already stated that the money was borrowed on account of Petitioner's *family*. That family consisted of her mother (Azeem-oo-Nissa Begum) and her grandmother (the Nabob Sahibah). The records of this Office show that these two ladies were in the habit of borrowing money together on the joint security of both their stipends. Their interests in fact were one, and the Nabob was therefore quite justified in recovering money due by the family from the one or the other or from both, as might appear to him expedient.

5. With regard to the other document, viz., the Nabob's order, it is therein stated that the recommendation of the Istiffa Cutcherry is grounded on the fact that the debt due to Miss Arathoon is included in the sum of five lakhs which the Nabob had agreed to pay. That fact has no bearing on the question whatsoever. The Regency debts consisted of "Tunkee Cutcherry" debts and "Treasury" debts. The Nabob, ten years after his accession, agreed to pay the latter. A list of them was therefore made out, and they were found to amount to a little more than five lakhs of Rupees. Miss Arathoon's debt was a Treasury debt and was therefore included in the said list; but as it had been already paid, it was not of course to be paid again to Miss Arathoon. Why the fact of its having been entered in the list should be a reason for paying it a second time to another person, I cannot conceive.

VIII.—The foregoing are all the reasons alleged, and I cannot but consider their insufficiency as not only depriving the documents in question of all weight, but as furnishing a strong presumption against the claim in question; for I cannot suppose that the Istiffa Cutcherry would have made a recommendation to the Nabob on insufficient grounds, if they had had sufficient grounds to give.

IX.—With regard to the rest of the petition, two points only appear to deserve notice.

First.—In petition Appendix J, first part, it is admitted that the money was borrowed from Miss Arathoon on account of Petitioner's family; but an attempt is made to explain the fact in a manner favorable to Petitioner's claim, on the ground that the loan was not a single transaction, but a part of arrangements entered into between the Nabob Sahibah and the Regent for the settlement of the debts of the former.

2. In explanation of the above it is necessary to make the following statement:—

When the late Nabob came to the throne, he found the affairs of the Circar, in a very unsatisfactory state. There was a large deficiency in the Treasury, and a great many debts besides. He attributed this state of affairs to the misconduct of the Regent and the Nabob Sahibah. He recovered the sum deficient in the Treasury by stopping the Regent's allowances; and he altogether repudiated the arrangements (above mentioned) entered into by the Regent and the Nabob Sahibah for the payment of the latter's debts; under the impression that the said arrangement was delusive and fraudulent. He also (as above stated) repudiated all the Regency debts; but after some time he allowed himself to be prevailed on to draw a distinction (also as above stated) between the "Tunkee Cutcherry debts" and the "Treasury debts;" the latter he agreed to pay—the former he finally and positively repudiated on the ground that they were not *bonâ fide* Circar debts, but had been contracted by the Regent for his own advantage, and that *he* therefore ought to pay them. This view was sanctioned by the Government and admitted to be just by the (Ex) Regent.

3. The arrangement for the settlement of the Nabob Sahibah's debts was one of those which came under the head of "Tunkee Cutcherry" and which was therefore repudiated by the Nabob *in its entirety*. This being the case, Petitioner cannot now be allowed to adduce *one* payment made under that arrangement, against an order of the Nabob given after the said arrangement had been repudiated; for granting the single payment to be as stated, the fact remains that when the Nabob came to the throne he found the account between him and Petitioner's family to show a balance in his favor; when therefore he found himself compelled, by a Decree of the Court, to settle a debt contracted under the old arrangement, he was justified on the general account in recovering the amount from Petitioner's family, even supposing that the particular item had been already settled.

Secondly.—In the same part of the petition (Appendix J, first portion), another attempt is made to shift from Petitioner's family the responsibility of repaying the money borrowed from Miss Arathoon. It is alleged that although the money was borrowed on account of the Nabob Sahibah, it was never actually paid to her; having been made away with by one Gholam Moortooza Khan, the Agent employed in negotiating the loan.

2. I notice the above allegation, lest it should appear that it had been overlooked; but I cannot think it deserving of discussion. Considering the rank of the persons concerned and the character of the Nabob Sahibah, it appears to me incredible that Gholam Moortooza Khan could have been allowed to perpetrate with impunity a fraud so gross and audacious.

No. 42. ORDER THEREON, 18th July 1862, No. 278.

As the Agent's letter above recorded contains a statement of facts which do not appear to have been before the Advocate General when he gave his opinion, under date the 14th December last, it will be referred to Mr. Smyth for any further remarks he may have to offer on the subject of the Petitioner's claim.

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

Exd. T. O'Connor.

Sir/ 50 8 1/1

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Political Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following Papers.

From the Acting Government Solicitor Madras (Here enter 18th December 1861 No. 849)

" " Government Agent at Chipauk (" " 10th July 1862 No. 369)

Order thereon 18th July 1862 No. 278.

As the Agents letter above recorded contains a Statement of facts which do not appear to have been before the Advocate General when he gave his opinion under date the 14th December last, it will be referred to Mr. Smyth for any further remarks he may have to offer on the subject of the Petitioner's claim.

To The Government Solicitor / 3 Encls. 19th July 1862 C. 2 Ls. 8. 10

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dated 25th July

Pol. Letter Engd. 25th Septr. No. 2 of 13 of 1862

Replied to 24th January 1867 No 169

Political 1862. Department.

No. 278

PROCEEDINGS OF GOVERNMENT.

Dated 18 July 1862

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Referring to the Advocate General for any further remarks he may have to offer on the subject of Ahmed bin Nijsa Begum's claim to arrears of her mothers Stipend. letter from the Government agent at Chepauk dated 10th July 1862.

7093] Madras—Printed at the Government Press.

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